IDAHO ADMINISTRATIVE BULLETIN

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IDAHO ADMINISTRATIVE BULLETIN

Table of Contents

October 1, 2014 -- Volume 14-10

PREFACE 10

IDAPA 01 - BOARD OF ACCOUNTANCY

01.01.01 - Idaho Accountancy Rules

Docket No. ***01-0101-1401***

Notice of Rulemaking - Proposed Rule 20

Docket No. ***01-0101-1402***

Notice of Rulemaking - Proposed Rule 22

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.05 - Rules Governing Diseases of Hops (Humulus lupulus)

Docket No. ***02-0605-1401 (Fee Rule)***

Notice of Rulemaking - Temporary and Proposed Rule 24

02.06.27 - Rules Governing Bacterial Ring Rot Caused By (Clavibacter michiganensis subsp. sepedonicus) of Potato

Docket No. ***02-0627-1401 (New Chapter)***

Notice of Rulemaking - Amendment to Temporary Rule 29

Docket No. ***02-0627-1402 (Fee Rule) (New Chapter)***

Notice of Rulemaking - Proposed Rule 34

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.03 - Rules of Electrical Licensing and Registration - General

Docket No. ***07-0103-1401***

Notice of Rulemaking - Proposed Rule 40

07.01.07 - Rules Governing Continuing Education Requirements

Docket No. ***07-0107-1401***

Notice of Rulemaking - Proposed Rule 42

07.01.11 - Rules Governing Civil Penalties

Docket No. ***07-0111-1401***

Notice of Rulemaking - Proposed Rule 47

07.02.04 - Rules Governing Plumbing Safety Inspections

Docket No. ***07-0204-1401***

Notice of Rulemaking - Proposed Rule 50

07.02.05 - Rules Governing Plumbing Safety Licensing

Docket No. ***07-0205-1401***

Notice of Rulemaking - Proposed Rule 52

07.02.06 - Rules Concerning Idaho State Plumbing Code

Docket No. ***07-0206-1401***

Notice of Rulemaking - Proposed Rule 56

07.03.01 - Rules of Building Safety
Docket No. ***07-0301-1401***
Notice of Rulemaking - Proposed Rule 69

Docket No. ***07-0301-1402***
Notice of Rulemaking - Temporary and Proposed Rule 78

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION
08.01.11 - Registration of Post-Secondary Educational Institutions and Proprietary Schools
Docket No. ***08-0111-1401***
Notice of Rulemaking - Proposed Rule 86

08.02.01 - Rules Governing Administration
Docket No. ***08-0201-1402***
Notice of Rulemaking - Temporary and Proposed Rule 90

08.02.02 - Rules Governing Uniformity
Docket No. ***08-0202-1401***
Notice of Rulemaking - Proposed Rule 92

Docket No. ***08-0202-1402***
Notice of Rulemaking - Proposed Rule 120

Docket No. ***08-0202-1403***
Notice of Rulemaking - Proposed Rule 122

Docket No. ***08-0202-1404***
Notice of Rulemaking - Proposed Rule 132

Docket No. ***08-0202-1405***
Notice of Rulemaking - Adoption of Temporary Rule 140

08.02.03 - Rules Governing Thoroughness
Docket No. ***08-0203-1401***
Notice of Rulemaking - Proposed Rule 142

Docket No. ***08-0203-1402***
Notice of Rulemaking - Temporary and Proposed Rule 148

Docket No. ***08-0203-1403***
Notice of Rulemaking - Temporary and Proposed Rule 152

Docket No. ***08-0203-1404***
Notice of Rulemaking - Temporary and Proposed Rule 157

Docket No. ***08-0203-1405***
Notice of Rulemaking - Adoption of Temporary Rule 160

Docket No. ***08-0203-1406***
Notice of Rulemaking - Temporary and Proposed Rule 165

IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS
10.01.01 - Rules of Procedure
Docket No. ***10-0101-1401***
Notice of Rulemaking - Adoption of Pending Rule 167

10.01.02 - Rules of Professional Responsibility
Docket No. 10-0102-1401
Notice of Rulemaking - Adoption of Pending Rule 168

10.01.03 - Rules for Corner Perpetuation and Filing
Docket No. ***10-0103-1401***
Notice of Rulemaking - Proposed Rule 169

IDAPA 11 - IDAHO STATE POLICE
11.03.01 - Rules Governing Alcohol Testing
Docket No. ***11-0301-1401***
Notice of Rulemaking - Temporary and Proposed Rule 171

11.04.09 - Rules Governing Claiming Races
Docket No. ***11-0409-1401***
Notice of Rulemaking - Proposed Rule 179

11.04.10 - Rules Governing Live Horse Races
Docket No. ***11-0410-1401***
Notice of Rulemaking - Proposed Rule 181

11.05.01 - Rules Governing Alcohol Beverage Control
Docket No. ***11-0501-1401***
Notice of Intent to Promulgate Rules - Negotiated Rulemaking 183

11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council
Docket No. ***11-1101-1401***
Notice of Rulemaking - Adoption of Pending Rule 184

Docket No. ***11-1101-1402***
Notice of Rulemaking - Adoption of Pending Rule 185

Docket No. ***11-1101-1403***
Notice of Rulemaking - Proposed Rule 186

11.11.04 - Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers
Docket No. ***11-1104-1401***
Notice of Rulemaking - Proposed Rule 194

11.13.01 - The Motor Carrier Rules
Docket No. ***11-1301-1401***
Notice of Rulemaking - Proposed Rule 198

Docket No. ***11-1301-1402***
Notice of Rulemaking - Proposed Rule 201

IDAPA 12 - DEPARTMENT OF FINANCE
12.01.10 - Rules Pursuant to the Idaho Residential Mortgage Practices Act
Docket No. ***12-0110-1401***
Notice of Rulemaking - Proposed Rule 204

IDAPA 13 - IDAHO FISH AND GAME COMMISSION
13.01.02 - Rules Governing Hunter Education and Mentored Hunting
Docket No. ***13-0102-1401***
Notice of Rulemaking - Temporary and Proposed Rule 206

13.01.04 - Rules Governing Licensing
Docket No. ***13-0104-1402***
Notice of Rulemaking - Temporary and Proposed Rule 209

13.01.04 - Rules Governing Licensing
Docket No. ***13-0104-1403***
Notice of Rulemaking - Temporary and Proposed Rule 212

Docket No. ***13-0104-1404***
Notice of Rulemaking - Temporary and Proposed Rule 215

13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho
Docket No. ***13-0108-1402***
Notice of Rulemaking - Proposed Rule.....220

Docket No. ***13-0108-1403***
Notice of Rulemaking - Temporary and Proposed Rule 227

Docket No. ***13-0108-1404***
Notice of Rulemaking - Temporary and Proposed Rule 234

13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho
Docket No. ***13-0109-1401***
Notice of Rulemaking - Temporary and Proposed Rule 237

IDAPA 15 - OFFICE OF THE GOVERNOR - FOREST PRODUCTS COMMISSION
15.03.01 - Rules of Administrative Procedure of the Idaho Forest Products Commission
Docket No. ***15-0301-1401***
Notice of Rulemaking - Proposed Rule.....239

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.02.02 - Rules of the Idaho Emergency Medical Services (EMS) Physician Commission
Docket No. ***16-0202-1401***
Notice of Rulemaking - Proposed Rule.....241

16.02.19 - Food Safety and Sanitation Standards for Food Establishments (The Idaho Food Code)
Docket No. ***16-0219-1401***
Notice of Rulemaking - Temporary and Proposed Rule 245

16.03.01 - Eligibility for Health Care Assistance for Families and Children
Docket No. ***16-0301-1401***
Notice of Rulemaking - Proposed Rule.....248

16.03.03 - Rules Governing Child Support Services
Docket No. ***16-0303-1401***
Notice of Rulemaking - Proposed Rule.....253

16.03.04 - Rules Governing the Food Stamp Program in Idaho
Docket No. ***16-0304-1401***
Notice of Rulemaking - Proposed Rule.....259

16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)
Docket No. ***16-0305-1401***
Notice of Rulemaking - Proposed Rule.....261

16.05.07 - The Investigation and Enforcement of Fraud, Abuse, and Misconduct
Docket No. ***16-0507-1401***
Notice of Rulemaking - Proposed Rule.....267

16.07.33 - Adult Mental Health Services
Docket No. ***16-0733-1401***
Notice of Rulemaking - Proposed Rule.....270

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

17.02.04 - Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Benefits
Docket No. ***17-0204-1401***
Notice of Rulemaking - Proposed Rule.....281

17.02.06 - Employers' Reports
Docket No. ***17-0206-1401***
Notice of Rulemaking - Proposed Rule.....284

17.02.08 - Miscellaneous Provisions
Docket No. ***17-0208-1401***
Notice of Rulemaking - Proposed Rule.....288

17.02.09 - Medical Fees
Docket No. ***17-0209-1401***
Notice of Rulemaking - Proposed Rule.....293

17.05.01 - Rules Under the Crime Victims Compensation Act
Docket No. ***17-0501-1401***
Notice of Rulemaking - Proposed Rule.....300

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.02.01 - Rules of the Board of Barber Examiners
Docket No. ***24-0201-1401***
Notice of Rulemaking - Proposed Rule.....306

24.04.01 - Rules of the Idaho Board of Cosmetology
Docket No. ***24-0401-1401***
Notice of Rulemaking - Proposed Rule.....311

24.06.01 - Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants
Docket No. ***24-0601-1401 (Fee Rule)***
Notice of Rulemaking - Proposed Rule.....315

24.09.01 - Rules of the Board of Examiners of Nursing Home Administrators
Docket No. ***24-0901-1401 (Fee Rule)***
Notice of Rulemaking - Proposed Rule.....317

24.14.01 - Rules of the State Board of Social Work Examiners
Docket No. ***24-1401-1401 (Fee Rule)***
Notice of Rulemaking - Proposed Rule.....319

24.15.01 - Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists
Docket No. ***24-1501-1401***
Notice of Rulemaking - Proposed Rule.....321

24.26.01 - Rules of the Idaho Board of Midwifery
Docket No. ***24-2601-1402***
Notice of Rulemaking - Proposed Rule.....323

IDAPA 27 - BOARD OF PHARMACY
27.01.01 - Rules of the Idaho State Board of Pharmacy
Docket No. ***27-0101-1401***
Notice of Rulemaking - Proposed Rule 325
Docket No. ***27-0101-1402 (Fee Rule)***
Notice of Rulemaking - Temporary and Proposed Rule 330
Docket No. ***27-0101-1403***
Notice of Rulemaking - Proposed Rule 338
Docket No. ***27-0101-1404***
Notice of Rulemaking - Proposed Rule 347
Docket No. ***27-0101-1405***
Notice of Rulemaking - Proposed Rule 361

IDAPA 28.04.01 - IDAHO DEPARTMENT OF COMMERCE
28.04.01 - Rules Governing the Idaho Reimbursement Incentive Act
Docket No. ***28-0401-1401 (New Chapter)***
Notice of Rulemaking - Amendment to Temporary Rule 364
Docket No. ***28-0401-1402 (New Chapter)***
Notice of Rulemaking - Proposed Rule 372

IDAPA 33 - REAL ESTATE COMMISSION
33.01.01 - Rules of the Idaho Real Estate Commission
Docket No. ***33-0101-1401***
Notice of Rulemaking - Proposed Rule 381
33.01.02 - Rules of Practice and Procedure of the Idaho Real Estate Commission Governing Contested Cases
Docket No. ***33-0102-1401***
Notice of Rulemaking - Proposed Rule 384

IDAPA 35 - STATE TAX COMMISSION
35.01.01 - Income Tax Administrative Rules
Docket No. ***35-0101-1401***
Notice of Rulemaking - Proposed Rule 389
Docket No. ***35-0101-1402***
Notice of Rulemaking - Proposed Rule 392
Docket No. ***35-0101-1403***
Notice of Rulemaking - Proposed Rule 396
35.01.02 - Idaho Sales and Use Tax Administrative Rules
Docket No. ***35-0102-1401***
Notice of Rulemaking - Proposed Rule 405
Docket No. ***35-0102-1402***
Notice of Rulemaking - Proposed Rule 411
Docket No. ***35-0102-1403***
Notice of Rulemaking - Proposed Rule 414
Docket No. ***35-0102-1404***
Notice of Rulemaking - Proposed Rule 428

35.01.03 - Property Tax Administrative Rules
Docket No. ***35-0103-1403***
Notice of Rulemaking - Proposed Rule....437

Docket No. ***35-0103-1406***
Notice of Rulemaking - Proposed Rule....441

35.02.01 - Tax Commission Administration and Enforcement Rules
Docket No. ***35-0201-1401***
Notice of Rulemaking - Proposed Rule....443

IDAPA 37 - IDAHO DEPARTMENT OF WATER RESOURCES
37.03.11 - Rules for Conjunctive Management of Surface and Ground Water Resources
Docket No. ***37-0311-1101***
Notice of Rulemaking - Proposed Rule....447

IDAPA 38 - DEPARTMENT OF ADMINISTRATION
38.05.01 - Rules of the Division of Purchasing
Docket No. ***38-0501-1401***
Notice of Rulemaking - Proposed Rule....449

38.06.01 - Rules of the Department of Administration Governing Billing Procedures of the Office of the Chief Information Officer
Docket No. ***38-0601-1401 (New Chapter)***
Notice of Rulemaking - Proposed Rule....471

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.02.03 - Rules Governing Vehicle Dealer's Principal Place of Business
Docket No. ***39-0203-1401***
Notice of Rulemaking - Adoption of Temporary Rule....477

Docket No. ***39-0203-1402***
Notice of Rulemaking - Proposed Rule....480

39.03.10 - Rules Governing When an Overlegal Permit is Required
Docket No. ***39-0310-1401***
Notice of Rulemaking - Temporary and Proposed Rule....484

39.03.50 - Rules Governing Safety Rest Areas
Docket No. ***39-0350-1401***
Notice of Rulemaking - Proposed Rule....486

IDAPA 46 - BOARD OF VETERINARY MEDICINE
46.01.01 - Rules of the State of Idaho Board of Veterinary Medicine
Docket No. ***46-0101-1401***
Notice of Rulemaking - Adoption of Pending Rule....488

IDAPA 49 - CERTIFIED SHORTHAND REPORTERS BOARD
49.01.01 - Rules of Procedure of the Idaho Certified Shorthand Reporters Board
Docket No. ***49-0101-1401***
Notice of Rulemaking - Proposed Rule....489

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE
50.01.01 - Rules of the Commission of Pardons and Parole
Docket No. ***50-0101-1401***
Notice of Rulemaking - Proposed Rule.....493

IDAPA 54 - OFFICE OF THE STATE TREASURER
54.03.01 - Idaho Unclaimed Property Administrative Rules
Docket No. ***54-0301-1401***
Notice of Rulemaking - Rescission of Temporary Rule and Vacation of Proposed Rulemaking 526

IDAPA 55 - DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION
55.01.04 - Rules Governing Idaho Quality Program Standards Incentive Grants and Agricultural Education Program Start-Up Grants
Docket No. ***55-0104-1401 (New Chapter)***
Notice of Rulemaking - Proposed Rule.....527

SECTIONS AFFECTED INDEX 533

LEGAL NOTICE - SUMMARY OF PROPOSED RULEMAKINGS 547

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES 555

SUBJECT INDEX 571

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 2014 Bulletin is cited as Volume **14-12**.

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.

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.

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.

PROPOSED RULEMAKING

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

a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority for or is occasioning the rulemaking;

b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;

c) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year when the pending rule will become effective; provided, however, that notwithstanding Section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or enforceability of the rule.

d) if any document is incorporated by reference in the proposed rule, a brief written synopsis of why the incorporation is needed must be included in the notice of proposed rulemaking, along with a link to the electronic version of the incorporated material or information on how it can be obtained.

e) the text of the proposed rule prepared in legislative format;

f) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;

g) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;

h) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and

i) the deadline for public (written) comments on the proposed rule.

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

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

As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may adopt the pending rule. Because a proposed rule is not enforceable, it has no effective date, even when published in conjunction with a temporary rule that is of full force and effect. An agency may vacate (terminate) a rulemaking after the publication of a proposed rule if it decides, for whatever reason, not to proceed further to finalize the rulemaking. The publication of a "Notice of Vacation of Proposed Rulemaking" in the Bulletin officially stops the formal rulemaking process.

TEMPORARY RULEMAKING

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

a) protection of the public health, safety, or welfare; or

b) compliance with deadlines in amendments to governing law or federal programs; or

c) conferring a benefit.

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

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

The statute that regulates rulemaking in Idaho requires that the text of all proposed rulemakings publish in the Bulletin in order for the rulemaking to be valid. This is true for all temporary rules as well. In most cases, the agency wants the temporary rule to also become a final rule and in most of these cases, the temporary rule and the proposed rule text is identical. In this event, both rulemakings may be promulgated concurrently, however, they remain separate rulemaking actions. The rulemaking is published in the Bulletin as a temporary/proposed rule. Combining the rulemaking allows for a single publication of the text in the Bulletin.

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. The agency must publish a notice of rescission to effectively rescind the temporary rule. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rule that is being vacated, the agency, in most instances, will rescind the temporary rule.

PENDING RULEMAKING

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

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

a) a statement giving the reasons for adopting the rule;

b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;

c) the date the pending rule will become final and effective and a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature;

d) an identification of any portion of the rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;

(e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and

(f) a specific description, if applicable, of any negative fiscal impact on the state general fund greater

than ten thousand dollars ($10,000) during the fiscal year when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

Agencies are required to republish the text of the 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. With the permission of the Rules Coordinator, only the sections or their subparts that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the "Notice of Rulemaking - Adoption of Pending Rule" is published.

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.

No pending rule adopted by an agency becomes final and effective until it has been submitted to the legislature for review and approval. Where the legislature finds that an agency has violated the legislative intent of the authorizing statute, a concurrent resolution may be adopted to reject the rulemaking in whole or in part. A "Notice of Rulemaking - Final Rule" and the final codified text must be published in the Bulletin for any rule that is partially rejected by concurrent resolution of the legislature. Unless rejected by concurrent resolution, a pending rule that is reviewed by the legislature becomes final and effective at the end of the session in which it is reviewed without any further legislative action. All pending rules that are approved by concurrent resolution become final and effective upon adoption of the concurrent resolution unless otherwise stated. In no event can a pending rule become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule that is final and effective may be applied retroactively, as provided in the rule.

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

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

SUBSCRIPTIONS AND DISTRIBUTION

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

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

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

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

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.

"38." refers to the Idaho Department of Administration

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

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

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

"02." refers to Subsection 200.**02**.

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

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

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. 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 2014

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
14-1	January 2014	***November 29, 2013**	January 1, 2014	January 22, 2014
14-2	February 2014	January 10, 2014	February 5, 2014	February 26, 2014
14-3	March 2014	February 7, 2014	March 5, 2014	March 26, 2014
14-4	April 2014	March 7, 2014	April 2, 2014	April 23, 2014
14-5	May 2014	April 4, 2014	May 7, 2014	May 28, 2014
14-6	June 2014	May 9, 2014	June 4, 2014	June 25, 2014
14-7	July 2014	June 6, 2014	July 2, 2014	July 23, 2014
14-8	August 2014	July 11, 2014	August 6, 2014	August 27, 2014
14-9	September 2014	August 8, 2014	September 3, 2014	September 24, 2014
14-10	October 2014	****August 29, 2014**	October 1, 2014	October 22, 2014
14-11	November 2014	October 10, 2014	November 5, 2014	November 26, 2014
14-12	December 2014	November 7, 2014	December 3, 2014	December 24, 2014

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2015

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
15-1	January 2015	***November 28, 2014**	January 7, 2015	January 28, 2015
15-2	February 2015	January 9, 2015	February 4, 2015	February 25, 2015
15-3	March 2015	February 6, 2015	March 4, 2015	March 25, 2015
15-4	April 2015	March 6, 2015	April 1, 2015	April 22, 2015
15-5	May 2015	April 3, 2015	May 6, 2015	May 27, 2015
15-6	June 2015	May 8, 2015	June 3, 2015	June 24, 2015
15-7	July 2015	June 5, 2015	July 1, 2015	July 22, 2015
15-8	August 2015	July 10, 2015	August 5, 2015	August 26, 2015
15-9	September 2015	August 7, 2015	September 2, 2015	September 23, 2015
15-10	October 2015	****August 28, 2015**	October 7, 2015	October 28, 2015
15-11	November 2015	October 9, 2015	November 4, 2015	November 25, 2015
15-12	December 2015	November 6, 2015	December 2, 2015	December 23, 2015

****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.***

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

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

ALPHABETICAL INDEX OF STATE AGENCIES AND CORRESPONDING IDAPA NUMBERS

IDAPA 24	**Occupational Licenses**, Board of (24.20) Acupuncture, Board of (24.17) Architectural Examiners, Board of (24.01) Barber Examiners, Board of (24.02) Chiropractic Physicians, Board of (24.03) Contractors Board, Idaho (24.21) Cosmetology, Board of (24.04) Counselors and Marriage and Family Therapists, Licensing Board of Professional (24.15) Denturity, Board of (24.16) Drinking Water and Wastewater Professionals, Board of (24.05) Driving Businesses Licensure Board, Idaho (24.25) Landscape Architects, Board of (24.07) Liquefied Petroleum Gas Safety Board, Idaho State (24.22) Midwifery, Idaho Board of (24.26) Morticians, State Board of (24.08) Nursing Home Administrators, Board of Examiners of (24.09) Occupational Therapy Licensure Board (24.06) Optometry, State Board of (24.10) Physical Therapy Licensure Board (24.13) Podiatry, State Board of (24.11) Psychologist Examiners, Idaho State Board of (24.12) Real Estate Appraiser Board (24.18) Residential Care Facility Administrators, Board of Examiners of (24.19) Social Work Examiners, State Board of (24.14) Speech and Hearing Services Licensure Board (24.23)
IDAPA 25	**Outfitters and Guides Licensing Board**
IDAPA 50	**Pardons and Parole**, Commission for
IDAPA 26	**Parks and Recreation**, Department of
IDAPA 27	**Pharmacy**, Board of
IDAPA 11	**Police,** Idaho State
IDAPA 29	**Potato Commission**, Idaho
IDAPA 55	**Professional-Technical Education**, Division of
IDAPA 59	**Public Employee Retirement System of Idaho (PERSI)**
IDAPA 31	**Public Utilities Commission**
IDAPA 56	**Rangeland Resources Commission**, Idaho
IDAPA 33	**Real Estate Commission**, Idaho
IDAPA 34	**Secretary of State**, Office of the
IDAPA 57	**Sexual Offender Management Board**
IDAPA 49	**Shorthand Reporters Board**, Idaho Certified
IDAPA 60	**Soil and Water Conservation Commission**, Idaho State

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

IDAPA 01 - BOARD OF ACCOUNTANCY

01.01.01 - IDAHO ACCOUNTANCY RULES

DOCKET NO. 01-0101-1401

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 54-204(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 October 15, 2014.

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:

Modify Rule 502.01 to reflect a new extension deadline date of April 30th each year which will help licensees who ask for an extension to have them completed, processed, and approved earlier in the process to help with timely license renewals.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the Idaho Administrative Bulletin, **Vol. 14-8, page 15**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kent A. Absec, (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 October 22, 2014.

DATED this 21st Day of August, 2014.

Kent A. Absec
Executive Director
Idaho State Board of Accountancy
3101 W. Main Street, Suite 201
PO Box 83720
Boise, Idaho 83720-0002
Phone: (208) 334-2490
Fax: (208) 334-2615
E-Mail: **kent.absec@isba.idaho.gov**

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 01-0101-1401
(Only those Sections being amended are shown.)

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 ~~*May*~~ April 3~~1~~0. 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 ~~*May*~~ April 3~~1~~0. 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 ~~*May*~~ April 3~~1~~0. ~~*(5-8-09)*~~( )

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. (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 01 - BOARD OF ACCOUNTANCY

01.01.01 - IDAHO ACCOUNTANCY RULES

DOCKET NO. 01-0101-1402

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 54-204(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 October 15, 2014.

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:

Modify Rule 606.01 to state that only firms performing any of the services set out in Rule 602 need to annually register with the Board.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are simple in nature and were discussed with the Idaho Society of Certified Public Accountants and licensees without objections.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kent A. Absec, (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 October 22, 2014.

DATED this 26th Day of June, 2014.

Kent A. Absec
Executive Director
Idaho State Board of Accountancy
3101 W. Main Street, Suite 201
PO Box 83720
Boise, Idaho 83720-0002
Phone: (208) 334-2490
Fax: (208) 334-2615
E-Mail: **kent.absec@isba.idaho.gov**

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 01-0101-1402
(Only those Sections being amended are shown.)

606. REPORTING TO THE BOARD (RULE 606).

01. Firm Registration Form. All firms~~, *whether or not they*~~ 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. ~~*(4-2-03)*~~( )

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. The Board reserves the right to obtain all other information relating to the peer review. (4-6-05)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.05 - RULES GOVERNING DISEASES OF HOPS *(HUMULUS LUPULUS)*

DOCKET NO. 02-0605-1401 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2014.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 22-2006, 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 15, 2014.

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 rule is being amended to change the hops quarantine area to allow free movement of hops green matter among Idaho, Oregon, and Washington. The rule requires a negative disease test and a Clean Plant Health Network certification prior to shipment to Idaho if the hops green matter is imported from outside of the three-state area.

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 temporary rule would maintain the health of Idaho's commercial hops industry, while allowing access to safe propagation sources for the general public.

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

The fees and charges associated with the inspection of hops for certificates and permits allowing shipment will be assessed according to IDAPA 02.06.04, "Idaho Department of Agriculture, Phytosanitary and Post-Entry Certification Rules," Section 500.

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 negative fiscal impact.

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 4, 2014, Idaho Administrative Bulletin, **Vol. 14-6, page 33**. A negotiated rulemaking meeting was held at the University of Idaho Parma Research and Extension Center on June 16, 2014. A representative of the Idaho Hops Commission was present and provided comments to the draft rule. The final language of the temporary and proposed rule incorporates the comments from the industry representative.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jared Stuart, Section Manager, Plant Industries Field Services, 208-332-8620 or email **Jared.Stuart@agri.idaho.gov**. Materials pertaining to this rulemaking can be found on the ISDA web site at the following web address: **http://www.agri.idaho.gov/Categories/LawsRules/sub_rules/Rulemaking.php**.

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 22, 2014.

DATED this 29th Day of August, 2014.

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

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF FEE DOCKET NO. 02-0605-1401
(Only those Sections being amended are shown.)

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.05, "Rules Governing Diseases of Hops (*Humulus lupulus*)." (5-3-03)

02. Scope. This chapter has the following scope: This rule ~~*E*~~establishes definitions, regulated pests, regulated products, control areas, ~~*procedures for the certification of propagative material to be shipped into Idaho, and inspection procedures for propagative material produced in Idaho*~~ quarantine areas and special permits. This rule ~~*R*~~requires farm machinery to be clean of plant debris and soil, ~~*and fields to be posted. S*~~sets forth consequences if a regulated pest is found, ~~*and*~~ including penalties for violations~~.~~, and ~~*S*~~sets a fee schedule ~~*for inspections and makes allowances for exemptions from the rule*~~. The official citation of this chapter is IDAPA 02.06.05 et seq. For example, the citation for this Section is IDAPA 02.06.05.001. ~~*(3-19-99)*~~(9-1-14)T

(BREAK IN CONTINUITY OF SECTIONS)

007. FINDINGS.
The revision of IDAPA 02.06.05, "Rules Governing Diseases of Hops (*Humulus lupulus*)," will confer benefits to the Idaho hop industry and members of the public. ~~*Powdery mildew of hops is not known to be in Idaho. The addition of powdery mildew to the list of regulated pests is necessary to prevent the introduction of powdery mildew contaminated hop propagating materials into Idaho. The revision of t*~~This rule will ~~*comply with*~~ provide for consistency among the quarantine rules of Oregon, Washington, and Idaho for the shipment of hop propagating materials ~~*from*~~ among Idaho, ~~*to*~~ Oregon, and Washington. ~~*In order to prevent the introduction of powdery mildew contaminated hop propagating materials into Idaho, the Department finds it necessary to make this revision effective immediately.*~~ ~~*(5-3-03)*~~(9-1-14)T

(BREAK IN CONTINUITY OF SECTIONS)

012. REGULATED PESTS.

01. Verticillium Wilt. Plant Material infected with the disease caused by the fungus *Verticillium* ~~*wilt*~~ *nonalfalfae* (formerly known as *Verticillium albo-atrum Reinke and Berth*~~.~~) ~~*a persistent soil borne fungus disease of hops*~~ and any species or strains of the genus Verticillium ~~*virulently*~~ pathogenic to hops. ~~*(3-19-99)*~~(9-1-14)T

02. Powdery Mildew. ~~*Powdery mildew*~~ Plant Material infected with the disease caused by ~~*all developmental stages and biotypes of*~~ the fungus *Podosphaera macularis* (Wallr. Fr.), synonyms *Sphaerotheca macularis* (~~*S. humuli*~~ Wallr. Fr.) Lind and *Sphaerotheca humuli* (Burril) Lind. ~~*(3-19-99)*~~(9-1-14)T

03. Hop Stunt Viroid. Plant Material infected with the disease caused by the viroid *Hostuviroid hop stunt viroid* and all strains and genetic variants associated with the genus. (9-1-14)T

04. Ilarvirus Species. Plant Material infected with the disease caused by virus species within the Genus Ilarvis, including but not limited to Apple Mosaic Virus and Prunus Necrotic Ringspot Virus. (9-1-14)T

013. -- 049. (RESERVED)

050. REGULATED ~~*PRODUCTS*~~ ARTICLES.

01. ~~*Rootstocks*~~ Plant Material. ~~*For example, rhizomes, strap cuttings, or greenwood cuttings of all species of the genus Humulus*~~ Plants and all plant parts of hops, except kiln dried cones. ~~*(8-1-80)*~~(9-1-14)T

02. Machinery. Machinery, vehicles, tools, equipment, trellis poles, wire, anchor irons, and any other appurtenances used in the culture and/or production of hops. (8-1-80)

051. -- 099. (RESERVED)

100. ~~*CONTROL*~~ QUARANTINE AREA.
~~*Except as stated in Subsection 350.03 of this rule, the control area is Bonner and Kootenai Counties, state of Idaho*~~ All areas outside of the territorial borders of Idaho, Oregon, and Washington. ~~*(4-6-05)*~~(9-1-14)T

101. -- 149. (RESERVED)

150. ~~*ELIGIBLE ROOTSTOCKS*~~ RESTRICTIONS ON IMPORT.
No person may import restricted articles from the quarantined area into Idaho unless the person importing the regulated articles first obtains a special permit from the department as set forth in Section 200. (9-1-14)T

~~***01. Eligibility**. Only rootstocks eligible for phytosanitary certification may be imported into the control area or transported as planting stock within the area. Eligibility will be established by meeting the following requirements: (8-1-80)*~~

~~***a.** Imported rootstocks. (8-1-80)*~~

~~*i. A desired clone must be grown under observation at a state or federal hop research facility in Idaho, Washington, Colorado, or Oregon for two (2) consecutive years or growing seasons with no evidence of Verticillium wilt or powdery mildew. (3-19-99)*~~

~~*ii. Only rooted aerial stem cuttings or apical meristems derived from clones having undergone the two (2) year observation period may be imported into the control area. (8-1-80)*~~

~~*iii. Colonies derived from eligible clones may serve as sources of eligible rootstocks but only after two (2) consecutive growing seasons in a commercial yard or nursery within the control area. (8-1-80)*~~

~~*iv. Eligible clonal stocks must be accompanied by a phytosanitary certificate when imported into the control area. A copy of the certificate must be filed with the Idaho State Department of Agriculture, Division of Plant Industries, at least ten (10) days prior to shipment. The certificate must affirm freedom from Verticillium wilt and powdery mildew and compliance with Subsections 150.01.a.i. through 150.01.a.iii. (3-19-99)*~~

~~***b.** Eligible rootstocks from within the control area. (8-1-80)*~~

~~*i. The owner of rootstocks may move existing eligible stocks from field to field within the control area.*~~

~~*(3-19-99)*~~

~~*ii. Rootstocks sold, moved, or transferred within the control area to other than the owners land must be accompanied by a valid transfer permit issued by the Department. Rootstocks moved without a transfer permit will not be eligible for future sale or transfer.* (8-1-80)~~

~~***02. Inspection Procedures to Retain Eligibility.*** (8-1-80)~~

~~***a.*** *Existing plants within the control area will be inspected at least once every other year except those plantings intended for sale or transfer in which case they must have been inspected during the twelve (12) month period immediately prior to transfer.* (8-1-80)~~

~~***b.*** *All new plantings of imported rootstocks will be inspected annually for the first two (2) consecutive years following initial planting and at least every twenty-four (24) months thereafter.* (8-1-80)~~

~~***c.*** *It shall be the responsibility of the individual grower to notify the Department of movement of eligible stock into new fields, sales and/or purchase of rootstocks. The grower shall also initiate annual requests on or before July 1 for inspections to maintain eligibility.* (3-19-99)~~

~~200~~151. MOVEMENT OF USED FARMING EQUIPMENT.

01. Clean and Free. Used ~~F~~farm equipment including, but not limited to, tillage equipment, vehicles, and hop yard appurtenances moving into Idaho from the ~~*control*~~ quarantine area, must be clean and free of soil and plant material including, but not limited to, hop debris. ~~*(8-1-80)*~~(9-1-14)T

02. Requirements. Freedom from plant material and soil may be accomplished by washing, steam cleaning, and/or use of a disinfectant appropriately labeled for the purpose. (8-1-80)

15~~1~~2. -- 199. (RESERVED)

200. SPECIAL PERMITS.
Any person(s) or agencies wishing to import covered commodities from the area under quarantine must apply in writing for a special permit as authorized by the director of the department. (9-1-14)T

01. Application. Application for special permits must list the prospective buyer and seller; the number, and origin of stock; location of proposed planting site; and any other relevant information. (9-1-14)T

02. Conditions. Special permits, when granted, may include such conditions as may be necessary to prevent disease establishment. All permitted material must be found free from regulated pests by the Clean Plant Center at Washington State University, Prosser, Washington, or an equivalent lab approved by the department. (9-1-14)T

201. -- ~~*249.*~~ ~~*(RESERVED)*~~

~~***250. POSTING OF FIELDS.***~~

~~***01. Purpose.*** *All hop yards and nurseries within the control area shall be posted to prevent entry of unauthorized personnel and vehicles.* (8-1-80)~~

~~***02. Visibility.*** *Signs shall be visible from adjacent public roadways or points of access to hop yards.* (8-1-80)~~

~~*251.*~~ 299. (RESERVED)

300. PEST DETECTION.

01. Inspection. If ~~*there is*~~ evidence of a regulated pest ~~*which*~~ is detected by visual inspection, the

Department, in cooperation with the University of Idaho, Department of Plant, Soil and Entomological Sciences, will perform laboratory procedures sufficient to determine the causal organism. ~~(3-19-99)~~(9-1-14)T

02. **Consequences**. Positive identification of the presence of Verticillium wilt, hop stunt viroid, ilar viruses, or powdery mildew virulently pathogenic to hops will result in loss of eligibility for sale or transfer for those rootstocks within the infected field. ~~*and in addition a directive may be issued*~~ The director may also order that the infested area be removed from hop production and the soil be disinfested. ~~(3-19-99)~~(9-1-14)T

301. -- ~~***349.***~~ ~~***(RESERVED)***~~

~~***350. EXEMPTIONS.***~~

~~***01. Agencies****. This order does not apply to any governmental agency growing hops in experimental plots approved by the Director, Idaho State Department of Agriculture and under the supervision of qualified plant scientists.*** ~~*(3-19-99)*~~

~~***02. Quarantine Area****. Such experimental plots shall serve as quarantine areas during the period that a clone is meeting the eligibility requirements for phytosanitary certification and be subject to Subsection 150.01.a. of this rule.*~~ ~~*(3-19-99)*~~

~~***03. Powdery Mildew Certification****. All hop propagating materials to be shipped to all counties in Idaho shall be accompanied by a phytosanitary certificate issued by the state of origin's plant regulatory agency stating that the propagating material has been inspected and found apparently free from powdery mildew. The plant regulatory agency of the state of origin shall send a copy of the phytosanitary certificate to the Idaho State Department of Agriculture, Division of Plant Industries, 2270 Old Penitentiary Road, P.O. Box 790, Boise, Idaho 83701-0790, FAX (208) 334-2283.*~~ ~~*(3-19-99)*~~

~~***351.***~~ **399. (RESERVED)**

(BREAK IN CONTINUITY OF SECTIONS)

500. FEES AND CHARGES.

01. ~~***Transfer Permits.***~~ ~~*For in-state sale of rootstocks: seven dollars and fifty cents ($7.50) per certificate*~~ **Special Permits**. For special permits for importation of hops from areas under quarantine, the fee will be sixty dollars ($60) per permit. ~~*(8-1-80)*~~(9-1-14)T

02. ~~***Phytosanitary Certificates.***~~ ~~*For exporting purposes: ten dollars ($10) per certificate*~~ **General Fees and Charges**. The fees and charges for inspection, certificates, and permits shall be as set forth in IDAPA 02.06.04, "Idaho Department of Agriculture, Phytosanitary and Post-Entry Certification Rules," Section 500. ~~*(8-1-80)*~~(9-1-14)T

~~***03. Field Inspection****.*~~ ~~*(8-1-80)*~~

~~***a.*** *Application for field inspection: three dollars ($3) per field.*~~ ~~*(8-1-80)*~~

~~***b.*** *Late penalty fees: twenty dollars ($20) per application on all applications received after July 1 of each year and prior to July 15.*~~ ~~*(8-1-80)*~~

~~***c.*** *Acreage inspection fee: three dollars ($3) per acre or fraction thereof per field.*~~ ~~*(8-1-80)*~~

~~***04. Laboratory Fees****. Fifty dollars ($50) per sample.*~~ ~~*(8-1-80)*~~

501. -- 999. (RESERVED)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.27 - RULES GOVERNING BACTERIAL RING ROT CAUSED BY (*CLAVIBACTER MICHIGANENSIS* SUBSP. *SEPEDONICUS*) OF POTATO

DOCKET NO. 02-0627-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: A temporary rule was adopted under this docket number in the February 26, 2014, Idaho Administrative Bulletin, **Vol. 14-3, pages 13 through 18** and is being amended. The effective date of the amendment to the temporary rule is September 1, 2014.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has amended a temporary rule. The action is authorized pursuant to Sections 22-103, 22-505, 22-1907 and 22-2006, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation and the reasons for amending the previously adopted temporary rule:

ISDA adopted a temporary rule regarding Bacterial Ring Rot caused by *Clavibacter michiganensis*, subsp. *sepedonicus* (BRR) on February 26, 2014, and that rule was published in the March 5, 2014, Idaho Administrative Bulletin **Vol. 14-3, pages 13 through 18**. After adoption of the temporary rule, ISDA continued the negotiated rulemaking process in order to present the rule to the Legislature in 2015 as a proposed rule. ISDA made changes to the existing temporary rule as a result of negotiated rulemaking. This rule is in place to help prevent the introduction and/or spread of BRR into and through Idaho and the United States.

This rule is also being promulgated as a proposed rule in this Bulletin under Docket No. 02-0627-1402 and rather than keep the temporary rule as previously adopted, the agency has amended the temporary rule to align it with the language of the proposed rule which accompanies this docket and is being promulgated in this Bulletin under Docket No. 02-0627-1402.

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

The laboratory that performs the testing for *Clavibacter michiganensis*, subsp. *sepedonicus* will set the fee. Any other fees associated with seed potato certification or phytosanitary certification for export are detailed in those respective rules. See IDAPA 08.05.01.000 et seq. and 02.06.04.000 et seq., respectively.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this temporary rule amendment, contact Lloyd B. Knight, Plant Industries Division Administrator, (208) 332-8620 or email **Lloyd.Knight@agri.idaho.gov**. Materials pertaining to this rulemaking can be found on the ISDA web site at the following web address: **http://www.agri.idaho.gov/Categories/LawsRules/sub_rules/Rulemaking.php**.

DATED this 8th Day of September, 2014

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

THE FOLLOWING IS THE AMENDED TEMPORARY TEXT OF DOCKET NO. 02-0627-1401
(Only those Sections being amended are shown.)

001. TITLE, SCOPE, AND INVESTIGATIONS.

01. Title. The title of this chapter is IDAPA 02.06.27, "Rules Governing Bacterial Ring Rot Caused By (*Clavibacter michiganensis* subsp. *sepedonicus*) of Potato." (2-26-14)T

02. Scope. These rules are to prevent the introduction and/or spread of *Cms* and subsequently bacterial ring rot into and through Idaho and the United States. These rules govern mandatory and voluntary reporting, mandatory testing, trace back, inspection, investigation, sampling and laboratory analysis of samples. Further, these rules will help ensure that, along with all other Idaho agricultural commodities, commercial potatoes grown in and exported from Idaho and, in particular, that seed potatoes being grown for planting in, exported from or imported into Idaho are of the highest quality. The official citation of this Chapter is IDAPA 02.06.27.000 et seq. For example, this section's citation is IDAPA 02.06.27.001. ~~*(2-26-14)T*~~(9-1-14)T

03. Trace Back Investigations. The public disclosure of information obtained during an investigation conducted under this rule shall be subject to disclosure to the public only insofar as it is allowed by Title 9, Chapter 3, Idaho Code. (2-26-14)T

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.
Copies of the following document may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.27 incorporates by reference: (2-26-14)T

01. ~~***The Idaho Crop Improvement Association, Inc. (ICIA) Rules of Certification for Seed Potatoes in Idaho (2013 Edition)***~~ **IDAPA 08.05.01.000 et seq., "Rules Governing Seed and Plant Certification" and Materials Incorporated Therein by Reference**. A copy of which may be accessed online ~~*from the ICIA website*~~ at: ~~*http://www.idahocrop.com/StandardDocs/2013%20Potato-R&R.pdf*~~ http://adminrules.idaho.gov/rules/current/08/index.html. ~~*(2-26-14)T*~~(9-1-14)T

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.
In addition to the definitions in Sections 22-1904 and 22-2005, Idaho Code, the following definitions shall apply in the interpretation and the enforcement of this rule: (2-26-14)T

01. Bacterial Ring Rot. Caused by a bacterium, *Clavibacter michiganensis* subsp. *sepedonicus*. (2-26-14)T

~~***02. Cutting Operation**. Any person in the regular business of providing seed potato cutting and/or treatment services to the public for a fee. (2-26-14)T*~~

0~~3~~2. Contact Lot. A seed lot produced on a farming operation using common production and handling equipment and/or storage facilities. (2-26-14)T

0~~4~~3. Department. The Idaho State Department of Agriculture. (2-26-14)T

0~~5~~4. Director. The Director of the Idaho State Department of Agriculture. (2-26-14)T

0~~6~~5. **Idaho Crop Improvement Association, Inc**. A grower association of certified seed producers and conditioners. In 1959, the Regents of the University of Idaho appointed the Idaho Crop Improvement Association, Inc. as its duly authorized agent to administer and conduct seed certification in Idaho. (2-26-14)T

0~~7~~6. **Person**. An individual, partnership, corporation, firm, association, agent, grower, processor, shipper or inspector. (2-26-14)T

0~~8~~7. **Seed Lot**. A field or a group of fields producing seed potatoes or the potatoes (tubers) harvested from a seed potato field, identified with a certification number and a North American Plant Health Certificate, enabling identity preservation and tracking. (2-26-14)T

08. **Seed Potato Certification Process**. The process, timing, and requirements for the certification of seed potatoes in Idaho, as set forth in IDAPA 08.05.01, "Rules Governing Seed and Plant Certification," and the materials incorporated therein by reference. (9-1-14)T

09. **Seed Stock**. Seed potatoes intended for use as a planting source for certification that are "Identity Preserved" with a certification number and a North American Plant Health Certificate. (2-26-14)T

10. **Sister Lot**. Seed lots originating from the same lot of seed stock. (2-26-14)T

(BREAK IN CONTINUITY OF SECTIONS)

101. ***~~MANDATORY~~*** **REPORTING OF BRR.**

01. **Mandatory Reporting**. It is mandatory for ~~A~~any person, including, but not limited to, a grower, processor, shipper, laboratory staff member, field inspector, ~~*and/*~~or shipping point inspector ~~*who discovers Cms or observes BRR within the state, or who discovers potato plants or tubers that are confirmed to be infested with Cms causing BRR, shall*~~ to immediately report the ~~*discovery*~~ presence of BRR to the Department when:~~. *The responsibility for reporting the results of Cms testing completed by laboratories outside of the state of Idaho resides with the person submitting the samples. This reporting requirement is mandatory.*~~ ~~*(2-26-14)T*~~(9-1-14)T

a. The BRR is discovered or observed in seed potato plants or tubers prior to final seed potato certification by ICIA; and (9-1-14)T

b. The presence of BRR is confirmed via laboratory testing; and (9-1-14)T

c. The positive tubers or plant parts are still in the possession of the original seed grower. (9-1-14)T

02. **Contents**. ~~*The*~~ All reports shall, to the best of the reporter's ability, contain the following information: ~~*(2-26-14)T*~~(9-1-14)T

a. The field, facility or other location at which *Cms* was found; (2-26-14)T

b. The date of discovery; (2-26-14)T

c. The location at which the suspect potatoes were grown; (2-26-14)T

d. The variety and generation of the suspect potatoes; (2-26-14)T

e. The laboratory submission report and test results; (2-26-14)T

f. The certification tags and origin of the seed potatoes used to produce the suspect crop; (2-26-14)T

g. North American Plant Health Certificate. (2-26-14)T

03. Methods of Reporting. The report shall be made by phone, in person or in writing (which may include electronic mail sent to BRR@agri.idaho.gov). Full Department headquarters contact information is listed in Section 005 of this rule. (2-26-14)T

(BREAK IN CONTINUITY OF SECTIONS)

103. TRACE BACK INVESTIGATION, SAMPLING, AND TESTING.

01. Trace Back and Investigation. The department shall, upon receiving a mandatory report of *Cms* infected potatoes, investigate the origin and destination of such potatoes. Trace back and investigation activities may include, but not be limited to: (9-1-14)T

a. A review of all inspection, certification, shipping and production records held by any person for the potatoes in question; (9-1-14)T

b. Inspection and sampling at the reporting operation as well as points for origin, storage and destination related to that operation; and (9-1-14)T

c. Laboratory testing records of any samples. (9-1-14)T

02. Mutual Cooperation. The Department and the Idaho Crop Improvement Association shall mutually cooperate with each other in trace back investigations where appropriate. ~~*(2-26-14)T*~~(9-1-14)T

03. Testing Positive for *Cms*. If certified seed potatoes in a lot test positive for *Cms* after they have left the control of the grower of that lot, ISDA's trace back investigation may include *Cms* testing any remaining seed from that lot that is still at the seed potato grower's facility. The testing level will be at a rate, depending on lot size, up to a maximum of four hundred (400) randomly selected tubers. (9-1-14)T

(BREAK IN CONTINUITY OF SECTIONS)

150. TESTING FOR BRR.

01. Compliance With Certification Standards. Seed potato tubers for planting for commercial production or for seed certification in Idaho or being imported into Idaho as seed potatoes for commercial production or certification as seed for planting must comply with the ICIA Rules of Certification for Seed Potatoes in Idaho as they relate to *Cms*, as incorporated in Section 004 of this rule. (2-26-14)T

02. Seed Potatoes to Be Exported Tested. Seed ~~*P*~~potato tubers being exported from Idaho to a foreign country as seed potatoes for planting must ~~*be tested at a laboratory approved by the Idaho State Department of Agriculture for the presence of Cms at a rate, depending on lot size, of a maximum, of 400 randomly selected tubers per shipment being exported*~~ meet all ICIA requirements for certification and export tag placement, as well as all phytosanitary certification requirements of the importing country. All costs for sampling, transport, and testing shall be borne by the exporter. ~~*(2-26-14)T*~~(9-1-14)T

151. -- ~~*2*~~399. (RESERVED)

~~***300. CUTTING OPERATIONS.***~~

~~***01. Records Kept and Maintained****. All cutting operations shall keep and maintain records of any and all cutting undertaken by the operation. The records must include, at a minimum:* *(2-26-14)T***

~~***a.*** *The origin of all seed lots cut by the operation;* *(2-26-14)T***

~~***b.*** *The cutting sequence employed by the operation;* *(2-26-14)T*~~

~~***c.*** *The sanitation schedule and methodology employed by the operation;* *(2-26-14)T*~~

~~***d.*** *Documents demonstrating that the operation has complied with the sanitation schedule and methodology; and* *(2-26-14)T*~~

~~***e.*** *A North American plant health certificate for each seed lot.* *(2-26-14)T*~~

~~***301. – 399.*** ***(RESERVED)***~~

400. HOLD ORDERS.

The Director may authorize Hold Orders restricting the movement of infested or suspect potatoes until investigation, trace back, and sample analysis are complete. Hold Orders may require verification that said potatoes will not be utilized for any purposes not authorized in writing by the Department. When potatoes from a certified seed potato lot are sampled and test positive for BRR after the seed potatoes have left the seed potato grower's facility, the Department will not issue a hold order on any seed potatoes from that lot that remain on the seed potato grower's facility unless and until potatoes from the affected lot are sampled at the seed potato grower's facility and test positive for BRR. ~~*(2-26-14)T*~~(9-1-14)T

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.27 - RULES GOVERNING BACTERIAL RING ROT CAUSED BY (*CLAVIBACTER MICHIGANENSIS* SUBSP. *SEPEDONICUS*) OF POTATO

DOCKET NO. 02-0627-1402 (FEE RULE) (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 22-101a, 22-505, 22-1907, and 22-2006, 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 15, 2014.

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:

ISDA adopted a temporary rule regarding Bacterial Ring Rot (BRR) caused by *Clavibacter michiganensis*, subsp. *sepedonicus* on February 26, 2014, and that rule was published in the March 5, 2014, Idaho Administrative Bulletin **Vol. 14-3, pages 13 through 18**. ISDA continued the negotiated rulemaking process in order to present the rule to the Idaho Legislature in 2015 as a proposed rule. ISDA made certain changes to the existing temporary rule as a result of negotiated rulemaking. This proposed rule represents the final negotiated rulemaking and will supplant the temporary rule now in place at the end of the 2015 legislative session. This rule is in place to help prevent the introduction and/or spread of BRR into and through Idaho and the United States.

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

The laboratory that performs the testing for *Clavibacter michiganensis*, subsp. *sepedonicus* will set the fee. Any other fees associated with seed potato certification or phytosanitary certification for export are detailed in those respective rules. See IDAPA 08.05.01.000 et seq. and 02.06.04.000 et seq., respectively.

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 negative fiscal impact.

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 4, 2014, Idaho Administrative Bulletin, **Vol. 14-6, page 36**. Negotiated rulemaking meetings were held in Pocatello, Idaho on June 17, July 9, and August 5, 2014. Representatives of the Idaho Crop Improvement Association, Idaho Potato Commission, Idaho Farm Bureau Federation, as well as multiple individual potato growers and producers, were present and provided comments to the draft rule. The final language of the proposed rule language incorporates the comments from the negotiated rulemaking meeting attendees and industry representatives.

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 "Rules Governing Seed and Plant Certification" IDAPA 08.05.01.000 are incorporated by reference because those rules include detailed requirements regarding inspection and sampling related to BRR.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Lloyd B. Knight, Plant Industries Division Administrator, (208) 332-8620 or email **Lloyd.Knight@agri.idaho.gov**. Materials pertaining to this rulemaking can be found on the ISDA web site at the following web address: **http://www.agri.idaho.gov/Categories/LawsRules/sub_rules/Rulemaking.php**.

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 22, 2014.

DATED this 8th Day of September, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0627-1402

IDAPA 02
TITLE 06
CHAPTER 27

02.06.27 - RULES GOVERNING BACTERIAL RING ROT CAUSED BY (*CLAVIBACTER MICHIGANENSIS* SUBSP. *SEPEDONICUS*) OF POTATO

000. LEGAL AUTHORITY.
This chapter is adopted under the legal authority of Title 22, Chapters 1, 5, 19 and 20 Idaho Code. ( )

001. TITLE, SCOPE, AND INVESTIGATIONS.

01. Title. The title of this chapter is IDAPA 02.06.27, "Rules Governing Bacterial Ring Rot Caused By (*Clavibacter michiganensis* subsp. *sepedonicus*) of Potato." ( )

02. Scope. These rules are to prevent the introduction and/or spread of *Cms* and subsequently bacterial ring rot into and through Idaho and the United States. These rules govern mandatory and voluntary reporting, mandatory testing, trace back, inspection, investigation, sampling and laboratory analysis of samples. Further, these rules will help ensure that, along with all other Idaho agricultural commodities, commercial potatoes grown in and exported from Idaho and, in particular, that seed potatoes being grown for planting in, exported from or imported into Idaho are of the highest quality. The official citation of this Chapter is IDAPA 02.06.27.000 et seq. For example, this section's citation is IDAPA 02.06.27.001. ( )

03. Trace Back Investigations. The public disclosure of information obtained during an investigation conducted under this rule shall be subject to disclosure to the public only insofar as it is allowed by Title 9, Chapter 3, Idaho Code. ( )

002. WRITTEN INTERPRETATIONS.
There are no written interpretations of these rules. ( )

003. ADMINISTRATIVE APPEAL.
There is no provision for administrative appeal before the Idaho State Department of Agriculture under this chapter. Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. ( )

004. INCORPORATION BY REFERENCE.
Copies of the following document may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.27 incorporates by reference: ( )

01. IDAPA 08.05.01.000 et seq., "Rules Governing Seed and Plant Certification" and materials incorporated therein by reference. A copy of which may be accessed online at: http://adminrules.idaho.gov/rules/current/08/index.html. ( )

005. ADDRESS, OFFICE HOURS, TELEPHONE, AND FAX NUMBERS.

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-8266. ( )

02. 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. ( )

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701-0790. ( )

04. Telephone Number. The telephone number of the central office is (208) 332-8500. ( )

05. Fax Number. The fax number of the central office is (208) 334-2170. ( )

006. PUBLIC RECORDS ACT COMPLIANCE.
These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. ( )

007. -- 009. (RESERVED)

010. DEFINITIONS.
In addition to the definitions in Sections 22-1904 and 22-2005, Idaho Code, the following definitions shall apply in the interpretation and the enforcement of this rule: ( )

01. Bacterial Ring Rot. Caused by a bacterium, *Clavibacter michiganensis* subsp. *sepedonicus* (*Cms*). ( )

02. Contact Lot. A seed lot produced on a farming operation using common production and handling equipment and/or storage facilities. ( )

03. Department. The Idaho State Department of Agriculture. ( )

04. Director. The Director of the Idaho State Department of Agriculture. ( )

05. Idaho Crop Improvement Association, Inc. A grower association of certified seed producers and conditioners. In 1959, the Regents of the University of Idaho appointed the Idaho Crop Improvement Association, Inc. as its duly authorized agent to administer and conduct seed certification in Idaho. ( )

06. Person. An individual, partnership, corporation, firm, association, agent, grower, processor, shipper or inspector. ( )

07. Seed Lot. A field or a group of fields producing seed potatoes or the potatoes (tubers) harvested from a seed potato field, identified with a certification number and a North American Plant Health Certificate, enabling identity preservation and tracking. ( )

08. Seed Potato Certification Process. The process, timing and requirements for the certification of

seed potatoes in Idaho, as set forth in IDAPA 08.05.01, Rules Governing Seed and Plant Certification and the materials incorporated therein by reference. ( )

09. **Seed Stock**. Seed potatoes intended for use as a planting source for certification that are "Identity Preserved" with a certification number and a North American Plant Health Certificate. ( )

10. **Sister Lot**. Seed lots originating from the same lot of seed stock. ( )

011. ABBREVIATIONS.

01. **BRR**. Bacterial Ring Rot. ( )

02. ***Cms***. *Clavibacter michiganensis* subsp. *sepedonicus*. ( )

03. **ISDA**. Idaho State Department of Agriculture. ( )

04. **ICIA**. Idaho Crop Improvement Association. ( )

012. APPLICABILITY.
These rules apply to the reporting, trace back, investigation, inspection, sampling, lab analysis and testing related to *Cms* and *Cms*-caused BRR in Idaho. ( )

013. -- 019. (RESERVED)

020. REGULATED PEST - BACTERIAL RING ROT.
Caused by a bacterium, *Clavibacter michiganensis* subsp. *sepedonicus* (*Cms*). ( )

021. -- 100. (RESERVED)

101. REPORTING OF BRR.

01. **Mandatory Reporting**. It is mandatory for any person, including but not limited to a grower, processor, shipper, laboratory staff member, field inspector, and/or shipping point inspector, to immediately report the presence of BRR to the Department when: ( )

a. The BRR is discovered or observed in seed potato plants or tubers prior to final seed potato certification by ICIA; and ( )

b. The presence of BRR is confirmed via laboratory testing; and ( )

c. The positive tubers or plant parts are still in the possession of the original seed grower. ( )

02. **Contents**. All reports shall, to the best of the reporter's ability, contain the following information: ( )

a. The field, facility or other location at which *Cms* was found; ( )

b. The date of discovery; ( )

c. The location at which the suspect potatoes were grown; ( )

d. The variety and generation of the suspect potatoes; ( )

e. The laboratory submission report and test results; ( )

f. The certification tags and origin of the seed potatoes used to produce the suspect crop; ( )

g. North American Plant Health Certificate. ( )

03. Methods of Reporting. The report shall be made by phone, in person or in writing (which may include electronic mail sent to BRR@agri.idaho.gov). Full Department headquarters contact information is listed in Section 005 of this rule. ( )

102. HOLD HARMLESS.
Reporting parties and those parties participating in and cooperating with the Department's trace back investigation of any alleged *Cms* contaminated potatoes will be held harmless from any civil penalties the Department has authority to issue under Section 500 of these Rules. ( )

103. TRACE BACK INVESTIGATION, SAMPLING, AND TESTING.

01. Trace Back and Investigation. The department shall, upon receiving a mandatory report of Cms infected potatoes, investigate the origin and destination of such potatoes. Trace back and investigation activities may include, but not be limited to: ( )

a. A review of all inspection, certification, shipping and production records held by any person for the potatoes in question; ( )

b. Inspection and sampling at the reporting operation as well as points for origin, storage and destination related to that operation; and ( )

c. Laboratory testing records of any samples. ( )

02. Mutual Cooperation. The Department and the Idaho Crop Improvement Association shall mutually cooperate with each other in trace back investigations where appropriate. ( )

03. Testing Positive for *Cms*. If certified seed potatoes in a lot test positive for Cms after they have left the control of the grower of that lot, ISDA's trace back investigation may include Cms testing any remaining seed from that lot that is still at the seed potato grower's facility. The testing level will be at a rate, depending on lot size, up to a maximum of four hundred (400) randomly selected tubers. ( )

104. RESTRICTION ON THE USE OF INFECTED POTATOES.
Those potatoes found to be infected with *Cms* may not be utilized for planting as seed. ( )

105. -- 149. (RESERVED)

150. TESTING FOR BRR.

01. Compliance With Certification Standards. Seed potato tubers for planting for commercial production or for seed certification in Idaho or being imported into Idaho as seed potatoes for commercial production or certification as seed for planting must comply with the ICIA Rules of Certification for Seed Potatoes in Idaho as they relate to *Cms*, as incorporated in Section 004 of this rule. ( )

02. Seed Potatoes to Be Exported Tested. Seed potato tubers being exported from Idaho to a foreign country as seed potatoes for planting must meet all ICIA requirements for certification and export tag placement, as well as all phytosanitary certification requirements of the importing country. All costs for sampling, transport and testing shall be borne by the exporter. ( )

151. -- 399. (RESERVED)

400. HOLD ORDERS.
The Director may authorize Hold Orders restricting the movement of infested or suspect potatoes until investigation, trace back, and sample analysis are complete. Hold Orders may require verification that said potatoes will not be utilized for any purposes not authorized in writing by the Department. When potatoes from a certified seed potato lot

are sampled and test positive for BRR after the seed potatoes have left the seed potato grower's facility, the department will not issue a hold order on any seed potatoes from that lot that remain on the seed potato grower's facility unless and until potatoes from the affected lot are sampled at the seed potato grower's facility and test positive for BRR. ( )

401. -- 449. (RESERVED)

450. FEES.
Fees for samples for laboratory testing for *Cms* shall be those normally charged by the approved laboratory doing the testing. ( )

451. -- 499. (RESERVED)

500. VIOLATIONS.
Any person violating any provisions of these rules or not cooperating with investigations conducted under the authority of this rule shall be subject to the provisions of Section 22-504, 22-1913 and 22-2020, Idaho Code. ( )

501. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.03 - RULES OF ELECTRICAL LICENSING AND REGISTRATION - GENERAL

DOCKET NO. 07-0103-1401

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, 54-1006, and 54-1007, 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 15, 2014.

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 and Electrical Board have determined, based on numerous complaints by the industry in recent years, that an increasing number of individuals already licensed in other jurisdictions as master and journeyman electricians enter Idaho and obtain apprentice registrations from the Division for the purpose of working on single jobs and leave the state upon completion of such. This practice prevents Idaho apprentice electricians from filling these positions and furthering their education and experience in working towards their journeyman license. There is no basis for someone already recognized as a journeyman in another jurisdiction working in Idaho as a apprentice to "learn" to be a journeyman; rather, it is circumvention of Idaho licensing requirements and allows these non-resident trades people to avoid testing for the Idaho journeyman's license. This rule would require anyone who has previously been licensed in any jurisdiction as a journeyman or master electrician to disclose such licensure history to the Division upon application. It also prevents any such individual so previously licensed from obtaining an apprentice registration.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the matter was formally designated as an agenda topic before the Electrical Board at four board meetings over the last two years prior to the rulemaking. The Board was satisfied that all stakeholders and interested parties were recognized and had an opportunity to participate in the adoption process.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
Tel: (208) 332-8986 / Fax: (877) 810-2840

1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0103-1401
(Only those Sections being amended are shown.)

004. -- 0~~1~~09. (RESERVED)

010. LICENSURE HISTORY.
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 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. ( )

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.07 - RULES GOVERNING CONTINUING EDUCATION REQUIREMENTS

DOCKET NO. 07-0107-1401

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 54-1006(5) and 54-1013, 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 15, 2014.

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 Electrical Board and Division have determined that imposing a less restrictive CEU requirement would allow licensees a better opportunity to fulfill their CEU requirements. The past couple of editions of the electrical code (NEC) have not required sixteen (16) hours of CEU's to adequately cover the changes in the new editions of the NEC. The Board and Division determined that licensees would be better served by having the discretion to use eight (8) hours of training directly related to the code, but not necessarily based on changes in the latest edition of the NEC. This change is in line with requirements of other states which have reciprocal licensing agreements with Idaho. The proposed rule would allow for an additional category of instruction in the area of electrical code-related training to qualify toward the continuing education credits that a journeyman and master electrician must obtain in each licensing period. Currently, journeyman and master electricians are required to receive twenty-four (24) hours of continuing education units (CEU) training in each three (3)-year licensing period. The twenty-four (24) hours currently consists of sixteen (16) hours of code update covering changes included in the latest edition of the NEC, and eight (8) hours of industry related training. This proposed rule would require eight (8) hours of code update, eight (8) hours of industry related training, and eight (8) hours of code-related training. It would also clarify that the required CEU hours must be completed in each three (3)-year licensing period, as opposed to the period between updates of the NEC.

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

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

There will be no impact to the general or dedicated funds. Positive impact to affected licensees is expected as a result of creating more options to obtain continuing education credits.

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 7, 2014 Idaho Administrative Bulletin, **Vol. 14-5, pages 48 and 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0107-1401
(Only those Sections being amended are shown.)

011. CONTINUING EDUCATION REQUIREMENTS.
Journeymen and master electricians must complete at least twenty-four (24) hours of continuing education instruction in every three (3) year period between ~~*updates of the National Electrical Code*~~ renewals of such licenses. The twenty-four (24) hours of instruction shall consist of ~~*sixteen*~~ eight (~~*16*~~8) hours of code update covering changes included in the latest edition of the National Electrical Code, eight (8) hours of code-related training, and eight (8) hours of 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 ~~*Electrical Bureau*~~ Division of Building Safety. Proof of completion of these continuing education requirements must be submitted to the ~~*Bureau*~~ 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. ~~*(4-7-11)*~~( )

012. COURSE APPROVAL REQUIREMENTS.
Continuing education courses for electricians must cover technical aspects of the electrical trade. Courses related to management, supervision, business practices, personal computer skills, or first aid will not be approved. Courses will be approved as either code update or industry related based on the criteria as defined in this section. (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 ~~*Electrical Bureau*~~ Division of Building Safety. ~~*(4-2-08)*~~( )

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 ~~*Electrical Bureau*~~ Division of Building Safety. ~~*(4-2-08)*~~( )

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. 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)

04. 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 ~~*Electrical Bureau*~~ 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: ~~*(4-2-08)*~~( )

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)

05. 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)

06. 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 ~~*Electrical Bureau*~~ 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: ~~*(4-2-08)*~~( )

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)

07. 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)

08. 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 ~~*Electrical Bureau*~~ Division of Building Safety or a state that is reciprocal with Idaho for continuing education; ~~*(4-2-08)*~~( )

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 ~~*Electrical Bureau*~~ Division of Building Safety; and ~~*(4-2-08)*~~( )

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)

09. Schedule of Approved Classes. The ~~*Electrical Bureau*~~ 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. ~~*(4-2-08)*~~( )

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.11 - RULES GOVERNING CIVIL PENALTIES

DOCKET NO. 07-0111-1401

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 October 15, 2014.

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:

No specific provision exists in rule to impose a civil penalty for failure to disclose the required information on an application for registration or certificate of competency. Requiring such disclosure will help prevent applicants, particularly those already licensed in other jurisdictions, from circumventing the journeyman licensure requirements in Idaho. This rule would establish a civil penalty for applicants who fail to disclose the required information on any Division electrical license application, specifically to include their licensure history and any licenses previously held in any state or jurisdiction.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the matter was formally designated as an agenda topic before the Electrical Board at four board meetings over the last two years prior to the rulemaking. The Board was satisfied that all stakeholders and interested parties were recognized and had an opportunity to participate in the adoption process.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 October 22, 2014.

DATED this 29th day of August, 2014.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0111-1401
(Only those Sections being amended are shown.)

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 as defined by Section 54-1003A(6), Idaho Code, apprentice electrician as defined by Section 54-1003A(3), Idaho Code, or a specialty electrical 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 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 by a qualified journeyman electrician 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 electrical contractor or specialty electrical journeyman performing electrical installations, alterations or maintenance outside the scope of the specialty 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. ( )

~~09~~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)

1~~0~~1. **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

07.02.04 - RULES GOVERNING PLUMBING SAFETY INSPECTIONS

DOCKET NO. 07-0204-1401

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 54-2601, 54-2605, and 54-2606, 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 15, 2014.

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 Plumbing Board has adopted the Cross Connection Control Manual as the standard by which all plumbing cross connection and backflow prevention devices must be installed to prevent against actual or potential connections between a potable and nonpotable water supply; which connection can constitute a serious public health hazard. The Cross Connection Control Manual is published by the American Water Works Association (AWWA), and was recently updated as reflected in the 7th edition of the manual published in 2012. This rulemaking adopts the 7th Edition of the Cross Connection Control Manual published in 2012 by the American Water Works Association in place of the now out-dated 1995 6th Edition.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule merely adopts the most recent edition of the Cross Connection Manual. Although formal negotiated rulemaking did not occur prior to the promulgation of this rulemaking, the matter was formally designated as an agenda topic before the Plumbing Board at three board meetings over the last two years prior to the rulemaking. The Board was satisfied that all stakeholders and interested parties were recognized and had an opportunity to participate in the adoption process.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Tel: (208) 332-8986 / Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0204-1401
(Only those Sections being amended are shown.)

012. REQUIREMENTS IN ADDITION TO THE PLUMBING CODE.

01. Cross Connection Control Manual. The "Cross Connection Control Manual" published by the Pacific Northwest Section of the American Water Works Association (~~*December*~~ April, ~~*1995*~~ 2012 ~~*6*~~7th Edition) is hereby adopted as the standard for cross connection control and back flow prevention devices. ~~*(5-3-03)*~~( )

02. Jurisdiction/Septic Systems. Septic tank and drain fields: Under the definition of a plumbing system as set forth in Section 54-2604(h), Idaho Code, the plumbing contractor's interest and responsibility ceases with the "connection" to the septic tank. (11-14-85)

03. Waste Disposal. The Department of Health and Welfare is the inspection authority on waste disposal. (6-4-76)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING

DOCKET NO. 07-0205-1401

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 54-2605, 54-2606, and 54-2610, 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 15, 2014.

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 more clearly defines the qualifications and requirements necessary to become a licensed plumber in Idaho for applicants from both within the state, as well as from other states. It more clearly aligns the requirements for licensure from out-of-state applicants with those for applicants from Idaho, eliminating any advantage to out-of-state applicants and ensuring all applications are handled uniformly and consistently. Licensing requirements vary in states throughout the country, and this rule requires that out-of-state applicants meet the same requirements as plumbers who are trained and licensed in Idaho. The proposed rule more clearly establishes the schooling and work experience requirements necessary to obtain a plumbing journeyman certificate of competency (license), as well as the necessary requirements for applicants who come from other states, which may or may not have a formal licensing scheme equivalent to or recognized by Idaho. Similarly, it more clearly establishes the work experience requirements necessary to obtain a plumbing contractor license, including the requirement to obtain a journeyman license. It also sets forth the necessary requirements for applicants who come from other states, which may or may not have a formal licensing scheme equivalent to or recognized by Idaho, including the journeyman license perquisite.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, **Vol. 14-7, pages 33 and 34**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
Tel: (208) 332-8986 / Fax: (877) 810-2840

1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0205-1401
(Only those Sections being amended are shown.)

011. APPRENTICE REGISTRATION.
A person wishing to become a plumbing apprentice shall register with the Division of Building Safety prior to going to work. All apprentices shall pay the registration fee as prescribed by Section 54-2614, Idaho Code. The minimum age for any apprentice shall be sixteen (16) years. No examination is required for such registration. In order to maintain registration, the apprentice shall renew his registration in accordance with Sections 54-2614 and 54-2614A, Idaho Code. (3-29-12)

01. Work Requirements. A plumbing apprentice must work at the trade under the constant on-the-job supervision of a journeyman and in the employ of a contractor for a total of four (4) years, defined as a minimum of eight thousand (8,000) hours work experience in order to be eligible for a journeyman certificate of competency. (3-29-12)

02. Schooling Requirements. A plumbing apprentice must complete an Idaho Plumbing Board approved related course of instruction for four (4) years in order to be eligible for a journeyman certificate of competency. Unless prior approval has been granted by the Division of Building Safety, the apprentice must complete the required course work sequentially: year one (1) must be completed prior to beginning year two (2); year two (2) must be completed prior to beginning year three (3); and year three (3) must be completed prior to beginning year four (4). A minimum of one hundred forty-four (144) hours of classroom or other Idaho Plumbing Board-approved instruction time per school year is required. A grade average of seventy percent (70%) must be attained in these courses. Upon completion of apprenticeship schooling, the apprentice must obtain a certificate of completion, or a letter signed by the chairman of his apprenticeship committee, and attach the certificate or letter to his application for a journeyman license. (3-29-12)

03. Journeyman Examination. (3-29-12)

a. Any plumbing apprentice who desires to take the written portion of the journeyman examination ~~*must*~~ shall complete an Idaho Plumbing Board approved related course of instruction for four (4) years as described in ~~*Paragraph*~~ Subsection 011.0~~*3*~~2~~*.b.*~~ of these rules prior to the date of the exam and provide a certificate of completion with the application for examination. There is no minimum work requirement in order to be eligible to take the written portion of the plumbing journeyman examination. ~~*(3-29-12)*~~( )

b. Successful completion of the journeyman written 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 plumber or the practical portion of the examination in order to be issued a journeyman ~~*license*~~ certificate of competency. Successful completion of the written plumbing journeyman examination notwithstanding, no journeyman ~~*license*~~ certificate of competency shall be issued until an apprentice successfully completes the practical portion for the examination and furnishes to the Division proof of satisfaction of the work requirements contained in ~~*Paragraph*~~ Subsection 011.0~~*3*~~1~~*.a.*~~ of these rules. Satisfaction of the work requirements contained in ~~*Paragraph*~~ Subsection 011.0~~*3*~~1~~*.a.*~~ of these rules is required before any individual is eligible to take the practical portion of the journeyman examination. ~~*(3-29-12)*~~( )

012. JOURNEYMAN.

01. Qualifications for Journeyman Plumber. An applicant for a journeyman plumber's certificate of competency ~~*must*~~ shall have at least four (4) years' experience as an apprentice making plumbing installations under the constant on-the-job supervision of a qualified journeyman plumber, as provided by Section 54-2611, Idaho Code. Pipe fitting will not be accepted as qualifications for a journeyman plumber's ~~*license*~~ certificate of competency.~~ *The first step i*~~In order to obtain~~*ing*~~ a journeyman certificate of competency, ~~*is to*~~ an individual shall submit an application for examination and license. The application ~~*must*~~ shall be accompanied by proof the applicant has completed ~~*the minimum*~~ an approved course of instruction for four (4) years~~*' experience in the trade*~~ as provided in Subsection 011.02 of these rules. ~~*Exhibition of a current license or photostatic copy of it from another jurisdiction may be*~~

~~*accepted as proof of experience*~~ The journeyman examination may be taken by an individual who has successfully completed an Idaho Plumbing Board-approved course of instruction for four (4) years as described in Subsection 011.03 of these rules. The examination fee shall be as prescribed by Section 54-2614, Idaho Code, and ~~*must*~~ shall accompany the application. ~~*(3-29-12)*~~( )

02. Examination. The journeyman examination grade is based on answers to written questions and practical work performed on plumbing installations as determined by the Division after successful completion of the written ~~*work*~~ examination. Time allowed for the written examination is four (4) hours. A passing grade is required on the written examination. The practical portion of the exam may be performed on a job in-progress or in a laboratory setting and shall consist of work performed in either a residential or commercial application. The practical portion of the exam must pass with no violations. ~~*(4-7-11)*~~( )

03. Out of State Journeyman Applications. ( )

a. Exhibition of a license issued by another recognized jurisdiction may be accepted as proof of meeting the experience and schooling requirements listed in Subsections 012.01 and 012.02 of these rules. An application for a journeyman certificate of competency from an individual previously licensed as a journeyman in another jurisdiction recognized by the Idaho Plumbing Board shall include satisfactory proof of licensure in such jurisdiction. The applicant shall pay all applicable application and examination fees to the Division, and successfully complete the journeyman examination administered by the Division. ( )

b. An application for a journeyman certificate of competency from an individual who has never been previously licensed as a journeyman in a jurisdiction recognized by the Idaho Plumbing Board shall include evidence that demonstrates that the applicant has four (4) years of plumbing work experience of a nature at least equivalent to that which a plumbing apprentice must perform in Idaho, as well as four (4) years of schooling equivalent to that which a plumbing apprentice must complete in Idaho. Upon submission of sufficient proof of having completed such experience and schooling requirements, such applicant shall also pay all applicable application and examination fees to the Division, and successfully complete the journeyman examination administered by the Division. ( )

013. PLUMBING CONTRACTOR.

01. Qualifications for Plumbing Contractor. A plumbing contractor must be certified as competent by the Idaho Plumbing Board and the administrator of the Division before he offers his service to the public. To obtain the certificate, he ~~*must*~~ shall first submit an acceptable application. The ~~*application must show, among other things*~~ applicant shall possess an active journeyman plumbing certificate of competency issued by the Division, a provable minimum of two and one-half (2 1/2) years' experience as a licensed journeyman plumber ~~*either*~~ in the state of Idaho, ~~*or another state. Such experience may be proven by the submission with the application of a photostatic copy of the license from another jurisdiction, which has been held for the required period of time. However, if the applicant is from a state which does not require or provide for formal journeyman licensing, then said experience may be proven by the submission of three (3) sworn affidavits from individuals attesting to the fact that the applicant has had at least two and one-half (2 1/2) years' experience as a journeyman plumber. Applications which are incomplete in any detail will be returned as unacceptable*~~ as well as provide payment to the Division for all applicable application and examination fees, and successfully complete the contractor examination administered by the Division. ~~*A*~~ The compliance bond ~~*must also*~~ required by Section 54-2606, Idaho Code, shall be required to be on file ~~*in*~~ with the Division ~~*before an*~~ upon successful completion of the examination ~~*will be given*~~. The examination fee shall be as prescribed by Section 54-2614, Idaho Code~~*, and must accompany the application*~~. ~~*(8-25-88)*~~( )

02. Out of State Contractor Applications. ( )

a. An applicant for a contractor certificate of competency who has previously been licensed as a journeyman in another jurisdiction recognized by the Idaho Plumbing Board shall first obtain an Idaho journeyman certificate of competency in accordance with Section 012 of these rules. Such applicants may provide proof of two and one half (2 ½) years of experience as a plumbing journeyman by providing satisfactory evidence to the Division of such work history in another recognized jurisdiction. Such applicants shall also pay all applicable application and examination fees to the Division, and successfully complete the contractor examination administered by the Division. The compliance bond required by Section 54-2606, Idaho Code, shall be required to be on file with the Division upon successful completion of the examination. ( )

b. An applicant for a contractor certificate of competency who has never been previously licensed as a journeyman in a jurisdiction recognized by the Idaho Plumbing Board shall first obtain an Idaho journeyman certificate of competency in accordance with Section 012 of these rules. Such applicants shall also provide proof of four (4) years of experience performing plumbing work of a nature equivalent to what a journeyman in Idaho must demonstrate to qualify for a contractor certificate of competency. Proof of such work experience may be provided by the submission of three (3) sworn affidavits from individuals attesting to the fact that the applicant has had at least four (4) years' experience performing such work. Alternatively, such an applicant must provide proof of two and one half (2 ½) years of experience as a journeyman plumber in the state of Idaho. Such applicants shall also pay all applicable application and examination fees to the Division, and successfully complete the contractor examination administered by the Division. The compliance bond required by Section 54-2606, Idaho Code, shall be required to be on file with the Division upon successful completion of the examination. Applications that are incomplete in any detail will be returned as unacceptable, or denied. ( )

0~~2~~3. Restrictive Use of Contractor Certificate. Any individual holding a contractor certificate and designated by a firm to represent that firm for licensing purposes shall represent one (1) firm only, and shall immediately notify the Division in writing when his working arrangement with that firm has been terminated for purposes of becoming self-employed or affiliation with another firm, or for any other reason. A license holder cannot represent any other person or firm, self-employed or otherwise, than originally stated on his application for license. When a change is made, he is required to so inform the Division. Otherwise, he is guilty of transferring his license in violation of Section 54-2610, Idaho Code, and is subject to license suspension, revocation, or refusal to renew under Section 54-2608, Idaho Code, or to prosecution under the provisions of Section 54-2628, Idaho Code. (8-25-88)

0~~3~~4. Previous Revocation. Any applicant for a plumbing contractor's license who has previously had his plumbing contractor's license revoked for cause, as provided by Section 54-2608, Idaho Code, shall be considered as unfit and unqualified to receive a new plumbing contractor's license so long as such cause for revocation is continuing, and of such a nature that correction can be made by the applicant. (11-14-85)

0~~4~~5. Reviving an Expired License. Any applicant for a plumbing contractor's license who has allowed his license to expire and seeks to revive it under the provisions of Section 54-2617, Idaho Code, may be denied a license as unfit and unqualified if, while operating under the license prior to expiration, he violated any of the laws, rules or regulations applicable to plumbing contractors, and such violation is continuing, and of such a nature that corrections can be made by the applicant. (11-14-85)

0~~5~~6. Effective Dates. The effective dates of the compliance bond referred to in Subsection 013.01 of these rules shall coincide with the effective dates of the contractor's license. Proof of renewal of the compliance bond must be on file with the Division before the contractor can renew or revive his license. (4-6-05)

0~~6~~7. Plumbing Contractor's Responsibility. It shall be the responsibility of the plumbing contractor to ensure that all his employees working at the plumbing trade are licensed as provided by Idaho Code and these rules. (8-25-88)

0~~7~~8. Advertising. Any person or entity advertising to engage in the business, trade, practice, or work of a plumbing contractor as defined in Section 54-2611, Idaho Code, who does not possess a current and valid plumbing contractor certificate of competency issued by the Division of Building Safety, shall be in violation of the licensing provisions of Title 54, Chapter 26, Idaho Code. Such conduct is punishable as a misdemeanor as prescribed by Section 54-2628, Idaho Code, and subject to civil penalties in accordance with IDAPA 07.02.07, "Rules Governing Civil Penalties," Section 011. (5-8-09)

a. For the purposes of this Section, advertising shall include, but not be limited to: newspaper, telephone directory, community flier ads or notices; telephone, television, radio, internet, or door-to-door solicitations. (5-8-09)

b. Any advertising, as defined in Subsection 013.07 of these rules, conducted by those persons or entities with a valid certificate of competency shall include the contractor certificate of competency number. (5-8-09)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.06 - RULES CONCERNING IDAHO STATE PLUMBING CODE

DOCKET NO. 07-0206-1401

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 54-2601 and 54-2605, 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 15, 2014.

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 updates the Idaho State Plumbing Code to allow certain materials to be used for potable water distribution piping and building sewers. This will allow contractors and property owners greater flexibility when installing such pipes and sewer systems. It also eliminates several provisions of the code which can unnecessarily cost contractors and property owners additional expense. This rulemaking amends several provisions of the Idaho State Plumbing Code. It allows for the use of Polypropylene (PP) and Polyethylene of Raised Temperature (PE-RT) materials for use in building supply pipes and fittings as well as water distribution pipes and fittings, and Polyethylene (PE) for use in building drains. It eliminates the requirement for a plumber to test a shower pan for water-tightness. It also eliminates the requirement to use a device in bathtubs and whirlpool tubs that limits the maximum hot temperature of the water discharged therein. Finally, it eliminates the requirement in certain seismic areas to anchor or strap water heaters in place to resist against displacement due to earthquake motion.

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

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

The proposed amendments are expected to have a positive fiscal impact on plumbing contractors and homeowners making their own installations as a result of allowing more materials to be used in supply pipe and sewer systems, as well as the elimination of additional equipment/devices and testing when making an installation. The proposed changes have no fiscal impact on the Division of Building Safety dedicated fund or the state of Idaho general fund, or other jurisdictions enforcing the Idaho State Plumbing Code.

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 March 5, 2014 Idaho Administrative Bulletin, **Vol. 14-3, 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:

Revisions are being made to the already incorporated by reference Idaho Plumbing Code, 2012 edition, in Section 011 as described above.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0206-1401
(Only those Sections being amended are shown.)

011. ADOPTION AND INCORPORATION BY REFERENCE OF THE IDAHO STATE PLUMBING CODE.
The Idaho State Plumbing Code published in 2012, including Appendices "A, B, D, E, I, and L," (herein ISPC) is adopted and incorporated by reference with amendments as prescribed by the Idaho Plumbing Board and contained in this Section. The Idaho State Plumbing Code is modeled after the 2009 Uniform Plumbing Code (UPC). The Idaho State Plumbing Code is available at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150, Meridian, Idaho 83642; 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814; and 2055 Garrett Way, Building 1, Suite 4, Pocatello, Idaho 83201. It may also be accessed electronically online at http://dbs.idaho.gov/. (3-25-13)

01. Section 218. Delete definition of "Plumbing System." Incorporate definition of "Plumbing System" as set forth in Section 54-2604, Idaho Code. (3-15-02)

02. Section 315.4. Add: Where unsuitable or soft material is encountered, excavate to a depth not less than two (2) pipe diameters below the pipe and replace with select backfill. Such backfill shall be sand, fine gravel, or stone and shall provide lateral support for the pipe. Where rock is encountered, the trench shall be excavated to a minimum depth of six (6) inches (152 mm) below the bottom of the pipe. Sand shall be added to provide uniform bedding and support for the pipe. The pipe shall not rest on any rock at any point, including joints. (3-25-13)

03. Section 316.1.6 Solvent Cement Plastic Pipe Joints. PVC DWV may be joined by the use of one-step solvent cement listed or labeled per U.P.C. Section 301.1.1. (3-25-13)

04. Section 402.4 Metered Faucets. Self-closing or self-closing metering faucets may be installed on lavatories intended to serve the transient public, such as those in, but not limited to, service stations, train stations, airports, restaurants, convention halls, and rest stops. Installed metered faucets shall deliver a maximum of zero point two six (0.26) gallons (one point zero (1.0) liter) of water per use. (3-25-13)

05. Section 411.8.1 Tests for Shower Receptors. Delete. ( )

0~~5~~6. Section 412.0 Minimum Number of Required Fixtures. Delete Section 412.0 and all subsections contained thereunder and replace with the following: (3-25-13)

a. 412.1 Fixture Count. Plumbing fixtures shall be provided for the type of building occupancy and in the minimum number shown in Table 412.1. The total occupant load and occupancy classification shall be determined in accordance with the building code. Occupancy classification not shown in Table 412.1 shall be considered separately by the Authority Having Jurisdiction. The minimum number of fixtures shall be calculated at fifty percent (50%) male and fifty percent (50%) female based on the total occupant load. Where information submitted indicates a difference in distribution of the sexes such information shall be used in order to determine the

number of fixtures for each sex. Once the occupancy load and occupancy are determined, Table 412.1 shall be applied to determine the minimum number of plumbing fixtures required. Where applying the fixture ratios in Table 412.1 results in fractional numbers, such numbers shall be rounded to the next whole number. For multiple occupancies, fractional numbers shall be first summed and then rounded to the next whole number. (3-25-13)

b. 412.1.1 Family or Assisted-Use Toilet and Bathing Facilities. Where family or assisted-use toilet and bathing rooms are required, in applicable building regulations, the facilities shall be installed in accordance with those regulations. (3-25-13)

c. 412.2 Separate Facilities. Separate toilet facilities shall be provided for each sex, with the following exceptions: (3-25-13)

i. Residential installations. (3-25-13)

ii. In occupancies with a total occupant load of ten (10) or less, including customers and employees, one (1) toilet facility, designed for use by no more than one (1) person at a time, shall be permitted for use by both sexes. (3-25-13)

iii. In business and mercantile occupancies with a total occupant load of fifty (50) or less including customers and employees, one (1) toilet facility, designed for use by no more than one (1) person at a time, shall be permitted for use by both sexes. (3-25-13)

d. 412.3 Fixture Requirements for Special Occupancies. Additional fixtures shall be permitted to be required where unusual environmental conditions or referenced activities are encountered. In food preparation areas, fixture requirements shall be permitted to be dictated by health codes. (3-25-13)

e. 412.4 Toilet Facilities Serving Employees and Customers. Each building or structure shall be provided with toilet facilities for employees and customers. Requirements for customers and employees shall be permitted to be met with a single set of restrooms accessible to both groups. Required toilet facilities for employees and customers located in shopping malls or centers shall be permitted to be met by providing a centrally located toilet facility accessible to several stores. The maximum travel distance from entry to any store to the toilet facility shall not exceed three hundred (300) feet (91.4 m). Required toilet facilities for employees and customers in other than shopping malls or centers shall have a maximum travel distance not to exceed five hundred (500) feet (152.4 m). (3-25-13)

f. 412.4.1 Access to Toilet Facilities. In multi-story buildings, accessibility to the required toilet facilities shall not exceed one (1) vertical story. Access to the required toilet facilities for customers shall not pass through areas designated as for employee use only such as kitchens, food preparation areas, storage rooms, closets, or similar spaces. Toilet facilities accessible only to private offices shall not be counted to determine compliance with this section. (3-25-13)

g. 412.5 Toilet Facilities for Workers. Toilet facilities shall be provided and maintained in a sanitary condition for the use of workers during construction. (3-25-13)

0~~6~~7. **Table 4-1 Minimum Plumbing Facilities**. Delete Table 4-1 and replace with the following Table 412.1:

TABLE 412.1
MINIMUM PLUMBING FACILITIES[1]

Each building shall be provided with sanitary facilities, including provisions for persons with disabilities as prescribed by the Department Having Jurisdiction. Table 412.1 applies to new buildings, additions to a building, and changes of occupancy or type in an existing building resulting in increased occupant load.

TYPE OF OCCUPANCY[2]	WATER CLOSETS (FIXTURES PER PERSON)[3]		URINALS (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS OR SHOWERS (FIXTURES PER PERSON)	DRINKING FOUNTAINS/ FACILITIES (FIXTURES PER PERSON)	OTHER
A-1 Assembly occupancy (fixed or permanent seating)- theatres, concert halls and auditoriums	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-200 2: 201-300 3: 301-400 4: 401-600	Male 1: 1-200 2: 201-400 3: 401-600 4: 601-750	Female 1: 1-100 2: 101-200 4: 201-300 5: 301-500 6: 501-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 750, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.			Over 750, add 1 fixture for each additional 500 persons.	
A-2 Assembly occupancy- restaurants, pubs, lounges, night clubs and banquet halls	Male 1: 1-50 2: 51-150 3: 151-300 4: 301-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-200 2: 201-300 3: 301-400 4: 401-600	Male 1: 1-150 2: 151-200 3: 201-400	Female 1: 1-150 2: 151-200 4: 201-400		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 250 males and 1 fixture for each 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 400 add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.			Over 750, add 1 fixture for each additional 500 persons.	
A-3 Assembly occupancy (typical without fixed or permanent seating)- arcades, places of worship, museums, libraries, lecture halls, gymnasiums (without spectator seating), indoor pools (without spectator seating)	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-600	Male 1: 1-200 2: 201-400 3: 401-600 4: 601-750	Female 1: 1-100 2: 101-200 4: 201-300 5: 301-500 6: 501-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400 add 1 fixture for each additional 500 males and 1 fixture for each additional 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 750, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.			Over 750, add 1 fixture for each additional 500 persons.	

TYPE OF OCCUPANCY[2]	WATER CLOSETS (FIXTURES PER PERSON)[3]		URINALS (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS OR SHOWERS (FIXTURES PER PERSON)	DRINKING FOUNTAINS/ FACILITIES (FIXTURES PER PERSON)	OTHER
A-4 Assembly occupancy (indoor activities or sporting events with spectator seating)- swimming pools, skating rinks, arenas and gymnasiums	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-600	Male 1: 1-200 2: 201-400 3: 401-750	Female 1: 1-100 2: 101-200 4: 201-300 5: 301-500 6: 501-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 750, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.			Over 750, add 1 fixture for each additional 500 persons.	
A-5 Assembly occupancy (outdoor activities or sporting events)- amusement parks, grandstands and stadiums	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-25 2: 26-50 3: 51-100 4: 101-200 6: 201-300 8: 301-400	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-600	Male 1: 1-200 2: 201-400 3: 401-750	Female 1: 1-100 2: 101-200 4: 201-300 5: 301-500 6: 501-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 125 females.		Over 600, add 1 fixture for each additional 300 males.	Over 750, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.			Over 750, add 1 fixture for each additional 500 persons.	
B Business occupancy (office, professional or service type transactions)- banks, vet clinics, hospitals, car wash, banks, beauty salons, ambulatory health care facilities, laundries and dry cleaning, educational institutions (above high school), or training facilities not located within school, post offices and printing shops	Male 1: 1-50 2: 51-100 3: 101-200 4: 201-400	Female 1: 1-15 2: 16-30 3: 31-50 4: 51-100 8: 101-200 11: 201-400	Male 1: 1-100 2: 101-200 3: 201-400 4: 401-600	Male 1: 1-75 2: 76-150 3: 151-200 4: 201-300 5: 301-400	Female 1: 1-50 2: 51-100 3: 101-150 4: 151-200 5: 201-300 6: 301-400		1 per 150	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 150 females.		Over 600, add 1 fixture for each additional 300 males.	Over 400, add 1 fixture for each additional 250 males and 1 fixture for each additional 200 females.				
E Educational occupancy- private or public schools	Male 1 per 50	Female 1 per 30	Male 1 per 100	Male 1 per 40	Female 1 per 40		1 per 150	1 service sink or laundry tray

TYPE OF OCCUPANCY[2]		WATER CLOSETS (FIXTURES PER PERSON)[3]		URINALS (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS OR SHOWERS (FIXTURES PER PERSON)	DRINKING FOUNTAINS/ FACILITIES (FIXTURES PER PERSON)	OTHER
F1, F2 Factory or Industrial occupancy-fabricating or assembly work		Male 1: 1-50 2: 51-75 3: 76-100	Female 1: 1-50 2: 51-75 3: 76-100		Male 1: 1-50 2: 51-75 3: 76-100	Female 1: 1-50 2: 51-75 3: 76-100	1 shower for each 15 persons exposed to excessive heat or to skin contamination with poisonous, infectious or irritating material.	1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
		Over 100 add 1 fixture for each additional 40 persons.			Over 100 add 1 fixture for each additional 40 persons.			Over 750 add 1 fixture for each additional 500 persons.	
I-1 Institutional occupancy (houses more than 16 persons on a 24-hour basis)- substance abuse centers, assisted living, group homes, or residential facilities		Male 1 per 15	Female 1 per 15		Male 1 per 15	Female 1 per 15	1 per 8	1 per 150	1 service sink or laundry tray
I-2 Institutional occupancy-medical, psychiatric, surgical or nursing homes	Hospitals and nursing homes-individual rooms and ward room	1 per room			1 per room		1 per room	1 per 150	1 service sink or laundry tray
		1 per 8 patients			1 per 10 patients		1 per 20 patients		
	Hospital Waiting or Visitor Rooms	1 per room			1 per room			1 per room	
	Employee Use	Male 1: 1-15 2: 16-35 3: 36-55	Female 1: 1-15 3: 16-35 4: 36-55		Male 1 per 40	Female 1 per 40			
		Over 55, add 1 fixture for each additional 40 persons.							

TYPE OF OCCUPANCY[2]		WATER CLOSETS (FIXTURES PER PERSON)[3]		URINALS (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS OR SHOWERS (FIXTURES PER PERSON)	DRINKING FOUNTAINS/ FACILITIES (FIXTURES PER PERSON)	OTHER
I-3 Institutional occupancy (houses more than 5 people)	Prisons	1 per cell			1 per cell		1 per 20	1 per cell block/floor	
	Correctional facilities or juvenile center	1 per 8			1 per 10		1 per 8	1 per floor	1 service sink or laundry tray
	Employee Use	Male 1: 1-15 2: 16-35 3: 36-55	Female 1: 1-15 3: 16-35 4: 36-55		Male 1 per 40	Female 1 per 40		1 per 150	
		Over 55, add 1 fixture for each additional 40 persons.							
I-4 Institutional occupancy (any age that receives care for less than 24 hours)		Male 1: 1-15 2: 16-35 3: 36-55	Female 1: 1-15 3: 16-35 4: 36-55		Male 1 per 40	Female 1 per 40		1 per 150	1 service sink or laundry tray
		Over 55, add 1 fixture for each additional 40 persons.							
M Mercantile occupancy (the sale of merchandise and accessible to the public)		Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-100 2: 101-200 4: 201-300 6: 301-400	Male 0: 1-200 1: 201-400	Male 1: 1-200 2: 201-400	Female 1: 1-200 2: 201-300 3: 301-400		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
		Over 400 add 1 fixture for each additional 500 males and 1 fixture for each 200 females.		Over 400 add 1 fixture for each additional 500 males.	Over 400 add 1 fixture for each additional 500 males and 1 fixture for each 400 females.			Over 750 add 1 fixture for each additional 500 persons.	
R-1 Residential occupancy (minimal stay)- hotels, motels, bed and breakfast homes		1 per sleeping room			1 per sleeping room		1 per sleeping room		1 service sink or laundry tray

TYPE OF OCCUPANCY[2]		WATER CLOSETS (FIXTURES PER PERSON)[3]		URINALS (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS OR SHOWERS (FIXTURES PER PERSON)	DRINKING FOUNTAINS/ FACILITIES (FIXTURES PER PERSON)	OTHER
R-2 Residential occupancy (long-term or permanent)	Dormitories	Male 1 per 10	Female 1 per 8	1 per 25	Male 1 per 12	Female 1 per 12	1 per 8	1 per 150	1 service sink or laundry tray
		Add 1 fixture for each additional 25 males and 1 fixture for each additional 20 females.		Over 150, add 1 fixture for each additional 50 males.	Add 1 fixture for each additional 20 males and 1 fixture for each additional 15 females.				
	Employee Use	Male 1: 1-15 2: 16-35 3: 36-55	Female 1: 1-15 3: 16-35 4: 36-55		Male 1 per 40	Female 1 per 40			
		Over 55, add 1 fixture for each additional 40 persons							
	Apartment house/unit	1 per apartment			1 per apartment		1 per apartment		1 kitchen sink per apartment. 1 laundry tray or 1 automatic clothes washer connection per unit or 1 laundry tray or 1 automatic clothes washer connection for each 12 units
R-3 Residential occupancy (long-term or permanent in nature) for more than 5 but does not exceed 16 occupants)		Male 1 per 10	Female 1 per 8		Male 1 per 12	Female 1 per 12	1 per 8	1 per 150	1 service sink or laundry tray
		Add 1 fixture for each additional 25 males and 1 fixture for each additional 20 females.			Add 1 fixture for each additional 20 males and 1 fixture for each additional 15 females.				

TYPE OF OCCUPANCY[2]	WATER CLOSETS (FIXTURES PER PERSON)[3]		URINALS (FIXTURES PER PERSON)	LAVATORIES (FIXTURES PER PERSON)		BATHTUBS OR SHOWERS (FIXTURES PER PERSON)	DRINKING FOUNTAINS/ FACILITIES (FIXTURES PER PERSON)	OTHER
R-3 Residential occupancy (one and two family dwellings)	1 per one and two family dwelling			1 per one and two family dwelling		1 per one and two family dwelling		1 kitchen sink and 1 automatic clothes washer connection per one and two family dwelling
R-4 Residential occupancy (residential care or assisted living)	Male 1 per 10	Female 1 per 8		Male 1 per 12	Female 1 per 12	1 per 8	1 per 150	1 service sink or laundry tray
	Add 1 fixture for each additional 25 males and 1 fixture for each additional 20 females.			Add 1 fixture for each additional 20 males and 1 fixture for each additional 15 females.				
S-1, S-2 Storage occupancy-storage of goods, warehouse, aircraft hanger, food products, appliances	Male 1: 1-100 2: 101-200 3: 201-400	Female 1: 1-100 2: 101-200 3: 201-400		Male 1: 1-200 2: 201-400 3: 401-750	Female 1: 1-200 2: 201-400 3: 401-750		1: 1-250 2: 251-500 3: 501-750	1 service sink or laundry tray
	Over 400, add 1 fixture for each additional 500 males and 1 fixture for each additional 150 females.			Over 750, add 1 fixture for each additional 500 persons.			Over 750, add 1 fixture for each additional 500 persons.	

Notes:

1 The figures shown are based upon one fixture being the minimum required for the number of persons indicated or any fraction thereof.

2 A restaurant is defined as a business that sells food to be consumed on the premises.

a. The number of occupants for a drive-in restaurant shall be considered as equal to the number of parking stalls.

b. Hand-washing facilities shall be available in the kitchen for employees.

3 The total number of required water closets for females shall be not less than the total number of required water closets and urinals for males.

(3-25-13)

08. Section 414.5 Limitation of Hot Water in Bathtubs and Whirlpool Bathtubs. Delete. ( )

0~~7~~9. Section 418.0. Pressure balance or thermostatic mixing valves are not required for high flow (over eight (8) g.p.m.) tub filler valves with hand shower sets attached. (3-25-13)

~~08~~10. Section 504.1 Inspection of Chimneys or Vents. Add the following to the end of section 504.1: Water heating appliances using Category 3 or 4 exhaust venting shall be tested in its entirety with five (5) pounds of air for fifteen (15) minutes. Plastic vents shall be constructed using manufacturer's instructions. (3-25-13)

11. Section 508.2. Delete. ( )

~~09~~12. Section 508.14 Installation in Residential Garages. Replace 508.14 (1) with the following: Any plumbing appliance or appurtenance in residential garages and in adjacent spaces that open to the garage and are not

part of the living space of a dwelling unit shall be installed so that burners, burner-ignition devices or other sources of ignition are located not less than eighteen (18) inches (450 mm) above the floor unless listed as flammable vapor ignition resistant. (3-25-13)

1~~0~~3. Section 603.4.16.5 Residential Sprinkler System. Add the following to the end of section 603.4.16.5: and the requirements of the Authority Having Jurisdiction (AHJ). (3-25-13)

~~***11. Section 604.1. Materials**. Crosslinked Polyethylene (PEX) Tubing manufactured to ASTM F876/ F877 and tested, approved, and listed to ANSI/NSF 14 and 61, for potable water along with all applicable installation standards may be used for hot and cold water distribution systems within a building or cold water distribution systems outside of a building. Listed PE (polyethylene) water service and yard piping may be installed within a building (above ground and below ground) with one (1) joint, provided that only listed and approved metallic transition fittings shall be used. (4-6-05)~~

14. Table 6-4 Materials for Building Supply and Water Distribution Pipings and Fittings. Add the following to Table 6-4:

Material	Building Supply Pipe & Fittings	Water Distribution Pipe & Fittings	Referenced Standard(s) Pipe	Referenced Standard(s) Fittings
PE-RT (Polyethylene of Raised Temperature)	X	X	ASTM F2769	ASTM F1807, ASTM F2098, ASTM F2159, ASTM F2735, ASTM F2769
PP (Polypropylene	X	X	ASTM F 2389	ASTM F2389, CSA B137.11

( )

15. Section 606. Joints and Connections. Add the following at the end of Section 606: ( )

a. Section 606.3 Polyethylene of Raised Temperature (PE-RT). Polyethylene of Raised Temperature (PE-RT) tubing shall be marked with the appropriate standard designations(s) listed in Table 6-4 for which the tubing has been approved. PE-RT tubing shall be installed in accordance with the manufacturer's installation instructions. Fittings, metal insert fittings, metal compression fittings and plastic fittings shall be manufactured to and marked in accordance with the standards for fittings in Table 6-4. ( )

b. Section 606.4 Polypropylene (PP) Piping and Joints. Polypropylene pipe and fittings shall be installed in accordance with the manufacturer's installation instructions. ( )

c. Section 606.4.1 Heat Fusion Joints. Heat fusion joints for PP pipe and fitting joints shall be installed with socket-heat fused polypropylene fittings, fusion outlets, butt fusion polypropylene fittings or pipe, or electro-fusion polypropylene fittings. Joint surfaces shall be clean and free from moisture. The joint shall be undisturbed until cool. Joints shall be made in accordance with ASTM F 2389 ir CSA B137.11. ( )

d. Section 606.4.2 Mechanical and Compression Sleeve Joints. Mechanical and compression sleeve joints shall be installed in accordance with the manufacturer's installation instructions. ( )

e. Section 606.4.3 Threaded Joints. PP pipe shall not be threaded. PP transition fittings for connection to other piping materials shall only be threaded by use of brass or stainless steel inserts molded in the fitting. ( )

f. Section 606.5 Listed Polyethylene (PE). Listed PE (polyethylene), 160 psi minimum, water service

and yard piping may be installed within a building (above ground and below ground) with one (1) joint, provided that only listed and approved metallic transition fittings shall be used. Polyethylene (PE) plastic pipe or tubing and fitting joining methods shall be installed in accordance with the manufacturer's installation instructions. Mechanical joints between PE pipe or tubing and fittings shall include inserts and mechanical compression fittings that provide a pressure seal resistance to pullout. Joints for insert fittings shall be made by cutting the pipe square, using a cutter designed for plastic piping, and removal of sharp edges. Two (2) stainless steel clamps shall be placed over the end of the pipe. Fittings shall be checked for proper size based on the diameter of the pipe. The end of pipe shall be placed over the barbed insert fitting, making contact with the fitting shoulder. Clamps shall be positioned equal to one hundred eighty (180) degrees (3.14 rad) apart and shall be tightened to provide a leak tight joint. Compression type couplings and fittings shall be permitted for use in joining PE piping and tubing. Stiffeners that extend beyond the clamp or nut shall be prohibited. Bends shall be not less than thirty (30) pipe diameters, or the coil radius where bending with the coil. Bends shall not be permitted closer than ten (10) pipe diameters of a fitting or valve. Mechanical joints shall be designed for their intended use. ( )

1~~2~~6. **Section 609.1 Installation**. Delete the following sentence: Water service yard piping shall be not less than twelve (12) inches (305 mm) below the average local frost depth; and replace it with the following: The cover shall be not less than forty-two (42) inches (1068mm) below grade. (3-25-13)

1~~3~~7. **Section 609.4 Testing**. Testing. Deleting the phrase "Except for plastic piping," at the beginning of the third sentence and add the following sentence at the end of the section: Plastic piping is to be tested in accordance with manufacturer's installation standards. (3-25-13)

1~~4~~8. **Section 609.10 Water Hammer**. Does not apply to residential construction. (3-25-13)

1~~5~~9. **Table 6-5 and Appendix Table A-2**. Change fixture unit loading value for both public and private for bathtub or combination bath/shower, and clothes washers to two (2) fixture units. (3-25-13)

~~16~~20. **Section 610.2**. Add the following: All new one (1) and two (2) family residences built slab on grade or that will have a finished basement at the time of final inspection must have a pre-plumbed water softener loop. The kitchen sink must have one (1) hot soft line and one (1) cold soft line and one (1) cold hard line. Exterior cold hose bibbs intended for irrigation purposes must be piped with hard water. (3-25-13)

~~17~~21. **Table 6-8 Sizing of Residential Softeners**. Amend Footnote 3 to read: Over four (4) bathroom groups, softeners shall be sized according to the manufacturer's standards. (3-25-13)

22. **Table 7-1 Materials for Drain, Waste, Vent Pipe and Fittings**. Add the following to Table 7-1:

Material	Underground Drain, Waste, Vent Pipe and Fittings	Above ground Drain, Waste, Vent Pipe and Fittings	Building Sewer Pipe & Fittings	Referenced Standard(s) Pipe	Referenced Standard(s) Fittings
PE (Polyethylene)			X[2]	ASTM F714	ASTM D2683, ASTM D3261, ASTM F1055, ASTM F2206

[2]PE piping and fittings used for building sewers shall be installed per manufactures installation instructions and IS 26-2006 Idaho State Plumbing Code. ( )

~~18~~23. **Table 7-3 Drainage Fixture Unit Valves (DFU)**. Change fixture unit loading value for clothes washers, domestic for private to two (2) fixture units. (3-25-13)

~~19~~24. **Section 703.1**. Add the following at the end of section 703.1: No portion of the drainage or vent system installed underground, underground under concrete or below a basement or cellar shall be less than two (2) inches in diameter. (3-25-13)

2~~0~~5. Section 703.2 and 710.5. Add Exception. In single family dwellings, one (1) fixture unit may be allowed for each gallon per minute of flow from a pump or a sump ejector. (3-15-02)

2~~1~~6. Section 704.2. Two inch (2") and smaller double sanitary tees may be used for back to back or side by side fixture trap arms without increasing the barrel size. (4-6-05)

2~~2~~7. Section 704.3. Delete. (5-3-03)

2~~3~~8. Table 7-5. Change fixture unit loading value for one and a half (1 1/2) inch horizontal drainage to two (2) fixture units. (7-1-98)

2~~4~~9. Section 707.0 Cleanouts. Add the following: A clean out shall be installed for double sanitary tees two (2) inches (50 mm) or less in diameter that receive the discharge from fixture connections. Exception in Section 707.4 shall not apply. (3-25-13)

~~25~~30. Section 707.4 Cleanouts. A full-sized accessible cleanout shall be installed in the vertical immediately above the floor or at the base of each waste or soil stack. A full-size cleanout extending to or above finished grade line shall be installed at the junction of the building drain and the building sewer (ref.: Section 719.1). Cleanouts shall be installed at fifty (50) foot intervals in horizontal drain lines two (2) inches or smaller. (3-15-02)

~~26~~31. Section 710.9. Add: Exception: One (1) pump shall be permitted for "public use" occupancies provided that such tank receives the discharge of not more than one (1) water closet and ten (10) fixture units. (3-25-13)

~~27~~32. Section 712.1 Media. In the first sentence, delete the phrase "except that plastic pipe shall not be tested with air." (3-25-13)

~~28~~33. Section 717.0 Size of Building Sewers. Add the following to the end of section 717.0: Exception: The building drain and building sewer is not less than four (4) inches extending from its connection with the city or private sewer system and shall run full size to inside the foundation or building lines. (3-25-13)

~~29~~34. Section 801.2.3. Add: Food preparation sinks, pot sinks, scullery sinks, dishwashing sinks, silverware sinks, commercial dishwashing machines, silverware-washing machines, steam kettles, potato peelers, ice cream dipper wells, and other similar equipment and fixtures must be indirectly connected to the drainage system by means of an air gap. The piping from the equipment to the receptor must not be smaller than the drain on the unit, but it must not be smaller than one (1) inch (twenty-five and four tenths (25.4) mm). (5-3-03)

3~~0~~5. Section 801.4. Connections from Water Distribution System. Provisions must be made for the discharge of the water softener to terminate in an approved location. The drain line for a water softener must be three-fourths (3/4) inch minimum. A washer box with a dual outlet is an approved location as long as it is on the same floor or one (1) floor below the softener unit and the water softener drain line is a minimum three-fourths (3/4) inch. (3-25-13)

3~~1~~6. Section 807.4. A domestic dishwashing machine may be installed without the use of an airgap if the drain hose is looped to the bottom side of the counter top and secured properly. (3-15-02)

3~~2~~7. Section 906.1. Delete the existing provision and replace with the following: (4-2-08)

a. Roof venting. When conventional roof venting is utilized, each vent pipe or stack shall extend through its flashing and shall terminate vertically not less than six (6) inches (one hundred fifty-two (152) mm) above the roof nor less than one (1) foot (three hundred five (305) mm) from any vertical surface. (4-2-08)

b. Sidewall venting. When sidewall venting is utilized, the vent shall extend flush with the eaves/ gable end, shall turn down using a ninety (90) degree ell, and shall terminate as close to the roof peak as possible. The vent end must be properly screened. Sidewall venting is acceptable on new or remodel construction on cabins, log homes, and residential or commercial buildings. (4-2-08)

c. Sidewall venting must meet the intent of Section 906.2 of the ISPC. (3-25-13)

3~~3~~8. **Section 908. Exception - Vertical Wet Venting**. A horizontal wet vent may be created provided it is created in a vertical position and all other requirements of Section 908 of the ISPC are met. (3-25-13)

3~~4~~9. **Section 909.0**. Add: Parameters for the limited use of Air Admittance Valves (A.A.V.). (4-2-08)

a. An A.A.V. may be used only in residential buildings. (4-2-08)

b. In remodels, an A.A.V. may be used with island fixtures or remotely located sinks such as in bar, kitchen, or laundry tray locations. An A.A.V. shall not be used in bathroom groups. (4-2-08)

c. In new construction, an A.A.V. may be used on island fixture sinks. (4-2-08)

d. Each A.A.V. may be used to vent only one (1) floor. (4-2-08)

e. Each A.A.V. must be readily accessible. (4-2-08)

f. The cross-sectional area of venting must remain the same and must meet the largest required building drain. (4-2-08)

g. An A.A.V. shall only be installed in accordance with the manufacturer's installation standards as per ASSE 1051. (4-2-08)

h. An A.A.V. may not be used in an attic, crawl space, outside installation, or in connection with chemical or acid waste systems. (4-2-08)

~~35~~40. **Section 1002.3**. Trap arms may not exceed one hundred eighty (180) degrees of horizontal turn without the use of a cleanout. (3-15-02)

~~36~~41. **Section 1007.0 Trap Seal Protection**. Delete section 1007.0 and replace with the following: Floor drains or similar traps directly connected to the drainage system and subject to infrequent use shall be protected with a trap seal primer or other approved trap seal protection device, except where not deemed necessary for safety or sanitation by the Authority Having Jurisdiction. Trap seal primers shall be accessible for maintenance. (3-25-13)

~~37~~42. **Section 1016.1 Where Required**. Add the following to the end of section 1016.1: Floor drains installed in residential garages shall be permitted to use the interceptor as the fixture trap. (3-25-13)

~~38~~43. **1601.0 Gray Water Systems - General**. Add to this section the following paragraph: (G) Plumbing for a gray water system from any fixture up to, but not to include the exterior irrigation system tank shall be inspected by the Authority Having Jurisdiction. The Idaho Department of Environmental Quality (IDEQ) shall have jurisdiction to inspect and approve the installation of the exterior irrigation system tank and all piping therefrom to the point of disposal in accordance with IDAPA 58.01.03, "Individual/Subsurface Sewage Disposal Rules." Gray water system location and design criteria requirements related to irrigation and leaching shall be determined in accordance with the requirements as established by the IDEQ. (3-25-13)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.01 - RULES OF BUILDING SAFETY

DOCKET NO. 07-0301-1401

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 39-4107 and 39-4109, 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 15, 2014.

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:

Energy code requirements related to the tightness of building envelopes has resulted in poor indoor air quality. The Board and collaborative group recognized this problem last year when reviewing the adoption of new editions of the building codes and decided to delete the requirement for mechanical ventilation pending the acquisition of more data related to the problem. The industry and code groups have concluded upon reviewing the available data, that mechanical ventilation should be required on all dwellings where the air changes average less than five (5) changes per hour. The average new home tested in the past year comes in at 3.5 air changes per hour. This rulemaking amends several provisions of the 2012 International Residential Code (IRC). It reinstates an exemption for building permits for fences not over seven (7) feet in height. It expands on the amendments to a table which establishes residential exterior wall fire resistance ratings and fire separation distances. Finally, it amends a provision requiring residential mechanical ventilation to ensure the exchange of air within the dwelling, and creates an exception for such mechanical ventilation where the air infiltration of a home is already greater than an established amount (five (5) air changes per hour when tested with a blower door).

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

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

There will be no fiscal impact to the general fund or to dedicated funds. Adoption of this docket will result in a cost increase in the cost of new homes, which is estimated at $200 to $400 per home.

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 4, 2014 Idaho Administrative Bulletin, **Vol. 14-6, pages 48 and 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:

Revisions are being made to the already incorporated by reference International Residential Code, 2012 edition, in Subsection 004.02 as described above.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0301-1401
(Only those Sections being amended are shown.)

004. ADOPTION AND INCORPORATION BY REFERENCE.
Under the provisions of Section 39-4109, Idaho Code, the codes enumerated in this Section are hereby adopted and incorporated by reference into IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety. Pursuant to Section 39-4109, Idaho Code, the effective date of any edition of the codes adopted in this Section, or any amendments identified thereto, shall be January 1 of the succeeding year following legislative approval of the rulemaking establishing the edition or amendment. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or the International Code Council at http://www.iccsafe.org. (3-20-14)

01. International Building Code. 2012 Edition with the following amendments: (4-4-13)

a. Delete section 305.2.3 and replace with the following: Twelve (12) or fewer children in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. (3-20-14)

b. Delete section 308.6.4 and replace with the following: Persons receiving care in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving day care or having five (5) or fewer persons receiving custodial care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. (3-20-14)

c. Delete section 310.5 and replace with the following: Residential Group R-3. Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4, E or I, including: (3-20-14)

i. Buildings that do not contain more than two (2) dwelling units; (3-20-14)

ii. Boarding houses (nontransient) with sixteen (16) or fewer occupants; (3-20-14)

iii. Boarding houses (transient) with ten (10) or fewer occupants; (3-20-14)

iv. Care facilities that provide accommodations for five (5) or fewer persons receiving care; (3-20-14)

v. Congregate living facilities (nontransient) with sixteen (16) or fewer occupants; (3-20-14)

vi. Congregate living facilities (transient) with ten (10) or fewer occupants; or (3-20-14)

vii. Dwelling units providing day care for twelve (12) or fewer children. (3-20-14)

d. Delete section 310.5.1 and replace with the following: Care facilities within a dwelling. Care facilities for twelve (12) or fewer children receiving day care or for five (5) or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the International Residential Code. (3-20-14)

e. Delete footnote (f) contained under Table 2902.1 Minimum Number of Required Plumbing Fixtures, and replace with the following: Drinking fountains are not required for an occupant load of thirty (30) or fewer. (4-4-13)

f. Delete footnote (g) contained under Table 2902.1 Minimum Number of Required Plumbing Fixtures and replace with the following: For business occupancies, excluding restaurants, and mercantile occupancies with an occupant load of thirty (30) or fewer, service sinks shall not be required. (3-20-14)

02. International Residential Code. 2012 Edition with the following amendments: (3-20-14)

a. Delete exception No. 1 contained under IRC section R101.2 - Scope. (3-20-14)

b. Delete exception No. 2 contained under IRC section R101.2 - Scope, and replace with the following: Owner-occupied lodging houses with three (3) or fewer guestrooms shall be permitted to be constructed in accordance with the International Residential Code for One- and Two-family Dwellings. Such occupancies shall be required to install smoke alarms and carbon monoxide alarms in accordance with sections R314 and R315 respectively of the International Residential Code for One- and Two-family Dwellings. (3-20-14)

~~***c.*** *Delete item No. 2 contained under the "Building" subsection of IRC section R105.2 - Work exempt from permit, and replace with the following: Fences not over six (6) feet (one thousand, eight hundred twenty-nine (1,829) mm) high may be exempted from the requirement for a building permit in the absence of any other applicable land use regulations governing the installation, height, type or other aspect.* *(4-7-11)*~~

~~***d***~~**c.** Delete item No. 7 contained under the "Building" subsection of IRC section R105.2 - Work exempt from permit, and replace with the following: Prefabricated swimming pools that are not greater than four (4) feet (one thousand, two hundred nineteen (1219) mm) deep. (4-7-11)

~~***e***~~**d.** Add the following item No. 11 at the end of the "Building" subsection of IRC section R105.2 - Work exempt from permit: Flag poles. (3-20-14)

~~***f***~~**e.** Delete IRC section R109.1.3 and replace with the following: Floodplain inspections. For construction in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, the building official is authorized to require submission of documentation of the elevation of the lowest floor, including basement, required in section R322. (3-29-10)

~~***g***~~**f.** IRC Table R302.1(1) Exterior Walls -- delete ~~*the figures contained in the last column of the t*~~Table R302.1(1) ~~*under the heading Minimum Fire Separation Distance for the "Walls" and "Projections" elements,*~~ and replace with the following:

~~***Minimum Fire Separation Distance***~~		
~~*Walls (fire-resistance rated):*~~	~~<~~	~~*Three (3) Feet*~~
~~*Walls (not fire-resistance rated):*~~	~~≥~~	~~*Three (3) Feet*~~
~~*Projections (fire-resistance rated):*~~	~~<~~	~~*Three (3) Feet*~~
~~*Projections (not fire-resistance rated):*~~	~~≥~~	~~*Three (3) Feet*~~

TABLE R302.1(1)
EXTERIOR WALLS

EXTERIOR WALL ELEMENT		MINIMUM FIRE-RESISTANCE RATING	MINIMUM FIRE SEPARATION DISTANCE
Walls	Fire-resistance rated	1 hour-tested in accordance with ASTM E 119 or UL263 with exposure from both sides	< 3 feet
	Not fire-resistance rated	0 hours	≥ 3 feet
Projections	Fire-resistance rated	1 hour on the underside	≥ 2 feet to < 3 feet
	Not fire-resistance rated	0 hours	≥ 3 feet
Openings in Walls	Not allowed	N/A	< 3 feet
	25% maximum of wall area	0 hours	≥ 3 feet to < 5 feet
	Unlimited	0 hours	5 feet
Penetrations	All	Comply with Section R302.4	< 3 feet
		None required	≥ 3 feet

For SI: 1 foot = 304.8 mm.
N/A = Not Applicable

~~(3-20-14)~~(____)

~~h~~**g.** Delete the exception contained under IRC section R302.2 -- Townhouses, and replace with the following: Exception: A common one-hour or two-hour fire resistance rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against the exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with section R302.4. (3-29-10)

~~i~~**h.** Delete IRC section R303.4 and replace with the following: R303.4 Mechanical Ventilation. Dwelling units shall be provided with whole-house mechanical ventilation in accordance with Section M1507.3

Exception: Where the air infiltration rate of a dwelling unit is equal to 5 air changes per hour or greater when tested with a blower door at a pressure of 0.2 inch w.c. (50 pa) in accordance with Section N1102.4.1.2.

~~(3-20-14)~~(____)

~~j~~**i.** Delete the exception contained under IRC section R313.1 -- Townhouse automatic fire sprinkler systems, and replace with the following: Exception: Automatic residential fire sprinkler systems shall not be required in townhouses where a two-hour fire-resistance rated wall is installed between dwelling units or when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed. (3-29-10)

~~k~~**j.** Delete IRC section R313.2. (3-29-10)

~~l~~**k.** Add the following to IRC section R315.3 - Where required in existing dwellings: Exceptions: 1. Work involving the exterior surfaces of dwellings, such as, but not limited to, replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck or electrical permits, are exempt from the requirements of this section; and 2. Installation, alteration or repairs of noncombustion plumbing or mechanical systems are exempt from the requirements of this section. (3-20-14)

~~m~~**l.** Delete IRC section R322.1.10. (3-29-10)

~~n~~**m.** Delete IRC section R322.2.2 subparagraph 2.2, and replace with the following: The total net area of

all openings shall be at least one (1) square inch (645 mm2) for each square foot (0.093 m2) of enclosed area, or the opening shall be designed and the construction documents shall include a statement that the design and installation of the openings will provide for equalization of hydrostatic flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. (3-20-14)

~~e~~n. Delete IRC section R501.3 and its exceptions. (3-20-14)

~~p~~o. Delete IRC section R602.10 and replace with the following: Wall bracing. Buildings shall be braced in accordance with this section or, when applicable section R602.12, or the most current edition of APA System Report SR-102 as an alternate method. Where a building, or portion thereof, does not comply with one (1) or more of the bracing requirements in this section, those portions shall be designated and constructed in accordance with section R301.1. (3-20-14)

~~q~~p. Delete section N1102.4.3 and replace with the following: Fireplaces. New wood-burning fireplaces shall have tight-fitting flue dampers and outdoor combustion air. (4-4-13)

~~r~~q. Chapter 11 [RE] Energy Efficiency - The following sections and tables of chapter 11 shall be amended in accordance with the requirements contained below in Subsection 004.04 of these rules which correspond to the appropriate section: (3-20-14)

i. Table N1102.1.1 (Table R402.1.1) - Insulation and Fenestration Requirements by Component; (3-20-14)

ii. Table N1102.1.3 (Table R402.1.3 - Equivalent U-Factors; (3-20-14)

iii. Table N1102.2.6 (Table R402.2.6) - Steel-Frame Ceiling, Wall and Floor Insulation (R-Value); (3-20-14)

iv. Section N1102.4.1 (R402.4.1) Building Thermal Envelope; (3-20-14)

v. Section N1102.4.1.1 (R402.4.1.1) - Insulation; (3-20-14)

vi. Table N1102.4.1.1 (Table R402.4.1.1) - Air Barrier and Insulation Installation; (3-20-14)

vii. Section N1102.4.1.2 (R402.4.1.2) Testing Option; (3-20-14)

viii. Add Section N1102.4.1.3 (R402.4.1.3) - Visual Inspection Option; (3-20-14)

ix. Add Section N1102.6 (R402.6) - Residential Log Home Thermal Envelope; (3-20-14)

x. Add Table N1102.6 (Table R402.6) - Log Home Prescriptive Thermal Envelope Requirements by Component; and (3-20-14)

xi. Section N1104.1 (R404.1) - Lighting Equipment. (3-20-14)

03. International Existing Building Code. 2012 Edition. (4-4-13)

04. International Energy Conservation Code. 2012 Edition with the following amendments. (3-20-14)

a. Delete the values contained in Table R402.1.1 (Table N1102.1.1) for climate zone “5 and Marine 4” and climate zone “6” and replace with the following: (3-20-14)

Table R402.1.1
INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT

Climate Zone	Fenestration U- Factor	Skylight U-factor	Glazed Fenestration SHGC	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value	Floor R-Value	Basement Wall R-Value	Slab R-Value	Crawlspace Wall R-Value
5 and Marine 4	0.35	0.60	NR	38	20 or 13+5[h]	13/17	30[g]	10/13	10, 2 ft	10/13
6	0.35	0.60	NR	49	20 or 13+5[h]	15/19	30[g]	15/19	10, 4 ft	10/13

(3-20-14)

b. Add the following footnote to the title of Table 402.1.1 - Insulation and Fenestration Requirements by Component: [k.] For residential log home building thermal envelope construction requirements see section 402.6.
(4-7-11)

c. Delete the values contained in Table R402.1.3 (Table N1102.1.3) for climate zone "5 and Marine 4" and climate zone "6" and replace with the following:

Table R402.1.3
EQUIVALENT U-FACTORS

Climate Zone	Fenestration U-factor	Skylight U-factor	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value	Floor R-Value	Basement Wall R-Value	Crawlspace Wall R-Value
5 and Marine 4	0.35	0.60	0.030	0.057	0.082	0.033	0.059	0.065
6	0.35	0.60	0.026	0.057	0.060	0.033	0.050	0.065

(3-20-14)

d. Delete Table R402.2.6 (Table N1102.2.6) and replace with the following:

TABLE R402.2.6
STEEL-FRAME CEILING, WALL AND FLOOR INSULATION
(R-VALUE)

WOOD FRAME R-VALUE REQUIREMENT	COLD-FORMED STEEL EQUIVALENT R-VALUE[a]
Steel Truss Ceilings	
R-30	R-38 or R-30 + 3 or R-26 + 5
R-38	R-49 or R-38 +3
a. Cavity insulation R-value is listed first, followed by continuous insulation R-value. b. Insulation exceeding the height of the framing shall cover the framing.	

WOOD FRAME R-VALUE REQUIREMENT	COLD-FORMED STEEL EQUIVALENT R-VALUE[a]
R-49	R-38 + 5
Steel Joist Ceilings	
R-30	R-38 in 2 x 4 or 2 x 6 or 2 x 8 R-49 in any framing
R-38	R-49 in 2 x 4 or 2 x 6 or 2 x 8 or 2 x 10
Steel-Framed Wall	
R-13	R-13 + 5 or R-15 + 4 or R-21 + 3 or R-0 + 10
R-19	R-13 + 9 or R-19 + 8 or R-25 + 7
R-21	R-13 + 10 or R-19 + 9 or R-25 + 8
Steel Joist Floor	
R-13	R-19 in 2 x 6 R-19 + 6 in 2 x 8 or 2 x 10
R-19	R-19 + 6 in 2 x 6 R-19 + 12 in 2 x 8 or 2 x 10
a. Cavity insulation R-value is listed first, followed by continuous insulation R-value. b. Insulation exceeding the height of the framing shall cover the framing.	

(3-20-14)

e. Delete section 402.4.1 (N1102.4.1) and replace with the following: Building thermal envelope. The building thermal envelope shall comply with sections R402.1.1 and either section R402.4.1.2 or R402.4.1.3. The sealing methods between dissimilar materials shall allow for differential expansion and contraction. (3-20-14)

f. Delete section 402.4.1.1 (N1102.4.1.1) and replace with the following: Installation. The components of the building thermal envelope as listed in Table R402.4.1.1 shall be installed in accordance with the manufacturer's instructions and the criteria listed in Table R402.4.1.1, as applicable to the method of construction. (3-20-14)

g. Delete the criteria requirement for the "Fireplace" component of Table R402.4.1.1 (Table N1102.4.1.1) - Air Barrier and Insulation Installation, and replace with the following: An air barrier shall be installed on fireplace walls. (3-20-14)

h. Delete section 402.4.1.2 (N1102.4.1.2) and replace with the following: Testing option, Building envelope tightness and insulation installation shall be considered acceptable when tested air leakage is less than seven (7) air changes per hour (ACH) when tested with a blower door at a pressure of 33.5 psf (50 Pa). Testing shall occur after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation and combustion appliances. During testing: (3-20-14)

i. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed; (3-20-14)

ii. Dampers shall be closed, but not sealed, including exhaust, intake, makeup air, backdraft and flue dampers; (3-20-14)

iii. Interior doors shall be open; (3-20-14)

iv. Exterior openings for continuous ventilation systems and heat recovery ventilators shall be closed and sealed; (3-20-14)

v. Heating and cooling system(s) shall be turned off; (3-20-14)

vi. HVAC ducts shall not be sealed; and (3-20-14)

vii. Supply and return registers shall not be sealed. (3-20-14)

i. Add the following as section 402.4.1.3 (N1102.4.1.3): Visual inspection option, Building envelope tightness and insulation installation shall be considered acceptable when the items listed in Table 402.4.1.1, applicable to the method of construction, are field verified. Where required by code official an approved party independent from the installer of the insulation shall inspect the air barrier and insulation. (3-20-14)

j. Delete section 402.4.3 and replace with the following: Fireplaces. New wood-burning fireplaces shall have tight-fitting flue dampers and outdoor combustion air. (4-4-13)

k. Add the following section: R402.6 (N1102.6) Residential Log Home Thermal Envelope. Residential log home construction shall comply with sections 401 (General), 402.4 (Air Leakage), 402.5 (Maximum Fenestration U-Factor and SHGC), 403.1 (Controls), 403.2.2 (Sealing), 403.2.3 (Building Cavities), sections 403.3 through 403.9 (referred to as the mandatory provisions), Section 404 (Electrical Power and Lighting Systems), and either Subparagraph 004.04.b.i., ii., or iii. as follows: (3-20-14)

i. Sections 402.2 through 402.3, 403.2.1, 404.1 and Table 402.6; (4-7-11)

ii. Section 405 Simulated Performance Alternative (Performance); or (4-7-11)

iii. REScheck (U.S. Department of Energy Building Codes Program). (4-7-11)

l. Add Table R402.6 (Table N1102.6) Log Home Prescriptive Thermal Envelope Requirements By Component to be used only in accordance with Subparagraph 004.04.b.i. above to appear as follows:

TABLE R402.6
LOG HOME PRESCRIPTIVE THERMAL ENVELOPE REQUIREMENTS BY COMPONENT

For SI: 1 foot = 304.8 mm.

CLIMATE ZONE	FENESTRATION U-FACTOR[a]	SKYLIGHT U-FACTOR	GLAZED FENESTRATION SHGC	CEILING R-VALUE	Min. Average LOG Size in inches	FLOOR R-VALUE	BASEMENT WALL R-VALUE[d]	SLAB R-VALUE & DEPTH[b]	CRAWL SPACE WALL R-VALUE[d]
5, 6 - High efficiency equipment path[c]	0.32	0.60	NR	49	5	30	15/19	10, 4 ft.	10/13
5	0.32	0.60	NR	49	8	30	10/13	10, 2 ft.	10/13
6	0.30	0.60	NR	49	8	30	15/19	10, 4 ft.	10/13

a. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.

b. R-5 shall be added to the required slab edge R-values for heated slabs.

c. 90% AFUE natural gas or propane, 84% AFUE oil, or 15 SEER heat pump heating equipment (zonal electric resistance heating equipment such as electric base board electric resistance heating equipment as the sole source for heating is considered compliant with the high efficiency equipment path).

d. “15/19” means R-15 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. “15/19” shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulated sheathing on the interior or exterior of the home. “10/13” means R-10 continuous insulated sheathing on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

(3-20-14)

m. Delete section R404.1 (N1104.1) and replace with the following: Lighting equipment (Mandatory). A minimum of fifty percent (50%) of the lamps in permanently installed lighting fixtures shall be high-efficacy lamps or a minimum of fifty percent (50%) of the permanently installed lighting fixtures shall contain only high efficacy lamps. (3-20-14)

05. References to Other Codes. Where any provisions of the codes that are adopted in this Section make reference to other construction and safety-related model codes or standards which have not been adopted by the involved authority having jurisdiction, to the extent possible, such reference should be construed as pertaining to the equivalent code or standard that has been duly adopted by such jurisdiction. (3-29-10)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.01 - RULES OF BUILDING SAFETY

DOCKET NO. 07-0301-1402

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2014.

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 39-4107 and 39-4109, 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 15, 2014.

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

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

This amendment of the 2012 edition of the International Residential Code is the result of negotiated rulemaking and the deliberations of a collaborative group within the building industry, local building officials, code development officials, board members, and other interested stakeholders that occurred in 2013. This amendment corrects an error to the same rulemaking submitted last year to the 2014 legislative session. This amendment correctly establishes the maximum guestroom amount at five (5) rooms, instead of three (3) which was submitted last year in error. The amendment will allow owner-occupied lodging house occupancies (bed and breakfasts) with five (5) or fewer guestrooms to be constructed or remodeled in accordance with the residential code instead of the commercial building code, and allow such to be operated without the installation of fire sprinklers. Smoke and carbon monoxide alarms are still required to be installed pursuant to another provision of the residential code. This is expected to be a cost saving to owners of such occupancies who reside in them, relieving them from having to install fire sprinklers and comply with other requirements of the commercial building code if they are remodeled. This rulemaking would amend the International Residential Code to allow owner-occupied lodging house occupancies (bed and breakfasts) with five (5) or fewer guestrooms to be constructed or remodeled in accordance with the residential code instead of the commercial building code. It also would allow such bed and breakfasts to be operated without the installation of fire sprinklers.

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

Because this rulemaking just corrects an error from a rulemaking from the previous year (2014 legislative session), it is necessary to make the rule effective as soon as possible to confer a benefit to building contractors and operators of owner-occupied lodging houses (bed and breakfasts).

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

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

There will be no fiscal impact to the general fund. Amendment to the code would result in decreases in cost to operators of owner-occupied lodging houses (bed and breakfast property) as a result of the elimination of fire sprinkler requirements in those with five (5) or fewer guestrooms. No significant additional costs of conformance with the newer edition of the code were brought forward in discussions before the Board.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking was negotiated and submitted as a rulemaking in a previous legislative session (2014). Due to a textual error in that rulemaking, it is being corrected and re-submitted this year; however it was not re-negotiated this year.

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:

Revisions are being made to the already incorporated by reference International Residential Code, 2012 edition, in Subsection 004.02 as described above.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Keys, Deputy Administrator - Operations, (208) 332-8986.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 07-0301-1402
(Only those Sections being amended are shown.)

004. ADOPTION AND INCORPORATION BY REFERENCE.
Under the provisions of Section 39-4109, Idaho Code, the codes enumerated in this Section are hereby adopted and incorporated by reference into IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety. Pursuant to Section 39-4109, Idaho Code, the effective date of any edition of the codes adopted in this Section, or any amendments identified thereto, shall be January 1 of the succeeding year following legislative approval of the rulemaking establishing the edition or amendment. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or the International Code Council at http://www.iccsafe.org. (3-20-14)

01. International Building Code. 2012 Edition with the following amendments: (4-4-13)

a. Delete section 305.2.3 and replace with the following: Twelve (12) or fewer children in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving such day care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. (3-20-14)

b. Delete section 308.6.4 and replace with the following: Persons receiving care in a dwelling unit. A facility such as the above within a dwelling unit and having twelve (12) or fewer children receiving day care or having five (5) or fewer persons receiving custodial care shall be classified as a Group R-3 occupancy or shall comply with the International Residential Code. (3-20-14)

c. Delete section 310.5 and replace with the following: Residential Group R-3. Residential occupancies where the occupants are primarily permanent in nature and not classified as Group R-1, R-2, R-4, E or I, including: (3-20-14)

i. Buildings that do not contain more than two (2) dwelling units; (3-20-14)

ii. Boarding houses (nontransient) with sixteen (16) or fewer occupants; (3-20-14)

iii. Boarding houses (transient) with ten (10) or fewer occupants; (3-20-14)

iv. Care facilities that provide accommodations for five (5) or fewer persons receiving care; (3-20-14)

v. Congregate living facilities (nontransient) with sixteen (16) or fewer occupants; (3-20-14)

vi. Congregate living facilities (transient) with ten (10) or fewer occupants; or (3-20-14)

vii. Dwelling units providing day care for twelve (12) or fewer children. (3-20-14)

d. Delete section 310.5.1 and replace with the following: Care facilities within a dwelling. Care facilities for twelve (12) or fewer children receiving day care or for five (5) or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the International Residential Code. (3-20-14)

e. Delete footnote (f) contained under Table 2902.1 Minimum Number of Required Plumbing Fixtures, and replace with the following: Drinking fountains are not required for an occupant load of thirty (30) or fewer. (4-4-13)

f. Delete footnote (g) contained under Table 2902.1 Minimum Number of Required Plumbing Fixtures and replace with the following: For business occupancies, excluding restaurants, and mercantile occupancies with an occupant load of thirty (30) or fewer, service sinks shall not be required. (3-20-14)

02. International Residential Code. 2012 Edition with the following amendments: (3-20-14)

a. Delete exception No. 1 contained under IRC section R101.2 - Scope. (3-20-14)

b. Delete exception No. 2 contained under IRC section R101.2 - Scope, and replace with the following: Owner-occupied lodging houses with ~~*three*~~ five (~~*3*~~5) or fewer guestrooms shall be permitted to be constructed in accordance with the International Residential Code for One- and Two-family Dwellings.~~ *Such occupancies shall be required to install smoke alarms and carbon monoxide alarms in accordance with sections R314 and R315 respectively of the International Residential Code for One- and Two-family Dwellings.*~~

~~*(3-20-14)*~~(10-1-14)T

c. Delete item No. 2 contained under the "Building" subsection of IRC section R105.2 - Work exempt from permit, and replace with the following: Fences not over six (6) feet (one thousand, eight hundred twenty-nine (1,829) mm) high may be exempted from the requirement for a building permit in the absence of any other applicable land use regulations governing the installation, height, type or other aspect. (4-7-11)

d. Delete item No. 7 contained under the "Building" subsection of IRC section R105.2 - Work exempt from permit, and replace with the following: Prefabricated swimming pools that are not greater than four (4) feet (one thousand, two hundred nineteen (1219) mm) deep. (4-7-11)

e. Add the following item No. 11 at the end of the "Building" subsection of IRC section R105.2 - Work exempt from permit: Flag poles. (3-20-14)

f. Delete IRC section R109.1.3 and replace with the following: Floodplain inspections. For construction in areas prone to flooding as established by Table R301.2(1), upon placement of the lowest floor, including basement, the building official is authorized to require submission of documentation of the elevation of the lowest floor, including basement, required in section R322. (3-29-10)

g. IRC Table R302.1 Exterior Walls -- delete the figures contained in the last column of the table under the heading Minimum Fire Separation Distance for the "Walls" and "Projections" elements, and replace with

the following:

Minimum Fire Separation Distance		
Walls (fire-resistance rated):	<	Three (3) Feet
Walls (not fire-resistance rated):	≥	Three (3) Feet
Projections (fire-resistance rated):	<	Three (3) Feet
Projections (not fire-resistance rated):	≥	Three (3) Feet

(3-20-14)

h. Delete the exception contained under IRC section R302.2 -- Townhouses, and replace with the following: Exception: A common one-hour or two-hour fire resistance rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. The wall shall be rated for fire exposure from both sides and shall extend to and be tight against the exterior walls and the underside of the roof sheathing. Penetrations of electrical outlet boxes shall be in accordance with section R302.4. (3-29-10)

i. Delete IRC section R303.4. (3-20-14)

j. Delete the exception contained under IRC section R313.1 -- Townhouse automatic fire sprinkler systems, and replace with the following: Exception: Automatic residential fire sprinkler systems shall not be required in townhouses where a two-hour fire-resistance rated wall is installed between dwelling units or when additions or alterations are made to existing townhouses that do not have an automatic residential fire sprinkler system installed. (3-29-10)

k. Delete IRC section R313.2. (3-29-10)

l. Add the following to IRC section R315.3 - Where required in existing dwellings: Exceptions: 1. Work involving the exterior surfaces of dwellings, such as, but not limited to, replacement of roofing or siding, or the addition or replacement of windows or doors, or the addition of a porch or deck or electrical permits, are exempt from the requirements of this section; and 2. Installation, alteration or repairs of noncombustion plumbing or mechanical systems are exempt from the requirements of this section. (3-20-14)

m. Delete IRC section R322.1.10. (3-29-10)

n. Delete IRC section R322.2.2 subparagraph 2.2, and replace with the following: The total net area of all openings shall be at least one (1) square inch (645 mm2) for each square foot (0.093 m2) of enclosed area, or the opening shall be designed and the construction documents shall include a statement that the design and installation of the openings will provide for equalization of hydrostatic flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. (3-20-14)

o. Delete IRC section R501.3 and its exceptions. (3-20-14)

p. Delete IRC section R602.10 and replace with the following: Wall bracing. Buildings shall be braced in accordance with this section or, when applicable section R602.12, or the most current edition of APA System Report SR-102 as an alternate method. Where a building, or portion thereof, does not comply with one (1) or more of the bracing requirements in this section, those portions shall be designated and constructed in accordance with section R301.1. (3-20-14)

q. Delete section N1102.4.3 and replace with the following: Fireplaces. New wood-burning fireplaces shall have tight-fitting flue dampers and outdoor combustion air. (4-4-13)

r. Chapter 11 [RE] Energy Efficiency - The following sections and tables of chapter 11 shall be amended in accordance with the requirements contained below in Subsection 004.04 of these rules which correspond

to the appropriate section: (3-20-14)

i. Table N1102.1.1 (Table R402.1.1) - Insulation and Fenestration Requirements by Component; (3-20-14)

ii. Table N1102.1.3 (Table R402.1.3 - Equivalent U-Factors; (3-20-14)

iii. Table N1102.2.6 (Table R402.2.6) - Steel-Frame Ceiling, Wall and Floor Insulation (R-Value); (3-20-14)

iv. Section N1102.4.1 (R402.4.1) Building Thermal Envelope; (3-20-14)

v. Section N1102.4.1.1 (R402.4.1.1) - Insulation; (3-20-14)

vi. Table N1102.4.1.1 (Table R402.4.1.1) - Air Barrier and Insulation Installation; (3-20-14)

vii. Section N1102.4.1.2 (R402.4.1.2) Testing Option; (3-20-14)

viii. Add Section N1102.4.1.3 (R402.4.1.3) - Visual Inspection Option; (3-20-14)

ix. Add Section N1102.6 (R402.6) - Residential Log Home Thermal Envelope; (3-20-14)

x. Add Table N1102.6 (Table R402.6) - Log Home Prescriptive Thermal Envelope Requirements by Component; and (3-20-14)

xi. Section N1104.1 (R404.1) - Lighting Equipment. (3-20-14)

03. International Existing Building Code. 2012 Edition. (4-4-13)

04. International Energy Conservation Code. 2012 Edition with the following amendments. (3-20-14)

a. Delete the values contained in Table R402.1.1 (Table N1102.1.1) for climate zone "5 and Marine 4" and climate zone "6" and replace with the following: (3-20-14)

Table R402.1.1
INSULATION AND FENESTRATION REQUIREMENTS BY COMPONENT

Climate Zone	Fenestration U- Factor	Skylight U-factor	Glazed Fenestration SHGC	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value	Floor R-Value	Basement Wall R-Value	Slab R-Value	Crawlspace Wall R-Value
5 and Marine 4	0.35	0.60	NR	38	20 or 13+5[h]	13/17	30[g]	10/13	10, 2 ft	10/13
6	0.35	0.60	NR	49	20 or 13+5[h]	15/19	30[g]	15/19	10, 4 ft	10/13

(3-20-14)

b. Add the following footnote to the title of Table 402.1.1 - Insulation and Fenestration Requirements by Component: [k.] For residential log home building thermal envelope construction requirements see section 402.6. (4-7-11)

c. Delete the values contained in Table R402.1.3 (Table N1102.1.3) for climate zone "5 and Marine 4"

and climate zone "6" and replace with the following:

Table R402.1.3
EQUIVALENT U-FACTORS

Climate Zone	Fenestration U-factor	Skylight U-factor	Ceiling R-Value	Wood Frame Wall R-Value	Mass Wall R-Value	Floor R-Value	Basement Wall R-Value	Crawlspace Wall R-Value
5 and Marine 4	0.35	0.60	0.030	0.057	0.082	0.033	0.059	0.065
6	0.35	0.60	0.026	0.057	0.060	0.033	0.050	0.065

(3-20-14)

d. Delete Table R402.2.6 (Table N1102.2.6) and replace with the following:

TABLE R402.2.6
STEEL-FRAME CEILING, WALL AND FLOOR INSULATION
(R-VALUE)

WOOD FRAME R-VALUE REQUIREMENT	COLD-FORMED STEEL EQUIVALENT R-VALUE[a]
Steel Truss Ceilings	
R-30	R-38 or R-30 + 3 or R-26 + 5
R-38	R-49 or R-38 +3
R-49	R-38 + 5
Steel Joist Ceilings	
R-30	R-38 in 2 x 4 or 2 x 6 or 2 x 8 R-49 in any framing
R-38	R-49 in 2 x 4 or 2 x 6 or 2 x 8 or 2 x 10
Steel-Framed Wall	
R-13	R-13 + 5 or R-15 + 4 or R-21 + 3 or R-0 + 10
R-19	R-13 + 9 or R-19 + 8 or R-25 + 7
R-21	R-13 + 10 or R-19 + 9 or R-25 + 8
Steel Joist Floor	
R-13	R-19 in 2 x 6 R-19 + 6 in 2 x 8 or 2 x 10
R-19	R-19 + 6 in 2 x 6 R-19 + 12 in 2 x 8 or 2 x 10
a. Cavity insulation R-value is listed first, followed by continuous insulation R-value. b. Insulation exceeding the height of the framing shall cover the framing.	

(3-20-14)

e. Delete section 402.4.1 (N1102.4.1) and replace with the following: Building thermal envelope. The building thermal envelope shall comply with sections R402.1.1 and either section R402.4.1.2 or R402.4.1.3. The sealing methods between dissimilar materials shall allow for differential expansion and contraction. (3-20-14)

f. Delete section 402.4.1.1 (N1102.4.1.1) and replace with the following: Installation. The components of the building thermal envelope as listed in Table R402.4.1.1 shall be installed in accordance with the manufacturer's instructions and the criteria listed in Table R402.4.1.1, as applicable to the method of construction. (3-20-14)

g. Delete the criteria requirement for the "Fireplace" component of Table R402.4.1.1 (Table N1102.4.1.1) - Air Barrier and Insulation Installation, and replace with the following: An air barrier shall be installed on fireplace walls. (3-20-14)

h. Delete section 402.4.1.2 (N1102.4.1.2) and replace with the following: Testing option, Building envelope tightness and insulation installation shall be considered acceptable when tested air leakage is less than seven (7) air changes per hour (ACH) when tested with a blower door at a pressure of 33.5 psf (50 Pa). Testing shall occur after rough in and after installation of penetrations of the building envelope, including penetrations for utilities, plumbing, electrical, ventilation and combustion appliances. During testing: (3-20-14)

i. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed; (3-20-14)

ii. Dampers shall be closed, but not sealed, including exhaust, intake, makeup air, backdraft and flue dampers; (3-20-14)

iii. Interior doors shall be open; (3-20-14)

iv. Exterior openings for continuous ventilation systems and heat recovery ventilators shall be closed and sealed; (3-20-14)

v. Heating and cooling system(s) shall be turned off; (3-20-14)

vi. HVAC ducts shall not be sealed; and (3-20-14)

vii. Supply and return registers shall not be sealed. (3-20-14)

i. Add the following as section 402.4.1.3 (N1102.4.1.3): Visual inspection option, Building envelope tightness and insulation installation shall be considered acceptable when the items listed in Table 402.4.1.1, applicable to the method of construction, are field verified. Where required by code official an approved party independent from the installer of the insulation shall inspect the air barrier and insulation. (3-20-14)

j. Delete section 402.4.3 and replace with the following: Fireplaces. New wood-burning fireplaces shall have tight-fitting flue dampers and outdoor combustion air. (4-4-13)

k. Add the following section: R402.6 (N1102.6) Residential Log Home Thermal Envelope. Residential log home construction shall comply with sections 401 (General), 402.4 (Air Leakage), 402.5 (Maximum Fenestration U-Factor and SHGC), 403.1 (Controls), 403.2.2 (Sealing), 403.2.3 (Building Cavities), sections 403.3 through 403.9 (referred to as the mandatory provisions), Section 404 (Electrical Power and Lighting Systems), and either Subparagraph 004.04.b.i., ii., or iii. as follows: (3-20-14)

i. Sections 402.2 through 402.3, 403.2.1, 404.1 and Table 402.6; (4-7-11)

ii. Section 405 Simulated Performance Alternative (Performance); or (4-7-11)

iii. REScheck (U.S. Department of Energy Building Codes Program). (4-7-11)

l. Add Table R402.6 (Table N1102.6) Log Home Prescriptive Thermal Envelope Requirements By Component to be used only in accordance with Subparagraph 004.04.b.i. above to appear as follows:

TABLE R402.6
LOG HOME PRESCRIPTIVE THERMAL ENVELOPE REQUIREMENTS BY COMPONENT

For SI: 1 foot = 304.8 mm.

CLIMATE ZONE	FENESTRATION U-FACTOR[a]	SKYLIGHT U-FACTOR	GLAZED FENESTRATION SHGC	CEILING R-VALUE	Min. Average LOG Size in inches	FLOOR R-VALUE	BASEMENT WALL R-VALUE[d]	SLAB R-VALUE & DEPTH[b]	CRAWL SPACE WALL R-VALUE[d]
5, 6 - High efficiency equipment path[c]	0.32	0.60	NR	49	5	30	15/19	10, 4 ft.	10/13
5	0.32	0.60	NR	49	8	30	10/13	10, 2 ft.	10/13
6	0.30	0.60	NR	49	8	30	15/19	10, 4 ft.	10/13

a. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.

b. R-5 shall be added to the required slab edge R-values for heated slabs.

c. 90% AFUE natural gas or propane, 84% AFUE oil, or 15 SEER heat pump heating equipment (zonal electric resistance heating equipment such as electric base board electric resistance heating equipment as the sole source for heating is considered compliant with the high efficiency equipment path).

d. “15/19” means R-15 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. “15/19” shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulated sheathing on the interior or exterior of the home. “10/13” means R-10 continuous insulated sheathing on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

(3-20-14)

m. Delete section R404.1 (N1104.1) and replace with the following: Lighting equipment (Mandatory). A minimum of fifty percent (50%) of the lamps in permanently installed lighting fixtures shall be high-efficacy lamps or a minimum of fifty percent (50%) of the permanently installed lighting fixtures shall contain only high efficacy lamps. (3-20-14)

05. References to Other Codes. Where any provisions of the codes that are adopted in this Section make reference to other construction and safety-related model codes or standards which have not been adopted by the involved authority having jurisdiction, to the extent possible, such reference should be construed as pertaining to the equivalent code or standard that has been duly adopted by such jurisdiction. (3-29-10)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.01.11 - REGISTRATION OF POST-SECONDARY EDUCATIONAL INSTITUTIONS AND PROPRIETARY SCHOOLS

DOCKET NO. 08-0111-1401

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 33-105, 33-107, 33-2402, and 33-2403, 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 15, 2014.

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 changes to IDAPA 08.01.11 will amend the definition of what constitutes having an "Idaho presence." Institutions, unless otherwise exempted, who have a physical presence within the state of Idaho are required to register with the State Board of Education. Idaho's definition of physical presence includes all students participating in a clinical experience within the state even if the institution itself does not meet the other requirements for a physical presence. The proposed change would give a slightly broader definition in regards to a clinical experience and allows that if there are fewer than ten (10) students simultaneously present at the site and the institution does not have a multi-year agreement with the site then that institution still does not have a physical presence within the state.

An additional change is being proposed to subsection 200.09 that would allow for the Board office to use financial instruments other than an institution's audited financial statements as part of the registration process. Due to timing and varying differences in an institution's operations the audited financial statements may not be the best instrument for staff to use to calculate the registration fee of a specific institution.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There will be no change to the current fee charged for registration.

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 fiscal impact due to the proposed change.

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 August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208)332-1582 or **tracie.bent@osbe.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th Day of August, 2014.

Tracie Bent, Chief Planning and Policy Officer
Office of the State Board of Education
650 W. State Street
P.O. Box 83720
Boise, ID 83720-0037
Tel: (208) 332-1582
Fax: (208) 334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0111-1401
(Only those Sections being amended are shown.)

200. REGISTRATION OF POST-SECONDARY EDUCATIONAL INSTITUTIONS.

01. Delegation. Section 33-2403, Idaho Code, provides that a post-secondary educational institution must hold a valid certificate of registration issued by the Board. The Board delegates authority to its Executive Director and the Office of the State Board of Education to administer the registration of post-secondary educational institution, in accordance with Title 33, Chapter 24, Idaho Code, and this rule. (3-29-12)

02. Registration Requirement. (4-9-09)

a. Unless exempted by statute or this rule, as provided herein, a post-secondary educational institution which maintains a presence within the state of Idaho, or that operates or purports to operate from a location within the state of Idaho, shall register and hold a valid certificate of registration issued by the Board. An institution shall not conduct, provide, offer, or sell a course or courses of study, or degree unless registered. (3-29-12)

b. Registration shall be for the period beginning on the date a certificate of registration is issued and continue through June 30 of the next succeeding year. A registered post-secondary educational institution must renew its certificate of registration annually, and renewal of registration is not automatic. (3-29-10)

c. Renewal of registration shall be for the period beginning on July 1 of any year, and continue through June 30 of the next succeeding year. (4-9-09)

d. A new or start-up entity that desires to operate as a postsecondary educational institution in Idaho but which is not yet accredited by an accreditation organization recognized by the Board must register and operate as a proprietary school until accreditation is obtained. A new or start-up entity that is accredited and authorized to operate in another state, and which desires to operate as a postsecondary educational institution in Idaho offering degrees for which specialized program accreditation is required, may be granted approval to operate subject to the successful attainment of such program accreditation within the regular program accreditation cycle required by the accreditor. (3-29-12)

e. There is no inherent or private right to grant degrees in Idaho. That authority belongs only to institutions properly authorized to operate in Idaho under these rules. (3-29-12)

03. Idaho Presence. (3-29-12)

a. An institution shall be deemed to have a presence in Idaho, or to be operating or purporting to be operating from a location within the state of Idaho, if it owns, rents, leases, or uses any office or other type of physical location in Idaho, including a mailing or shipping center, or if it represents in any way, such as on an electronic or Internet website, to have an Idaho street or mailing address, including a post office box in Idaho, for purposes of conducting, providing, offering or selling a course or courses of study or degrees. (3-29-12)

b. Idaho presence shall include medical/osteopathic education clinical instruction occurring in the

state of Idaho as part of a course of study leading to a degree pursuant to a formal multiyear arrangement or agreement between such clinic and an institution providing medical/osteopathic education instruction where eleven (11) or more students of the institution are physically present simultaneously at a single field site. ~~*(3-29-12)*~~( )

c. Idaho presence shall not include: (3-29-12)

i. Distance or online education delivered by an institution located outside of the state of Idaho to students in this state when the institution does not otherwise have physical presence in Idaho, as provided in Subsection 200.03.a. of this rule; (3-29-12)

ii. Medical education instruction occurring in the state of Idaho by an institution pursuant to a medical education program funded by the state of Idaho; (3-29-12)

iii. Internship or cooperative training programs occurring in the state of Idaho where students are employed by or provide services to a business or company in this state and receive course credit from an institution related to such activities; or (3-29-12)

iv. Activities limited to the recruiting or interviewing of applicants or potential students in the state of Idaho, whether conducted by a compensated employee, agent, or representative of an institution, or by volunteer alumnus of an institution, even if such individual is physically located in this state. (3-29-12)

04. Institutions Exempt from Registration. (4-9-09)

a. Idaho public post-secondary educational institutions. Section 33-2402(1), Idaho Code, provides that a public institution supported primarily by taxation from either the state of Idaho or a local source in Idaho shall not be required to register. (4-9-09)

b. Certain Idaho private, nonprofit, post-secondary educational institutions. A private, nonprofit, post-secondary educational institution that is already established and operational as of the date when this rule first went into effect (Brigham Young University - Idaho, College of Idaho, Northwest Nazarene University, New Saint Andrews College, Boise Bible College), and located within the state of Idaho, and that is accredited by an accreditation organization recognized by the Board, as set forth in Section 100 of this rule, shall not be required to register. A private, nonprofit, institution is located within the state of Idaho only if it has been lawfully organized in the state of Idaho and its principal place of business is located within the state of Idaho. An institution exempt under this subsection may voluntarily register by following the procedure for registration provided herein. (3-29-12)

c. Idaho religious institutions. A religious institution located within the state of Idaho that is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and that grants only religious degrees shall not be required to register. (3-29-12)

05. Institutions That Must Register. Unless exempt under Subsection 200.04 of this rule, any entity that desires to operate as a postsecondary educational institution in Idaho must register as provided herein. (3-29-12)

06. Application. A post-secondary educational institution that is required to register under this rule must submit to the Board office an application for registration (either an application for initial registration or renewal of registration, as applicable), on the form provided by the Board office. The application must include a list of each course, course of study, and degree the applicant institution intends to conduct, provide, offer, or sell in Idaho during the registration year. (3-29-10)

07. Registration Fees. The Board shall assess an annual registration fee for initial registration or renewal of registration of a post-secondary educational institution. The registration fee must accompany the application for registration, and shall be in the amount of one-half of one percent (.5%) of the gross Idaho tuition revenue of the institution during the previous tax reporting year (Jan 1 - Dec 31), but not less than one hundred dollars ($100) and not to exceed five thousand dollars ($5,000). The institution must provide financial documentation to substantiate the amount of revenue reported. Registration fees are nonrefundable. (4-4-13)

08. Deadline for Registration. An initial application for registration may be submitted to the Board at

anytime. An institution should expect the Board's review process for an initial registration to take approximately three (3) to five (5) months. An application for renewal of registration must be submitted to the Board on or before the first business day of May that precedes the registration year. The renewal will be processed within thirty (30) days. Institutions that do not adhere to this schedule and whose renewals are not processed by July 1st must cease all active operations until approval of registration is received. (3-29-12)

09. Information Required. (3-29-12)

a. An application must include all the information requested on the application form, as well as the following information: (3-29-12)

i. Copy of most recent accreditation letter showing the period of approval; (4-7-11)

ii. Current list of chief officers - e.g. president, board chair, chief academic officer, chief fiscal officer; (4-9-09)

iii. Enrollment data for current and past two (2) years; (4-9-09)

iv. Copy of annual audited financial statement, or other financial instrument as established by the executive director; ~~(4-9-09)~~( )

v. Any additional information that the Board may request. (4-9-09)

vi. All advertising, pamphlets, and other literature used to solicit students and all contract forms must accurately represent the purpose of the school, its courses or courses of study, and other relevant information to assist students in making an informed decision to enroll. Institutions offering courses or courses of study which require clinical, practicum or internship components must provide students in writing information regarding the number of clinical, practicum or internship positions available and the location of said positions. Institutions with courses or courses of study that have not been fully accredited must disclose to prospective students in these courses or courses of study the accreditation status of the program and anticipated date for full accreditation. (4-4-13)

b. The Board may, in connection with a renewal of registration, request that an institution only submit information that documents changes from the previous year, provided that the institution certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 200.07 of this rule, shall remain applicable. (3-29-12)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.01 - RULES GOVERNING ADMINISTRATION

DOCKET NO. 08-0201-1402

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 14, 2014.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-1511(2), Idaho Code.

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

Thursday, October 16, 2014 - 3:00 p.m.

Idaho State Department of Education
650 West State Street, 2nd Floor
Barbara Morgan Conference Room
Boise, ID 83702

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 08.02.01.400.01.b. and 400.01.c. were approved in 1997. There are two technical errors in the portion of rule for Exceptional Child Support Units concerning the percentages. This change will correct the errors.

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

The temporary rule confers a benefit by fixing technical errors in the rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule is simple in nature, making only a technical correction.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tim Hill, State Department of Education, 208-332-6843, **tdhill@sde.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 14th Day of August, 2014.

Tom Luna, Superintendent of Public Instruction
State Department of Education
650 West State Street, 2nd Floor
Boise, Idaho 83720-0027
Phone: (208) 332-6812
Fax: (208) 334-2228

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 08-0201-1402
(Only those Sections being amended are shown.)

400. SPECIAL EDUCATION FUNDING FOR DISTRICTS WITH APPROVED PROGRAMS.

01. Reimbursement for Exceptional Child Support Units. State reimbursement provided by exceptional child support units is based on the following formula: (4-1-97)

a. Preschool students will generate funding based upon the weekly hours and minutes they are enrolled in special education. (4-1-97)

b. From the fall elementary enrollment of kindergarten through grade six (K-6), subtract elementary residential facility students and multiply the result by six one-hundredths (.~~0~~06). Add the elementary residential facility students to the product. (Section 33-1002(4), Idaho Code.) ~~(4-1-97)~~(8-14-14)T

c. From the fall regular secondary enrollment of grades seven through twelve (7-12), subtract secondary residential facility students and multiply the result by fifty-five one-~~*hundredths*~~ thousandths (.055). Add the secondary residential facility students to the product. (Section 33-1002(4), Idaho Code). ~~(4-1-97)~~(8-14-14)T

d. Add the juvenile detention facility students to the total. (4-1-97)

e. Use the exceptional child divisor to determine the number of exceptional child units. Secondary programs with a smaller divisor may use the smaller divisor for their secondary computation. (4-1-97)

f. Elementary and secondary exceptional child support units will be calculated using one hundred percent (100%) Average Daily Attendance (ADA): the ADA will be subtracted from their respective regular elementary and secondary administrative unit for computing the support unit. (4-1-97)

02. Contracting for Educational and Related Services. (Section 33-2004, Idaho Code) (4-1-97)

a. A school district which contracts for special education services with another agency may claim reimbursement up to a maximum amount of state funding, as annually determined by the State Department of Education, less the district's certified annual tuition rate. When any agency contracts for the education of exceptional children, all such children will be enrolled in the district of their residence and the agency will certify to the home school district the daily record of attendance of such student. (4-1-97)

b. For special education contracts between local school districts, the district receiving service will pay the district providing service the amount of the providing district's local annual tuition rate as certified under the provision of Idaho Code. The school district providing service will include students served within such contract within the total number of special education students used to calculate exceptional education support units. Charges for additional costs may be negotiated between the districts. (4-1-97)

c. The State Department of Education will determine if public and private schools and facilities meet state standards for an approved special education program. Any agency aggrieved by the Department of Education's final decision may appeal that decision to the State Board of Education. (4-1-97)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1401

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 33-105, 33-107, 33-116, 33-1201, 33-1202, 33-1203, 33-1204, 33-2203, and 33-1612, Idaho Code, and Article IX, Section 2 of the Idaho Constitution.

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

October 7, 2014 7:00 p.m. - 9:00 p.m.	October 14, 2014 7:00 p.m. - 9:00 p.m.	October 21, 2014 7:00 p.m. - 9:00 p.m.
Idaho State University Student Union Building Salmon River Room 921 South 8th Ave. Pocatello, ID	**Lewis-Clark State College Meriwether Lewis Hall Room 100 500 8th Ave. Lewiston, ID**	**Mountain View High School Lecture Hall 2000 S. Millennium Way Meridian, Id**

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

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

In 2013 the Governor's Task Force for Improving Education made a recommendation that the state move to a tiered teacher licensure model that encompasses a continuum of professional growth and learning and that movement through the system be accomplished in an objective way using performance measures, including evaluations based upon the framework for teaching. In Idaho code and rule we use the term certification not licensure. The proposed rule amends the certification requirements to add a tiered certification system as recommended by the Governor's Task Force.

The tiered system of certification would include a 3 year non-renewable Residency Certificate, and a 5 year renewable Professional Certificate. The Professional Certificate would consist of a standard professional level a master level and a contingent designation. The existing categorical requirements for secondary, elementary, and early childhood and professional-technical certificates would continue to apply and be incorporated into the tiered certification model. Movement between the professional and master levels would be based on established performance requirements. Those requirements would be based on student achievement/growth and performance evaluation ratings. The level of ratings would determine eligibility for moving to the Professional Certificate at the end of the Residency stage and once an individual has attained a Professional Certificate these measure would be used for movement to the master level, with a higher level of performance being required for the master tier. Teachers would be able to remain on the professional tier and continue to renew at that level if they did not meet the minimum requirements for the master level. Teachers who did not meet the minimum requirements to move from the residency tier to the professional tier would not be granted a Professional Certificate. Teachers who did not maintain the minimum proficiency levels of the Professional Certificate at time of renewal would be granted a "contingent" Professional Certificate. As soon as they met the minimum requirements for the Professional Certificate renewal the "contingent" status would be removed from their certificate. Student achievement would be determined by the district from the list of acceptable assessments or student learning objectives. In addition to the teacher proficiency levels and student achievement each teacher will have a professional learning plan tied to their evaluation that is developed at the district level.

Teacher with existing certificates moving in from other states and teachers completing an alternate route will be placed on a 3 year interim certificate, during that time they may establish they meet the requirements to move from a

residency certificate to a professional certificate and may apply for a professional certificate at the conclusion of the interim certificate.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There will be no change to the current fee charged for certification applications.

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:

Proposed changes to the teacher certification process may necessitate additional one-time costs for database programing to capture the new data fields. The total programing costs are estimated to be under $10,000. An additional staff person or the restructuring of current department staff to process the certifications in a timely manner may be necessary, a thorough evaluation of current staffing resources will need to be conducted prior to a determination being made.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted through the Career Ladder/Tiered Licensure subcommittee of stakeholders looking at implementing the recommendations from the Governor's Task Force for Improving Education. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, page 27**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208) 332-1582 or **tracie.bent@osbe.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED the 29th day of August, 2014.

Tracie Bent, Chief Planning and Policy Officer
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650 W. State Street
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1401
(Only those Sections being amended are shown.)

007. DEFINITIONS.

01. Active Teacher. K-12 teacher with a valid Idaho certificate who is currently teaching in an Idaho K-12 classroom/school. (3-16-04)

02. Alternative Routes. Routes to teacher certification designed for candidates who want to enter the teaching profession from non-education professions or the para-educator profession, or for teachers lacking certification in a specific area defined as an emergency district need. (3-16-04)

03. **Credential**. The general term used to denote the document on which all of a person's educational certificates and endorsements are listed. The holder is entitled to provide educational services in any and/or all areas listed on the credential. (3-16-04)

04. **Endorsement**. Term used to refer to the content area or specific area of expertise in which a holder is granted permission to provide services. (3-16-04)

05. **Idaho Student Achievement Standards**. Standards of achievement for Idaho's K-12 students. See IDAPA 08.02.03, "Rules Governing Thoroughness." (3-16-04)

06. **Individualized Learning Plan**. An individualized plan developed based on the Idaho framework for teaching to determine and develop a professional action plan based on the individual's strengths and areas of needed growth. ( )

0~~6~~7. **Institutional Recommendation**. Signed form or written verification from an accredited institution with an approved teacher preparation program stating that an individual has completed the program, received a basic or higher rating in all twenty-two (22) components of the Idaho state performance evaluation system, has an individualized learning plan, has demonstrated measurable student achievement or the ability to create student learning objectives, and is now being recommended for state certification. ~~(3-16-04)~~( )

08. **Measurable Student Achievement/Growth**. Demonstrate a teacher's impact on student learning within a given interval of instruction. May include: ( )

a. Idaho standards achievement test; ( )

b. Student learning objectives; ( )

c. Formative assessments; ( )

d. Teacher-constructed assessments of student growth; ( )

e. Pre- and post-tests; ( )

f. Performance based assessments; ( )

g. Idaho Reading Indicator; ( )

h. College entrance exams (PSAT, SAT, ACT); ( )

i. District adopted assessment; ( )

j. End of course exams; ( )

k. Advance placement exams; ( )

l. Professional-Technical exams; ( )

0~~7~~9. **Orientation**. School district/school process used to acquaint teachers new to district/school on its policies, procedures and processes. (3-16-04)

~~08~~10. **Para-Educator**. Aides and assistants employed by school districts to supplement instruction and provide additional assistance to students. (3-16-04)

~~09~~11. **Pedagogy**. Teaching knowledge and skills. (3-16-04)

12. **Performance Evaluation System**. Summative evaluation conducted with two (2) observers who

have proof of proficiency in evaluating teacher performance based on the Idaho state performance evaluation system as outlined in Section 120 of these rules. ( )

13. **Student Learning Objective (SLO)**. A measurable, long-term academic growth target that a teacher sets at the beginning of year for all students or for subgroups of students. SLOs demonstrate a teachers impact on student learning within a given interval of instruction based upon baseline data gathered at the beginning of the course. ( )

1~~0~~4. **Teacher Leader**. A master teacher who facilitates the design and implementation of sustained, intensive, and job-embedded professional learning based on identified student and teacher needs. (4-4-13)

(BREAK IN CONTINUITY OF SECTIONS)

~~015. IDAHO INTERIM CERTIFICATE.~~

~~01. Issuance of Interim Certificate. The State Department of Education is authorized to issue a three-year (3) interim certificate to those applicants who hold a valid certificate/license from another state or other entity that participates in the National Association of State Directors of Teacher Education and Certification (NASDTEC) Interstate Agreement. An interim certificate is nonrenewable except under extenuating circumstances. (4-2-08)~~

~~a. Idaho Comprehensive Literacy Course. For all Idaho teachers working on interim certificates, alternate routes or coming from out of the state, completion of a state approved reading instruction course shall be a one-time requirement for full certification. (4-7-11)~~

~~b. Technology. Out-of-state applicants will be reviewed by the hiring district for technology deficiencies and may be required to take technology courses to improve their technology skills. (4-7-11)~~

~~02. Reinstatement of Expired Certificate. An individual holding an expired Idaho certificate may be issued a nonrenewable three year interim certificate. During the validity period of the interim certificate, the applicant must meet all current requirements listed for the specific certificate and endorsement(s) including the appropriate content, pedagogy, and performance assessments. (3-29-12)~~

~~03. Foreign Institutions. An educator having graduated from a foreign institution that is listed in the Accredited Degree-Granting Institutions section of the "Accredited Institutions of Postsecondary Education" and having a valid/current teaching certificate/license from the country or province in which the foreign institution is located, may be issued a non-renewable, three-year interim certificate. The applicant must also complete the requirements listed in Section 013 of these rules. (4-2-08)~~

01~~6~~5. IDAHO EDUCATOR CREDENTIAL.
The State Board of Education authorizes the State Department of Education to issue certificates and endorsements to those individuals meeting the specific requirements for each area provided herein. ~~*(Section 33-1201, Idaho Code)*~~ In addition to the applicable certificate level requirements outlined in Subsections 015.01 through 015.04, applicants must meet the specific grade level or subject area certificate requirements as provided herein. Teachers who hold an Idaho educator credential issued prior to April 2015 will be subject to the provisions of their certificate at time of issue and must meet the renewal provisions as described herein at time of renewal. ~~*(3-16-04)*~~( )

01. **Measurable Student Achievements/Growth**. Measurable student achievement used for movement between and renewal of each level of certificate will include at least three (3) assessments demonstrating the teacher's students achievement. Of those three (3), the Idaho Reading Indicator and the Idaho standards achievement test must be included as applicable to the subject areas taught. Student learning objectives, including pre- and post-assessment for student learning must be included for non-tested subjects. Other measures shall be chosen at the district level, selected from the definition as contained in these rules. The majority of student achievement shall be based on student growth. ( )

02. **Idaho Residency Certificate**. Teachers meeting the following criteria may apply for an Idaho

Residency Certificate. The residency certificate is valid for three (3) years and is non-renewable. ( )

a. Graduates of an Idaho approved educator or occupational teacher preparation program and have received an institutional recommendation; or ( )

b. Completed an Idaho approved alternate route to certification as described in Section 042 of these rules. ( )

c. Holders of an Idaho Residency Certificate shall receive intensive mentoring during year one (1) of their certificate, and mentoring at a lessor level during year two (2) of their certificate. Mentoring shall be provided by the hiring district. ( )

03. **Idaho Professional Certificate**. Teachers meeting the following criteria may apply for an Idaho Professional Certificate. The professional certificate is a five (5) year renewable certificate. ( )

a. Hold an Idaho residency certificate for three (3) years. ( )

b. For two (2) of three (3) years, including the final year prior to applying for a professional certificate, show demonstrated teaching proficiency on the Idaho state performance evaluation system through: ( )

i. Sixteen (16) or more elements rated as proficient or higher. ( )

ii. No more than six (6) elements ranked as basic, no more than two (2) of the six (6) elements rated as basic in domain one (1) or domain four (4), and no more than one (1) element rated as basic in domain two (2) or domain three (3). ( )

iii. No elements rated as unsatisfactory. ( )

iv. Show increased measurable student achievement/growth. ( )

c. Have an annual individualized professional learning plan developed in conjunction with school district supervisor. ( )

d. Teachers holding a residency certificate who cannot meet the minimum requirements for a professional certificate may return to an approved education preparation program to address areas of deficiency. ( )

i. Once successful in completing the higher education instruction, teachers may re-apply for a residency certificate. ( )

ii. Teachers will not hold a certificate during this time period. ( )

iii. Teachers may bank one (1) year of combined proficiency and measurable student achievement accomplished during the previous three (3) years. ( )

iv. Teachers may reapply for a professional certificate once the minimum requirements are met.( )

e. To renew a professional certificate teachers must, during three (3) of five (5) years, one (1) of which must be during the fourth or fifth year, achieve the following: ( )

i. Demonstrate teaching proficiency on the Idaho state performance evaluation through achievement of eighteen (18) or more elements ranked as proficient. Have no more than four (4) elements ranked as basic. Have no more than two (2) of the four (4) elements ranked as basic in domain one (1) or four (4). Have no more than one (1) element ranked as basic in domain two (2) or three (3). Have no elements ranked as unsatisfactory. ( )

ii. Demonstrate increased measurable student achievement/growth. ( )

iii. Must have an individualized professional learning plan developed in conjunction with school district supervisor. ( )

f. Teachers who do not meet the requirements described herein at time of renewal will receive a contingent status on their certificate. The teacher will be placed on a district improvement plan. The improvement plan will include peer assistance and, if appropriate, intervention courses from an approved teacher preparation program. Contingent status on a professional certificate will be removed once the performance and measurable student achievement requirements are met. ( )

i. Teachers with a contingent status on their professional certificate are not eligible for leadership premiums, other than those who currently are serving in a hard to fill position. ( )

ii. Teachers with a contingent status on their professional certificate are not eligible to apply for a master certificate. ( )

04. Idaho Master Professional Certificate. Teachers meeting the following criteria may apply for an Idaho master level professional certificate. The master level professional certificate is a five (5) year renewable certificate. ( )

a. Hold an Idaho professional certificate for five (5) years. ( )

b. During three (3) of five (5) years, one of which must be during the fourth or fifth year, teachers must achieve the following: ( )

i. Demonstrate teaching proficiency on the Idaho state performance evaluation through achieving no elements ranked as basic or less and at least six (6) elements ranked as distinguished. Four (4) out of the six (6) elements ranked as distinguished must be in domains two (2) and three (3) of the performance evaluation system. ( )

ii. Demonstrate measurable student achievement/growth through sixty percent (60%) or more students meeting or exceeding growth targets. ( )

c. During the last five (5) years have not: ( )

i. Been placed on a district performance improvement plan or probation. ( )

ii. Received any elements ranked as unsatisfactory on the state performance evaluation. ( )

d. Have an annual individualized professional learning plan developed in conjunction with school district supervisor. ( )

e. If at time of renewal teachers holding a master professional certificate cannot meet the performance and measurable student achievement standards of the master professional certificate but can meet the standard professional certificate performance and measurable student achievement standards, they may apply for a standard professional certificate. Applicants who cannot meet the standard professional certificate performance and measurable student achievement requirements will be granted a contingent status professional certificate. ( )

05. Elementary Certificate. An Elementary Certificate makes an individual eligible to teach grades kindergarten (K) through eight (8), and may be issued to any person who has a bachelor's degree from an accredited college or university and who meets the following requirements: ( )

a. Completion of the general education requirements at an accredited college or university is required. ( )

b. Professional Education Requirements. ( )

i. A minimum of twenty-four (24) semester credit hours, or thirty-six (36) quarter credit hours, in the philosophical, psychological, and methodological foundations and in the professional subject matter of elementary education, which shall include at least six (6) semester credit hours, or nine (9) quarter credit hours, in developmental reading and its application to the content area. ( )

ii. At least six (6) semester credit hours, or nine (9) quarter credit hours, of elementary student teaching or two (2) years of satisfactory experience as a teacher in grades K-8. ( )

c. An institutional recommendation from an accredited college or university or verification of two (2) years of teaching experience in grades Kindergarten (K) through eight (8). ( )

d. All individuals, who begin an Idaho approved preparation program after July 1, 2013, seeking a elementary certificate shall complete the requirements for a subject area endorsement as outlined under requirements for a secondary certificate. An endorsement allowing teaching of that subject through grade nine (9) or a K-12 endorsement shall be added to the Elementary Certificate. ( )

e. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate shall meet or exceed the state qualifying score on approved elementary content area and pedagogy assessments. ( )

06. Secondary Certificate. A Secondary Certificate makes an individual eligible to teach in grades six (6) through twelve (12). A Secondary Certificate may be issued to any person with a bachelor's degree from an accredited college or university and who meets the following minimum requirements: ( )

a. Completion of the general education requirements at an accredited college or university is required. ( )

b. Professional Education Requirements. ( )

i. A minimum of twenty (20) semester credit hours, or thirty (30) quarter credit hours, in the philosophical, psychological, and methodological foundations, instructional technology, and in the professional subject matter of secondary education, which must include at least three (3) semester credit hours, or four (4) quarter credit hours, of reading in the content area. ( )

ii. The required twenty (20) semester credit hours, or thirty (30) quarter credit hours, must also include at least six (6) semester credit hours, or nine (9) quarter credit hours, of secondary student teaching or two (2) years of satisfactory experience as a teacher in grades six (6) through twelve (12). ( )

c. Preparation in at least two (2) fields of secondary teaching: a first teaching field of at least thirty (30) semester credit hours, or forty-five (45) quarter credit hours, and a second teaching field of at least twenty (20) semester credit hours, or thirty (30) quarter credit hours. Preparation of not less than forty-five (45) semester credit hours, or sixty-seven (67) quarter credit hours, in a single subject area may be used in lieu of the first teaching field or second teaching field requirements. ( )

d. An institutional recommendation from an accredited college or university or verification of two (2) years of teaching experience in grades six (6) through twelve (12). ( )

e. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate must have a qualifying score on an approved content area assessment in any area(s) for which the certificate or endorsement(s) will be applied. ( )

07. Early Childhood / Early Childhood Special Education Blended Certificate. An Early Childhood / Early Childhood Special Education Blended Certificate is non-categorical and makes an individual eligible to teach in any educational setting for youth from birth to grade three (3), including those who are at-risk or have developmental delays. The Early Childhood / Early Childhood Special Education Blended Certificate may be issued to any person with a bachelor's degree from an accredited college or university and who meets the following minimum requirements: ( )

a. Completion of the general education requirements at an accredited college or university is required.

( )

b. Professional Education Requirements. ( )

i. A minimum of thirty (30) semester credit hours, or forty-five (45) quarter credit hours, in the philosophical, psychological, and methodological foundations, in instructional technology, and in the professional subject matter of early childhood and early childhood-special education. The professional subject matter of early childhood and early childhood-special education shall include course work specific to the young child from birth through grade three (3) in the areas of child development and learning; curriculum development and implementation; family and community relationships; assessment and evaluation; professionalism; and, application of technologies. ( )

ii. The required thirty (30) semester credit hours, or forty-five (45) quarter credit hours, shall include not less than six (6) semester credit hours, or nine (9) quarter credit hours, of early childhood student teaching and three (3) semester credit hours, or four (4) quarter credit hours, of developmental reading. ( )

c. An institutional recommendation from an accredited college or university, and passage of the Idaho Comprehensive Literacy Assessment. ( )

d. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate shall meet or exceed the state qualifying score on approved early-childhood assessments. ( )

08. Exceptional Child Certificate. Holders of this certificate work with children who have been identified as having an educational impairment. ( )

a. Completion of the general education requirements at an accredited college or university is required. ( )

b. Generalist Endorsement (K-12): the Generalist K-12 endorsement is non-categorical and allows one to teach in any K-12 special education setting. This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. Regardless of prior special education experience, all initial applicants must provide an institutional recommendation that an approved special education program has been completed, with field work to include an internship and student teaching in a special education setting. To be eligible for an Exceptional Child Certificate with a Generalist K-12 endorsement, a candidate must have satisfied the following requirements: ( )

i. Completion of a baccalaureate degree from an accredited college or university. ( )

ii. Completion, in an Idaho college or university, of a program in elementary, secondary, or special education currently approved by the Idaho State Board of Education, or completion, in an out-of-state college or university, of a program in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed. ( )

iii. Completion of thirty (30) semester credit hours in special education, or closely related areas, as part of an approved special education program. ( )

iv. Each candidate must have a qualifying score on an approved core content assessment and a second assessment related to the specific endorsement requested. ( )

c. Early Childhood Special Education Endorsement (Pre-K-3): the Early Childhood Special Education (Pre-K-3) endorsement is non-categorical and allows one to teach in any Pre-K-3 special education setting. This endorsement may only be added to the Exceptional Child Certificate in conjunction with the Generalist K-12 endorsement and is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. To be eligible for an Exceptional Child Certificate with an Early Childhood Special Education (Pre-K-3) endorsement, a candidate must have satisfied the following requirements: ( )

i. Completion of a program of a minimum of twenty (20) semester credit hours in the area of Early Childhood Education to include course work in each of the following areas: child development and behavior with

emphasis in cognitive-language, physical, social and emotional areas, birth through age eight (8); curriculum and program development for young children ages three (3) to eight (8); methodology: planning, implementing and evaluating environments and materials for young children ages three (3) to eight (8); guiding young children's behavior: observing, assessing and individualizing ages three (3) to eight (8); identifying and working with atypical young children ages three (3) to eight (8); parent-teacher relations; and, field work to include an internship and student teaching at the Pre-K - 3 grades. ( )

d. Hearing Impairment Endorsement (K-12): completion of a minimum of thirty (30) semester credit hours in the area of hearing impairment. An institutional recommendation specific to this endorsement is required. To be eligible for an Exceptional Child Certificate with a Hearing Impairment endorsement, a candidate must have satisfied the following requirements: ( )

i. Completion of a baccalaureate degree from an accredited college or university; ( )

ii. Completion of a program from an Idaho college or university in elementary, secondary, or special education currently approved by the Idaho State Board of Education; or ( )

iii. Completion of a program from an out-of-state college or university in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed; ( )

iv. Completion of a program of a minimum of thirty (30) semester credit hours in the area of Hearing Impairment. Must receive an institutional recommendation specific to this endorsement from an accredited college or university. ( )

e. Visual Impairment Endorsement (K-12): Completion of a program of a minimum of thirty (30) semester credit hours in the area of visual impairment. An institutional recommendation specific to this endorsement is required. To be eligible for an Exceptional Child Certificate with a Visually Impairment endorsement, a candidate must have satisfied the following requirements: ( )

i. Completion of a baccalaureate degree from an accredited college or university; ( )

ii. Completion of a program from an Idaho college or university in elementary, secondary, or special education currently approved by the Idaho State Board of Education; or ( )

iii. Completion of a program from an out-of-state college or university in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed; ( )

iv. Completion of a program of a minimum of thirty (30) semester credit hours in the area of Visual Impairment. Must receive an institutional recommendation specific to this endorsement from an accredited college or university. ( )

09. Certification Standards for Professional-Technical Educators. Teachers of professional-technical classes or programs in secondary or postsecondary schools must hold an endorsement in an appropriate occupational discipline. This endorsement may be held on a Secondary Teaching Certificate or on an Occupational Specialist Certificate. For postsecondary instructors and administrators, certification fees are set by the State Board for Professional-Technical Education, and application processes are managed by the Division of Professional-Technical Education. ( )

10. Degree Based Professional-Technical Certification. ( )

a. Individuals graduating from an approved occupational teacher preparation degree program qualify to teach in the following five (5) disciplines: Agricultural Science & Technology; Business Technology Education; Family & Consumer Science; Marketing Technology Education; and Technology Education. Occupational teacher preparation course work must meet the Idaho Standards for the Initial Certification of Professional School Personnel. The occupational teacher education program must provide appropriate content to constitute a major in the identified field. Student teaching shall be in an approved program and include experiences in the major field. Applicants shall

have accumulated four-thousand (4,000) clock hours of related work experience or shall have completed an approved practicum in their respective field of specialization. ( )

b. The Professional-Technical Administrator certificate is required for an individual serving as an administrator, director, manager or coordinator of professional-technical education at the state, secondary or postsecondary level. Individuals must meet the following prerequisites to qualify for the Professional-Technical Administrator Certificate. Equivalence in each area will be determined on an individual basis by the State Division of Professional-Technical Education. ( )

i. Qualify for or hold an Occupational Specialist certificate or hold an occupational endorsement on the secondary teaching credential; ( )

ii. Provide evidence of a minimum of three (3) years teaching in an occupational discipline; ( )

iii. Hold a master's degree; and, ( )

iv. Completed at least fifteen (15) semester credits of administrative course work. Applicants must have completed: financial aspects of professional-technical education; administration of personnel; and legal aspects of professional-technical education. Additional course work can be selected from any of the following areas: administration and supervision of occupational programs; instructional supervision; administration internship; curriculum development; curriculum evaluation; research in curriculum; school community relations; communication; teaching the adult learner; coordination of work-based learning programs; and/or measurement and evaluation. ( )

v. To renew the Professional-Technical Administrator Certificate, individuals are required to complete six (6) semester hours of related course work or meet renewal requirements for professional-technical teachers. ( )

c. Work-Based Learning Coordinator Endorsement: educators assigned to coordinate approved work-based experiences must hold the Work-Based Learning Coordinator endorsement. To be eligible, applicants must hold an occupational endorsement on the Secondary Certificate or qualify for an Occupational Specialist Certificate, plus complete course work in coordination of work-based learning programs. ( )

d. Career Counselor Endorsement: the endorsement for a Career Counselor may be issued to applicants who hold a current Pupil Personnel Services Certificate endorsed Counselor K-12 and who have satisfied the following professional technical requirement: Career Pathways and Professional Technical Guidance; Principles/ Foundations of Professional-Technical Education; and Theories of Occupational Choice. ( )

11. Occupational Specialist Certificate. The Occupational Specialist Certificate is and industry based professional-technical certification. Persons who need to hold the Occupational Specialist Certificate include: secondary educators assigned to Health Occupations Education and to Trades & Industry Education; specialized occupational areas where specific degree-granting professional technical teacher education programs do not exist; and postsecondary professional-technical educators who teach courses to nine (9) to twelve (12) students per class. ( )

a. Applicants must: be eighteen (18) years of age; document full-time, successful, recent, gainful employment in the area for which certification is requested; possess either a high school diploma or General Educational Development (GED) certificate; meet provisions of Idaho Code; and, verify technical skills through work experience, certification or testing as listed below. When applicable, requirements of occupationally related state agencies must also be met. Since educational levels and work experiences vary, applicants may be determined highly qualified under any one (1) of the following three (3) options: ( )

i. Have sixteen-thousand (16,000) hours of full-time, successful, recent, gainful employment in the occupation for which certification is requested. Up to forty-eight (48) months credit can be counted toward the eight (8) years on a month-to-month basis for journeyman training and/or postsecondary training successfully completed as a full-time student in an approved/approvable, postsecondary, professional-technical education program. ( )

ii. Have a bachelor's degree in the specific occupation or related area, plus six-thousand (6,000) hours

of full-time, successful, recent, gainful employment in the occupation. ( )

iii. Meet one (1) of the following: have at least journeyman level plus two (2) years of recent, full-time, gainful, related work experience. A person who has completed a formal apprenticeship program in the occupation or related area for which certification is requested. The apprenticeship must be under the direction of an employer and the Bureau of Apprenticeship and Training or an approved State Apprenticeship Agency; pass approved state or national certification/certification examination plus three (3) years of recent, full-time, gainful, related work experience (length and type of work experience in emergency services and health professions will be determined on an individual basis); or pass approved industry related certification for skill level requirements (vendor and industry specific) plus three (3) years of recent, full-time, gainful, related work experience (length and type of work experience in emergency services and health professions will be determined on an individual basis). If no competency test exists, a written recommendation from a representative occupational advisory council/committee and recorded in its minutes is required to verify occupational competence. ( )

b. Limited Occupational Specialist Certificate: this certificate is issued to individuals who are new to teaching trades and health occupations in public schools. The certificate is valid for three (3) years. ( )

i. Within the first eighteen (18) months, the holder must complete the pre-service workshop sponsored by the State Division of Professional-Technical Education and an approved course in professional technical methods and student assessment. ( )

ii. Complete a new-teacher induction workshop at the state or district level. ( )

iii. File a Professional Development Plan with the State Division of Professional-Technical Education. ( )

iv. Within the three (3) year period of the Limited Occupational Specialist Certificate, the instructor must satisfactorily complete course work that includes competencies in four (4) of the following: Principles/ Foundations of Occupational Education; Career Pathways and Guidance; Analysis, Integration, and Curriculum Development; Measurement and Evaluation; and Methods of Teaching Occupational Education. ( )

c. Standard Occupational Specialist Certificate: this certificate is issued to individuals who have completed course work equivalent to that required of the Limited Occupational Specialist Certificate. The certificate must be renewed every five (5) years, which shall include completion of six (6) semester credit hours of approved course work or verification of two hundred forty (240) hours of approved related work experience or ninety (90) hours of attendance at approved technical conferences, institutes, or workshops or any equivalent combination thereof, and file of a Professional Development Plan for the next certification period. ( )

d. Advanced Occupational Specialist Certificate: this certificate is issued to individuals who meet all the requirements outlined below: ( )

i. Meet the requirements for the Standard Occupational Specialist Certificate; ( )

ii. Provide evidence of completion of a teacher training degree program or eighteen (18) semester credits of approved course work in addition to the twelve (12) semester credits required for the Standard Occupational Specialist Certificate (a total of thirty (30) semester credits); and ( )

iii. File a new Professional Development Plan for the next certification period. ( )

iv. This certificate must be renewed every five (5) years, which shall include completion of six (6) semester credit hours of approved course work or submit verification of two hundred forty (240) hours of approved related work experience or ninety (90) hours of attendance at approved technical conferences, institutes and workshops or any equivalent combination thereof, and file a new Professional Development Plan for the next certification period. ( )

12. **Additional Renewal Requirements**. In addition to specific certificate or certificate level renewal

requirements applicants must meet the following renewal requirements as applicable. ( )

01. **a.** ***Renewal Requirement*** Mathematics In-Service Program.: ***I***in order to recertify, the state approved mathematics instruction course titled "Mathematical Thinking for Instruction", or another State Department of Education approved alternative course, shall be required. The "Mathematical Thinking for Instruction" course consists of three (3) credits (or forty-five (45) contact hours of in-service training). Teachers and administrators shall take one (1) of the three (3) courses developed that each teacher deems to be most closely aligned with their current assignment prior to September 1, 2014. Any teacher or administrator successfully completing said course shall be deemed to have met the requirement of Subsection 060.03.c. of this rule, regardless of whether such course is part of any official transcript. Successful completion of state approved mathematics instruction course shall be a one-time requirement for renewal of certification for those currently employed in an Idaho school district and shall be included within current requirements for continuing education for renewal. The following individuals *listed in Subsection 016.01.a. through 016.01.c. shall* must successfully complete the "Mathematical Thinking for Instruction" course in order to recertify: *(3-20-14)*( )

a. i. Each teacher holding an Early Childhood/Early Childhood Special Education Blended Certificate (Birth - Grade 3) who is employed in an elementary classroom (multi-subject classroom, K-8); (3-29-10)

b. ii. Each teacher holding a *Standard* Elementary Certificate (K-8) who is employed in an elementary classroom (multi-subject classroom K-8); *(3-20-14)*( )

c. iii. Each teacher holding a *Standard* Secondary Certificate (6-12) teaching in a math content classroom (grade six (6) through grade twelve (12)) including Title I who is employed in an elementary classroom (multi-subject classroom K-8); (3-20-14)

d. iv. Each teacher holding a Standard Exceptional Child Certificate (K-12) who is employed in an elementary classroom (multi-subject classroom K-8); and (3-20-14)

e. v. Each school administrator holding an Administrator Certificate (Pre K-12) who is employed in an elementary classroom (multi-subject classroom K-8), including all school district and charter administrators. (3-20-14)

02. Out of State Applicants - Mathematical Thinking for Instruction. *(4-4-13)*

a. *Out of state applicants shall take the state approved mathematics instruction course titled "Mathematical Thinking for Instruction" as a certification requirement. The "Mathematical Thinking for Instruction" course consists of three (3) credits (or forty-five (45) contact hours of in-service training).* *(3-29-10)*

b. *Those individuals who qualify for an Idaho certificate through state reciprocity shall be granted a three-year, non-renewable, interim certificate to allow time to meet the Idaho Mathematics In-service program requirement.* *(4-4-13)*

03. **b.** Waiver of Mathematics In-Service Program.: ***W***when applying for certificate renewal, an automatic waiver of the mathematics in-service program requirement shall be granted for any certificated individual living outside of the state of Idaho who is not currently employed as an educator in the state of Idaho. This waiver applies only as long as the individual remains outside the state of Idaho or as long as the individual is not employed as an educator in the state of Idaho. Upon returning to Idaho or employment in an Idaho public school, the educator will need to complete this requirement prior to the next renewal period. *(3-20-14)*( )

04. **c.** ***Renewal Requirement*** Idaho Comprehensive Literacy Course.: ***I***in order to recertify, a state approved Idaho Comprehensive Literacy Course shall be required. Successful completion of a state approved Idaho Comprehensive Literacy course shall be a one-time requirement for renewal of certification for those currently employed in an Idaho school district and shall be included within current requirements for continuing education for renewal. The following individuals *listed in Subsection 016.04.a. through 016.04.c. shall* must successfully complete an Idaho Comprehensive Literacy course in order to recertify: *(4-4-13)*( )

a. Each teacher holding an Early Childhood/Early Childhood Special Education Blended Certificate

(Birth - Grade 3) who is employed in an elementary classroom (multi-subject classroom, K-8); (4-4-13)

b. Each teacher holding a Standard Elementary Certificate (K-8) who is employed in an elementary classroom (K-8); and (3-20-14)

c. Each teacher holding a Standard Exceptional Child Certificate (K-12) who is employed in a K-12 classroom. (3-20-14)

~~***05. Out of State Applicants - Idaho Comprehensive Literacy Course.*** *(3-20-14)*~~

~~***a.*** *Out of state applicants shall take a state approved Idaho Comprehensive Literacy Course as a certification requirement.* *(3-20-14)*~~

~~***b.*** *Those individuals who qualify for an Idaho certificate through state reciprocity shall be granted a three-year, non-renewable, interim certificate to allow time to meet the Idaho Comprehensive Literacy Course requirement.* *(3-20-14)*~~

13. Leave of Absence. Certificated teachers who are granted a district approved leave of absence from teaching for one (1) or more years may receive a one-year (1) extension to their renewal time frame. ( )

a. Teachers must notify the Department of Education that they have an approved leave of absence from the school district prior to the expiration of their current teaching certificate. ( )

b. The time frame may be extended to two (2) years if the purpose of the leave is to serve in a non-teaching district approved position. ( )

c. In the event of military leave, the renewal timeframe may be extended to a timeframe equivalent to the military obligation. ( )

14. Inactive Status. Certificated teachers who are no longer in the classroom may apply for inactive status. ( )

a. During inactive status, in order to return to active status, the teacher must: ( )

i. maintain the relevant credit renewal requirements specified in these rules; and ( )

ii. complete any new courses implemented prior to last certificate renewal prior to returning to active status. ( )

b. On return to active status, the teacher shall be placed on year one of the standard professional certificate, provided any contingencies applicable at the time the individual became inactive shall apply upon reactivation. ( )

c. To be placed on inactive status a teacher must apply for inactive certificate status prior to or at the time of active certificate renewal. ( )

01~~7~~6. CONTENT, PEDAGOGY AND PERFORMANCE ASSESSMENT FOR CERTIFICATION.

01. Assessments. State Board of Education approved content, pedagogy and performance area assessments shall be used in the state of Idaho to ensure qualified teachers are employed in Idaho's classrooms. The Professional Standards Commission shall recommend assessments and qualifying scores to the State Board of Education for approval. (4-2-08)

02. Out-of-State Waivers. An out-of-state applicant for Idaho certification holding a current certificate may request a waiver from the above requirement. The applicant shall provide evidence of passing a state approved content, pedagogy and performance area assessment(s) or hold current National Board for Professional Standards Teaching Certificate. (4-2-08)

03. Idaho Comprehensive Literacy Assessment. All applicants for initial Idaho certification (Kindergarten through grade twelve (12)) from an Idaho approved teacher education program must demonstrate competency in comprehensive literacy. Areas to be included as parts of the assessment are: phonological awareness, phonics, fluency, vocabulary, comprehension, writing, and assessments and intervention strategies. Each Idaho public higher education institution shall be responsible for the assessment of teacher candidates in its teacher preparation program. The assessment must measure teaching skills and knowledge congruent with current research on best literacy practices for elementary students or secondary students (adolescent literacy) dependent upon level of certification and English Language Learners. In addition the assessment must measure understanding and the ability to apply strategies and beliefs about language, literacy instruction, and assessments based on current research and best practices congruent with International Reading Association/National Council of Teachers of English standards, National English Language Learner's Association professional teaching standards, National Council for Accreditation of Teacher Education standards, and state accreditation standards. (4-7-11)

04. Technology Assessment. All applicants for initial Idaho certification (Kindergarten through grade twelve (12)) from an Idaho approved teacher education program must demonstrate proficiency in relevant technology skills and practices to enhance classroom management and instruction. Each Idaho public higher education institution shall be responsible for the assessment of teacher candidates in its teacher preparation program. The assessment must measure understanding and the ability to apply strategies and beliefs about the integration of technology based on current research and best practices congruent with the International Society for Technology in Education professional teaching standards, the National Council for Accreditation of Teacher Education standards, and state accreditation standards. (4-7-11)

~~***018. STANDARD ELEMENTARY CERTIFICATE.***~~
~~*A Standard Elementary Certificate makes an individual eligible to teach grades Kindergarten (K) through eight (8), and may be issued to any person who has a bachelor's degree from an accredited college or university and who meets the following requirements:* (3-16-04)~~

~~***01. General Education Requirements**. Completion of the general education requirements at an accredited college or university is required.* (3-30-07)~~

~~***02. Professional Education Requirements**.* (3-30-07)~~

~~***a.** A minimum of twenty-four (24) semester credit hours, or thirty-six (36) quarter credit hours, in the philosophical, psychological, and methodological foundations and in the professional subject matter of elementary education, which shall include at least six (6) semester credit hours, or nine (9) quarter credit hours, in developmental reading and its application to the content area.* (3-16-04)~~

~~***b.** At least six (6) semester credit hours, or nine (9) quarter credit hours, of elementary student teaching or two (2) years of satisfactory experience as a teacher in grades K-8.* (3-16-04)~~

~~***03. Additional Requirements**. An institutional recommendation from an accredited college or university or verification of two (2) years of teaching experience in grades Kindergarten (K) through eight (8).* (3-16-04)~~

~~***04. Area of Endorsement**. All individuals, who begin an Idaho approved preparation program after July 1, 2013, seeking a Standard Elementary Certificate shall complete the requirements for a subject area endorsement as outlined under requirements for a Standard Secondary Certificate. An endorsement allowing teaching of that subject through grade nine (9) or a K-12 endorsement shall be added to the Standard Elementary Certificate.* (3-12-14)~~

~~***05. Proficiency**. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate shall meet or exceed the state qualifying score on approved elementary content area and pedagogy assessments.* (3-16-04)~~

~~***019. EARLY CHILDHOOD / EARLY CHILDHOOD SPECIAL EDUCATION BLENDED CERTIFICATE.***~~
~~*An Early Childhood / Early Childhood Special Education Blended Certificate is non-categorical and makes an*~~

~~*individual eligible to teach in any educational setting for youth from birth to grade three (3), including those who are at-risk or have developmental delays. The Early Childhood / Early Childhood Special Education Blended Certificate may be issued to any person with a bachelor's degree from an accredited college or university and who meets the following minimum requirements:* (3-16-04)~~

~~***01. General Education Requirements**. Completion of the general education requirements at an accredited college or university is required.* (3-30-07)~~

~~***02. Professional Education Requirements**.* (3-16-04)~~

~~***a.** A minimum of thirty (30) semester credit hours, or forty five (45) quarter credit hours, in the philosophical, psychological, and methodological foundations, in instructional technology, and in the professional subject matter of early childhood and early childhood special education. The professional subject matter of early childhood and early childhood special education shall include course work specific to the young child from birth through grade three (3)in the areas of child development and learning; curriculum development and implementation; family and community relationships; assessment and evaluation; professionalism; and, application of technologies.* (3-16-04)~~

~~***b.** The required thirty (30) semester credit hours, or forty-five (45) quarter credit hours, shall include not less than six (6) semester credit hours, or nine (9) quarter credit hours, of early childhood student teaching and three (3) semester credit hours, or four (4) quarter credit hours, of developmental reading.* (3-16-04)~~

~~***03. Additional Requirements**. An institutional recommendation from an accredited college or university, and passage of the Idaho Comprehensive Literacy Exam.* (3-16-04)~~

~~***04. Proficiency**. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate shall meet or exceed the state qualifying score on approved early-childhood assessments.* (3-16-04)~~

~~***020. STANDARD SECONDARY CERTIFICATE.***~~
~~*A Standard Secondary Certificate makes an individual eligible to teach in grades six (6) through twelve (12). A Secondary Certificate may be issued to any person with a bachelor's degree from an accredited college or university and who meets the following minimum requirements:* (3-16-04)~~

~~***01. General Education Requirements**. Completion of the general education requirements at an accredited college or university is required.* (3-30-07)~~

~~***02. Professional Education Requirements**.* (3-30-07)~~

~~***a.** A minimum of twenty (20) semester credit hours, or thirty (30) quarter credit hours, in the philosophical, psychological, and methodological foundations, instructional technology, and in the professional subject matter of secondary education, which must include at least three (3) semester credit hours, or four (4) quarter credit hours, of reading in the content area.* (3-16-04)~~

~~***b.** The required twenty (20) semester credit hours, or thirty (30) quarter credit hours, must also include at least six (6) semester credit hours, or nine (9) quarter credit hours, of secondary student teaching or two (2) years of satisfactory experience as a teacher in grades six (6) through twelve (12).* (3-16-04)~~

~~***03. Teaching Field Requirements**. Preparation in at least two (2) fields of secondary teaching: a first teaching field of at least thirty (30) semester credit hours, or forty five (45) quarter credit hours, and a second teaching field of at least twenty (20) semester credit hours, or thirty (30) quarter credit hours. Preparation of not less than forty-five (45) semester credit hours, or sixty-seven (67) quarter credit hours, in a single subject area may be used in lieu of the first teaching field or second teaching field requirements.* (3-30-07)~~

~~***04. Additional Requirements**. An institutional recommendation from an accredited college or university or verification of two (2) years of teaching experience in grades six (6) through twelve (12).* (3-16-04)~~

~~***05.*** ***Proficiency****. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate must have a qualifying score on an approved content area assessment in any area(s) for which the certificate or endorsement(s) will be applied.* *(3-16-04)*~~

017. IDAHO INTERIM CERTIFICATE.

01. Teacher Holding Certificates From States Other Than Idaho. Teachers holding valid certificates from other states may apply for a non-renewable three-year (3) interim certificate as follows: ( )

a. Teachers with less than three (3) years teaching experience may be granted an interim residency certificate. A teacher on an interim residency certificate may apply for a standard professional certificate once they have completed three (3) years of teaching certificate and meet the following requirements: ( )

i. Idaho's proficiency and measurable student achievement/growth requirements. ( )

ii. May provide evidence based on experience outside of the state of Idaho if proficiency and measurable student achievement is comparable to Idaho requirements. ( )

iii. Must meet the standard professional certificate proficiency and measurable student achievement while serving at least one year as a teacher in Idaho. ( )

iv. Teachers who do not meet the standard professional certificate requirements within three (3) years will be subject to the same provisions of the residency certificate at time of expiration. ( )

b. Teachers with three (3) or more years of experience may apply for an interim professional certificate. A teacher on an interim professional certificate may apply for a standard professional certificate once they show evidence of meeting Idaho's standard professional certificate proficiency and measurable student achievement. ( )

i. May provide evidence based on experience outside of the state of Idaho if proficiency and measurable student achievement is comparable to Idaho requirements. ( )

ii. Must meet the standard professional certificate proficiency and measurable student achievement while serving at least one year as a teacher in Idaho. ( )

iii. Teachers who do not meet the standard professional certificate requirements within three (3) years will be subject to the same provisions of the residency certificate. ( )

c. Teachers with eight (8) or more years of experience may apply for an interim master professional certificate. To qualify for an interim master professional certificate the teacher must: ( )

i. Show proof of meeting the master professional certificate proficiency and measurable student growth requirements through evidence based on experience outside of the state of Idaho if proficiency and measurable student achievement is comparable to Idaho requirements; or ( )

ii. Hold a master, tier three, or equivalent certificate or license in certifying state. ( )

iii. A teacher on an interim master certificate may apply for an Idaho master professional certificate if they meet proficiency and measurable student achievement requirements of the Idaho master professional certificate in two (2) of three (3) years, including the final year on the interim master certificate. ( )

iv. A teacher on an interim master certificate may apply for an Idaho standard professional certificate if they meet proficiency and measurable student achievement requirements of the Idaho professional certificate in two (2) of three (3) years, including the final year on the interim master certificate. If the teacher does not meet the proficiency and measurable student achievement requirements the teacher may receive a contingent status professional certificate. ( )

d. All out of state teachers must meet the following requirements: ( )

i. Will be reviewed by the hiring district for technology deficiencies and may be required to take technology courses to improve their technology skills. ( )

ii. Shall take the state approved mathematics instruction course titled "Mathematical Thinking for Instruction." The course consists of three (3) credits or forty-five (45) contact hours of in-service training. ( )

02. Idaho Comprehensive Literacy Course. For all Idaho teachers working on interim certificates, alternate routes or coming from out of the state, completion of a state approved reading instruction course shall be a one-time requirement for full certification. ( )

03. Occupational Specialist Certificate. Occupational Specialist Certificate applicants must apply for an interim residency certificate. The limited occupational specialist certificate is a one-time three-year (3) interim certificate. Teachers who possess a limited occupation specialist certificate cannot apply for a professional level certificate at the end of the interim certificate period. Standard and advanced occupational specialist certificate holders may apply for a professional level certificate at the conclusion of the interim certificate period. ( )

04. Reinstatement of Expired Certificate. An individual holding an expired Idaho certificate may be issued a nonrenewable three-year (3) interim certificate. During the validity period of the interim certificate, the applicant must meet all current requirements listed for the specific certificate and endorsement(s) including the appropriate content, pedagogy, and performance assessments. ( )

05. Foreign Institutions. An educator having graduated from a foreign institution that is listed in the Accredited Degree-Granting Institutions section of the "Accredited Institutions of Postsecondary Education" and having a valid/current teaching certificate/license from the country or province in which the foreign institution is located, may be issued a non-renewable, three-year (3) interim certificate. The applicant must also complete the requirements listed in Section 013 of these rules. ( )

018 -- 020. (RESERVED)

021. ENDORSEMENTS.
Holders of a ~~*Secondary Certificate or a Standard*~~ Elementary Certificate, Secondary Certificate, Exceptional Child Certificate, Standard Occupational Specialist Certificate, ~~*and*~~ or Advanced Occupational Specialist Certificate may be granted endorsements in subject areas as provided herein. Idaho preparation programs shall prepare candidates for endorsements in accordance with the Idaho Standards for Initial Certification of Professional School Personnel. An official statement of competency in a teaching area or field is acceptable in lieu of courses for a teaching major or minor if such statements originate in the department or division of the accredited college or university in which the competency is established and are approved by the director of teacher education of the recommending college or university. To add an endorsement to an existing credential, an individual shall complete the credit hour requirements as provided herein and shall also meet or exceed the state qualifying score on appropriate, state approved content, pedagogy and performance assessments. When converting semester credit hours to quarter credit hours, two (2) semester credit hours is equal to three (3) quarter credit hours. ~~*(4-4-13)*~~( )

01. Clinical Experience Requirement. All endorsements require supervised teaching experience in the relevant content area, or a State Department of Education approved alternative clinical experience. (3-12-14)

(BREAK IN CONTINUITY OF SECTIONS)

028. ~~*EXCEPTIONAL CHILD CERTIFICATE.*~~ (RESERVED)
~~*Holders of this certificate work with children who have been identified as having an educational impairment.*~~
~~*(3-16-04)*~~

~~***01. General Education Requirements**. Completion of the general education requirements at an accredited college or university is required.*~~ ~~*(3-30-07)*~~

02. Generalist Endorsement (K-12). *The Generalist K-12 endorsement is non-categorical and allows one (1) to teach in any K-12 special education setting. This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. Regardless of prior special education experience, all initial applicants must provide an institutional recommendation that an approved special education program has been completed, with field work to include an internship and student teaching in a special education setting. To be eligible for an Exceptional Child Certificate with a Generalist K-12 endorsement, a candidate must have satisfied the following requirements: (4-4-13)*

a. *Completion of a baccalaureate degree from an accredited college or university. (3-16-04)*

b. *Completion, in an Idaho college or university, of a program in elementary, secondary, or special education currently approved by the Idaho State Board of Education, or completion, in an out-of-state college or university, of a program in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed. (3-16-04)*

c. *Completion of thirty (30) semester credit hours in special education, or closely related areas, as part of an approved special education program. (3-16-04)*

d. *Each candidate must have a qualifying score on an approved core content assessment and a second assessment related to the specific endorsement requested. (3-16-04)*

03. Early Childhood Special Education Endorsement (Pre-K-3). *The Early Childhood Special Education (Pre-K-3) endorsement is non-categorical and allows one to teach in any Pre-K-3 special education setting. This endorsement may only be added to the Standard Exceptional Child Certificate in conjunction with the Generalist K-12 endorsement and is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. To be eligible for an Exceptional Child Certificate with an Early Childhood Special Education (Pre-K-3) endorsement, a candidate must have satisfied the following requirements: (4-7-11)*

a. *Completion of a program of a minimum of twenty (20) semester credit hours in the area of Early Childhood Education to include course work in each of the following areas: Child development and behavior with emphasis in cognitive language, physical, social and emotional areas, birth through age eight (8); Curriculum and program development for young children ages three to eight (3-8); Methodology: planning, implementing and evaluating environments and materials for young children ages three to eight (3-8); Guiding young children's behavior: observing, assessing and individualizing ages three to eight (3-8); Identifying and working with atypical young children ages three to eight (3-8) Parent-teacher relations; and, Field work to include an internship and student teaching at the Pre-K - 3 grades. (4-7-11)*

04. Hearing Impairment Endorsement (K-12). *Completion of a minimum of thirty (30) semester credit hours in the area of hearing impairment. An institutional recommendation specific to this endorsement is required. To be eligible for an Exceptional Child Certificate with a Hearing Impaired endorsement, a candidate must have satisfied the following requirements: (4-11-06)*

a. *Completion of a baccalaureate degree from an accredited college or university; (4-11-06)*

b. *Completion of a program from an Idaho college or university in elementary, secondary, or special education currently approved by the Idaho State Board of Education; or (4-11-06)*

c. *Completion of a program from an out-of-state college or university in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed; (4-11-06)*

d. *Completion of a program of a minimum of thirty (30) semester credit hours in the area of Hearing Impairment. Must receive an institutional recommendation specific to this endorsement from an accredited college or university. (4-11-06)*

05. Visual Impairment Endorsement (K-12). *Completion of a program of a minimum of thirty (30)*

~~*semester credit hours in the area of visual impairment. An institutional recommendation specific to this endorsement is required. To be eligible for an Exceptional Child Certificate with a Visually Impaired endorsement, a candidate must have satisfied the following requirements:* *(4-11-06)*~~

~~***a.*** *Completion of a baccalaureate degree from an accredited college or university;* *(4-11-06)*~~

~~***b.*** *Completion of a program from an Idaho college or university in elementary, secondary, or special education currently approved by the Idaho State Board of Education; or* *(4-11-06)*~~

~~***c.*** *Completion of a program from an out-of-state college or university in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed;* *(4-11-06)*~~

~~***d.*** *Completion of a program of a minimum of thirty (30) semester credit hours in the area of Visual Impairment. Must receive an institutional recommendation specific to this endorsement from an accredited college or university.* *(4-11-06)*~~

(BREAK IN CONTINUITY OF SECTIONS)

~~***034. CERTIFICATION STANDARDS FOR PROFESSIONAL-TECHNICAL EDUCATORS.***~~
~~*Teachers of professional-technical classes or programs in secondary or postsecondary schools must hold an endorsement in an appropriate occupational discipline. This endorsement may be held on a Secondary Teaching Certificate or on an Occupational Specialist Certificate. For postsecondary instructors and administrators, certification fees are set by the State Board for Professional-Technical Education, and application processes are managed by the Division of Professional-Technical Education.* *(3-16-04)*~~

~~***035. DEGREE-BASED PROFESSIONAL-TECHNICAL CERTIFICATION.***~~

~~***01. Teacher Preparation Through Degreed Program****. Individuals graduating from an approved occupational teacher preparation degree program qualify to teach in the following five (5) disciplines: Agricultural Science & Technology; Business Technology Education; Family & Consumer Science; Marketing Technology Education; and Technology Education. Occupational teacher preparation course work must meet the Idaho Standards for the Initial Certification of Professional School Personnel. The occupational teacher education program must provide appropriate content to constitute a major in the identified field. Student teaching shall be in an approved program and include experiences in the major field. Applicants shall have accumulated four thousand (4,000) clock hours of related work experience or shall have completed an approved practicum in their respective field of specialization.* *(3-16-04)*~~

~~***02. Professional-Technical Administrator Certificate****. The Professional-Technical Administrator certificate is required for an individual serving as an administrator, director, manager or coordinator of professional-technical education at the state, secondary or postsecondary level. Individuals must meet the following prerequisites to qualify for the Professional-Technical Administrator Certificate. Equivalence in each area will be determined on an individual basis by the State Division of Professional-Technical Education.* *(3-16-04)*~~

~~***a.*** *Qualify for or hold an Occupational Specialist certificate or hold an occupational endorsement on the secondary teaching credential;* *(3-16-04)*~~

~~***b.*** *Provide evidence of a minimum of three (3) years' teaching in an occupational discipline;* *(3-16-04)*~~

~~***c.*** *Hold a masters degree; and,* *(3-16-04)*~~

~~***d.*** *Completed at least fifteen (15) semester credits of administrative course work. Applicants must have completed: financial aspects of professional-technical education; administration of personnel; and legal aspects of professional-technical education. Additional course work can be selected from any of the following areas:*~~

~~*administration and supervision of occupational programs; instructional supervision; administration internship; curriculum development; curriculum evaluation; research in curriculum; school community relations; communication; teaching the adult learner; coordination of work-based learning programs; and/or measurement and evaluation.* (3-16-04)~~

~~***e.*** *To renew the Professional-Technical Administrator Certificate, individuals are required to complete six (6) semester hours of related course work or meet renewal requirements for professional-technical teachers.* (3-16-04)~~

~~***03. Work-Based Learning Coordinator Endorsement****. Educators assigned to coordinate approved work-based experiences must hold the Work-Based Learning Coordinator endorsement. To be eligible, applicants must hold an occupational endorsement on the Standard Secondary Certificate or qualify for an Occupational Specialist Certificate, plus complete course work in coordination of work-based learning programs.* (3-16-04)~~

~~***04. Career Counselor Endorsement****. The endorsement for a Career Counselor may be issued to applicants who hold a current Pupil Personnel Services Certificate endorsed Counselor K-12 and who have satisfied the following professional technical requirement: Career Pathways and Professional Technical Guidance; Principles/Foundations of Professional-Technical Education; and Theories of Occupational Choice.* (3-16-04)~~

~~***036. INDUSTRY BASED PROFESSIONAL TECHNICAL CERTIFICATION.***~~
~~*Persons who need to hold the Occupational Specialist Certificate include: secondary educators assigned to Health Occupations Education and to Trades & Industry Education; specialized occupational areas where specific degree-granting professional technical teacher education programs do not exist; and postsecondary professional technical educators who teach courses to 9-12 students.* (3-16-04)~~

~~***01. General Requirements****. Applicants must: be eighteen (18) years of age; document full time, successful, recent, gainful employment in the area for which certification is requested; possess either a high school diploma or General Educational Development (GED) certificate; meet provisions of Idaho Code; and, verify technical skills through work experience, certification or testing as listed below. When applicable, requirements of occupationally related state agencies must also be met. Since educational levels and work experiences vary, applicants may be determined highly qualified under any one (1) of the following three (3) options:* (3-16-04)~~

~~***a.*** *Have sixteen-thousand (16,000) hours of full-time, successful, recent, gainful employment in the occupation for which certification is requested. Up to forty-eight (48) months credit can be counted toward the eight (8) years on a month-to-month basis for journeyman training and/or postsecondary training successfully completed as a full-time student in an approved/approvable, postsecondary, professional-technical education program.* (3-16-04)~~

~~***b.*** *Have a bachelor's degree in the specific occupation or related area, plus six-thousand (6,000) hours of full-time, successful, recent, gainful employment in the occupation.* (3-16-04)~~

~~***c.*** *Meet one (1) of the following:* (3-16-04)~~

~~*i.* *Have at least journeyman level plus two (2) years of recent, full time, gainful, related work experience. A person who has completed a formal apprenticeship program in the occupation or related area for which certification is requested. The apprenticeship must be under the direction of an employer and the Bureau of Apprenticeship and Training or an approved State Apprenticeship Agency;* (3-16-04)~~

~~*ii.* *Pass approved state or national certification/certification examination plus three (3) years of recent, full time, gainful, related work experience (length and type of work experience in emergency services and health professions will be determined on an individual basis); or* (3-16-04)~~

~~*iii.* *Pass approved industry related certification for skill level requirements (vendor and industry specific) plus three (3) years of recent, full-time, gainful, related work experience (length and type of work experience in emergency services and health professions will be determined on an individual basis). If no competency test exists, a written recommendation from a representative occupational advisory council/committee and recorded in its minutes is required to verify occupational competence.* (3-16-04)~~

~~***02.*** ***Limited Occupational Specialist Certificate****. This certificate is issued to individuals who are new to teaching trades and health occupations in public schools. The certificate is valid for three (3) years.* *(3-16-04)*~~

~~***a.*** *Within the first eighteen (18) months, the holder must complete the pre-service workshop sponsored by the State Division of Professional-Technical Education and an approved course in professional technical methods and student assessment.* *(3-16-04)*~~

~~***b.*** *Complete a new-teacher induction workshop at the state or district level.* *(3-16-04)*~~

~~***c.*** *File a Professional Development Plan with the State Division of Professional-Technical Education.* *(3-16-04)*~~

~~***d.*** *Within the three (3) year period of the Limited Occupational Specialist Certificate, the instructor must satisfactorily complete course work which includes competencies in four (4) of the following: Principles/ Foundations of Occupational Education; Career Pathways and Guidance; Analysis, Integration, and Curriculum Development; Measurement and Evaluation; and Methods of Teaching Occupational Education.* *(3-16-04)*~~

~~***03.*** ***Standard Occupational Specialist Certificate****. This certificate is issued to individuals who have completed course work equivalent to that required of the Limited Occupational Specialist Certificate. The certificate must be renewed every five (5) years, which shall include completion of six (6) semester credit hours of approved course work or verification of two hundred forty (240) hours of approved related work experience or ninety (90) hours of attendance at approved technical conferences, institutes, or workshops or any equivalent combination thereof, and file of a Professional Development Plan for the next certification period.* *(3-16-04)*~~

~~***04.*** ***Advanced Occupational Specialist Certificate****. This certificate is issued to individuals who meet all the requirements outlined below:* *(3-16-04)*~~

~~***a.*** *Meet the requirements for the Standard Occupational Specialist Certificate;* *(3-16-04)*~~

~~***b.*** *Provide evidence of completion of a teacher training degree program or eighteen (18) semester credits of approved course work in addition to the twelve (12) semester credits required for the Standard Occupational Specialist Certificate (a total of thirty (30) semester credits); and* *(3-16-04)*~~

~~***c.*** *File a new Professional Development Plan for the next certification period.* *(3-16-04)*~~

~~***d.*** *This certificate must be renewed every five (5) years, which shall include completion of six (6) semester credit hours of approved course work or submit verification of two hundred forty (240) hours of approved related work experience or ninety (90) hours of attendance at approved technical conferences, institutes and workshops or any equivalent combination thereof, and file a new Professional Development Plan for the next certification period.* *(3-16-04)*~~

03~~7~~4. -- 041. (RESERVED)

042. ALTERNATE ROUTES TO CERTIFICATION.
The purpose of this program is to provide an alternative for individuals to become certificated teachers in Idaho without following a standard teacher education program. Alternative Routes to Certification shall allow individuals to serve as the teacher of record prior to having earned full certification status. The teacher of record is defined as the person who is primarily responsible for planning instruction, delivering instruction, assessing students formatively and summatively, and designating the final grade. Individuals who are currently employed as Para-Educators, individuals who are currently certificated to teach but who are in need of emergency certification in another area, and individuals with strong subject matter background but limited experience with educational methodology shall follow the alternate certification requirements provided herein. Applicants completing an approved alternative route to authorization may be granted an Idaho interim residency certificate and are subject to all of the requirements of the interim certificate as provided for in Section 017. ~~*(4-4-13)*~~( )

~~***043***~~**01. Alternative Authorization -- Teacher To New Certification**. The purpose of this alternative

authorization is to allow Idaho school districts to request endorsement/certification when a professional position cannot be filled with someone who has the correct endorsement/certification. Alternative authorization in this area ~~is valid for up to three (3) years and is nonrenewable~~. ~~(5-8-09)~~( )

~~01~~a. ~~Initial Qualifications.~~ Prior to application, a candidate must hold a Bachelor's degree, and a valid Idaho teacher certificate without full endorsement in content area of need. The school district must provide supportive information attesting to the ability of the candidate to fill the position. ~~(5-8-09)~~( )

~~02~~b. Alternative Route Preparation Program. (3-20-04)

~~a~~i. Option I - Teacher to New Certification/Endorsement. ~~(5-8-09)~~

~~i.~~ Candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. Candidate must complete a minimum of nine (9) semester credits annually to ~~be~~ maintain eligib~~le~~ility ~~for extension of up to a total of three (3) years~~. ~~(3-20-04)~~

~~ii.~~ The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. ~~(3-20-04)~~

~~iii.~~ Candidate shall meet all requirements for the endorsement/certificate as provided herein. ~~(3-20-04)~~( )

~~b~~ii. Option II - National Board (endorsement only). By earning National Board certification in content specific areas teachers may gain endorsement in a corresponding subject area. (5-8-09)

~~c~~iii. Option III - Master's degree or higher (endorsement only). By earning a graduate degree in a content specific area, candidates may add an endorsement in that same content area to a valid certificate. (5-8-09)

~~d~~iv. Option IV - Testing and/or Assessment (endorsement only). Two (2) pathways are available to some teachers, depending upon endorsement(s) already held. ~~(5-8-09)~~

~~i.~~ Pathway 1 - Endorsements may be added through state-approved testing and a mentoring component. The appropriate test must be successfully completed within the first year of authorization in an area closely compatible with an endorsement for which the candidate already qualifies and is experienced. Additionally requires the successful completion of a one (1)-year state-approved mentoring component. ~~(5-8-09)~~

~~ii.~~ Pathway 2 - Endorsements may be added through state-approved testing in an area less closely compatible with an endorsement for which the candidate already qualifies and is experienced. The appropriate test must be successfully completed within the first year of the authorization. Additionally requires the successful completion of a one (1)-year state-approved mentoring component and passing a final pedagogy assessment. ~~(5-8-09)~~( )

~~044~~02. **Alternative Authorization -- Content Specialist**. The purpose of this alternative authorization is to offer an expedited route to certification for individuals who are highly and uniquely qualified in a subject area to teach in a district with an identified need for teachers in that area. ~~Alternative authorization in this area is valid for three (3) years and is not renewable.~~ ~~(3-20-04)~~( )

~~01~~a. Initial Qualifications. (3-20-04)

~~a~~i. Prior to application, a candidate must hold a Bachelor's degree or have completed all of the requirements of a Bachelor's degree except the student teaching or practicum portion. (4-4-13)

~~b~~ii. The candidate shall meet enrollment qualifications of the alternative route preparation program. (3-20-04)

~~02~~b. Alternative Route Preparation Program -- College/University Preparation. (3-20-04)

~~*a*~~i. A consortium comprised of a designee from the college/university to be attended, and a representative from the school district, and the candidate shall determine preparation needed to meet the Idaho Standards for Initial Certification of Professional School Personnel. This preparation must include mentoring and a minimum of one (1) classroom observation per month until certified. (3-20-04)

~~*b*~~ii. Prior to entering the classroom, the candidate completes eight (8) to sixteen (16) weeks of accelerated study in education pedagogy. (3-20-04)

~~*c*~~iii. Candidate will work toward completion of the alternative route preparation program through a participating college/university, and the employing school district. A teacher must attend, participate in, and successfully complete an individualized alternative route preparation program as one (1) of the conditions to receive a recommendation for full certification. (3-20-04)

~~*d*~~iv. The participating college/university shall provide procedures to assess and credit equivalent knowledge, dispositions and relevant life/work experiences. (3-20-04)

~~*e*~~v. Prior to entering the classroom, the candidate shall meet or exceed the state qualifying score on appropriate state-approved content, pedagogy, or performance assessment. (3-20-04)

~~*045*~~**03**. **Non-traditional Route To Teacher Certification**. An individual may acquire interim certification as found in Section 01~~5~~6 of these rules through an approved non-traditional route certification program. ~~*(3-20-14)*~~(____)

~~*01*~~**a**. ~~***Approval of the Program.***~~ The State Board of Education must approve any non-traditional route to teacher certification. The program must include, at a minimum, the following components: ~~*(3-20-14)*~~(____)

~~*a*~~i. Preassessment of teaching and content knowledge; (4-6-05)

~~*b*~~ii. An academic advisor with knowledge of the prescribed instruction area; and (4-6-05)

~~*c*~~iii. Exams of pedagogy and content knowledge. (4-6-05)

~~*02*~~**b**. ~~***Eligibility***~~. Individuals who possess a bachelor's degree or higher from an institution of higher education may utilize this non-traditional route to an interim Idaho Teacher Certification. ~~*(3-20-14)*~~(____)

~~*03*~~**c**. ~~***Requirements for Completion.***~~ To complete this non-traditional route, the individual must: ~~*(3-20-14)*~~(____)

~~*a*~~i. Complete a Board approved program; (4-6-05)

~~*b*~~ii. Pass the Board approved pedagogy and content knowledge exams; and (4-6-05)

~~*c*~~iii. Complete the Idaho Department of Education Criminal History Check. (4-6-05)

~~*04*~~**d**. ~~***Interim Certificate.***~~ Upon completion of the certification process described herein, the individual will be awarded an ~~*interim certificate from the State Department of Education's Bureau of Certification and Professional Standards. The term of the interim certification shall be three (3) years*~~ Idaho residency certificate. During the term of the interim certificate, teaching by the individual must be done in conjunction with a two (2) year ~~*a*~~ teacher mentoring program approved by the Board. The individual must complete the mentoring program during the term of the ~~*interim*~~ certificate. In the case where teachers start their mentoring program in the third year of their ~~*interim*~~ certificate, they must apply to the State Department of Education Teacher Certification Department for a ~~*waiver*~~ one (1) year extension to complete the final year of their mentoring program for ~~*full*~~ professional certification. All laws and rules governing the fully certificated teachers with respect to conduct, discipline and professional standards shall apply to individuals teaching under a~~*n interim*~~ residency certificate. ~~*(3-20-14)*~~(____)

~~*05*~~**e**. ~~***Interim Certificate Not Renewable.*** *Interim c*~~Certification hereunder is only available on a one (1) time basis per individual. It will be the responsibility of the individual to obtain full Idaho ~~*Teacher*~~ Professional

Certification during the three (3) year ~~interim~~ certification term. ~~(4-6-05)~~(____)

~~06~~f. ~~Types of Certificates and Endorsements.~~ The non-traditional route may be used for first-time certification~~, subsequent certificates~~, and additional endorsements. ~~(3-20-14)~~(____)

~~046. (RESERVED)~~

~~047~~04. **Alternative Authorization - Pupil Personnel Services**. The purpose of this alternative authorization is to allow Idaho school districts to request emergency endorsement/certification when a position requiring the Pupil Personnel Services certificate cannot be filled with someone who has the correct endorsement/certification. The exception to this rule is the School Nurse endorsement. The requirements for this endorsement are already defined in Subsection 027.03, of these rules. (4-2-08)

~~01~~a. ~~Term of Validity.~~ Alternative authorization in this area is valid for three (3) years and will be reviewed annually and is nonrenewable. ~~(4-2-08)~~(____)

~~02~~b. ~~Initial Qualifications.~~ The applicant must complete the following: ~~(4-2-08)~~(____)

~~a~~i. Prior to application, a candidate must hold a Masters degree and hold a current Idaho license from the Bureau of Occupational Licenses in the area of desired certification; and (4-2-08)

~~b~~ii. The employing school district must provide supportive information attesting to the ability of the candidate to fill the position. (4-2-08)

~~03~~c. **Alternative Route Preparation Program**. (4-2-08)

~~a~~i. The candidate must work toward completion of the alternative route preparation program through a participating college/university and the employing school district. (4-2-08)

~~b~~ii. The candidate must complete a minimum of nine (9) semester credits annually to be eligible for extension of up to a total of three (3) years. (4-2-08)

~~c~~iii. The participating college/university or the State Department of Education will provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (4-2-08)

~~d~~iv. The candidate must meet all requirements for the endorsement/certificate as provided herein. (4-2-08)

04~~8~~3. -- 059. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

066. FEES.
The state department of education shall maintain a record of all certificates issued, showing names, dates of issue and renewal, and if revoked, the date thereof and the reason therefor and the performance rating of each component on the statewide performance evaluation system. A nonrefundable fee shall accompany each application for a prekindergarten through grade twelve (12) certificate, alternate certificate, change in certificate or replacement as follows: ~~(3-16-04)~~(____)

01. ~~Initial~~ **Residency Certificate**. All types, issued for ~~five~~ three (~~5~~3) years -- seventy-five dollars ($75). ~~(3-16-04)~~(____)

02. **New or Renewal Certificate**. All types, issued for five (5) years -- seventy-five dollars ($75). ~~(3-16-04)~~(____)

03. **Alternate Route Authorization**. All types~~, issued for one (1) year~~ -- one hundred dollars ($100). ~~(3-16-04)~~( )

04. **Additions~~ or~~, Changes, or Late Fees During the Life of an Existing Certificate**. Twenty-five dollars ($25). ~~(3-16-04)~~( )

05. **To Replace an Existing Certificate**. Ten dollars ($10). (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

120. LOCAL DISTRICT EVALUATION POLICY -- TEACHER AND PUPIL PERSONNEL CERTIFICATE HOLDERS.
Each school district board of trustees will develop and adopt policies for teacher performance evaluation using multiple measures in which criteria and procedures for the evaluation of certificated personnel are research based and aligned to Charlotte Danielson Framework for Teaching Second Edition domains and components of instruction. The process of developing criteria and procedures for certificated personnel evaluation will allow opportunities for input from those affected by the evaluation; i.e., trustees, administrators, teachers, and parents. The evaluation policy will be a matter of public record and communicated to the certificated personnel for whom it is written. Summative evaluations based on the Idaho state performance evaluation system must include observations completed by two (2) observers who have proof of proficiency in evaluating teacher performance as stated in Subsection 121.05 of these rules. One (1) of the observations may be conducted through video. ~~(3-20-14)~~( )

01. **Standards**. Each district evaluation model shall be aligned to state minimum standards that are based on Charlotte Danielson's Framework for Teaching Second Edition domains and components of instruction. Those domains and components include: (3-29-10)

a. Domain 1 - Planning and Preparation: (3-29-10)

i. Demonstrating Knowledge of Content and Pedagogy; (3-29-10)

ii. Demonstrating Knowledge of Students; (3-29-10)

iii. Setting Instructional Outcomes; (3-20-14)

iv. Demonstrating Knowledge of Resources; (3-29-10)

v. Designing Coherent Instruction; and (3-29-10)

vi. Designing Student Assessments. (3-29-12)

b. Domain 2 - The Classroom Environment: (3-29-12)

i. Creating an Environment of Respect and Rapport; (3-29-10)

ii. Establishing a Culture for Learning; (3-29-10)

iii. Managing Classroom Procedures; (3-29-10)

iv. Managing Student Behavior; and (3-29-10)

v. Organizing Physical Space. (3-29-10)

c. Domain 3 - Instruction and Use of Assessment: (3-29-10)

i. Communicating with Students; (3-29-12)

ii. Using Questioning and Discussion Techniques; (3-29-10)

iii. Engaging Students in Learning; (3-29-10)

iv. Using Assessment in Instruction; and (3-29-12)

v. Demonstrating Flexibility and Responsiveness. (3-29-12)

d. Domain 4 - Professional Responsibilities: (3-29-10)

i. Reflecting on Teaching; (3-29-10)

ii. Maintaining Accurate Records; (3-29-10)

iii. Communicating with Families; (3-29-10)

iv. Participating in a Professional Community; (3-29-12)

v. Growing and Developing Professionally; and (3-29-10)

vi. Showing Professionalism. (3-29-10)

02. Professional Practice. For evaluations conducted on or after July 1, 2013, all certificated instructional employees must receive an evaluation in which at least sixty-seven percent (67%) of the evaluation results are based on Professional Practice. All measures included within the Professional Practice portion of the evaluation must be aligned to the Charlotte Danielson Framework for Teaching Second Edition. The measures included within the Professional Practice portion of the evaluation shall include a minimum of two (2) documented observations annually, with at least one (1) observation being completed by January 1 of each year. District evaluation models shall also include at least one (1) of the following as a measure to inform the Professional Practice portion of all certificated instructional employee evaluations: (3-20-14)

a. Parent/guardian input; (3-20-14)

b. Student input; and/or (3-20-14)

c. Portfolios. (3-20-14)

03. Student Achievement. For evaluations conducted on or after July 1, 2013, all certificated instructional employees, principals and superintendents must receive an evaluation in which at least thirty-three percent (33%) of the evaluation results are based on multiple objective measures of growth in student achievement as determined by the board of trustees and based upon research. For evaluations conducted on or after July 1, 2014, growth in student achievement as measured by Idaho's statewide assessment for Federal accountability purposes must be included. This portion of the evaluation may be calculated using current and/or past year's data and may use one (1) or multiple years of data. Growth in student achievement may be considered as an optional measure for all other school based and district based staff, as determined by the local board of trustees. (3-20-14)

04. Participants. Each district evaluation policy will include provisions for evaluating all certificated employees identified in Section 33-1001, Idaho Code, Subsection 16. Evaluations shall be differentiated for certificated non-instructional employees and pupil personnel certificate holders in a way that aligns with the Charlotte Danielson Framework for Teaching Second Edition to the extent possible. Policies for evaluating certificated employees should identify the differences, if any, in the conduct of evaluations for nonrenewable contract personnel and renewable contract personnel. (3-20-14)

05. Evaluation Policy - Content. Local school district policies will include, at a minimum, the following information: (4-1-97)

a. Purpose -- statements that identify the purpose or purposes for which the evaluation is being conducted; e.g., individual instructional improvement, personnel decisions. (4-1-97)

b. Evaluation criteria -- statements of the general criteria upon which certificated personnel will be evaluated. (4-1-97)

c. Evaluator -- identification of the individuals responsible for appraising or evaluating certificated instructional staff and pupil personnel performance. The individuals assigned this responsibility shall have received training in evaluation and prior to September 1, 2018, shall demonstrate proof of proficiency in conducting observations and evaluating effective teacher performance by passing a proficiency assessment approved by the State Department of Education as a onetime recertification requirement. (3-20-14)

d. Sources of data -- description of the sources of data used in conducting certificated personnel evaluations. For certificated instructional staff, a minimum of two (2) documented classroom observations shall be included as one (1) source of data. At least one (1) of those observations must be completed prior to January 1 of each year. Parent/guardian input, student input and/or portfolios shall be considered. (3-20-14)

e. Procedure -- description of the procedure used in the conduct of certificated personnel evaluations. (4-1-97)

f. Communication of results -- the method by which certificated personnel are informed of the results of evaluation. (4-1-97)

g. Personnel actions -- the action available to the school district as a result of the evaluation and the procedures for implementing these actions; e.g., job status change. Note: in the event the action taken as a result of evaluation is to not renew an individual's contract or to renew an individual's contract at a reduced rate, school districts should take proper steps to follow the procedures outlined in Sections 33-513 through 33-515, Idaho Code in order to assure the due process rights of all personnel. (3-20-14)

h. Appeal -- the procedure available to the individual for appeal or rebuttal when disagreement exists regarding the results of certificated personnel evaluations. (4-1-97)

i. Remediation -- the procedure available to provide remediation in those instances where remediation is determined to be an appropriate course of action. (4-1-97)

j. Monitoring and evaluation. -- A description of the method used to monitor and evaluate the district's personnel evaluation system. (4-1-97)

k. Professional development and training -- a plan for ongoing training for evaluators/administrators and teachers on the districts evaluation standards, tool and process. (3-29-10)

l. Funding -- a plan for funding ongoing training and professional development for administrators in evaluation. (3-29-10)

m. Collecting and using data -- a plan for collecting and using data gathered from the evaluation tool that will be used to inform professional development. Aggregate data shall be considered as part of the district and individual schools Needs Assessment in determining professional development offerings. (3-20-14)

n. Individualizing teacher evaluation rating system -- a plan for how evaluations will be used to identify proficiency and record growth over time. No later than July 1, 2013, districts shall have established an individualized teacher evaluation rating system with a minimum of three (3) rankings used to differentiate performance of teachers and pupil personnel certificate holders including: (3-20-14)

i. Unsatisfactory being equal to "1"; (3-20-14)

ii. Basic being equal to "2"; and (3-20-14)

iii. Proficient being equal to "3". (3-20-14)

o. A plan for including all stakeholders including, but not limited to, teachers, board members, administrators, and parents in the development and ongoing review of their teacher evaluation plan. (3-20-14)

06. Evaluation Policy - Frequency of Evaluation. The evaluation policy shall include a provision for evaluating all certificated personnel on a fair and consistent basis. (3-20-14)

07. Evaluation Policy - Personnel Records. Permanent records of each certificated personnel evaluation will be maintained in the employee's personnel file. All evaluation records will be kept confidential within the parameters identified in federal and state regulations regarding the right to privacy (Section 33-518, Idaho Code). Local school districts shall report the rankings of individual certificated personnel evaluations to the State Department of Education annually for State and Federal reporting purposes. The State Department of Education shall ensure that the privacy of all certificated personnel is protected by not releasing statistical data of evaluation rankings in local school districts with fewer than five (5) teachers and by only reporting that information in the aggregate by local school district. (3-20-14)

08. Evaluation System Approval. Each school district board of trustees will develop and adopt policies for teacher and pupil personnel certificated performance evaluation in which criteria and procedures for the evaluation are research based and aligned with the Charlotte Danielson Framework for Teaching Second Edition. By July 1, 2014, an evaluation plan which incorporates all of the above elements shall be submitted to the State Department of Education for approval. Once approved, subsequent changes made in the evaluation system shall be resubmitted for approval. (3-20-14)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1402

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 33-1511(2), Idaho Code.

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

Thursday, October 16, 2014 - 3:00 p.m.

Idaho State Department of Education
650 West State Street, 2nd Floor
Barbara Morgan Conference Room
Boise, Idaho 83702

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 Professional Standards Commission follows a Strategic Plan of annually reviewing twenty percent (20%) of the Idaho Standards for Initial Certification of Professional School Personnel. The following endorsements were reviewed by committees of content experts in the fall of 2013 and the spring of 2014 and are ready for submission: School Counselor, Special Education Generalist, and School Psychologist. All standards and endorsements were revised to better align with national standards and best practices. They were then presented to the Professional Standards Commission for consideration. The Professional Standards Commission has recommended approval of all of the committee's proposed revisions including renaming the Library Science/Library Media Specialist standards and endorsement to Teacher Librarian.

A public school district may contract with an approved private driving school to provide a driver education program. In order to assure a quality program, maintain student records and proper reporting to the Idaho State Department of Education, specific wording was implemented regarding contracting.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because: NA

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 are too large to include with the rule changes. They may be found at **www.boardofed.idaho.gov**; and **http://www.sde.idaho.gov/site/driver_edu/forms_curriculum.htm**.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Taylor Raney, State Department of Education: (208) 332-6886. **traney@sde.idaho.gov** and Audra Urie, (208) 332-6984. **aurie@sde.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 14th Day of August, 2014.

Tom Luna
Superintendent of Public Instruction
State Department of Education
650 West State Street, 2nd Floor
P.O. Box 83720, Boise, Idaho 83720-0027
(208) 332-6812 / Fax (208) 334-2228

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1402
(Only those Sections being amended are shown.)

004. INCORPORATION BY REFERENCE.
The State Board of Education adopts and incorporates by reference into its rules: (5-8-09)

01. Idaho Standards for the Initial Certification of Professional School Personnel as approved on August 1~~5~~4, 201~~3~~4. Copies of this document can be found on the Office of the State Board of Education website at www.boardofed.idaho.gov. ~~(3-20-14)~~(____)

02. Standards for Idaho School Buses and Operations as approved on June 23, 2011. The Standards for Idaho School Buses and Operations are available at the Idaho State Department of Education, 650 W. State St., Boise Idaho, 83702 and can also be accessed electronically at http://www.sde.idaho.gov/site/transportation/library.htm. (3-29-12)

03. Operating Procedures for Idaho Public Driver Education Programs as approved on August 1~~5~~4, 201~~3~~4. The Operating Procedures for Idaho Public Driver Education Programs are available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702 and can also be accessed electronically at http://www.sde.idaho.gov/site/driver_edu/forms_curriculum.htm. ~~(3-20-14)~~(____)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1403

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 33-1511(2), Idaho Code.

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

Thursday, October 16, 2014 - 3:00 p.m.

Idaho State Department of Education
650 West State Street, 2nd Floor
Barbara Morgan Conference Room
Boise, Idaho 83702

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 changes the language governing endorsements and reflects revisions made to the standards and endorsements to better align them with national standards and best practices. The Professional Standards Commission follows a Strategic Plan of annually reviewing twenty percent (20%) of the Idaho Standards for Initial Certification of Professional School Personnel. The endorsements were reviewed by committees of content experts in the fall of 2013 and the spring of 2014 and were submitted to the State Board of Education for approval. Clarifications were made to:

Section 08.02.02.030 - Removal of this section – there are no state approved preparation standards for this endorsement;
Section 08.02.02.047 - This clarification is to reflect the addition of the Interim Speech Language Pathologist endorsement and to clarify that districts do not need to declare an emergency to request alternative authorization for these interim certificates.
Section 08.02.02.076 - Clarification regarding the types of inappropriate images covered under this rule.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because: NA

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Taylor Raney, State Department of Education: (208) 332-6886. **traney@sde.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 14th Day of August, 2014.

Tom Luna, Superintendent of Public Instruction
State Department of Education
650 West State Street, 2nd Floor
Boise, Idaho 83720-0027
(208) 332-6812 / Fax (208) 334-2228

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1403
(Only those Sections being amended are shown.)

027. PUPIL PERSONNEL SERVICES CERTIFICATE.
Persons who serve as school counselors, school psychologists, speech-language pathologists, school social workers, school nurses and school audiologists are required to hold the Pupil Personnel Services Certificate, with the respective endorsement(s) for which they qualify. (3-16-04)

01. Counselor Endorsement (K-12). To be eligible for a Pupil Personnel Services Certificate endorsed Counselor K-12, a candidate must have satisfied the following requirements. The Pupil Personnel Services Certificate with a Counselor endorsement is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the endorsement. (5-8-09)

a. Hold a master's degree and provide verification of completion of an approved program of graduate study in school ~~*guidance and*~~ counseling from a college or university approved by the Idaho State Board of Education or the state educational agency of the state in which the program was completed. The program must include successful completion of seven hundred (700) clock hours of supervised field experience, seventy-five percent (75%) of which must be in a K-12 school setting. ~~*Substantial amounts of t*~~This K-12 experience must be in each of the following levels: elementary, middle/junior high, and high school. Previous school counseling experience may be considered to help offset the field experience clock hour requirement. ~~*(5-8-09)*~~( )

b. An institutional recommendation is required for a Counselor K-12 Endorsement. (5-8-09)

02. School Psychologist Endorsement. This endorsement is valid for five (5) years. In order to renew the endorsement, six (6) professional development credits are required every five (5) years. The renewal credit requirement may be waived if the applicant holds a current valid National Certification for School Psychologists (NCSP) offered through the National Association of School Psychologists (NASP). To be eligible for initial endorsement, a candidate must complete a minimum of sixty (60) graduate semester credit hours which must be accomplished through one (1) of the following options: (3-29-12)

a. Completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hours, master's degree in education or psychology and completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hour, School Psychology Specialist Degree program, and completion of a minimum of twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist. (4-7-11)

b. Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, master's degree program in School Psychology, and completion of a minimum of twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist. (4-7-11)

c. Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, School Psychology Specialist degree program which did not require a master's degree as a prerequisite, with

laboratory experience in a classroom, which may include professional teaching experience, student teaching or special education practicum, and completion of a minimum twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist. (5-8-09)

d. Earn a current and valid National Certification for School Psychologists (NCSP) issued by the National Association of School Psychologists (NASP). (3-29-12)

03. School Nurse Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement may be accomplished through completion of either requirements in Subsections 027.03.a. or 027.03.b. in addition to the requirement of Subsection 027.03.c. (3-29-10)

a. The candidate must possess a valid nursing (RN) license issued by the Idaho State Board of Nursing, and a bachelor's degree in nursing, education, or a health-related field from an accredited institution. (5-8-09)

b. The candidate must possess a valid professional nursing (RN) license issued by the Idaho State Board of Nursing and have completed nine (9) semester credit hours from a university or college in at least three (3) of the following areas: (5-8-09)

i. Health program management; (5-8-09)

ii. Child and adolescent health issues; (5-8-09)

iii. Counseling, psychology, or social work; or (5-8-09)

iv. Methods of instruction. (5-8-09)

c. Additionally, each candidate must have two (2) years' full-time (or part-time equivalent) school nursing, community health nursing, or any area of pediatric, adolescent, or family nursing experience. (5-8-09)

04. Interim Endorsement - School Nurse. This certificate will be granted for those who do not meet the educational and/or experience requirements but who hold a valid professional nursing (RN) license in Idaho. An Interim Certificate - will be issued for three (3) years while the applicant is meeting the educational requirements, and it is not renewable. (3-29-10)

05. Speech-Language Pathologist Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement will be issued to candidates who possess a master's degree from an accredited college or university in a speech/language pathology program approved by the State Board of Education, and who receive an institutional recommendation from an accredited college or university. (3-16-04)

06. Audiology Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement will be issued to candidates who possess a master's degree from an accredited college or university in an audiology program approved by the State Board of Education, and who receive an institutional recommendation from an accredited college or university. (3-16-04)

07. School Social Worker Endorsement. This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years in order to renew the endorsement. Initial endorsement may be accomplished through possession of a social work certificate issued by the Idaho Bureau of Occupational Licenses, an institutional recommendation, and completion of one (1) of the following options: (3-16-04)

a. A master's degree in social work from an Idaho college or university approved by the State Board of Education, or a master's degree in social work from an out-of-state college or university. The program must be currently approved by the state educational agency of the state in which the program was completed. (3-16-04)

b. A master's degree in guidance and counseling, sociology, or psychology plus thirty (30) semester credit hours of graduate work in social work education, including course work in all the following areas: understanding the individual; casework method; field placement; social welfare programs and community resources; and research methods. (3-16-04)

08. Interim Endorsement-Speech Language Pathologist. This certificate will be granted for those who do not meet the educational requirements but who hold a bachelor's degree in Speech language pathology and are pursuing a master's degree in order to obtain the pupil personnel services certificate endorsed in speech language pathology. An Interim Certificate will be issued for three (3) years while the applicant is meeting the educational requirements, and it is not renewable. (3-29-10)

028. EXCEPTIONAL CHILD CERTIFICATE.
Holders of this certificate work with children who have been identified as having an educational impairment. (3-16-04)

01. General Education Requirements. Completion of the general education requirements at an accredited college or university is required. (3-30-07)

02. Generalist Endorsement (K-12). The Generalist K-12 endorsement is non-categorical and allows one (1) to teach in any K-12 special education setting. This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. Regardless of prior special education experience, all initial applicants must provide an institutional recommendation that an approved special education program has been completed, with field work to include an internship and student teaching in a special education setting. To be eligible for an Exceptional Child Certificate with a Generalist K-12 endorsement, a candidate must have satisfied the following requirements: (4-4-13)

a. Completion of a baccalaureate degree from an accredited college or university. (3-16-04)

b. Completion, in an Idaho college or university, of a program in elementary, secondary, or special education currently approved by the Idaho State Board of Education, or completion, in an out-of-state college or university, of a program in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed. (3-16-04)

c. Completion of thirty (30) semester credit hours in special education, or closely related areas, as part of an approved special education program. (3-16-04)

d. Each candidate must have a qualifying score on an approved core content assessment and a second assessment related to the specific endorsement requested. (3-16-04)

03. Early Childhood Special Education Endorsement (Pre-K-3). The Early Childhood Special Education (Pre-K-3) endorsement is non-categorical and allows one to teach in any Pre-K-3 special education setting. This endorsement may only be added to the Standard Exceptional Child Certificate in conjunction with the Generalist K-12 endorsement and is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. To be eligible for an Exceptional Child Certificate with an Early Childhood Special Education (Pre-K-3) endorsement, a candidate must have satisfied the following requirements: (4-7-11)

a. Completion of a program of a minimum of twenty (20) semester credit hours in the area of Early Childhood Education to include course work in each of the following areas: Child development and behavior with emphasis in cognitive-language, physical, social and emotional areas, birth through age eight (8); Curriculum and program development for young children ages three to eight (3-8); Methodology: planning, implementing and evaluating environments and materials for young children ages three to eight (3-8); Guiding young children's behavior: observing, assessing and individualizing ages three to eight (3-8); Identifying and working with atypical young children ages three to eight (3-8) Parent-teacher relations; and, Field work to include an internship and student teaching at the Pre-K - 3 grades. (4-7-11)

04. Deaf/Hard of Hearing ~~*Impairment*~~ Endorsement (K-12). Completion of a minimum of thirty-three (3~~0~~3) semester credit hours in the area of deaf/hard of hearing ~~*impairment*~~ with an emphasis on instruction for

students who use sign language or completion of a minimum thirty-three (33) semester credit hours in the area of deaf/hard of hearing with an emphasis on instruction for students who use listening and spoken language. An institutional recommendation specific to this endorsement is required. To be eligible for an Exceptional Child Certificate with a Deaf/Hard of Hearing ~~*Impaired*~~ endorsement, a candidate must have satisfied the following requirements: ~~*(4-11-06)*~~( )

a. Completion of a baccalaureate degree from an accredited college or university; (4-11-06)

b. Completion of a program from an Idaho college or university in elementary, secondary, or special education currently approved by the Idaho State Board of Education; or (4-11-06)

c. Completion of a program from an out-of-state college or university in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed; (4-11-06)

d. Completion of a program of a minimum of thirty-three (3~~0~~3) semester credit hours in the area of Deaf/Hard of Hearing ~~*Impairment*~~. Must receive an institutional recommendation specific to this endorsement from an accredited college or university. ~~*(4-11-06)*~~( )

05. Visual Impairment Endorsement (K-12). Completion of a program of a minimum of thirty (30) semester credit hours in the area of visual impairment. An institutional recommendation specific to this endorsement is required. To be eligible for an Exceptional Child Certificate with a Visually Impaired endorsement, a candidate must have satisfied the following requirements: (4-11-06)

a. Completion of a baccalaureate degree from an accredited college or university; (4-11-06)

b. Completion ~~*of a program from*~~ in an Idaho college or university of a program in elementary, secondary, or special education currently approved by the Idaho State Board of Education~~;~~, or completion in an out-of-state college or university of a program in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed. ~~*(4-11-06)*~~( )

~~***c.*** *Completion of a program from an out of state college or university in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed;* *(4-11-06)*~~

~~***d***~~**c.** Completion of a program of a minimum of thirty (30) semester credit hours in the area of Visual Impairment. Must receive an institutional recommendation specific to this endorsement from an accredited college or university. (4-11-06)

d. Each candidate must have a qualifying score on an approved core content assessment and a second assessment related to the specific endorsement requested. ( )

(BREAK IN CONTINUITY OF SECTIONS)

030. ~~***SUPERVISOR/COORDINATOR OF SPECIAL EDUCATION ENDORSEMENT.***~~ **(RESERVED)**

~~***01.*** ***Special Education Support****. Supervisors/coordinators of special education support the district administrative team in ensuring that district practice is in compliance with the requirements of the Individuals with Education Disabilities Act. The assigned duties may include the evaluation of related services staff; supervision of the operations of special education programs within a school district; technical assistance and training to district staff and parents; assistance with student placement decisions; and representation for the school district regarding special education matters with other agencies and with the State Department of Education.* *(4-11-06)*~~

~~***02.*** ***Endorsement****. To be eligible for this endorsement on the Standard Exceptional Child Certificate or the Pupil Personnel Certificate endorsed for School Psychologist, Speech-Language Pathologist or Social Worker, a*~~

~~*candidate must complete a master's degree program; have verification of a minimum of three (3) years of experience in a special education setting; and obtain college or university verification of demonstrated competencies in special education administration, supervision of instruction and counseling parents of exceptional children.* *(4-11-06)*~~

(BREAK IN CONTINUITY OF SECTIONS)

047. ALTERNATIVE AUTHORIZATION - PUPIL PERSONNEL SERVICES.
The purpose of this alternative authorization is to allow Idaho school districts to request ~~*emergency*~~ endorsement/certification when a position requiring the Pupil Personnel Services certificate cannot be filled with someone who has the correct endorsement/certification. The exception to this rule is the Interim School Nurse endorsement and the Interim Speech Language Pathologist endorsement. The requirements for ~~*this*~~ these endorsements are already defined in Subsections 027.0~~3~~4 and 027.08 respectively, of these rules. ~~*(4-2-08)*~~( )

01. Term of Validity. Alternative authorization in this area is valid for three (3) years and will be reviewed annually and is nonrenewable. (4-2-08)

02. Initial Qualifications. The applicant must complete the following: (4-2-08)

a. Prior to application, a candidate must hold a Masters degree and hold a current Idaho license from the Bureau of Occupational Licenses in the area of desired certification; and (4-2-08)

b. The employing school district must provide supportive information attesting to the ability of the candidate to fill the position. (4-2-08)

03. Alternative Route Preparation Program. (4-2-08)

a. The candidate must work toward completion of the alternative route preparation program through a participating college/university and the employing school district. (4-2-08)

b. The candidate must complete a minimum of nine (9) semester credits annually to be eligible for extension of up to a total of three (3) years. (4-2-08)

c. The participating college/university or the State Department of Education will provide procedures to assess and credit equivalent knowledge, dispositions, and relevant life/work experiences. (4-2-08)

d. The candidate must meet all requirements for the endorsement/certificate as provided herein. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

076. CODE OF ETHICS FOR IDAHO PROFESSIONAL EDUCATORS (SECTIONS 33-1208 AND 33-1209, IDAHO CODE).
Believing in the worth and dignity of each human being, the professional educator recognizes the supreme importance of pursuing truth, striving toward excellence, nurturing democratic citizenship and safeguarding the freedom to learn and to teach while guaranteeing equal educational opportunity for all. The professional educator accepts the responsibility to practice the profession according to the highest ethical principles. The Code of Ethics for Idaho Professional Educators symbolizes the commitment of all Idaho educators and provides principles by which to judge conduct. (3-20-04)

01. Aspirations and Commitments. (3-20-04)

a. The professional educator aspires to stimulate the spirit of inquiry in students and to provide opportunities in the school setting that will help them acquire viable knowledge, skills, and understanding that will meet their needs now and in the future. (3-20-04)

b. The professional educator provides an environment that is safe to the cognitive, physical and psychological well-being of students and provides opportunities for each student to move toward the realization of his goals and potential as an effective citizen. (3-20-14)

c. The professional educator, recognizing that students need role models, will act, speak and teach in such a manner as to exemplify nondiscriminatory behavior and encourage respect for other cultures and beliefs. (3-20-14)

d. The professional educator is committed to the public good and will help preserve and promote the principles of democracy. He will provide input to the local school board to assist in the board's mission of developing and implementing sound educational policy, while promoting a climate in which the exercise of professional judgment is encouraged. (4-11-06)

e. The professional educator believes the quality of services rendered by the education profession directly influences the nation and its citizens. He strives, therefore, to establish and maintain the highest set of professional principles of behavior, to improve educational practice, and to achieve conditions that attract highly qualified persons to the profession. (4-11-06)

f. The professional educator regards the employment agreement as a pledge to be executed in a manner consistent with the highest ideals of professional service. He believes that sound professional personal relationships with colleagues, governing boards, and community members are built upon integrity, dignity, and mutual respect. The professional educator encourages the practice of the profession only by qualified persons. (4-11-06)

02. Principle I - Professional Conduct. A professional educator abides by all federal, state, and local education laws and statutes. Unethical conduct shall include the conviction of any felony or misdemeanor offense set forth in Section 33-1208, Idaho Code. (3-20-14)

03. Principle II - Educator/Student Relationship. A professional educator maintains a professional relationship with all students, both inside and outside the physical and virtual classroom. Unethical conduct includes, but is not limited to: (3-20-14)

a. Committing any act of child abuse, including physical or emotional abuse; (3-20-04)

b. Committing any act of cruelty to children or any act of child endangerment; (3-20-04)

c. Committing or soliciting any sexual act from any minor or any student regardless of age; (3-20-04)

d. Committing any act of harassment as defined by district policy; (4-11-06)

e. Soliciting, encouraging, or consummating a romantic or inappropriate relationship (whether written, verbal, virtual, or physical) with a student, regardless of age; (3-20-14)

f. Using inappropriate language including, but not limited to, swearing and improper sexual comments (e.g., sexual innuendoes or sexual idiomatic phrases); (3-20-04)

g. Taking or possessing ~~*inappropriate*~~ images (digital, photographic, or video) of students of a harassing, confidential, or sexual nature; ~~*(3-20-14)*~~( )

h. Inappropriate contact with any minor or any student regardless of age using electronic media; (4-11-06)

i. Furnishing alcohol or illegal or unauthorized drugs to any student or allowing or encouraging a student to consume alcohol or unauthorized drugs except in a medical emergency; (3-20-14)

j. Conduct that is detrimental to the health or welfare of students; and (3-20-14)

k. Deliberately falsifying information presented to students. (3-20-14)

04. Principle III - Alcohol and Drugs Use or Possession. A professional educator refrains from the abuse of alcohol or drugs during the course of professional practice. Unethical conduct includes, but is not limited to: (3-20-14)

a. Being on school premises or at any school-sponsored activity, home or away, involving students while possessing, using, or consuming illegal or unauthorized drugs; (3-20-04)

b. Being on school premises or at any school-sponsored activity, home or away, involving students while possessing, using, or consuming alcohol; (3-20-04)

c. Inappropriate or illegal use of prescription medications on school premises or at any school-sponsored events, home or away; (4-11-06)

d. Inappropriate or illegal use of drugs or alcohol that impairs the individual's ability to function; and (4-11-06)

e. Possession of an illegal drug as defined in Chapter 27, Idaho Code, Uniform Controlled Substances. (3-20-04)

05. Principle IV - Professional Integrity. A professional educator exemplifies honesty and integrity in the course of professional practice. Unethical conduct includes, but is not limited to: (3-20-14)

a. Fraudulently altering or preparing materials for licensure or employment; (3-20-04)

b. Falsifying or deliberately misrepresenting professional qualifications, degrees, academic awards, and related employment history when applying for employment or licensure; (3-20-04)

c. Failure to notify the state at the time of application for licensure of past revocations or suspensions of a certificate or license from another state; (3-20-04)

d. Failure to notify the state at the time of application for licensure of past criminal convictions of any crime violating the statutes or rules governing teacher certification; (3-20-14)

e. Falsifying, deliberately misrepresenting, or deliberately omitting information regarding the evaluation of students or personnel, including improper administration of any standardized tests (changing test answers; copying or teaching identified test items; unauthorized reading of the test to students, etc.); (4-11-06)

f. Falsifying, deliberately misrepresenting, or deliberately omitting reasons for absences or leaves; (3-20-04)

g. Falsifying, deliberately misrepresenting, or deliberately omitting information submitted in the course of an official inquiry or investigation; (3-20-14)

h. Falsifying, deliberately misrepresenting, or deliberately omitting material information on an official evaluation of colleagues; and (3-20-14)

i. Failure to notify the state of any criminal conviction of a crime violating the statutes and/or rules governing teacher certification. (3-20-14)

06. Principle V - Funds and Property. A professional educator entrusted with public funds and property honors that trust with a high level of honesty, accuracy, and responsibility. Unethical conduct includes, but is not limited to: (3-20-14)

a. Misuse, or unauthorized use, of public or school-related funds or property; (3-20-04)

b. Failure to account for school funds collected from students, parents, or patrons; (3-20-14)

c. Submission of fraudulent requests for reimbursement of expenses or for pay; (3-20-04)

d. Co-mingling of public or school-related funds in personal bank account(s); (3-20-04)

e. Use of school property for private financial gain; (3-20-14)

f. Use of school computers to deliberately view or print pornography; and, (3-20-04)

g. Deliberate use of poor budgeting or accounting practices. (3-20-04)

07. Principle VI - Compensation. A professional educator maintains integrity with students, colleagues, parents, patrons, or business personnel when accepting gifts, gratuities, favors, and additional compensation. Unethical conduct includes, but is not limited to: (3-20-14)

a. Unauthorized solicitation of students or parents of students to purchase equipment, supplies, or services from the educator who will directly benefit; (3-20-14)

b. Acceptance of gifts from vendors or potential vendors for personal use or gain where there may be the appearance of a conflict of interest; (3-20-04)

c. Tutoring students assigned to the educator for remuneration unless approved by the local board of education; and, (3-20-04)

d. Soliciting, accepting, or receiving a financial benefit greater than fifty dollars ($50) as defined in Section 18-1359(b), Idaho Code. (3-20-14)

08. Principle VII - Confidentiality. A professional educator complies with state and federal laws and local school board policies relating to the confidentiality of student and employee records, unless disclosure is required or permitted by law. Unethical conduct includes, but is not limited to: (3-20-14)

a. Sharing of confidential information concerning student academic and disciplinary records, personal confidences, health and medical information, family status or income, and assessment or testing results with inappropriate individuals or entities; and (3-20-04)

b. Sharing of confidential information about colleagues obtained through employment practices with inappropriate individuals or entities. (3-20-04)

09. Principle VIII - Breach of Contract or Abandonment of Employment. A professional educator fulfills all terms and obligations detailed in the contract with the local board of education or education agency for the duration of the contract. Unethical conduct includes, but is not limited to: (3-20-14)

a. Abandoning any contract for professional services without the prior written release from the contract by the employing school district or agency; (3-20-04)

b. Willfully refusing to perform the services required by a contract; and, (3-20-04)

c. Abandonment of classroom or failure to provide appropriate supervision of students at school or school-sponsored activities to ensure the safety and well-being of students. (3-20-04)

10. Principle IX - Duty to Report. A professional educator reports breaches of the Code of Ethics for Idaho Professional Educators and submits reports as required by Idaho Code. Unethical conduct includes, but is not limited to: (3-20-14)

a. Failure to comply with Section 33-1208A, Idaho Code, (reporting requirements and immunity);

(3-20-04)

b. Failure to comply with Section 16-1605, Idaho Code, (reporting of child abuse, abandonment or neglect); (4-11-06)

c. Failure to comply with Section 33-512B, Idaho Code, (suicidal tendencies and duty to warn); and (4-11-06)

d. Having knowledge of a violation of the Code of Ethics for Idaho Professional Educators and failing to report the violation to an appropriate education official. (3-20-04)

11. **Principle X - Professionalism**. A professional educator ensures just and equitable treatment for all members of the profession in the exercise of academic freedom, professional rights and responsibilities while following generally recognized professional principles. Unethical conduct includes, but is not limited to: (3-20-14)

a. Any conduct that seriously impairs the Certificate holder's ability to teach or perform his professional duties; (3-20-04)

b. Committing any act of harassment toward a colleague; (4-11-06)

c. Failure to cooperate with the Professional Standards Commission in inquiries, investigations, or hearings; (3-20-04)

d. Using institutional privileges for the promotion of political candidates or for political activities, except for local, state or national education association elections; (4-11-06)

e. Willfully interfering with the free participation of colleagues in professional associations; and (4-11-06)

f. Taking or possessing ~~*inappropriate*~~ images (digital, photographic or video) of colleagues of a harassing, confidential, or sexual nature. ~~*(3-20-14)*~~( )

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1404

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 33-1511(2), Idaho Code.

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

Thursday, October 16, 2014 - 3:00 p.m.

Idaho State Department of Education
650 West State Street, 2nd Floor
Barbara Morgan Conference Room
Boise, Idaho 83702

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

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

In March 2014, the Idaho Legislature approved revisions in IDAPA 08.02.02.120 and the addition of IDAPA 08.02.02.121 in order to meet the required elements of teacher and principal evaluation models in Principle 3 of the ESEA Waiver that was approved by the State Board of Education.

In an effort to clarify the intent of the rule as well as meet the needs of varying situations, the following revisions are being put before the State Board of Education for approval:

- In Section 08.02.02.120, include the option of one (1) classroom observation in situations where the teacher is unavailable for two (2) classroom observations.
- In Section 08.02.02.121, clarify those responsible for measuring teacher performance.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any 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:

No Fiscal Impact

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because: This change in rule is for clarification of the original intent of the rule as to classroom observation.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lisa Colon, State Department of Education: (208) 332-6917. **lcolon@sde.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 14th Day of August, 2014.

Tom Luna, Superintendent of Public Instruction
State Department of Education
650 West State Street, 2nd Floor
Boise, Idaho 83720-0027
(208) 332-6812 / Fax (208) 334-2228

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1404
(Only those Sections being amended are shown.)

120. LOCAL DISTRICT EVALUATION POLICY -- TEACHER AND PUPIL PERSONNEL CERTIFICATE HOLDERS.
Each school district board of trustees will develop and adopt policies for teacher performance evaluation using multiple measures in which criteria and procedures for the evaluation of certificated personnel are research based and aligned to Charlotte Danielson Framework for Teaching Second Edition domains and components of instruction. The process of developing criteria and procedures for certificated personnel evaluation will allow opportunities for input from those affected by the evaluation; i.e., trustees, administrators, teachers, and parents. The evaluation policy will be a matter of public record and communicated to the certificated personnel for whom it is written. (3-20-14)

01. Standards. Each district evaluation model shall be aligned to state minimum standards that are based on Charlotte Danielson's Framework for Teaching Second Edition domains and components of instruction. Those domains and components include: (3-29-10)

a. Domain 1 - Planning and Preparation: (3-29-10)

i. Demonstrating Knowledge of Content and Pedagogy; (3-29-10)

ii. Demonstrating Knowledge of Students; (3-29-10)

iii. Setting Instructional Outcomes; (3-20-14)

iv. Demonstrating Knowledge of Resources; (3-29-10)

v. Designing Coherent Instruction; and (3-29-10)

vi. Designing Student Assessments. (3-29-12)

b. Domain 2 - The Classroom Environment: (3-29-12)

i. Creating an Environment of Respect and Rapport; (3-29-10)

ii. Establishing a Culture for Learning; (3-29-10)

iii. Managing Classroom Procedures; (3-29-10)

iv. Managing Student Behavior; and (3-29-10)

v. Organizing Physical Space. (3-29-10)

c. Domain 3 - Instruction and Use of Assessment: (3-29-10)

i. Communicating with Students; (3-29-12)

ii. Using Questioning and Discussion Techniques; (3-29-10)

iii. Engaging Students in Learning; (3-29-10)

iv. Using Assessment in Instruction; and (3-29-12)

v. Demonstrating Flexibility and Responsiveness. (3-29-12)

d. Domain 4 - Professional Responsibilities: (3-29-10)

i. Reflecting on Teaching; (3-29-10)

ii. Maintaining Accurate Records; (3-29-10)

iii. Communicating with Families; (3-29-10)

iv. Participating in a Professional Community; (3-29-12)

v. Growing and Developing Professionally; and (3-29-10)

vi. Showing Professionalism. (3-29-10)

02. Professional Practice. For evaluations conducted on or after July 1, 2013, all certificated instructional employees must receive an evaluation in which at least sixty-seven percent (67%) of the evaluation results are based on Professional Practice. All measures included within the Professional Practice portion of the evaluation must be aligned to the Charlotte Danielson Framework for Teaching Second Edition. The measures included within the Professional Practice portion of the evaluation shall include a minimum of two (2) documented observations annually, with at least one (1) observation being completed by January 1 of each year. In situations where certificated personnel are unavailable for two (2) documented classroom observations, due to situations such as long-term illness, late year hire, etc., one (1) documented classroom observation is acceptable. District evaluation models shall also include at least one (1) of the following as a measure to inform the Professional Practice portion of all certificated instructional employee evaluations: ~~(3-20-14)~~( )

a. Parent/guardian input; (3-20-14)

b. Student input; and/or (3-20-14)

c. Portfolios. (3-20-14)

03. Student Achievement. For evaluations conducted on or after July 1, 2013, all certificated instructional employees, principals and superintendents must receive an evaluation in which at least thirty-three percent (33%) of the evaluation results are based on multiple objective measures of growth in student achievement as determined by the board of trustees and based upon research. For evaluations conducted on or after July 1, 2014, growth in student achievement as measured by Idaho's statewide assessment for Federal accountability purposes must be included. This portion of the evaluation may be calculated using current and/or past year's data and may use one (1) or multiple years of data. Growth in student achievement may be considered as an optional measure for all other school based and district based staff, as determined by the local board of trustees. (3-20-14)

04. Participants. Each district evaluation policy will include provisions for evaluating all certificated employees identified in Section 33-1001, Idaho Code, Subsection 16. Evaluations shall be differentiated for certificated non-instructional employees and pupil personnel certificate holders in a way that aligns with the Charlotte Danielson Framework for Teaching Second Edition to the extent possible. Policies for evaluating certificated employees should identify the differences, if any, in the conduct of evaluations for nonrenewable contract personnel and renewable contract personnel. (3-20-14)

05. Evaluation Policy - Content. Local school district policies will include, at a minimum, the following information: (4-1-97)

a. Purpose -- statements that identify the purpose or purposes for which the evaluation is being conducted; e.g., individual instructional improvement, personnel decisions. (4-1-97)

b. Evaluation criteria -- statements of the general criteria upon which certificated personnel will be evaluated. (4-1-97)

c. Evaluator -- identification of the individuals responsible for appraising or evaluating certificated instructional staff and pupil personnel performance. The individuals assigned this responsibility shall have received training in evaluation and prior to September 1, 2018, shall demonstrate proof of proficiency in conducting observations and evaluating effective teacher performance by passing a proficiency assessment approved by the State Department of Education as a onetime recertification requirement. (3-20-14)

d. Sources of data -- description of the sources of data used in conducting certificated personnel evaluations. For certificated instructional staff, a minimum of two (2) documented classroom observations shall be included as one (1) source of data. At least one (1) of those observations must be completed prior to January 1 of each year. In situations where certificated personnel are unavailable for two (2) documented classroom observations, due to situations such as long-term illness, late year hire, etc., one (1) documented classroom observation is acceptable. Parent/guardian input, student input and/or portfolios shall be considered as sources of data to support professional practice. ~~(3-20-14)~~( )

e. Procedure -- description of the procedure used in the conduct of certificated personnel evaluations. (4-1-97)

f. Communication of results -- the method by which certificated personnel are informed of the results of evaluation. (4-1-97)

g. Personnel actions -- the action available to the school district as a result of the evaluation and the procedures for implementing these actions; e.g., job status change. Note: in the event the action taken as a result of evaluation is to not renew an individual's contract or to renew an individual's contract at a reduced rate, school districts should take proper steps to follow the procedures outlined in Sections 33-513 through 33-515, Idaho Code in order to assure the due process rights of all personnel. (3-20-14)

h. Appeal -- the procedure available to the individual for appeal or rebuttal when disagreement exists regarding the results of certificated personnel evaluations. (4-1-97)

i. Remediation -- the procedure available to provide remediation in those instances where remediation is determined to be an appropriate course of action. (4-1-97)

j. Monitoring and evaluation. -- A description of the method used to monitor and evaluate the district's personnel evaluation system. (4-1-97)

k. Professional development and training -- a plan for ongoing training for evaluators/administrators and teachers on the districts evaluation standards, tool and process. (3-29-10)

l. Funding -- a plan for funding ongoing training and professional development for administrators in evaluation. (3-29-10)

m. Collecting and using data -- a plan for collecting and using data gathered from the evaluation tool that will be used to inform professional development. Aggregate data shall be considered as part of the district and individual schools Needs Assessment in determining professional development offerings. (3-20-14)

n. Individualizing teacher evaluation rating system -- a plan for how evaluations will be used to identify proficiency and record growth over time. No later than July 1, 2013, districts shall have established an

individualized teacher evaluation rating system with a minimum of three (3) rankings used to differentiate performance of teachers and pupil personnel certificate holders including: (3-20-14)

i. Unsatisfactory being equal to "1"; (3-20-14)

ii. Basic being equal to "2"; and (3-20-14)

iii. Proficient being equal to "3". (3-20-14)

o. A plan for including all stakeholders including, but not limited to, teachers, board members, administrators, and parents in the development and ongoing review of their teacher evaluation plan. (3-20-14)

06. Evaluation Policy - Frequency of Evaluation. The evaluation policy shall include a provision for evaluating all certificated personnel on a fair and consistent basis. (3-20-14)

07. Evaluation Policy - Personnel Records. Permanent records of each certificated personnel evaluation will be maintained in the employee's personnel file. All evaluation records will be kept confidential within the parameters identified in federal and state regulations regarding the right to privacy (Section 33-518, Idaho Code). Local school districts shall report the rankings of individual certificated personnel evaluations to the State Department of Education annually for State and Federal reporting purposes. The State Department of Education shall ensure that the privacy of all certificated personnel is protected by not releasing statistical data of evaluation rankings in local school districts with fewer than five (5) teachers and by only reporting that information in the aggregate by local school district. (3-20-14)

08. Evaluation System Approval. Each school district board of trustees will develop and adopt policies for teacher and pupil personnel certificated performance evaluation in which criteria and procedures for the evaluation are research based and aligned with the Charlotte Danielson Framework for Teaching Second Edition. By July 1, 2014, an evaluation plan which incorporates all of the above elements shall be submitted to the State Department of Education for approval. Once approved, subsequent changes made in the evaluation system shall be resubmitted for approval. (3-20-14)

121. LOCAL DISTRICT EVALUATION POLICY - SCHOOL PRINCIPAL.
For principal evaluations conducted on or after July 1, 2014, each school district board of trustees will develop and adopt policies for principal performance evaluation using multiple measures in which criteria and procedures for the evaluation of administratively certificated personnel serving as school principal are research based and aligned to the standards and requirements outlined in Subsections 121.01 through 121.07 of this rule. Districts must, at a minimum, pilot such an evaluation during the 2013-2014 school year and report the results of that pilot to the State Department of Education no later than July 1, 2014, in a format determined by the Department. The process of developing criteria and procedures for principal evaluation will allow opportunities for input from those affected by the evaluation; i.e., trustees, administrators, teachers and parents. The evaluation policy will be a matter of public record and communicated to the principal for whom it is written. (3-20-14)

01. Standards. Each district principal evaluation model shall be aligned to state minimum standards based on the Interstate School Leaders Licensure Consortium (ISLLC) standards and include proof of proficiency in conducting teacher evaluations using the state's adopted model, the Charlotte Danielson Framework for Teaching Second Edition. Proof of proficiency in evaluating teacher performance shall be required of all individuals assigned the responsibility for appraising, observing, or evaluating certificated personnel performance. Those responsible for measuring teacher performance include contracted district leadership such as principals, assistant principals, special education directors, and superintendents. Proof of proficiency in evaluating performance shall be demonstrated by passing a proficiency assessment approved by the State Department of Education as a onetime recertification requirement prior to September 1, 2018. Principal evaluation standards shall additionally address the following domains and components: ~~(3-20-14)~~( )

a. Domain 1: School Climate - An educational leader promotes the success of all students by advocating, nurturing and sustaining a school culture and instructional program conducive to student learning and staff professional development. An educational leader articulates and promotes high expectations for teaching and learning while responding to diverse community interest and needs. (3-20-14)

i. School Culture - Principal establishes a safe, collaborative, and supportive culture ensuring all students are successfully prepared to meet the requirements for tomorrow's careers and life endeavors. (3-20-14)

ii. Communication - Principal is proactive in communicating the vision and goals of the school or district, the plans for the future, and the successes and challenges to all stakeholders. (3-20-14)

iii. Advocacy - Principal advocates for education, the district and school, teachers, parents, and students that engenders school support and involvement. (3-20-14)

b. Domain 2: Collaborative Leadership - An educational leader promotes the success of all students by ensuring management of the organization, operations and resources for a safe, efficient and effective learning environment. In collaboration with others, uses appropriate data to establish rigorous, concrete goals in the context of student achievement and instructional programs. The educational leader uses research and/or best practices in improving the education program. (3-20-14)

i. Shared Leadership - Principal fosters shared leadership that takes advantage of individual expertise, strengths, and talents, and cultivates professional growth. (3-20-14)

ii. Priority Management - Principal organizes time and delegates responsibilities to balance administrative/managerial, educational, and community leadership priorities. (3-20-14)

iii. Transparency - Principal seeks input from stakeholders and takes all perspectives into consideration when making decisions. (3-20-14)

iv. Leadership Renewal - Principal strives to continuously improve leadership skills through, professional development, self-reflection, and utilization of input from others. (3-20-14)

v. Accountability - Principal establishes high standards for professional, legal, ethical, and fiscal accountability for self and others. (3-20-14)

c. Domain 3: Instructional Leadership - An educational leader promotes the success of all students by facilitating the development, articulation, implementation, and stewardship of a vision of learning that is shared and supported by the school community. The educational leader provides leadership for major initiatives and change efforts and uses research and/or best practices in improving the education program. (3-20-14)

i. Innovation - Principal seeks and implements innovative and effective solutions that comply with general and special education law. (3-20-14)

ii. Instructional Vision - Principal insures that instruction is guided by a shared, research-based instructional vision that articulates what students do to effectively learn. (3-20-14)

iii. High Expectations - Principal sets high expectation for all students academically, behaviorally, and in all aspects of student well-being. (3-20-14)

iv. Continuous Improvement of Instruction - Principal has proof of proficiency in assessing teacher performance based upon the Charlotte Danielson Framework for Teaching Second Edition. Aligns resources, policies, and procedures toward continuous improvement of instructional practice guided by the instructional vision. (3-20-14)

v. Evaluation - Principal uses teacher/principal evaluation and other formative feedback mechanisms to continuously improve teacher/principal effectiveness. (3-20-14)

vi. Recruitment and Retention -Principal recruits and maintains a high quality staff. (3-20-14)

02. Professional Practice. For evaluations conducted on or after July 1, 2014, all principals must receive an evaluation in which sixty-seven percent (67%) of the evaluation results are based on Professional Practice.

All measures included within the Professional Practice portion of the evaluation must be aligned to the Domains and Components listed in Subsection 121.01.a. through 121.01.c. of this rule. As a measure to inform the Professional Practice portion of all principal evaluations, district evaluation models shall also include at least one (1) of the following: (3-20-14)

a. Parent/guardian input; (3-20-14)

b. Teacher input; (3-20-14)

c. Student input; and/or (3-20-14)

d. Portfolios. (3-20-14)

03. Student Achievement. For evaluations conducted on or after July 1, 2013, all certificated instructional employees, principals and superintendents must receive an evaluation in which at least thirty-three percent (33%) of the evaluation results are based on multiple objective measures of growth in student achievement as determined by the board of trustees and based upon research. For evaluations conducted on or after July 1, 2014, growth in student achievement as measured by Idaho's statewide assessment for Federal accountability purposes must be included. This portion of the evaluation may be calculated using current and/or past year's data and may use one (1) or multiple years of data. Growth in student achievement may be considered as an optional measure for all other school based and district based staff, as determined by the local board of trustees. (3-20-14)

04. Evaluation Policy - Content. For evaluations conducted on or after July 1, 2014, local school district policies will include, at a minimum, the following information: (3-20-14)

a. Purpose -- statements that identify the purpose or purposes for which the evaluation is being conducted; e.g., individual instructional leadership, personnel decisions. (3-20-14)

b. Evaluation criteria -- statements of the general criteria upon which principals be evaluated. (3-20-14)

c. Evaluator -- identification of the individuals responsible for appraising or evaluating principal performance. The individuals assigned this responsibility shall have received training in evaluation. (3-20-14)

d. Sources of data -- description of the sources of data used in conducting principal evaluations. Proficiency in conducting observations and evaluating effective teacher performance shall be included as one (1) source of data. (3-20-14)

e. Procedure -- description of the procedure used in the conduct of principal evaluations. (3-20-14)

f. Communication of results -- the method by which principals are informed of the results of evaluation. (3-20-14)

g. Personnel actions -- the action, available to the school district as a result of the evaluation, and the procedures for implementing these actions; e.g., job status change. (3-20-14)

h. Appeal -- the procedure available to the individual for appeal or rebuttal when disagreement exists regarding the results of an evaluations. (3-20-14)

i. Remediation -- the procedure available to provide remediation in those instances where remediation is determined to be an appropriate course of action. (3-20-14)

j. Monitoring and evaluation. -- A description of the method used to monitor and evaluate the district's principal evaluation system. (3-20-14)

k. Professional development and training -- a plan for ongoing training and professional learning based upon the district's evaluation standards and process. (3-20-14)

l. Funding -- a plan for funding ongoing training and professional development for evaluators of principals. (3-20-14)

m. Collecting and using data -- a plan for collecting and using data gathered from the evaluation tool that will be used to inform professional development for principals. (3-20-14)

n. Individualizing principal evaluation rating system -- a plan for how evaluations will be used to identify proficiency and record growth over time. No later than July 1, 2014, districts shall have established an individualized principal evaluation rating system with a minimum of three rankings used to differentiate performance of principals including: (3-20-14)

i. Unsatisfactory being equal to "1"; (3-20-14)

ii. Basic being equal to "2"; and (3-20-14)

iii. Proficient being equal to "3". (3-20-14)

o. A plan for including stakeholders including, but not limited to, teachers, board members, administrators, and parents in the development and ongoing review of their principal evaluation plan. (3-20-14)

05. Evaluation Policy - Frequency of Evaluation. The evaluation policy should include a provision for evaluating all principals on a fair and consistent basis. All principals shall be evaluated at least once annually no later than May 1 of each year. (3-20-14)

06. Evaluation Policy - Personnel Records. Permanent records of each principal evaluation will be maintained in the employee's personnel file. All evaluation records will be kept confidential within the parameters identified in federal and state regulations regarding the right to privacy (Section 33-518, Idaho Code). Local school districts shall report the rankings of individual certificated personnel evaluations to the State Department of Education annually for State and Federal reporting purposes. The State Department of Education shall ensure that the privacy of all certificated personnel is protected by not releasing statistical data of evaluation rankings in local school districts with fewer than five (5) teachers and by only reporting that information in the aggregate by local school district. (3-20-14)

07. Evaluation System Approval. Each school district board of trustees will develop and adopt policies for principal performance evaluation in which criteria and procedures for the evaluation are research based and aligned with state standards. By July 1, 2014, an evaluation plan which incorporates all of the above elements shall be submitted to the State Department of Education for approval. Once approved, subsequent changes made in the evaluation system shall be resubmitted for approval. (3-20-14)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1405

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 14, 2014.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 33-1511(2), Idaho Code.

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

A public school district may contract with an approved private driving school to provide a driver education program. In order to assure a quality program, maintain student records and proper reporting to the Idaho State Department of Education, specific wording was implemented regarding contracting.

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

In the accounting process for fiscal year 2014, it has come to our attention that the rules governing school districts contracting with private driving schools need to be more specific. We have found several public schools were not properly bidding their driving education contracts. During the auditing process, it was also found that private companies claiming state funds were not holding classes at the contracting public school, not instructing students enrolled at the contracting school, and directly collecting funds from the student.

The intent of state reimbursement for $125.00 per student for driver education is to reduce the cost to parents by offsetting the expense the public school incurs providing the program. By adding more specific language in the rule the Idaho State Department of Education can guarantee the funding will be used for a public school that incurs an expense for the program and/or directly reduces the fee to parents, thereby making driver education more accessible to all teens.

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:

No Fiscal Impact.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Audra Urie, State Department of Education, (208) 332-6984, **aurie@sde.idaho.gov**.

DATED this 14th Day of August, 2014.

Tom Luna, Superintendent of Public Instruction
State Department of Education
650 West State Street, 2nd Floor
Boise, Idaho 83720-0027
(208) 332-6812 / Fax (208) 334-2228

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 08-0202-1405
(Only those Sections being amended are shown.)

004. INCORPORATION BY REFERENCE.
The State Board of Education adopts and incorporates by reference into its rules: (5-8-09)

01. Idaho Standards for the Initial Certification of Professional School Personnel as approved on August 15, 2013. Copies of this document can be found on the Office of the State Board of Education website at www.boardofed.idaho.gov. (3-20-14)

02. Standards for Idaho School Buses and Operations as approved on June 23, 2011. The Standards for Idaho School Buses and Operations are available at the Idaho State Department of Education, 650 W. State St., Boise Idaho, 83702 and can also be accessed electronically at http://www.sde.idaho.gov/site/transportation/library.htm. (3-29-12)

03. Operating Procedures for Idaho Public Driver Education Programs as approved on August 1~~5~~4, 201~~3~~4. The Operating Procedures for Idaho Public Driver Education Programs are available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702 and can also be accessed electronically at http://www.sde.idaho.gov/site/driver_edu/forms_curriculum.htm. ~~(3-20-14)~~(8-14-14)T

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1401

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 33-1511(2), Idaho Code.

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

Thursday, October 16, 2014 - 3:00 p.m.

Idaho State Department of Education
650 West State Street, 2nd Floor
Barbara Morgan Conference Room
Boise, Idaho 83702

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:

Paragraph 105.01.i. - at the request of the Legislature, an addition to the substitution clause for one credit of physical education for graduation is clarified.

Subparagraph 105.03.b.iii. - currently states that a student may elect an exemption in grade eleven (11) from the college entrance exam requirement if enrolled for the first time in grade twelve (12) at an Idaho high school after the spring statewide administration of the college entrance exam. This will be corrected from spring to fall.

Subsection 105.05 - currently contains the word "required" which is being removed because it is too vague and is meant for any class the student is taking.

Subsection 105.06 - as Idaho continues to transition to higher standards, Idaho's graduation requirement must be considered and changed to meet the requirements.

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

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

No Fiscal Impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because: These changes are to bring these rules into compliance with requests from the Legislature and the College Board.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Luci Willits, State Department of Education:
(208) 332-6814, **lbwillits@sde.idaho.gov**

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 14th Day of August, 2014.

Tom Luna, Superintendent of Public Instruction
State Department of Education
650 West State Street, 2nd Floor
Boise, Idaho 83720-0027
(208) 332-6812 / Fax (208) 334-2228

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1401
(Only those Sections being amended are shown.)

105. HIGH SCHOOL GRADUATION REQUIREMENTS.
A student must meet all of the requirements identified in this section before the student will be eligible to graduate from an Idaho high school. The local school district or LEA may establish graduation requirements beyond the state minimum. (5-8-09)

01. Credit Requirements. The State minimum graduation requirement for all Idaho public high schools is forty-six (46) credits and must include twenty-nine (29) credits in core subjects as identified in Paragraphs 105.01.c. through 105.01.i. (3-12-14)

a. Credits. (Effective for all students who enter the ninth grade in the fall of 2010 or later.) One (1) credit shall equal sixty (60) hours of total instruction. School districts or LEA's may request a waiver from this provision by submitting a letter to the State Department of Education for approval, signed by the superintendent and chair of the board of trustees of the district or LEA. The waiver request shall provide information and documentation that substantiates the school district or LEA's reason for not requiring sixty (60) hours of total instruction per credit. (3-29-10)

b. Mastery. A student may also achieve credits by demonstrating mastery of a subject's content standards as defined and approved by the local school district or LEA. (3-29-10)

c. Secondary Language Arts and Communication. Nine (9) credits are required. Eight (8) credits of instruction in Language Arts. Each year of Language Arts shall consist of language study, composition, and literature and be aligned to the Idaho Content Standards for the appropriate grade level. One (1) credit of instruction in communications consisting of oral communication and technological applications that includes a course in speech, a course in debate, or a sequence of instructional activities that meet the Idaho Speech Content Standards requirements. (3-29-10)

d. Mathematics. Six (6) credits are required. Secondary mathematics includes Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and reasoning. AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering courses may also be counted as a mathematics credit if the student has completed Algebra II standards. Students who choose to take AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering may not concurrently count such courses as both a math and science credit. (3-12-14)

i. Students must complete secondary mathematics in the following areas: (3-12-14)

(1) Two (2) credits of Algebra I or courses that meet the Idaho Algebra I Content Standards as

approved by the State Department of Education; (3-29-10)

(2) Two (2) credits of Geometry or courses that meet the Idaho Geometry Content Standards as approved by the State Department of Education; and (3-29-10)

(3) Two (2) credits of mathematics of the student's choice. (3-29-10)

ii. Two (2) credits of the required six (6) credits of mathematics must be taken in the last year of high school in which the student intends to graduate. For the purposes of this subsection, the last year of high school shall include the summer preceding the fall start of classes. Students who return to school during the summer or the following fall of the next year for less than a full schedule of courses due to failing to pass a course other than math are not required to retake a math course as long as they have earned six (6) credits of high school level mathematics. (3-12-14)

iii. Students who have completed six (6) credits of math prior to the fall of their last year of high school, including at least two (2) semesters of an Advanced Placement or dual credit calculus or higher level course, are exempt from taking math during their last year of high school. High School math credits completed in middle school shall count for the purposes of this section. (3-12-14)

e. Science. Six (6) credits are required, four (4) of which will be laboratory based. Secondary sciences include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. Up to two (2) credits in AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering may be used as science credits. Students who choose to take AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering may not concurrently count such courses as both a math and science credit. (3-12-14)

i. Secondary sciences include instruction in the following areas: biology, physical science or chemistry, and earth, space, environment, or approved applied science. Four (4) credits of these courses must be laboratory based. (3-29-10)

f. Social Studies. Five (5) credits are required, including government (two (2) credits), United States history (two (2) credits), and economics (one (1) credit). Courses such as geography, sociology, psychology, and world history may be offered as electives, but are not to be counted as a social studies requirement. (3-29-10)

g. Humanities. Two (2) credits are required. Humanities courses include instruction in visual arts, music, theatre, dance, or world language aligned to the Idaho content standards for those subjects. Other courses such as literature, history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if the course is aligned to the Idaho Interdisciplinary Humanities Content Standards. (3-29-10)

h. Health/Wellness. One (1) credit is required. Course must be aligned to the Idaho Health Content Standards. Effective for all public school students who enter grade nine (9) in Fall 2015 or later, each student shall receive a minimum of one (1) class period on psychomotor cardiopulmonary resuscitation (CPR) training as outlined in the American Heart Association (AHA) Guidelines for CPR to include the proper utilization of an automatic external defibrillator (AED) as part of the Health/Wellness course. (3-12-14)

i. Students participating in one (1) season in any sport recognized by the Idaho High School Activities Association or club sport recognized by the local school district, or eighteen (18) weeks of a sport recognized by the local school district may choose to substitute participation up to one (1) credit of physical education. Students must show mastery of the content standards for Physical Education in a format provided by the school district. ~~(3-12-14)~~(____)

02. Content Standards. Each student shall meet locally established subject area standards (using state content standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (3-29-10)

03. College Entrance Examination. (Effective for all public school students who enter grade nine (9) in Fall 2012 or later.) (3-12-14)

a. A student must take one (1) of the following college entrance or placement examinations before the end of the student's eleventh grade year: SAT, ACT, or Compass. A student who misses the statewide administration of the college exam during the student's grade eleven (11) for one (1) of the following reasons, may take the examination during their grade twelve (12) to meet this requirement: (3-12-14)

i. Transferred to an Idaho school district during grade eleven (11); (3-12-14)

ii. Was homeschooled during grade eleven (11); or (3-12-14)

iii. Missed the spring statewide administration of the college entrance exam dates for documented medical reasons. (3-12-14)

b. A student may elect an exemption in grade eleven (11) from the college entrance exam requirement if the student is: (3-12-14)

i. Enrolled in a special education program and has an Individual Education Plan (IEP) that specifies accommodations not allowed for a reportable score on the approved tests; (3-12-14)

ii. Enrolled in a Limited English Proficient (LEP) program for three (3) academic years or less; or (3-12-14)

iii. Enrolled for the first time in grade twelve (12) at an Idaho high school after the ~~*spring*~~ fall statewide administration of the college entrance exam. ~~*(3-12-14)*~~(____)

c. Students who are eligible to take an alternate assessment may take the ACCUPLACER Placement exam during their senior year to meet the college entrance exam graduation requirement. (3-12-14)

04. Senior Project. A student must complete a senior project by the end of grade twelve (12). The project must include a written report and an oral presentation. Additional requirements for a senior project are at the discretion of the local school district or LEA. (3-12-14)

05. Middle School. A student will have met the high school content and credit area requirement for any ~~*required*~~ high school course if: ~~*(3-12-14)*~~(____)

a. The student completes such course with a grade of C or higher before entering grade nine (9); (3-12-14)

b. The course meets the same content standards that are required in high school; and (3-12-14)

c. The course is taught by a properly certificated teacher who meets the federal definition of highly qualified for the course being taught. (3-12-14)

d. The student shall be given a grade for the successful completion of that course and such grade and the number of credit hours assigned to the course shall be transferred to the student's high school transcript. Courses taken in middle school appearing in the student's high school transcript, pursuant to this subsection, shall count for the purpose of high school graduation. However, the student must complete the required number of credits in all high school core subjects as identified in Subsections 105.01.c. through 105.01.h. except as provided in 105.01.d.iii. (3-12-14)

06. Proficiency. Each student must achieve a proficient or advanced score on the grade ten (10) Idaho Standards Achievement Test (ISAT) in math, reading and language usage in order to graduate. Students who receive a proficient or advanced score on the grade ten (10) ISAT while in grade nine (9) may bank the score for purposes of meeting their graduation requirement. A student who does not attain at least a proficient score prior to graduation may appeal to the school district or LEA, and will be given an opportunity to demonstrate proficiency of the content standards through some other locally established plan. School districts or LEAs shall adopt an alternate plan and provide notice of that plan to all students who have not achieved a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test by the fall semester of the student's junior year. All locally established alternate plans

used to demonstrate proficiency shall be forwarded to the State Board of Education for review and information. Alternate plans must be promptly re-submitted to the Board whenever changes are made in such plans. (3-12-14)

a. Before entering an alternate measure, the student must be: (4-2-08)

i. Enrolled in a special education program and have an Individual Education Plan (IEP); or (3-20-04)

ii. Enrolled in an Limited English Proficient (LEP) program for three (3) academic years or less; or (3-20-04)

iii. Enrolled in the fall semester of the senior year. (3-20-04)

b. The alternate plan must: (4-7-11)

i. Contain multiple measures of student achievement; (4-7-11)

ii. Be aligned at a minimum to tenth grade state content standards; (4-7-11)

iii. Be aligned to the state content standards for the subject matter in question; (4-7-11)

iv. Be valid and reliable; and (4-7-11)

v. Ninety percent (90%) of the alternate plan criteria must be based on academic proficiency and performance. (4-7-11)

c. A student is not required to achieve a proficient or advanced score on the ISAT if: (5-8-09)

i. The student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state's exit exam must approved by the State Board of Education and must measure skills at the tenth grade level and be in comparable subject areas to the ISAT; (5-8-09)

ii. The student completes another measure established by a school district or LEA and received by the Board as outlined in Subsection 105.06; or (3-29-10)

iii. The student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test; (5-8-09)

iv. The student is considered an LEP student through a score determined on a language proficiency test and has been in an LEP program for three (3) academic years or less; (5-8-09)

d. Those students who will graduate in 2016 and have not received a proficient or advanced score on the ISAT in grade nine (9), will be required to complete an alternative plan for graduation, as designed by the district, including the elements prescribed in Subsection 105.06.b. and may enter the alternate path prior to the fall of their senior year. (3-12-14)

e. Students who graduate in 2017 are required to complete the ISAT in grade eleven (11) in mathematics and English language usage. ( )

f. Students who graduate in 2018 are required to pass the ISAT in grade eleven (11) in mathematics and English language usage at a grade nine (9) proficiency level. ( )

g. Students who graduate in 2019 are required to pass the ISAT in grade eleven (11) in mathematics and English language usage at a grade ten (10) proficiency level. ( )

h. Students who graduate in 2020 are required to pass the ISAT in grade eleven (11) in mathematics and English language usage at a college and career level proficiency of grade eleven (11). ( )

i. Beginning with the class of 2018, any student who passes the ISAT in mathematics and English language usage at a grade eleven (11) proficiency level while in grade nine (9) or grade ten (10) shall not be required to take the ISAT again. ( )

j. Students who graduate, beginning in 2017, are required to complete an End of Course Assessment (EOC) provided by the state in either biology or chemistry after completion of the course. ( )

k. Beginning with the class of 2019, students are required to pass an End of Course Assessment in biology or chemistry. ( )

07. Special Education Students. A student who is eligible for special education services under the Individuals With Disabilities Education Improvement Act must, with the assistance of the student's Individualized Education Program (IEP) team, refer to the current Idaho Special Education Manual for guidance in addressing graduation requirements. (4-11-06)

08. Foreign Exchange Students. A foreign exchange student may be eligible for graduation by completing a comparable program as approved by the school district or LEA. (4-11-06)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1402

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 14, 2014.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-1511(2), Idaho Code.

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

Thursday, October 16, 2014 - 3:00 p.m.

Idaho State Department of Education
650 West State Street, 2nd Floor
Barbara Morgan Conference Room
Boise, Idaho 83702

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 change to Accountability is to clarify that a limited English proficient (LEP) student is one who does not score "proficient" on the approved test and meets one of the other listed criteria.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This rule needs to be in place for the 2014-2015 school year.

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

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

No Fiscal Impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because: NA

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Luci Willits, State Department of Education: (208) 332-6814, **lbwillits@sde.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 14th Day of August, 2014.

Tom Luna, Superintendent of Public Instruction
State Department of Education
650 West State Street, 2nd Floor
Boise, Idaho 83720-0027
(208) 332-6812 / Fax (208) 334-2228

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 08-0203-1402
(Only those Sections being amended are shown.)

112. ACCOUNTABILITY.
The provisions in this section apply for the purposes of meeting the "No Child Left Behind" Act and the state of Idaho accountability requirements. (3-20-04)

01. ISAT Student Achievement Levels. There are four (4) levels of student achievement for the ISAT: Below Basic, Basic, Proficient, and Advanced. Definitions for these levels of student achievement are adopted by reference in Subsection 004.05. (4-2-08)

02. IELA Language Proficiency Levels. There are five (5) levels of language proficiency for students testing on the Idaho English Language Assessment: beginning," advanced beginning, intermediate, early fluent, and fluent. Definitions for these levels of language proficiency are adopted by reference in Subsections 004.02 and 004.04. (4-2-08)

03. Adequate Yearly Progress (AYP). (3-20-04)

a. Proficiency is defined as the number of students scoring proficient or advanced on the spring on-grade level ISAT. (3-20-04)

b. The State Department of Education will make AYP determinations for schools and districts each year. Results will be given to the districts at least one (1) month prior to the first day of school. (4-7-11)

c. The baseline for AYP will be set by the Board and shall identify the amount of growth (percentage of students reaching proficiency) required for each intermediate period. (3-20-04)

04. Adequate Yearly Progress (AYP) Definitions. For purposes of calculating and reporting adequate yearly progress, the following definitions shall be applied. (3-20-04)

a. Full Academic Year (continuous enrollment). (3-20-04)

i. A student who is enrolled continuously in the same public school from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included in the calculation to determine if the school achieved AYP in proficiency. A student is continuously enrolled if he/she has not transferred or dropped-out of the public school. Students who are serving suspensions are still considered to be enrolled students. (4-7-11)

ii. A student who is enrolled continuously in the school district from the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the school district has achieved AYP. (4-2-08)

iii. A student who is enrolled continuously in a public school within Idaho from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the state has achieved AYP. (4-2-08)

b. Participation Rate. (3-20-04)

i. Failure to include ninety-five percent (95%) of all students and ninety-five percent (95%) of students in designated subgroups automatically identifies the school as not having achieved AYP. The ninety-five percent (95%) determination is made by dividing the number of students assessed on the Spring ISAT by the number of students reported on the class roster file for the Spring ISAT. (3-20-04)

(1) If a school district does not meet the ninety-five percent (95%) participation target for the current year, the participation rate can be calculated by the most current three (3) year average of participation. (4-6-05)

(2) Students who are absent for the entire state-approved testing window because of medical reasons or are homebound are exempt from taking the ISAT if such circumstances prohibit them from participating. Students who drop out, withdraw, or are expelled prior to the beginning of the final makeup portion of the test window are considered exited from the school. (4-7-11)

ii. For groups of ten (10) or more students, absences for the state assessment may not exceed five percent (5%) of the current enrollment or two (2) students, whichever is greater. Groups of less than ten (10) students will not have a participation determination. (3-20-04)

c. Schools. (3-20-04)

i. An elementary school includes a grade configuration of grades Kindergarten (K) through six (6) inclusive, or any combination thereof. (3-20-04)

ii. A middle school is a school that does not meet the definition of an elementary school and contains grade eight (8) but does not contain grade twelve (12). (4-6-05)

iii. A high school is any school that contains grade twelve (12). (3-20-04)

iv. The accountability of public schools without grades assessed by this system (i.e., K-2 schools) will be based on the third grade test scores of the students who previously attended that feeder school. (3-20-04)

v. A "new school" for purposes of accountability is a wholly new entity receiving AYP determinations for the first time, or a school with a significant student population change as a result of schools being combined or geographic boundaries changing, or a result of successful school restructuring sanctioned by the Office of the State Board of Education. (4-7-11)

d. Subgroups. Scores on the ISAT must be disaggregated and reported by the following subgroups: (3-20-04)

i. Race/Ethnicity - Black/African American, Asian, Native Hawaiian/Pacific Islander, White, Hispanic/Latino Ethnicity, American Indian/Alaska Native. (3-20-04)

ii. Economically disadvantaged - identified through the free and reduced lunch program. (3-20-04)

iii. Students with disabilities - individuals who are eligible to receive special education services through the Individuals with Disabilities Education Act (IDEA). (3-20-04)

iv. Limited English Proficient - individuals who do not score ~~*in the low range*~~ proficient on the state-approved language proficiency test and meet one (1) of the following criteria: ~~*(4-6-05)*~~(8-14-14)T

(1) Individuals whose native language is a language other than English; or (4-6-05)

(2) Individuals who come from environments where a language other than English is dominant; or (4-6-05)

(3) Individuals who are American Indian and Alaskan natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms, where the language of instruction is English. (4-6-05)

e. Graduation Rate. The State Board of Education will establish a target for graduation. All high schools must meet the target or make sufficient progress toward the target each year, as determined by the State Board of Education. The graduation rate will be disaggregated by the subpopulations listed in Subsection 112.04.d. in the event the "safe harbor" is invoked by the school/district. (4-7-11)

f. Additional Academic Indicator. The State Board of Education will establish a target for an additional academic indicator. All elementary and middle schools must maintain or make progress toward the additional academic indicator target each year. The additional academic indicator target will be disaggregated by the subpopulations listed in Subsection 112.04.d. in the event the "safe harbor" is invoked by the school/district. By 2014, the schools/districts must meet the target. (3-20-04)

05. Annual Measurable Achievement Objectives (AMAOs). Local school districts are responsible for ensuring district progress of Limited English Proficient (LEP) students in their acquisition of English. Progress and proficiency are measured by the IELA and determined based on three (3) AMAOs: (4-2-08)

a. Annual increases in the percent or number of LEP students making progress in acquiring English language proficiency; (4-2-08)

b. Annual increases in the percent or number of LEP students attaining English language proficiency by the end of the school year; and (4-2-08)

c. Each school district must make Adequate Yearly Progress for LEP students on the spring ISAT. (4-2-08)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1403

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 14, 2014.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-1511(2), Idaho Code.

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

Thursday, October 16, 2014 - 3:00 p.m.

Idaho State Department of Education
650 West State Street, 2nd Floor
Barbara Morgan Conference Room
Boise, Idaho 83702

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:

Assessment in the Public Schools, regarding the use of accommodations/adaptions for LEP students must accurately reflect the Designated Supports and Accommodations as referenced in the Smarter Balanced Assessment Consortium (SBAC) guidelines and science End of Course Assessments have been added to the list of required assessments.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This rule needs to be in place for the 2014-2015 school year and to align with changes in Idaho's approved ESEA waiver and Title III Federal regulations.

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

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

No Fiscal Impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because: NA

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Luci Willits, State Department of Education: (208) 332-6814, **lbwillits@sde.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 14th Day of August, 2014.

Tom Luna, Superintendent of Public Instruction
State Department of Education
650 West State Street, 2nd Floor
Boise, Idaho 83720-0027
(208) 332-6812 / Fax (208) 334-2228

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 08-0203-1403
(Only those Sections being amended are shown.)

111. ASSESSMENT IN THE PUBLIC SCHOOLS.

01. Philosophy. Acquiring the basic skills is essential to realization of full educational, vocational and personal/social development. Since Idaho schools are responsible for instruction in the basic scholastic skills, the State Board of Education has a vested interest in regularly surveying student skill acquisition as an index of the effectiveness of the educational program. This information can best be secured through objective assessment of student growth. The State Board of Education will provide oversight for all components of the comprehensive assessment program. (4-2-08)

02. Purposes. The purpose of assessment in the public schools is to: (3-15-02)

a. Measure and improve student achievement; (3-15-02)

b. Assist classroom teachers in designing lessons; (3-15-02)

c. Identify areas needing intervention and remediation, and acceleration; (3-15-02)

d. Assist school districts in evaluating local curriculum and instructional practices in order to make needed curriculum adjustments; (3-15-02)

e. Inform parents and guardians of their child's progress; (3-15-02)

f. Provide comparative local, state and national data regarding the achievement of students in essential skill areas; (3-15-02)

g. Identify performance trends in student achievement across grade levels tested and student growth over time; and (3-15-02)

h. Help determine technical assistance/consultation priorities for the State Department of Education. (3-15-02)

03. Content. The comprehensive assessment program will consist of multiple assessments, including, the Idaho Reading Indicator (IRI), the National Assessment of Educational Progress (NAEP), the Idaho English Language Assessment, the Idaho Standards Achievement Tests (ISAT), the Idaho Alternate Assessment, and a college entrance exam. (3-29-12)

04. Testing Population. All students in Idaho public schools, grades kindergarten through twelve (K-12), are required to participate in the comprehensive assessment program approved by the State Board of Education

and funded. (4-2-08)

a. All students who are eligible for special education shall participate in the statewide assessment program. (4-6-05)

b. Each student's individualized education program team shall determine whether the student shall participate in the regular assessment without accommodations, the regular assessment with accommodations or adaptations, or whether the student qualifies for and shall participate in the alternate assessment. (4-6-05)

c. Limited English Proficient (LEP) students, as defined in Subsection 112.04.d.iv., ~~*who receive a score below the fluent level on the Idaho English Language Assessment and have an Education Learning Plan (ELP), shall be given the ISAT with accommodations or adaptations as outlined in the ELP. Students can be categorized as LEP students for two (2) years after testing proficient on the language proficiency test and exiting the LEP program. LEP students who do not have an ELP or a language acquisition score will be given the regular ISAT without accommodations or adaptations*~~ may receive designated supports or accommodations, or both, for the ISAT assessment if need has been indicated by the LEP student's Educational Learning Plan (ELP) team. The team shall outline the designated supports or accommodations, or both, in an ELP prior to the assessment administration. Designated supports or accommodations, or both, shall be familiar to the student and used throughout the school year during instruction and for other assessments. LEP students who are enrolled in their first year of school in the United States may take the IELA in lieu of the ~~*reading/*~~ English language ~~*usage*~~ ISAT, but will still be required to take the ISAT ~~*m*~~(Mathematics and ~~*s*~~Science). ~~*ISAT with accommodations or adaptations as determined by the language proficiency score and ELP.*~~ Such LEP students will be counted as participants for the ninety-five percent (95%) participation target, as described in Subsection 112.04. However, such LEP students are not required to be counted for ~~*AYP*~~ accountability purposes ~~*in determining proficiency*~~, as described in Subsection 112.03. ~~*(5-8-09)*~~(8-14-14)T

05. Scoring and Report Formats. Scores will be provided for each subject area assessed and reported in standard scores, benchmark scores, or holistic scores. Test results will be presented in a class list report of student scores, building/district summaries, content area criterion reports by skill, disaggregated group reports, and pressure sensitive labels as appropriate. Information about the number of students who are eligible for special education who participate in regular and alternate assessments, and their performance results, shall be included in reports to the public if it is statistically sound to do so and would not disclose performance results identifiable to individual students. (4-7-11)

a. Effective April 1, 2009, all students taking the Idaho Standards Achievement Test (ISAT) must have a unique student identifier. (4-7-11)

b. Districts must send all assessment results and related communication to parents within three (3) weeks of receipt from the state. (4-7-11)

06. Comprehensive Assessment Program. The State approved comprehensive assessment program is outlined in Subsections 111.06.a. through 111.06.l. Each assessment will be comprehensive of and aligned to the Idaho State Content Standards it is intended to assess. In addition, districts are responsible for writing and implementing assessments in those standards not assessed by the state assessment program. (4-2-08)

a. Kindergarten - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

b. Grade 1 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

c. Grade 2 - Idaho Reading Indicator, Grade 2 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

d. Grade 3 - Idaho Reading Indicator, Grade 3 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

e. Grade 4 - National Assessment of Educational Progress, Grade 4 Idaho Standards Achievement

Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)

f. Grade 5 - Grade 5 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)

g. Grade 6 - Grade 6 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)

h. Grade 7 - Grade 7 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)

i. Grade 8 - National Assessment of Educational Progress, Grade 8 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)

j. Grade 9 - Grade 9 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (3-29-12)

k. Grade 10 - High School Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

l. Grade 11 - High School Idaho Standards Achievement Tests (as applicable), Idaho English Language Assessment, college entrance exam. ~~(3-29-12)~~(8-14-14)T

m. Grade 12 - National Assessment of Educational Progress, Idaho English Language Assessment. (4-2-08)

n. Students who complete biology or chemistry are required to take an End of Course Assessment provided by the state and administered by the district. (8-14-14)T

~~n~~o. Students who achieve a proficient or advanced score on a portion or portions of the ISAT, or the Idaho Alternate Assessment, offered in their tenth grade year or later are not required to continue taking that portion or portions. (5-8-09)

07. Comprehensive Assessment Program Schedule. (5-3-03)

a. The Idaho Reading Indicator will be administered in accordance with Section 33-1614, Idaho Code. (3-15-02)

b. The National Assessment of Educational Progress will be administered in timeframe specified by the U.S. Department of Education. (3-15-02)

c. The Idaho Standards Achievement Tests will be administered twice annually in the Fall and Spring in a time period specified by the State Board of Education. (5-3-03)

d. The Idaho Alternate Assessment will be administered in a time period specified by the State Board of Education. (4-2-08)

e. The Idaho English Language Assessment will be administered in a time period specified by the State Board of Education. (4-2-08)

08. Costs Paid by the State. Costs for the following testing activities will be paid by the state: (4-1-97)

a. All consumable and non-consumable materials needed to conduct the prescribed statewide comprehensive assessment program; (3-15-02)

b. Statewide distribution of all assessment materials; and (3-29-12)

c. Processing and scoring student response forms, distribution of prescribed reports for the statewide comprehensive assessment program. (3-29-12)

09. Costs of Additional Services. Costs for any additional administrations or scoring services not included in the prescribed statewide comprehensive assessment program will be paid by the participating school districts. (3-15-02)

10. Services. The comprehensive assessment program should be scheduled so that a minimum of instructional time is invested. Student time spent in testing will not be charged against attendance requirements. (3-15-02)

11. Test Security, Validity and Reliability. Test security is of the utmost importance. To ensure integrity of secure test items and protect validity and reliability of test outcomes, test security must be maintained. School districts will employ security measures in protecting statewide assessment materials from compromise. Each individual who has any opportunity to see test items must sign a state-provided confidentiality agreement, which the district must keep on file in the district for at least two (2) years. Documentation of security safeguards must be available for review by authorized state and federal personnel. (4-2-08)

a. All ISAT paper and pencil test booklets will be boxed and shipped to the test vendor to be counted no later than two (2) weeks after the end of the testing window. (3-20-04)

b. The ISAT will be refreshed each year to provide additional security beginning with grades four (4) eight (8) and ten (10) in 2007. Items will be refreshed for grades three (3) and seven (7) in 2008; grades five (5) and six (6) in 2009; and grades two (2) and nine (9) in 2010. (3-20-04)

c. Any assessment used for federal reporting shall be independently reviewed for reliability, validity, and alignment with the Idaho Content Standards. (4-2-08)

12. Demographic Information. Accurate demographic information must be submitted as required for each test to assist in interpreting test results. It may include but is not limited to race, sex, ethnicity, and special programs, (Title I, English proficiency, migrant status, special education status, gifted and talented status, and socio-economic status). (4-2-08)

13. Dual Enrollment. For the purpose of non-public school student participation in non-academic public school activities as outlined in Section 33-203, Idaho Code, the Idaho State Board of Education recognizes the following: (3-15-02)

a. The Idaho Standards Achievement Tests (grades 3-9 and High School). (3-29-12)

b. A portfolio demonstrating grade level proficiency in at least five (5) of the subject areas listed in Subsections 111.13.b.i. through 111.13.b.vi. Portfolios are to be judged and confirmed by a committee comprised of at least one (1) teacher from each subject area presented in the portfolio and the building principal at the school where dual enrollment is desired. (4-6-05)

i. Language Arts/Communications. (3-15-02)

ii. Math. (3-15-02)

iii. Science. (3-15-02)

iv. Social Studies. (3-15-02)

v. Health. (3-15-02)

vi. Humanities. (3-15-02)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1404

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 14, 2014.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-1511(2), Idaho Code.

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

Thursday, October 16, 2014 - 3:00 p.m.

Idaho State Department of Education
650 West State Street, 2nd Floor
Barbara Morgan Conference Room
Boise, Idaho 83702

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:

Inadvertently, the wording to require Physical Education and Professional Technical Education as required instructional offerings of a high school were removed and are being added back into the rule. In addition, clarifying language was added to ensure learning plans are reviewed throughout a student's high school career.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This rule needs to be in place for the 2014-2015 school year.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because: Simple clarification of the intent of the original rule and clarifying language added to ensure review of learning plans.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Luci Willits, State Department of Education: (208) 332-6814, **lbwillits@sde.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 14th Day of August, 2014.

Tom Luna, Superintendent of Public Instruction
State Department of Education
650 West State Street, 2nd Floor
Boise, Idaho 83720-0027
(208) 332-6812 / Fax (208) 334-2228

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 08-0203-1404
(Only those Sections being amended are shown.)

104. OTHER REQUIRED INSTRUCTION.
Other required instruction for all students and other required offerings of the school are: (4-1-97)

01. Elementary Schools. (4-11-06)

a. The following section outlines other information required for all elementary students, as well as other required offerings of the school:

Fine Arts (art and music)
Health (wellness)
Physical Education (fitness) (4-11-06)

b. Additional instructional options as determined by the local school district. For example:
Languages other than English
Career Awareness (4-1-97)

02. Middle Schools/Junior High Schools. (4-11-06)

a. No later than the end of Grade eight (8) each students shall develop parent-approved student learning plans for their high school and post-high school options. The learning plan shall be developed by students with the assistance of parents or guardians, and with advice and recommendation from school personnel. It shall be reviewed annually and may be revised at any time. The purpose of a parent-approved student learning plan is to outline a course of study and learning activities for students to become contributing members of society. A student learning plan describes, at a minimum, the list of courses and learning activities in which the student will engage while working toward meeting the school district's or LEA's graduation standards. The school district or LEA will have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the learning plan. A learning plan will not be required if the parent or guardian requests, in writing, that no learning plan be developed. (4-11-06)

b. A student must have taken pre-algebra before the student will be permitted to enter grade nine (9). (3-12-14)

c. Other required instruction for all middle school students:
Health (wellness)
Physical Education (fitness) (4-11-06)

d. Other required offerings of the school:
Family and Consumer Science
Fine & Performing Arts

Professional Technical Education
Advisory Period (middle school only, encouraged in junior high school) (4-11-06)

03. High Schools. (8-14-14)T

a. High schools must offer a wide variety of courses to satisfy state and local graduation requirements. High schools are required to provide instructional offerings in Physical Education (fitness) and Professional Technical Education. (8-14-14)T

b. High schools will annually review and update with the student the parent-approved student learning plans outlined in Subsection 104.02.a.. (8-14-14)T

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1405

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 14, 2014.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 33-1511(2), Idaho Code.

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

Paragraph 105.01.i. - The Legislators approved changes to the credit requirements for physical education at the 2014 session. Students participating in one (1) season in any sport recognized by the Idaho High School Activities Association or club sport recognized by the local school district, or eighteen (18) week of a sport recognized by the local school district may choose to substitute participation up to one (1) credit of physical education. The legislators requested that we add wording that will include evidence of standards being met.

Subparagraph 105.03.b.iii. - The current rule states: students may elect an exemption in grade eleven (11) from the college entrance exam requirement if: Enrolled for the first time in grade twelve (12) at an Idaho high school after the spring statewide administration of the college entrance exam. The mistake in this rule is: it should say fall, not spring. The spring administration is for juniors and the College Board does not allow students to test outside of their grade level group.

Subsection 105.05 - the word "required" is removed because this section applies to any class the student is taking.

Subsection 105.06 - as Idaho continues to transition to higher standards, Idaho's graduation requirement must be considered. Currently, the State Board of Education requires students to pass the 10th grade Idaho Standards Achievement Tests (ISAT) to graduate. The Board made accommodations for the Class of 2016 as students took the field test. For the class of 2017, the Department recommends students are required to take the test.

In 2010, the State Board of Education removed the requirement for students to pass the ISAT science test in 10th grade. At that time, the Department began work on replacing the science test with a more appropriate measure of science knowledge in the form of an end of course assessment. Tests in biology and chemistry were developed and field tested. Starting with the class of 2017 (sophomores in 2014-2015), students will be required to take either biology or chemistry.

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:

These changes in rule are necessary to bring the rules into compliance with requests from the Legislature and the College Board.

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:

No Fiscal Impact.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Luci Willits, State Department of Education, (208) 332-6814, **lbwillits@sde.idaho.gov**.

DATED this 14th Day of August, 2014.

Tom Luna, Superintendent of Public Instruction
State Department of Education
650 West State Street, 2nd Floor
Boise, Idaho 83720-0027
(208) 332-6812 / Fax (208) 334-2228

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 08-0203-1405
(Only those Sections being amended are shown.)

105. HIGH SCHOOL GRADUATION REQUIREMENTS.
A student must meet all of the requirements identified in this section before the student will be eligible to graduate from an Idaho high school. The local school district or LEA may establish graduation requirements beyond the state minimum. (5-8-09)

01. Credit Requirements. The State minimum graduation requirement for all Idaho public high schools is forty-six (46) credits and must include twenty-nine (29) credits in core subjects as identified in Paragraphs 105.01.c. through 105.01.i. (3-12-14)

a. Credits. (Effective for all students who enter the ninth grade in the fall of 2010 or later.) One (1) credit shall equal sixty (60) hours of total instruction. School districts or LEA's may request a waiver from this provision by submitting a letter to the State Department of Education for approval, signed by the superintendent and chair of the board of trustees of the district or LEA. The waiver request shall provide information and documentation that substantiates the school district or LEA's reason for not requiring sixty (60) hours of total instruction per credit. (3-29-10)

b. Mastery. A student may also achieve credits by demonstrating mastery of a subject's content standards as defined and approved by the local school district or LEA. (3-29-10)

c. Secondary Language Arts and Communication. Nine (9) credits are required. Eight (8) credits of instruction in Language Arts. Each year of Language Arts shall consist of language study, composition, and literature and be aligned to the Idaho Content Standards for the appropriate grade level. One (1) credit of instruction in communications consisting of oral communication and technological applications that includes a course in speech, a course in debate, or a sequence of instructional activities that meet the Idaho Speech Content Standards requirements. (3-29-10)

d. Mathematics. Six (6) credits are required. Secondary mathematics includes Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and reasoning. AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering courses may also be counted as a mathematics credit if the student has completed Algebra II standards. Students who choose to take AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering may not concurrently count such courses as both a math and science credit. (3-12-14)

i. Students must complete secondary mathematics in the following areas: (3-12-14)

(1) Two (2) credits of Algebra I or courses that meet the Idaho Algebra I Content Standards as approved by the State Department of Education; (3-29-10)

(2) Two (2) credits of Geometry or courses that meet the Idaho Geometry Content Standards as approved by the State Department of Education; and (3-29-10)

(3) Two (2) credits of mathematics of the student's choice. (3-29-10)

ii. Two (2) credits of the required six (6) credits of mathematics must be taken in the last year of high school in which the student intends to graduate. For the purposes of this subsection, the last year of high school shall include the summer preceding the fall start of classes. Students who return to school during the summer or the following fall of the next year for less than a full schedule of courses due to failing to pass a course other than math are not required to retake a math course as long as they have earned six (6) credits of high school level mathematics. (3-12-14)

iii. Students who have completed six (6) credits of math prior to the fall of their last year of high school, including at least two (2) semesters of an Advanced Placement or dual credit calculus or higher level course, are exempt from taking math during their last year of high school. High School math credits completed in middle school shall count for the purposes of this section. (3-12-14)

e. Science. Six (6) credits are required, four (4) of which will be laboratory based. Secondary sciences include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. Up to two (2) credits in AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering may be used as science credits. Students who choose to take AP Computer Science, Dual Credit Computer Science, and Dual Credit Engineering may not concurrently count such courses as both a math and science credit. (3-12-14)

i. Secondary sciences include instruction in the following areas: biology, physical science or chemistry, and earth, space, environment, or approved applied science. Four (4) credits of these courses must be laboratory based. (3-29-10)

f. Social Studies. Five (5) credits are required, including government (two (2) credits), United States history (two (2) credits), and economics (one (1) credit). Courses such as geography, sociology, psychology, and world history may be offered as electives, but are not to be counted as a social studies requirement. (3-29-10)

g. Humanities. Two (2) credits are required. Humanities courses include instruction in visual arts, music, theatre, dance, or world language aligned to the Idaho content standards for those subjects. Other courses such as literature, history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if the course is aligned to the Idaho Interdisciplinary Humanities Content Standards. (3-29-10)

h. Health/Wellness. One (1) credit is required. Course must be aligned to the Idaho Health Content Standards. Effective for all public school students who enter grade nine (9) in Fall 2015 or later, each student shall receive a minimum of one (1) class period on psychomotor cardiopulmonary resuscitation (CPR) training as outlined in the American Heart Association (AHA) Guidelines for CPR to include the proper utilization of an automatic external defibrillator (AED) as part of the Health/Wellness course. (3-12-14)

i. Students participating in one (1) season in any sport recognized by the Idaho High School Activities Association or club sport recognized by the local school district, or eighteen (18) weeks of a sport recognized by the local school district may choose to substitute participation up to one (1) credit of physical education. Students must show mastery of the content standards for physical education in a format provided by the school district. ~~(3-12-14)~~(8-14-14)T

02. Content Standards. Each student shall meet locally established subject area standards (using state content standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (3-29-10)

03. College Entrance Examination. (Effective for all public school students who enter grade nine (9) in Fall 2012 or later.) (3-12-14)

a. A student must take one (1) of the following college entrance or placement examinations before the end of the student's eleventh grade year: SAT, ACT, or Compass. A student who misses the statewide administration of the college exam during the student's grade eleven (11) for one (1) of the following reasons, may take the examination during their grade twelve (12) to meet this requirement: (3-12-14)

i. Transferred to an Idaho school district during grade eleven (11); (3-12-14)

ii. Was homeschooled during grade eleven (11); or (3-12-14)

iii. Missed the spring statewide administration of the college entrance exam dates for documented medical reasons. (3-12-14)

b. A student may elect an exemption in grade eleven (11) from the college entrance exam requirement if the student is: (3-12-14)

i. Enrolled in a special education program and has an Individual Education Plan (IEP) that specifies accommodations not allowed for a reportable score on the approved tests; (3-12-14)

ii. Enrolled in a Limited English Proficient (LEP) program for three (3) academic years or less; or (3-12-14)

iii. Enrolled for the first time in grade twelve (12) at an Idaho high school after the ~~*spring*~~ fall statewide administration of the college entrance exam. ~~*(3-12-14)*~~(8-14-14)T

c. Students who are eligible to take an alternate assessment may take the ACCUPLACER Placement exam during their senior year to meet the college entrance exam graduation requirement. (3-12-14)

04. Senior Project. A student must complete a senior project by the end of grade twelve (12). The project must include a written report and an oral presentation. Additional requirements for a senior project are at the discretion of the local school district or LEA. (3-12-14)

05. Middle School. A student will have met the high school content and credit area requirement for any ~~*required*~~ high school course if: ~~*(3-12-14)*~~(8-14-14)T

a. The student completes such course with a grade of C or higher before entering grade nine (9); (3-12-14)

b. The course meets the same content standards that are required in high school; and (3-12-14)

c. The course is taught by a properly certificated teacher who meets the federal definition of highly qualified for the course being taught. (3-12-14)

d. The student shall be given a grade for the successful completion of that course and such grade and the number of credit hours assigned to the course shall be transferred to the student's high school transcript. Courses taken in middle school appearing in the student's high school transcript, pursuant to this subsection, shall count for the purpose of high school graduation. However, the student must complete the required number of credits in all high school core subjects as identified in Subsections 105.01.c. through 105.01.h. except as provided in 105.01.d.iii. (3-12-14)

06. Proficiency. Each student must achieve a proficient or advanced score on the grade ten (10) Idaho Standards Achievement Test (ISAT) in math, reading and language usage in order to graduate. Students who receive a proficient or advanced score on the grade ten (10) ISAT while in grade nine (9) may bank the score for purposes of meeting their graduation requirement. A student who does not attain at least a proficient score prior to graduation may appeal to the school district or LEA, and will be given an opportunity to demonstrate proficiency of the content standards through some other locally established plan. School districts or LEAs shall adopt an alternate plan and provide notice of that plan to all students who have not achieved a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test by the fall semester of the student's junior year. All locally established alternate plans used to demonstrate proficiency shall be forwarded to the State Board of Education for review and information. Alternate plans must be promptly re-submitted to the Board whenever changes are made in such plans. (3-12-14)

a. Before entering an alternate measure, the student must be: (4-2-08)

i. Enrolled in a special education program and have an Individual Education Plan (IEP); or (3-20-04)

ii. Enrolled in an Limited English Proficient (LEP) program for three (3) academic years or less; or (3-20-04)

iii. Enrolled in the fall semester of the senior year. (3-20-04)

b. The alternate plan must: (4-7-11)

i. Contain multiple measures of student achievement; (4-7-11)

ii. Be aligned at a minimum to tenth grade state content standards; (4-7-11)

iii. Be aligned to the state content standards for the subject matter in question; (4-7-11)

iv. Be valid and reliable; and (4-7-11)

v. Ninety percent (90%) of the alternate plan criteria must be based on academic proficiency and performance. (4-7-11)

c. A student is not required to achieve a proficient or advanced score on the ISAT if: (5-8-09)

i. The student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state's exit exam must approved by the State Board of Education and must measure skills at the tenth grade level and be in comparable subject areas to the ISAT; (5-8-09)

ii. The student completes another measure established by a school district or LEA and received by the Board as outlined in Subsection 105.06; or (3-29-10)

iii. The student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test; (5-8-09)

iv. The student is considered an LEP student through a score determined on a language proficiency test and has been in an LEP program for three (3) academic years or less; (5-8-09)

d. Those students who will graduate in 2016 and have not received a proficient or advanced score on the ISAT in grade nine (9), will be required to complete an alternative plan for graduation, as designed by the district, including the elements prescribed in Subsection 105.06.b. and may enter the alternate path prior to the fall of their senior year. (3-12-14)

e. Students who graduate in 2017 are required to complete the ISAT in grade eleven (11) in mathematics and English language usage. (8-14-14)T

f. Students who graduate, beginning in 2017, are required to complete an end of course assessment provided by the state in either biology or chemistry. The end of course assessment must be given at the end of the student's instruction in either biology or chemistry. (8-14-14)T

07. Special Education Students. A student who is eligible for special education services under the Individuals With Disabilities Education Improvement Act must, with the assistance of the student's Individualized Education Program (IEP) team, refer to the current Idaho Special Education Manual for guidance in addressing graduation requirements. (4-11-06)

08. Foreign Exchange Students. A foreign exchange student may be eligible for graduation by completing a comparable program as approved by the school district or LEA. (4-11-06)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1406

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 14, 2014.

AUTHORITY: In compliance with Section 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 33-1511(2), Idaho Code.

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

Thursday, October 16, 2014 - 3:00 p.m.

Idaho State Department of Education
650 West State Street, 2nd Floor
Barbara Morgan Conference Room
Boise, Idaho 83702

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 rule allows for the five new data elements to be collected which will provide the necessary information for finance to accurately calculate payments necessary for staffing and for the Advanced Opportunities option.

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:

To implement Senate Bill 1372, which was passed into law during the 2014 Legislative Session with an emergency clause, retroactively becoming Section 33-133.3.g.i, Idaho Code, that requires legislation for any data element added to the Idaho State Department of Education's data collection from the districts.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because: The rule is needed due to SB1372 requiring legislation for any data element added to the Idaho State Department of Education's data collection from the districts.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Joyce Popp, State Department of Education: (208) 332-6970, **jpopp@sde.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 14th Day of August, 2014.

Tom Luna, Superintendent of Public Instruction
State Department of Education
650 West State Street, 2nd Floor
Boise, Idaho 83720-0027
(208) 332-6812 / Fax (208) 334-2228

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 08-0203-1406
(Only those Sections being amended are shown.)

115. DATA COLLECTION.

01. Data Collection and Required Data Elements. The State Department of Education will collect the required information from participating school files for state and federal reporting and decision-making. The ~~*enrollment*~~ data collection ~~*will*~~ shall contain ~~*information about the enrollment of the student attributes such as unique student identifier, active special education, Limited English Proficient (LEP), migrant, grade level, gender, race, and free/reduced lunch status*~~ all data as listed on the State Department of Education's website under "required data elements." The collection ~~*will be done in mid-October, early February, and May (end of the testing window)*~~ shall be submitted monthly for any period of time in which students are receiving educational instruction or services provided by a state public school or charter school. Each participating school is required to verify and assure the accuracy and completeness of the data submitted in the files. ~~*(5-8-09)*~~(8-14-14)T

02. New Data Elements in State Student Data System. To meet the requirements of Section 33-133.3, Idaho Code, the following data elements will be added to the monthly ISEE data upload beginning in the 2014-2015 school year. (8-14-14)T

a. Private or Home Schooled Flag in the Student Demographics File. To indicate if the student is Private or Home Schooled as well as proper grade level for testing for use in correct allocation of funds. (8-14-14)T

b. Provider School Name Field in the Student Course Enrollment File. To indicate the name of the institution providing instruction of a non-regular course, i.e. virtual or distance education. For use in accurate calculation of payment for Advanced Opportunity Program payments. (8-14-14)T

c. Instructor Name Field in the Student Course Enrollment File. To indicate the name of the actual instructor within an institution that is providing instruction of a non-regular course, i.e. virtual or distance education. For use in accurate calculation for Advanced Opportunity Program payments. (8-14-14)T

d. Examination to be Taken Flag in the Student Course Enrollment File. To indicate if a course has a specific examination that requires payment to sit for the examination. To identify and accurately calculate the examination reimbursement payments for the Advanced Opportunities Program. (8-14-14)T

e. Examination Type Field in the Student Course Enrollment File. To collect the type of college credit bearing examination that a student is associated with a specific Advanced Opportunity course to identify the type of examination and the payment necessary as part of the Advanced Opportunity Program to accurately calculate payment for the program. (8-14-14)T

IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

10.01.01 - RULES OF PROCEDURE

DOCKET NO. 10-0101-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

The pending rule will improve the process the board uses to substantiate the educational requirements that must be met prior to assignment to examinations or granting a professional engineer license by comity. It is difficult for the board to ascertain the applicant's educational coursework when reviewing foreign education or non-EAC/ABET accredited applications. Also, applications for comity licensure in which the education was completed many years ago are difficult to evaluate where course descriptions are no longer published or available. The board is expanding the option of requiring an independent evaluation of an applicant's educational credentials to any graduate of a program that is not accredited by the EAC/ABET organization. The previous rule applied the credential evaluation only to foreign educated applicants.

Additionally, the board is changing the process to evaluate foreign applicants for comity licensure. The rule revision will separate the foreign applicant process from the interstate applicant process along with all application materials to be in English. The foreign applicant process will also separate the foreign credentialing process from those that are board approved and those that are not or are unknown. For the non-approved or unknown foreign countries, the board will add a 2-year U.S. experience requirement along with education and examination requirements similar to those required of U.S. engineers. Finally, a provision is added for the board to waive the prescriptive licensure requirements of Section 19.03 in this rule to an international expert in unique fields of engineering without first approving the licensing process of that country so long as they meet the minimum requirements of 54-1219 Idaho Code. This provision is added to enable unique international expertise to be available on a case-by-case basis.

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 August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, pages 28 through 36**.

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 or agency dedicated funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Keith Simila at (208) 373-7210.

DATED This 27th Day of August, 2014

Keith Simila, P.E., Executive Director
1510 Watertower St., Meridian, Idaho 83642
Telephone: (208) 373-7210 / Fax: (208) 373-7213
Email: **keith.simila@ipels.idaho.gov**

IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

10.01.02 - RULES OF PROFESSIONAL RESPONSIBILITY

DOCKET NO. 10-0102-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

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

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

The amendments will correct an incorrect citation to Section 67-2320, Idaho Code, which is the law requiring public agencies use qualification based selection processes when soliciting engineering or land surveying services. The board intends that all provisions of law be complied with, not just section (2)(a). The existing citation is ambiguous. The rule change clarifies the intent of the board.

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 August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, pages 37 and 38**.

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 or agency dedicated funds.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Keith Simila at (208) 373-7210.

DATED: August 27, 2014.

Keith Simila, P.E.
Executive Director
1510 Watertower St.
Meridian, Idaho 83642
Telephone: (208) 373-7210
Fax: (208) 373-7213
Email: **keith.simila@ipels.idaho.gov**

IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

10.01.03 - RULES FOR CORNER PERPETUATION AND FILING

DOCKET NO. 10-0103-1401

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 54-1208, Idaho Code.

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

Tuesday – October 14, 2014 – 9:00 A.M.

1510 E. Watertower Street
Meridian, ID 83642

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 amendments will require surveyors to perpetuate historic corner record information on the corner perpetuation and filing (CP&F) forms filed or recorded in the county courthouse in lieu of listing all corner record instrument numbers on the record of survey map. The reason for this change is that over time, the number of CP&F record filings are increasing, and there is insufficient room on the record of survey map to continue the practice of listing all corner record instrument numbers without creating a cluttered map that is less legible to read. Only the most current corner record instrument number is proposed for listing on the Record of Survey map. A change to 55-1906, Idaho Code is proposed that removes the requirement for listing all corner record instrument numbers on the record of survey map.

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

There is no fee associated with this rule change.

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 fiscal impact to the state general fund or the agency dedicated fund.

NEGOTIATED RULEMAKING: In accordance with Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, page 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:

There are no materials incorporated by reference in this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Keith Simila, (208) 373-7210.

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 October 22, 2014.

DATED this 27th Day of August, 2014.

Keith Simila, P.E.
Executive Director
1510 Watertower St.
Meridian, Idaho 83642
Telephone: (208) 373-7210
Fax: (208) 373-7213
Email: **keith.simila@ipels.idaho.gov**

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 10-0103-1401
(Only those Sections being amended are shown.)

007. RECORD OF ORIGINAL CORNER AND SUBSEQUENT HISTORY.
Information provided in this section shall include the name of the original surveyor and the date or dates on which the original survey was performed and a description of the original monument set. The information shall also include the history of subsequent remonumentation, including the name(s) of the surveyor(s), the agency or company they represented, the date(s) of the survey(s) and a description of all monuments found or set, including all monuments and accessories that are not shown on previously recorded corner records. Information provided in this section shall also include the instrument numbers of all previously recorded corner records, or the filing information if the corner record was not recorded, pertaining to the corner in question. ~~*(7-1-93)*~~(____)

008. DESCRIPTION OF CORNER EVIDENCE FOUND.
Information provided in this section shall include a description of any evidence found relating to the original corner. If no evidence of the original corner is found, ~~*the same*~~ evidence of a subsequent remonumentation shall be indicated on the form. ~~*(7-1-93)*~~(____)

009. DESCRIPTION AND SKETCH OF MONUMENT AND ACCESSORIES FOUND OR ESTABLISHED TO PERPETUATE THE LOCATION OF THIS CORNER.
Information provided in this section shall include a description and a sketch of the monument and accessories found or placed in the current survey as well as the date the work was performed and the true or assumed magnetic declination at the time of the survey if magnetic bearings are used. If magnetic bearings are not used, the professional land surveyor shall indicate the basis of bearing to accessories. ~~*(5-8-09)*~~(____)

IDAPA 11 - IDAHO STATE POLICE
ISP FORENSIC SERVICES

11.03.01 - RULES GOVERNING ALCOHOL TESTING

DOCKET NO. 11-0301-1401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 2, 2014.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-2901, 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 15, 2014.

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

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

This rule adds current standard operating procedures published by Idaho State Police Forensic Services (ISPFS) for alcohol analysis and breath testing to administrative rule. These rules have previously been part of the standard operating procedure documents published by ISPFS for use in court testimony.

The following procedures will be added to administrative rule:

- Breath alcohol instrument training requirements for operators and specialists;
- Breath alcohol instrument performance verification and calibration requirements and rules;
- Breath alcohol testing requirements and procedures;
- Alcohol laboratory approval and operational standards;
- Minor in possession/minor in consumption (MIP/MIC) testing methods; and
- Passive testing procedures.

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 need for the temporary rule change is due to ongoing criminal cases and appeals in the Idaho judicial system to suppress blood alcohol results based on the current process of having the rules governing breath alcohol testing in ISP Forensic Services' Standard Operating Procedure (SOP) rather than administrative rule. If the breath alcohol results are suppressed by the courts because of the current wording, DUI cases with breath test results would not be able to be prosecuted in Idaho. Not prosecuting DUI cases presents a significant public safety threat.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there is no change to the process for alcohol testing, the change is merely adding the current standard operation procedure to administrative 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Matthew Gamette, Director of Forensic

Services at (208) 884-7217.

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 22, 2014.

DATED this 29th Day of August, 2014.

Colonel Ralph W. Powell, Director
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642
(208) 884-7003 / (208) 884-7090

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 11-0301-1401
(Only those Sections being amended are shown.)

010. DEFINITIONS AND ABBREVIATIONS.

01. Alcohol. "Alcohol" shall mean the chemical compounds~~,~~ of ethyl alcohol, methyl alcohol, or isopropyl alcohol. ~~(7-1-93)~~(9-2-14)T

02. Approved Vendor. "Approved vendor" shall mean a source/provider/manufacturer of an approved standard. (9-2-14)T

0~~2~~3. Blood Alcohol Analysis. "Blood alcohol analysis" shall mean an analysis of blood to determine the concentration of alcohol present. (7-1-93)

0~~3~~4. Breath Alcohol Analysis. "Breath alcohol analysis" shall mean an analysis of breath to determine the concentration of alcohol present. (7-1-93)

05. Breath Alcohol Test. "Breath alcohol test" shall mean a breath sample or series of separate breath samples provided during a breath testing sequence. (9-2-14)T

06. Breath Alcohol Testing Sequence. "Breath alcohol testing sequence" shall mean a sequence of events as determined by the Idaho State Police Forensic Services, which may be directed by the instrument, the Operator, or both, and may consist of air blanks, performance verification, internal standard checks, and breath samples. (9-2-14)T

07. Breath Testing Certification Class. "Breath testing certification class" shall mean a department approved training class for prospective or uncertified breath alcohol Operators/Breath Testing Specialists. (9-2-14)T

08. Breath Testing Specialist (BTS). "Breath Testing Specialist" shall mean an operator who has completed advanced training approved by the department and are certified to perform routine instrument maintenance, teach instrument operation skills, proctor proficiency tests for instrument Operators, and testifying as an expert on alcohol physiology and instrument function in court. (9-2-14)T

09. Calibration. "Calibration" shall mean a set of laboratory operations which establish under specified conditions, the relationship between values indicated by a measuring instrument or measuring system, or values represented by a material, and the corresponding known values of a measurement. (9-2-14)T

10. Certificate of Analysis. "Certificate of analysis" shall mean a certificate stating the standards used for performance verification have been tested and approved for use by the ISPFS or are manufactured by an ISO 17025:2005 vendor and are traceable to N.I.S.T. standards. (9-2-14)T

11. Certificate of Instrument Calibration. "Certificate of instrument calibration" shall mean a certificate stating that an individual breath alcohol testing instrument has been evaluated by the ISPFS and found to be suitable for forensic alcohol testing. The certificate bears the signature of the calibration analyst at Idaho State Police Forensic Services, and the effective date of the instrument approval. (9-2-14)T

12. Changeover Class. "Changeover class" shall mean a training class for currently certified Operators during which the Operator is taught theory, operation, and proper testing procedure for a new make or model of instrument being adopted by their agency. Breath Testing Specialists complete BTS training that qualifies them to perform BTS duties related to the new make or model instrument. (9-2-14)T

~~04~~13. **Department**. "Department" shall mean the Idaho State Police. (7-1-93)

14. Evidentiary Test. "Evidentiary test" shall mean a blood, breath, or urine test performed on a subject/individual for potential evidentiary or legal purposes. A distinction is made between evidentiary testing and non-quantitative screening/monitoring. (9-2-14)T

15. Idaho State Police Forensic Services (ISPFS). "Idaho State Police Forensic Services" shall mean a division of the Idaho State Police. ISPFS is dedicated to providing forensic science services to the criminal justice system of Idaho. ISPFS is the administrative body for the blood and breath alcohol testing programs in Idaho. (9-2-14)T

~~05~~16. **Laboratory**. "Laboratory" shall mean the place at which specialized devices, instruments and methods are used by trained personnel to measure the concentration of alcohol in samples of blood, vitreous humor, ~~or~~ urine, or beverages for law enforcement purposes. ~~(4-7-11)~~(9-2-14)T

17. MIP/MIC. "MIP/MIC" shall mean an abbreviation used to designate minor in possession or minor in consumption of alcohol. (9-2-14)T

18. Operator Certification. "Operator certification" shall mean the condition of having satisfied the training requirements for administering breath alcohol tests as established by the department. (9-2-14)T

19. Operator. "Operator" shall mean an individual certified by the department as qualified by training to administer breath alcohol tests. (9-2-14)T

20. Performance Verification. "Performance verification" shall mean a verification of the accuracy of the breath testing instrument utilizing a performance verification standard. Performance verification should be reported to three decimal places. While ISPFS uses the term performance verification, manufacturers and others may use a term such as "calibration check" or "simulator check." (9-2-14)T

21. Performance Verification Standard. "Performance verification standard" shall mean an ethyl alcohol standard used for field performance verifications. The standard is provided or approved, or both, by the department. (9-2-14)T

~~06~~22. **Proficiency Testing**. "Proficiency testing" shall mean a periodic analysis of blood, urine, or other liquid specimen(s) whose alcohol content is unknown to the testing laboratory, to evaluate the capability of that laboratory to perform accurate analysis for alcohol concentration. ~~(3-19-99)~~(9-2-14)T

~~07~~23. **Quality Control**. "Quality control" shall mean an analysis of referenced samples whose alcohol content is known, which is performed with each batch of ~~urine or~~ blood, vitreous humor, urine or beverage analysis to ensure that the laboratory's determination of alcohol concentration is reproducible and accurate. ~~(3-19-99)~~(9-2-14)T

24. Recertification Class. "Recertification class" shall mean a training class offered by the department for currently certified personnel, completion of which results in uninterrupted continuation of their BTO or BTS

status for an additional 2 years. (9-2-14)T

***08*25.** **Urine Alcohol Analysis**. "Urine alcohol analysis" shall mean an analysis of urine to determine the concentration of alcohol present. (7-1-93)

26. Waiting Period/Monitoring Period/Deprivation Period/Observation Period. "Waiting Period/Monitoring Period/Deprivation Period/Observation Period" shall mean individual titles used for the time period prior to administering a breath alcohol test, in which an officer monitors the test subject/individual. (9-2-14)T

011. *ABBREVIATIONS* (RESERVED)
There are no abbreviations or acronyms in this chapter. *(4-7-11)*

(BREAK IN CONTINUITY OF SECTIONS)

013. REQUIREMENTS FOR LABORATORY ALCOHOL ANALYSIS.

01. Laboratory. Any laboratory desiring to perform urine alcohol, vitreous humor, *or* blood alcohol, or beverage analysis shall meet the following standards: *(3-19-99)*(9-2-14)T

a. The laboratory shall prepare and maintain a written procedure governing its method of analysis, including guidelines for quality control and proficiency testing. A copy of the procedure shall be provided to ISPFS for initial approval. Whenever procedure, protocol, or method changes (however named) are adopted by a laboratory, a copy of the update with the changes clearly indicated shall be approved by ISPFS before implementation; *(7-1-93)*(9-2-14)T

b. The laboratory shall provide adequate facilities and space for the procedure used. The laboratory alcohol related functions shall be subject to an assessment by either an accrediting body or the department each calendar year, and the results from the annual audit shall be submitted to the department. The assessment shall be at the expense of the laboratory; *(7-1-93)*(9-2-14)T

c. Specimens shall be maintained in a limited access and secure storage area prior to analysis. A chain of custody shall be maintained while the evidence is in the laboratory; *(7-1-93)*(9-2-14)T

d. All instrumentation, equipment, reagents and glassware necessary for the performance of the chosen procedure shall be on hand or readily available on the laboratory premises. Instrument maintenance documentation shall be available for review by the department; *(7-1-93)*(9-2-14)T

e. The laboratory shall participate in approved proficiency testing and pass this proficiency testing according to standards set by the department. Laboratories must participate in proficiency testing from a department approved provider at least once a calendar year. Approved providers include National Highway Transportation Safety Administration (NHTSA) and Collaborative Testing Services (CTS). Each test consists of at least four (4) blood samples spiked with an unknown concentration of ethyl alcohol, and possibly other volatiles, for qualitative determination. Participating laboratories must obtain proficiency tests from approved providers and are responsible for all costs associated with obtaining and analyzing such tests. Results from proficiency tests must be submitted by the due date to the test provider and ISPFS. Results not submitted to a test provider within the allowed time do not qualify as a proficiency test. An alcohol concentration range is determined from the target value and ±3.0 standard deviations as provided by the proficiency test provider. Reported values must fall within this range. If a laboratory determines more than one (1) alcohol value for a given sample, the mean value of results will be submitted and evaluated. Upon satisfactory completion of an approved proficiency test, a certificate of approval will be issued by the department to the participating laboratory. Approval to perform legal blood alcohol determinations is continued until the results of the next proficiency test are reviewed and notification is sent to the respective laboratory by ISPFS. Failure to pass a proficiency test shall result in *disapproval until the problem is corrected and a proficiency test is successfully completed* immediate suspension of testing by an analyst or laboratory in the form of a written inquiry from the department. The test is graded as a unsuccessful when the mean results are outside the tolerance range established from the accepted mean values. The laboratory shall have thirty (30) calendar days to respond to the

department inquiry. The department shall notify the laboratory within fourteen (14) calendar days regarding corrective action steps necessary to lift the testing suspension, or the department may issue a written revocation. The department shall not lift a proficiency testing related suspension or revocation until a successful proficiency test has been completed by the individual analyst or laboratory. ~~(7-1-93)~~(9-2-14)T

f. For a laboratory performing blood, ~~or~~ urine, vitreous humor, or beverage analysis for alcohol ~~analysis~~, approval shall be awarded to the laboratory director or primary analyst responsible for that laboratory. The responsibility for the correct performance of tests in that laboratory rests with that person; however, the duty of performing such tests may be delegated to any person designated by such director or primary analyst. The department may temporarily suspend or permanently revoke the approval of a laboratory or analyst if the listed requirements are not met. The department will issue the suspension or revocation in writing to the laboratory director or primary analyst responsible; ~~(3-19-99)~~(9-2-14)T

g. ~~Urine samples shall be collected in clean, dry containers.~~ Reinstatement after revocation requires completed corrective action of any items listed on the revocation documentation issued by the department. Documentation of corrective actions taken to address the nonconformities shall be submitted to the department for review. Once the department is satisfied that the laboratory is in compliance with all requirements, the department will issue written approval for the resumption of testing by that laboratory or analyst. A laboratory may appeal a suspension or revocation to the Director of the department. ~~(7-1-93)~~(9-2-14)T

02. Blood Collection. Blood collection shall be accomplished according to the following requirements: (7-1-93)

a. Blood samples shall be collected using sterile, dry syringes and hypodermic needles, or other equipment of equivalent sterility; (7-1-93)

b. The skin at the area of puncture shall be cleansed thoroughly and disinfected with an aqueous solution of a nonvolatile antiseptic. Alcohol or phenolic solutions shall not be used as a skin antiseptic; (7-1-93)

c. Blood specimens shall contain at least ten (10) milligrams of sodium fluoride per cubic centimeter of blood plus an appropriate anticoagulant. (4-4-13)

03. ~~***Results***~~ **Blood Reported**. The results of analysis on blood for alcohol concentration shall be reported in units of grams of alcohol per one hundred (100) cubic centimeters of whole blood. ~~(3-19-99)~~(9-2-14)T

04. Urine Collection. Urine samples shall be collected in clean, dry containers. (9-2-14)T

0~~4~~5. Urine Reported. The results of analysis on urine for alcohol concentration shall be reported in units of grams of alcohol per sixty-seven (67) milliliters of urine. Results of alcohol analysis of urine specimens shall be accompanied by a warning statement about the questionable value of urine alcohol results. ~~(3-19-99)~~(9-2-14)T

0~~5~~6. Records. All records regarding proficiency tests, quality control and results shall be retained for three (3) years. (7-1-93)

014. REQUIREMENTS FOR PERFORMING BREATH ALCOHOL TESTING.

01. Instruments. Each breath testing instrument model shall be approved by the department and shall be listed in the "Conforming Products List of Evidential Breath Measurement Devices" published in the Federal Register by the United States Department of Transportation as incorporated by reference in Section 004 of this rule. The department will maintain a list of benchtop and portable instruments approved for evidentiary testing use in Idaho. Each individual breath testing instrument must be certified by the department. The department may, for cause, remove a specific instrument by serial number from evidential testing and suspend or withdraw certification thereof. ~~(4-7-11)~~(9-2-14)T

02. Report. Each direct breath testing instrument shall report alcohol concentration as grams of alcohol per two hundred ten (210) liters of breath. (7-1-93)

03. Administration. Breath tests shall be administered in conformity with standards established by the department. Standards shall be developed for each type of breath testing instrument used in Idaho, and such standards shall be issued in the form of Idaho administrative rules, ISPFS analytical methods, and ISPFS standard operating procedures. ~~*(4-7-11)*~~(9-2-14)T

a. The breath alcohol test must be administered by an operator (BTO or BTS) currently certified in the use of the instrument. (9-2-14)T

b. Prior to administering the observation period, any foreign objects/materials which have the potential to enter the instrument/breath tube or may present a choking hazard should be removed. If a foreign object/material (e.g. dental work, gum, chewing tobacco, food, piercing) is left in the mouth during the entirety of the fifteen (15) minute monitoring period, any potential external alcohol contamination should not interfere with the results of the subsequent breath alcohol tests. (9-2-14)T

c. Prior to evidentiary breath alcohol testing, the subject/individual should be observed for fifteen (15) minutes. The operator should be alert for any event that might influence the accuracy of the breath alcohol test. During the observation period the subject/individual should not be allowed to smoke, drink, eat, or belch/burp/vomit/regurgitate. (9-2-14)T

d. If mouth alcohol is suspected or indicated by the testing instrument, the operator should begin another fifteen (15) minute observation period before repeating the testing sequence. If during the observation period the subject/individual vomits or regurgitates material from the stomach into the breath pathway, the observation period should start over. If there is doubt as to the events occurring during the observation period (e.g. silent burp, belch, vomit, regurgitation), the officer should evaluate the instrument results for any indication of mouth alcohol. (9-2-14)T

e. A complete breath alcohol test includes two (2) valid breath samples taken during the testing procedure and preceded by air blanks. The subsequent breath samples performed with a portable breath testing instrument should be approximately two (2) minutes apart or more. If the subject/individual fails or refuses to provide a subsequent, adequate sample as requested by the operator, the single test result shall be considered valid. If only a single test result is used, then a fifteen (15) minute observation period must be observed. For hygienic reasons, the operator should use a new mouthpiece for each series of tests. (9-2-14)T

f. The operator has the discretion to end breath testing, repeat breath testing, or request a blood draw at any point during the testing process as the circumstances require (including but not limited to lack of sample correlation, lack of subject participation or cooperation, subject is incoherent or incapable of following instructions, subject incapacitation). If a subject/individual fails or refuses to provide a subsequent, adequate sample as requested by the operator, the results obtained are still considered valid, provided the failure to supply the requested samples was the fault of the subject/individual and not the operator. (9-2-14)T

g. A third breath sample should be collected if the first two (2) two results differ by more than 0.02 g/210L alcohol. Unless mouth alcohol is indicated or suspected, it is not necessary to repeat the observation period prior to obtaining a third breath sample. (9-2-14)T

h. The results for subsequent breath samples should correlate within 0.02 g/210L alcohol to show consistent sample delivery, indicate the absence of RFI, and to indicate the absence of alcohol contamination in the subject/individual's breath pathway as a contributing factor to the breath results. (9-2-14)T

i. In the event of an instrument failure, the operator should attempt to utilize another instrument or have blood drawn. (9-2-14)T

04. Training. Each individual operator (BTO or BTS) shall demonstrate ~~*that he has*~~ sufficient training to operate the instrument correctly. This shall be accomplished by successfully completing a training course approved by the department on each instrument model utilized by the operator. ~~*Officers must retrain periodically as required by the department.*~~ Operator certifications issued after July 1, 2013 are valid for two (2) calendar years from the course completion date. The department may revoke individual operator (BTO/BTS) certification for cause. ~~*(7-1-93)*~~(9-2-14)T

05. **Performance Verification Checks**. Each breath testing instrument shall be checked ~~*on a schedule established by the Department*~~ for accuracy with a ~~*simulator solution provided by or*~~ performance verification standard approved by the department. ~~*These*~~ Performance verification checks shall be performed according to a procedure established by the department and shall be documented. The official time and date of the performance verification is the time and date recorded on the printout, or the time and date recorded in the log. ~~*(4-7-11)*~~(9-2-14)T

a. A performance verification check shall occur within twenty-four (24) hours before or after an evidentiary test. The benchtop instrument requires a performance verification check as part of the testing sequence. On the portable instrument, multiple breath alcohol tests may be covered by a single performance verification. (9-2-14)T

b. A performance verification on a portable instrument consists of two (2) samples at either the 0.08 or 0.20 level. Both samples must be run with the same performance verification standard. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the third performance verification fails, the instrument shall be taken out of service. The instrument shall not be returned to service until it has been calibrated and certified by ISPFS. (9-2-14)T

c. A performance verification acquired during a breath testing sequence on an approved benchtop instrument consists of one (1) sample at either the 0.08 or 0.20 level. A performance verification acquired outside the breath testing sequence on an approved benchtop instrument consists of two (2) samples at either the 0.08 or 0.20 level. Three (3) attempts at obtaining an acceptable performance verification are allowed. Troubleshooting measures may be employed during this process. If the third performance verification fails, the instrument must be taken out of service. The instrument must not be returned to service until it has been calibrated and certified by ISPFS. (9-2-14)T

d. Performance verification checks must be within +/- 10% of the performance verification standard target value. (9-2-14)T

e. A wet bath 0.08 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications or every calendar month, whichever comes first. For a closed loop, recirculating system (e.g. the Intox 5000 series), the 0.08 performance verification standard should be replaced with fresh standard approximately every one hundred (100) verifications or every calendar month, whichever comes first. (9-2-14)T

f. A wet bath 0.20 performance verification standard should be replaced with fresh standard approximately every twenty-five (25) verifications. (9-2-14)T

g. Dry gas performance verification standards may be used continuously without replacement until the canister is spent or the expiration date is reached. (9-2-14)T

h. Performance verification standards should not be used beyond the expiration date. (9-2-14)T

i. If Section 18-8004C, Idaho Code, (excessive alcohol concentration) is applicable, then a 0.20 performance verification must be run and results documented once per calendar month. Failure to perform a 0.20 performance verification will not invalidate any tests where Section 18-8004C, Idaho Code, is not applicable. A performance verification with a 0.20 standard does not need to be performed within twenty-four (24) hours of an evidentiary breath test in excess of 0.20 g/210L alcohol. (9-2-14)T

j. Temperature of the wet bath simulator shall be between thirty-three point five degrees Celsius (33.5°C) and thirty-four point five degrees Celsius (34.5°C) in order for the performance verification results to be valid. (9-2-14)T

k. An agency may run additional performance verification standard levels at their discretion. (9-2-14)T

06. **Records**. Operators must document and retain test results (i.e. written log, printout, or electronic database). All records regarding maintenance and results shall be retained for three (3) years. ISPFS is not responsible

for storage of documentation not generated by ISPFS. ~~(3-19-99)~~(9-2-14)T

07. **Deficiencies**. Failure to meet any of the conditions listed in Sections 013 and 014. Any laboratory or breath testing instrument may be disapproved for failure to meet one (1) or more of the requirements listed in Sections 013 and 014, and approval may be withheld until the deficiency is corrected. (4-7-11)

08. **Standards**. Premixed alcohol simulator solutions shall be from an approved vendor and explicitly approved in writing by the department before distribution within Idaho. Dry gas standards from ISO 17025:2005 certified providers are explicitly approved by the department for use in Idaho without evaluation by the department. (9-2-14)T

09. **MIP/MIC**. The presence or absence of alcohol is the determining factor in the evidence in an MIP/MIC case. The instrumentation used in obtaining the breath sample is often the same instrumentation utilized for acquiring DUI evidence. The different standard of evidence requires different standards for the procedure. (9-2-14)T

a. Fifteen (15) minute observation period: The monitoring/observation period is not required for the MIP/MIC procedure. (9-2-14)T

b. The breath alcohol test must be administered by an operator currently certified in the use of that instrument. (9-2-14)T

c. The instrument used must be certified by ISPFS. The instrument only needs to be initially certified by ISPFS. Initial certification shows that the instrument responds to alcohols and not to acetone. The instrument does not need to be checked regularly or periodically with any of the 0.08 or 0.20 standard. (9-2-14)T

d. The officer should have the individual being tested remove all loose foreign material from their mouth before testing. False teeth, partial plates, or bridges installed or prescribed by a dentist or physician do not need to be removed to obtain a valid test. The officer may allow the individual to briefly rinse their mouth out with water prior to the breath testing. Any alcohol containing material left in the mouth during the entirety of the breath test sampling could contribute to the results in the breath testing sequence. (9-2-14)T

e. A complete breath alcohol test includes two (2) valid breath samples taken from the subject and preceded by an air blank. The subsequent breath samples do not need to be consecutive samples from the same subject. The individual breath samples should be approximately two (2) minutes apart or more. A deficient or insufficient sample does not automatically invalidate a test sample. The operator should use a new mouthpiece for each individual. (9-2-14)T

f. A third breath sample is required if the first two (2) results differ by more than 0.02 g/210L alcohol. In the event that all three (3) samples fall outside the 0.02 g/210L alcohol correlation, and testing indicates or the officer suspects mouth alcohol, they must administer a fifteen (15) minute observation period and then retest the subject. If mouth alcohol is not suspected or indicated by the test results, then the officer may retest the subject without administering an observation period. (9-2-14)T

g. The operator should manually log test results and/or retain printouts for possible use in court. (9-2-14)T

h. The instrument must not be in passive mode for the testing of subjects for evidential purposes. (9-2-14)T

i. The passive mode of testing using the Lifeloc FC20 or ASIII should be used for testing liquids or containers of liquid for the presence or absence of alcohol. (9-2-14)T

IDAPA 11 - IDAHO STATE POLICE
IDAHO STATE RACING COMMISSION

11.04.09 - RULES GOVERNING CLAIMING RACES

DOCKET NO. 11-0409-1401

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 54-2506 and 54-2512A, 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 15, 2014.

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 rule will clarify that it is not necessary for a horse that has been claimed to re-establish eligibility for a starter allowance race by running in a claiming race; and further prevents the use of "protective claims."

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule is simple in nature and the rule was discussed with interested parties at the July 23, 2014 meeting of the Idaho Racing Commission.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Frank Lamb, Racing Commission Executive Director, at (208) 884-7080.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th Day of August, 2014.

Frank Lamb
Executive Director
Idaho Racing Commission
700 S Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7080
Fax: (208) 884-7098

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-0409-1401
(Only those Sections being amended are shown.)

036. -- ~~*039.*~~ ~~*(RESERVED)*~~

~~***040.*** ***STARTER ALLOWANCE RACE.***~~
~~*A horse which has been claimed must re-establish eligibility for a starter allowance race by running in a claiming race.* *(3-29-10)*~~

~~***041.***~~ **049. (RESERVED)**

050. PROHIBITIONS.

01. Financial or Beneficial Interest. A person may not claim a horse in which the person has a financial or beneficial interest as an owner or trainer. (3-29-10)

02. Undisclosed Financial or Beneficial Interest. A person may not cause another person to claim a horse for the purpose of obtaining or retaining an undisclosed financial or beneficial interest in the horse. (3-29-10)

03. Agreement. A person may not enter into an agreement for the purpose of preventing another person from obtaining a horse in a claiming race. (3-29-10)

04. Ineligible or Undisclosed Person. A person may not claim a horse, or enter into any agreement to have a horse claimed, on behalf of an ineligible or undisclosed person. (3-29-10)

05. No more than One Horse. A person may not claim more than one (1) horse in a race. No authorized agent may submit more than one (1) claim for the same horse in a race, even if the authorized agent represents several owners. When a trainer's stable consists of more than one (1) owner, each owner may submit a claim in any one race, but no two (2) or more shall submit a claim for any one horse or all such claims shall be void. No person, corporation, partnership, stable name, or other legal entity will be eligible to claim another owner's horse from his own trainer's stable. ~~*(3-29-10)*~~( )

IDAPA 11 - IDAHO STATE POLICE
IDAHO STATE RACING COMMISSION

11.04.10 - RULES GOVERNING LIVE HORSE RACES

DOCKET NO. 11-0410-1401

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 54-2506 and 54-2512A, 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 15, 2014.

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 rule will allow thoroughbred horses that are owned by the same owner to be uncoupled for wagering purposes.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule is simple in nature and the rule was discussed with interested parties at the July 23, 2014 meeting of the Idaho Racing Commission.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Frank Lamb, Racing Commission Executive Director, at (208) 884-7080.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th Day of August, 2014.

Frank Lamb
Executive Director
Idaho Racing Commission
700 S Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7080
Fax: (208) 884-7098

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-0410-1401
(Only those Sections being amended are shown.)

113. COUPLED ENTRIES.

01. Coupled Entries. Two (2) or more horses that are entered in a race will be joined as a mutuel entry and single betting interest if they are owned or leased in whole or in part by the same racing interest or are trained by a trainer who owns or leases any interest in any of the other horses in the race, except: (3-29-10)

a. Multiple horses owned by the same racing interest may be uncoupled in stake races for the purpose of pari-mutuel wagering; or (3-29-10)

b. Multiple horses owned by the same racing interest may be uncoupled ~~*in straightaway races*~~ for the purpose of pari-mutuel wagering. ~~*(3-29-10)*~~( )

02. Overnight Race. No more than two (2) horses owned by the same racing interest may be entered in an overnight race. Under no circumstances may both horses of ~~*a coupled*~~ such an entry start to the exclusion of a single entry. When making an ~~*coupled*~~ entry, a preference for one (1) of the horses must be made. ~~*(3-29-10)*~~( )

IDAPA 11 - IDAHO STATE POLICE
ALCOHOL BEVERAGE CONTROL BUREAU

11.05.01 - RULES GOVERNING ALCOHOL BEVERAGE CONTROL

DOCKET NO. 11-0501-1401

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 Sections 23-901, 23-392, 23-1330 and 23-1408, 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 October 15, 2014.

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.

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 website.

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.

Persons wishing to participate in the rulemaking process may submit written comments.

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

Provide a definition for the term “Actual Use” as it pertains to an alcohol license and establishes criteria which define the minimum standards for placing a newly issued or transferred license into use for purposes of clarification and compliance.

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

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

CONTACT INFORMATION, WEB ADDRESS, ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this negotiated rulemaking, contact Lt. Russell Wheatley, Idaho State Police Alcohol Beverage Control (208) 884-7060 or **abc@isp.idaho.gov** and reference Docket Number 11-0501-1401. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Idaho State Police Alcohol Beverage Control web site at the following web address: **www.isp.idaho.gov/abc**.

All written comments must be directed to the undersigned and must be delivered on or before October 31, 2014.

DATED this 29th Day of August, 2014.

Colonel Ralph W. Powell, Director
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642
Tel: (208) 884-7003 / Fax: (208) 884-7090

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 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 19-5107, 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 August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, pages 40 through 42**.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Rory Olsen at (208) 884-7256.

DATED this 28th Day of August, 2014.

Kevin Johnson
Interim POST Division Administrator
Idaho State Police/Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7251
Fax: (208) 884-7295

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1402

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 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 19-5107, 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 August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, pages 43 and 44**.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Rory Olsen at (208) 884-7256.

DATED this 28th Day of August, 2014.

Kevin Johnson
Interim POST Division Administrator
Idaho State Police/Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642
Phone: (208) 884-7251
Fax: (208) 884-7295

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1403

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 19-5107, 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 15, 2014.

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 adds language to address home schooling and foreign education, and clarifies what documentation is required as proof of education. The medical standards are being left up to the employing agencies, and language added to indicate applicants must be physically capable of passing all requirements while attending the academy or they will be disenrolled. Language was added to reflect all of the different disciplines trained by POST.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature and representatives of the affected interests were involved in the drafting and approval of the 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rory Olsen at (208) 884-7256.

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 October 22, 2014.

DATED this 25th Day of August, 2014.

Kevin Johnson
Interim POST Division Administrator
Idaho State Police/Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642
Phone (208) 884-7251 / Fax (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1101-1403
(Only those Sections being amended are shown.)

010. DEFINITIONS.

01. Act. Title 19, Chapter 51, of the Idaho Code. (4-5-00)

02. Adult Probation and Parole Officer. Any employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (3-30-07)

03. Agency. A law enforcement agency which is a part of or administered by the state or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; a juvenile detention center; a juvenile probation department; the Idaho Department of Correction; or a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)

04. Agency Head. A chief of police of a city, sheriff of a county, or chief administrator of any law enforcement agency of the state of Idaho or any political subdivision thereof who is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; the chief administrator of a juvenile detention center; the chief administrator of a juvenile probation department; the director of the Idaho Department of Correction; or the chief administrator of a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)

05. Applicant. Any person applying to participate in a POST training program or applying for POST certification. (4-2-08)

06. Basic Adult Probation and Parole Academy. A basic course of instruction for Adult Probation and Parole Officers as recognized by POST Council. (4-2-08)

07. Basic Correction Academy. A basic course of instruction for Correction Officers as recognized by POST Council. (4-2-08)

08. Basic Detention Academy. A basic course of instruction for Detention Officers as recognized by POST Council. (4-2-08)

09. Basic Juvenile Detention Academy. A basic course of instruction for Juvenile Detention Officers as recognized by POST Council. (4-2-08)

10. Basic Juvenile Probation Academy. A basic course of instruction for Juvenile Probation Officers as recognized by POST Council. (4-2-08)

11. Basic Patrol Academy. A basic course of instruction for Patrol Officers as recognized by POST Council. (4-2-08)

12. College Credit. A unit of work towards a baccalaureate or vocational degree accepted by a college or university of higher education accredited by the Northwest Association of Schools and Colleges or other ~~*equivalent*~~ POST-accepted U.S. regional accrediting agency. ~~*(7-1-93)*~~( )

13. Correction Officer. Any employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility. (3-30-07)

14. Correction Standards and Training Council. An advisory group to the POST Council that is comprised of members from academia and law enforcement agencies. The purpose of the Correction Standards and Training Council is to advise POST Council in the planning, development, and operation of the Basic Correction Academy and the Basic Adult Probation and Parole Academy. (4-2-08)

15. Council. The Idaho Peace Officer Standards and Training Council. (4-2-08)

16. County Detention Officer. An employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates. (4-5-00)

17. Crime of Deceit. Any offense described in Section 18-1301 et seq., Idaho Code, (Bribery), Section 18-1401 et seq. (Burglary), Sections 18-1901 (Fictitious Stock Subscription), 18-1902 (Exhibition of False Papers to Public Officers), 18-1903 (Use of False Name in Prospectus), 18-1904 (Illegal Dividends and Reductions of Capital), 18-1905 (Falsification of Corporate Books), 18-1906 (Fraudulent Reports by Officers), 18-2202(1) (Computer Crime), 18-2302 (False Swearing as to Qualifications as Voter), 18-2304 (Procuring Illegal Votes), 18-2305 (Intimidation, Corruption and Frauds), 18-2306 (Illegal Voting or Interference with Election), 18-2307 (Attempting to Vote When Not Qualified or to Repeat Voting), 18-2309 (Officers Attempting to Change Result), 18-2310 (Forging or Counterfeiting Returns), 18-2311 (Adding to or Subtracting From Votes), 18-2316 (Tampering with Certificates of Nomination or Ballots), 18-2320 (Bribery of Electors), Section 18-2401 et seq. (Theft), Section 18-2601 et seq. (Falsifying Evidence -- Offering Forged or Fraudulent Documents in Evidence), Section 18-2701 et seq. (Bribery of Executive Officers), Sections 18-3105 (False Statement by Commission Merchant, Broker, Agent, Factor or Consignee to Principal or Consignor), 18-3106 (Drawing Check Without Funds -- Drawing Check With Insufficient Funds -- Prima Facie Evidence of Intent -- Standing of Person Having Acquired Rights -- Probation Conditions), 18-3123 (Forgery of a Financial Transaction Card), 18-3124 (Fraudulent Use of a Financial Transaction Card), 18-3125 (Criminal Possession of Financial Transaction Card and FTC Forgery Devices), 18-3125A (Unauthorized Factoring of Credit Card Sales Drafts), 18-3126 (Misappropriation of Personal Identifying Information), 18-3127 (Receiving or Possessing Fraudulently Obtained Goods or Services), 18-3201 (Officer Stealing, Mutilating or Falsifying Public Records), 18-3202 (Private Person Stealing, Mutilating or Falsifying Public Records), 18-3203 (Offering False or Forged Instrument for Record), 18-3204 (False Certificates or Other Instruments from Officers), 18-3206 (Mutilating Written Instruments), Section 18-3601 et seq. (Forgery), Sections 18-4616 (Defacing Marks on Logs or Lumber), 18-4617 (Stealing Rides on Trains), 18-4621 (Stealing Electric Current --Tampering with Meters), 18-4622 (Stealing Electric Current -- Accessories Liable as Principals), 18-4624 (Taken or Converted Merchandise as Theft), 18-4626 (Willful Concealment of Goods, Wares or Merchandise -- Defense for Detention), 18-4630 (Illegal Use of Documents), 18-4701 (Alteration of Bills), 18-4702 (Alteration of Enrolled Copies), 18-4703 (Offering Bribes to Legislators), 18-4704 (Legislators Receiving Bribes), Section 18-5401 et seq. (Perjury), Section 18-6501 et seq. (Robbery), Sections 18-8201 (Money Laundering and Illegal Investment -- Penalty -- Restitution), 41-293 (Insurance Fraud), 41-294 (Damage to or Destruction of Insured Property), 41-1306 (False Financial Statements), 49-228 (Receiving or Transferring Stolen Vehicles), 49-231 (Farm Implements -- Purchasing or Selling When Identifying Number Altered or Defaced a Felony), 49-232 (Fraudulent Removal or Alteration of Numbers Prohibited), 49-518 (Altering or Forging Certificate -- Stolen Cars -- Destroying or Altering Engine or Decal Number -- Use of Fictitious Name -- Fraud), or any attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any racketeering offense under Section 18-7801 et seq., Idaho Code, in which any of the foregoing offenses constitutes at least one (1) of the predicate acts, or any other crime defined in the Idaho Code involving any form of theft or including fraudulent intent as an element, or an offense equivalent to any of the foregoing in any other jurisdiction. (4-2-08)

18. Direction. Direction, at its broadest term, allows an employing agency to utilize a Level II reserve officer to work under the immediate presence and direction of a full-time peace officer of the same agency. This does not allow a Level II reserve officer to operate alone in his official capacity. He shall be under direct observation and control of the agency's full-time peace officer. (3-29-12)

19. Field Training. Training in which an individual receives formal instruction on the job for special and defined purposes. (7-1-93)

20. Full Time. Employment of one hundred sixty (160) hours or more per month for ninety (90) consecutive calendar days. (4-2-08)

~~***21. High School**. A school accredited as a high school by the Department of Education of the state in which the high school is located, or a school accredited as a high school by the recognized regional accreditation body, or a school accredited as a high school by the State University of the state in which the school is located.*~~
~~*(7-1-93)*~~

2~~2~~1. **In-Service Training**. Training designed to refresh or add to an individual's capabilities to do the task to which they are or may be assigned. (7-1-93)

2~~3~~2. **Juvenile Detention Center**. A juvenile detention facility that is part of or administered by the county or any political subdivision thereof and is responsible for the safety, care, protection, and monitoring of juvenile offenders. (4-2-08)

2~~4~~3. **Juvenile Detention Officer**. Any employee of a juvenile detention center who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center. (4-2-08)

2~~5~~4. **Juvenile Probation Officer**. Any employee of a juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders. (4-2-08)

2~~6~~5. **Juvenile Training Council**. An advisory group to the POST Council that is composed of the Director of the Department of Juvenile Corrections, a Magistrate, a county Juvenile Detention Director, a county Chief Probation Officer, a county Commissioner, a county Clerk, and a county Sheriff. The purpose of the Juvenile Training Council is to advise POST Council in the planning, development, and operation of the Juvenile Detention and Juvenile Probation Academies. (4-2-08)

2~~7~~6. **Law Enforcement Profession**. As used in agreements authorized pursuant to Section 19-5112, Idaho Code, means an employee of a police or law enforcement agency that is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates; an employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center; an employee of a county juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation, and the supervision of juvenile offenders' compliance with court orders; an employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility; or an employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (4-2-08)

2~~8~~7. **Manual**. This book of Rules as adopted by the Idaho Peace Officer Standards and Training Council. (4-5-00)

2~~9~~8. **Part Time**. Employment of less than one hundred sixty (160) hours per month for ninety (90) consecutive calendar days. (4-2-08)

~~*30*~~29. **Part-Time Juvenile Detention Officer**. Any employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center, and does not meet the definition of "employee" as defined in Section 59-1302, Idaho Code. (4-2-08)

3~~1~~0. **Peace Officer**. Any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho. (4-5-00)

3~~2~~1. **POST**. The Idaho Peace Officer Standards and Training Program. (7-1-93)

3~~3~~2. **POST Basic Training Academy**. The Basic Adult Probation and Parole Academy, the Basic Correction Academy, the Basic Detention Academy, the Basic Juvenile Detention Academy, the Basic Juvenile Probation Academy, or the Basic Patrol Academy. (4-2-08)

3~~4~~3. **Prosecutor**. A city prosecuting attorney, city assistant prosecuting attorney, county prosecuting attorney, county deputy prosecuting attorney, attorney general, deputy attorney general, United States attorney, or assistant United States attorney. (4-2-03)

3~~5~~4. **Qualified Instructor**. Any person certified by the Idaho POST Council as being competent to teach in a Council-approved school. (4-2-08)

3~~6~~5. **Reserve Peace Officer**. An individual assigned by an agency to perform the duties of a peace officer on a part-time basis. All reserve officers shall be under supervision as set forth in these rules unless they hold a current Part-Time Basic certificate. (4-2-08)

3~~7~~6. **School**. Any school, college, university, academy, or local training program which offers law enforcement training and includes within its meaning the combination of course curriculum, instructors and facilities, or any training session as certified by POST. (7-1-93)

3~~8~~7. **School Director or Coordinator**. An individual charged with the responsibility of conducting a training school under the provisions of the Act. (7-1-93)

3~~9~~8. **Specification**. A description of a requirement supplementing a section of the Rules. (7-1-93)

~~40~~39. **Supervision**. Supervision allows the employing agency to utilize a Level I reserve officer to work by himself without the immediate presence or direction of a full-time peace officer, but acting under the overall on-duty supervision of an on-duty, full-time peace officer. This may allow a Level I reserve officer to work alone in his jurisdiction, without immediate oversight of an agency full-time peace officer, as long as there were another full-time peace officer of the agency working at the same time to provide supervision of the Level I reserve officer's activities. (3-29-12)

4~~1~~0. **Temporary**. Employment of less than ninety (90) consecutive calendar days. (7-1-93)

4~~2~~1. **Trainee**. An officer participating in any POST approved training program. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

052. EDUCATION.
~~*The applicant shall be a high school graduate or have earned a GED certificate.* *(4-2-08)*~~

01. ~~***Documentation***~~ **Acceptable Education**. ~~*Proof of education shall not have been mutilated, altered, or damaged, and shall be in the form of a photocopy of one (1) of the following*~~ The applicant must: ~~*(4-7-11)*~~( )

a. ~~*High school diploma*~~ Be a high school graduate from a school accredited as a high school at the time of graduation by the Department of Education of the state in which the high school is located; ~~*(4-2-08)*~~( )

b. ~~*GED certificate*~~ Be a high school graduate from a school accredited as a high school at the time of graduation by the recognized regional accreditation body; ~~*(4-2-08)*~~( )

c. ~~*High school transcript that indicates the date of graduation*~~ Have passed GED testing; ~~*(4-7-11)*~~( )

d. ~~*GED test report form*~~ Have successfully completed a high school equivalency program and

obtained a state-issued certificate; or ~~(4-7-11)~~( )

e. ~~*High school equivalency certificate; or*~~ Have successfully completed a minimum of fifteen (15) academic credits at a U.S. regionally-accredited college. The six (6) POST-accepted regional accreditation agencies are: ~~(4-7-11)~~( )

i. Middle States Association of Schools and Colleges; ( )

ii. New England Association of Schools and Colleges; ( )

iii. North Central Association of Colleges and Schools (the Higher Learning Commission); ( )

iv. Northwest Association of Colleges and Universities; ( )

v. Southern Association of Colleges and Schools; and ( )

vi. Western Association of Schools and Colleges. ( )

~~*f. Official college transcript indicating the successful completion of a minimum of fifteen (15) academic credits.*~~ ~~(4-7-11)~~

02. Home Schooling. Applicants who were home schooled must provide documentation of having passed GED testing. ( )

03. Foreign Education. Applicants who were educated outside the U.S. must provide documentation of having passed GED testing or provide an evaluation from an evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or Association of International Credential Evaluators, Inc. (AICE) showing the applicant's education meets or exceeds the U.S. requirements for high school graduation. ( )

04. Documentation. Proof of education must not have been mutilated, altered, or damaged, and must be in the form of a photocopy of one (1) of the following: ( )

a. High school diploma that indicates the date of graduation; ( )

b. High school transcript that indicates the date of graduation; ( )

c. Official transcript of GED results indicating a passing score; ( )

d. State-issued high school equivalency certificate; ( )

e. Official college transcript from a POST-accepted U.S. regionally-accredited college indicating the successful completion of a minimum of fifteen (15) academic credits; or ( )

f. Official evaluation of foreign education by a member of the National Association of Credential Evaluation Services (NACES) or Association of International Credential Evaluators, Inc. (AICE) showing the applicant's education meets or exceeds the U.S. requirements for high school graduation. ( )

(BREAK IN CONTINUITY OF SECTIONS)

060. PHYSICAL - MEDICAL.

01. Requirements. (7-1-93)

~~***a.*** *Hearing. The applicant shall have unaided or aided hearing between zero (0) and twenty five (25) decibels for each ear at the frequencies of five-hundred (500) Hz, one thousand (1000) Hz, two thousand (2000) Hz,*~~

~~*and three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council.* (4-7-11)~~

~~***b.*** *Vision.* (7-1-93)~~

~~*i.* *The applicant shall possess binocular coordination that does not manifest diplopia; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision shall be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There shall be no pathology of the eye; applicant shall possess a minimum seventy percent (70%) proficiency on a color discrimination test. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council.* (4-7-11)~~

~~*ii.* *The applicant shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but shall have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council.* (4-7-11)~~

~~***c.*** *Disease/Condition. The applicant shall be free from any impediments of the senses of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver of the above may be considered by the Council upon the applicant's demonstration that the deficiency does not jeopardize or impair his ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections.* (4-7-11)~~

~~***d***~~**a.** Agency Physical Readiness Test. To determine the applicant's physical capability, a physical readiness test based upon the job requirements of the appointing agency ~~*shall*~~ must be administered by the appointing agency to each applicant. ~~(4-7-11)~~( )

b. Physical Capability Requirement. The applicant must be physically capable of passing all physically demanding tasks and tests while attending any Idaho POST Academy or any academy equivalent program approved by the POST Council. Any applicant who fails a required physical test while attending an Idaho POST Academy will be disenrolled from the academy and provided the option to attend a future academy session. ( )

~~***02.*** ***Procedures.*** (7-1-93)~~

~~***a.*** *A POST Council-approved medical history form shall be supplied by each applicant to the examining physician. The medical history shall include information on past and present diseases, injuries and operations.* (4-7-11)~~

~~***b.*** *A medical examination shall be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's*~~

~~*ability to perform the duties of a peace, detention, juvenile detention, juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The physician shall record his findings on the appropriate form and shall note thereon any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. A medical examination shall remain valid for one (1) year unless extended by the POST Division Administrator under extraordinary conditions and for good cause shown.*~~ ~~*(3-27-13)*~~

061. MENTAL EXAMINATION.

01. Requirement. Where a question of emotional stability or disorder is indicated by ~~*the*~~ physician~~*'s report*~~ or the background investigation, a thorough evaluation ~~*shall*~~ must be made by a licensed psychiatrist or clinical psychologist to determine if the applicant is free from any emotional or mental condition which might adversely affect the applicant's ability to perform the duties of a peace, detention, juvenile detention, ~~*or*~~ juvenile probation, correction, adult probation and parole, juvenile corrections, or misdemeanor probation officer. ~~*(4-2-08)*~~( )

02. Procedure. During the interview, the examining psychiatrist or psychologist ~~*shall*~~ must evaluate the applicant sufficiently to assess those symptoms of a degree that would impair the effective performance of duty. The results of the examination ~~*shall*~~ must be recorded and that record or a summary of recommendations ~~*shall*~~ must be forwarded to the appointing authority for review. ~~*(3-15-02)*~~( )

IDAPA 11 - IDAHO STATE POLICE

11.11.04 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR CORRECTION OFFICERS AND ADULT PROBATION AND PAROLE OFFICERS

DOCKET NO. 11-1104-1401

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 19-5107, 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 15, 2014.

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 Minimum Standards for Employment for Correction Officers and Adult Probation and Parole Officers are now identical to all other disciplines in the area of education and physical - medical, so the duplicative language was removed and the applicant referred to the Minimum Standards for Employment listed in 11.11.01.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule is simple in nature and representatives of the affected interests were involved in the drafting and approval of the 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rory Olsen at (208) 884-7256.

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 October 22, 2014.

DATED this 25th Day of August, 2014.

Kevin Johnson
Interim POST Division Administrator
Idaho State Police/Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642
Phone (208) 884-7251
Fax (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1104-1401
(Only those Sections being amended are shown.)

033. EDUCATION.
The applicant ~~*shall be a high school graduate or have earned a GED (General Education Development) certificate*~~ must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 052. ~~*(4-2-08)*~~( )

~~***01. Documentation**. Proof of education shall not have been mutilated, altered, or damaged, and shall be in the form of a photocopy of one (1) of the following:* *(4-7-11)*~~

~~***a.** High school diploma;* *(4-2-08)*~~

~~***b.** GED certificate;* *(4-2-08)*~~

~~***c.** High school transcript that indicates the date of graduation;* *(4-7-11)*~~

~~***d.** GED test report form;* *(4-7-11)*~~

~~***e.** High school equivalency certificate; or* *(4-7-11)*~~

~~***f.** Official college transcript indicating the successful completion of a minimum of fifteen (15) academic credits.* *(4-7-11)*~~

(BREAK IN CONTINUITY OF SECTIONS)

039. PHYSICAL -- MEDICAL.

01. Requirements. The applicant must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 060. ~~*(4-11-06)*~~( )

~~***a.** Hearing. The applicant shall have unaided or aided hearing between zero (0) and thirty (30) decibels for each ear at the frequencies of one thousand (1000) Hz and two thousand (2000) Hz; and unaided or aided hearing between zero (0) and fifty (50) decibels for each ear at the frequency of three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a correction officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council.* *(4-7-11)*~~

~~***b.** Vision. The applicant shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/thirty (20/30) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but shall have the strong eye corrected to twenty/thirty (20/30) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a correction officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council.* *(4-7-11)*~~

~~***c.** Disease/Condition. The applicant shall be free from any impediments of the senses of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free*~~

~~*from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver of Subsection 039.01.c. may be considered by the Council upon the applicant's demonstration that the deficiency does not jeopardize or impair his ability to perform the duties of a correction officer.* *(4-7-11)*~~

~~***d.*** *Physical Readiness Test. The applicant shall pass the POST Physical Readiness Test for Correction Officers.* *(4-7-11)*~~

~~***02.*** ***Procedures****.* *(4-11-06)*~~

~~***a.*** *A POST Council-approved medical history form shall be supplied by each applicant to the examining physician. The medical history shall include information on past and present diseases, injuries and operations.* *(4-7-11)*~~

~~***b.*** *A medical examination shall be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's ability to perform the duties of a correction officer. The physician shall record his findings on the appropriate form or letter and shall note thereon, for evaluation by the appointing authority, any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. A medical examination shall remain valid for one (1) year unless extended by the POST Division Administrator under extraordinary conditions and for good cause shown.* *(4-4-13)*~~

040. MENTAL EXAMINATION.

01. Requirement. ~~*Where a question of emotional stability or disorder is indicated by the physician's report or the background investigation, a thorough evaluation must be made by a licensed psychiatrist or clinical psychologist to determine if the applicant is free from any emotional or mental condition which might adversely affect the applicant's ability to perform the duties of a correction officer*~~ The applicant must meet the requirements as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Section 061. ~~*(4-11-06)*~~( )

~~***02.*** ***Procedure****. During the interview, the examining psychiatrist or psychologist must evaluate the applicant sufficiently to assess those symptoms of a degree that would impair the effective performance of duty. The results of the examination must be recorded and that record or a summary of recommendations must be forwarded to the appointing authority for review.* *(4-11-06)*~~

(BREAK IN CONTINUITY OF SECTIONS)

061. MINIMUM STANDARDS FOR EMPLOYMENT FOR ADULT PROBATION AND PAROLE OFFICERS.

Every adult probation and parole officer ~~*shall*~~ must meet the minimum standards for employment as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Sections 050 through 065~~*, with the exception of hearing, vision, and physical agility*~~. ~~*(4-7-11)*~~( )

~~***01.*** ***Hearing****. An applicant for adult probation and parole officer certification shall have unaided or aided hearing between zero (0) and twenty-five (25) decibels for each ear at the frequencies of one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council.* *(4-7-11)*~~

~~***02.*** ***Vision****.* *(4-11-06)*~~

~~***a.*** *An applicant for adult probation and parole officer certification shall possess binocular coordination that does not manifest diplopia; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision shall be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There shall be no pathology of the eye; applicant shall possess a minimum of seventy percent (70%) proficiency on a color discrimination test. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council.* *(4-7-11)*~~

~~***b.*** *The applicant shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but shall have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council.* *(4-7-11)*~~

~~***03.*** ***Physical Readiness Test****. An applicant for adult probation and parole officer certification shall pass the POST Physical Readiness Test for Adult Probation and Parole officers.* *(4-7-11)*~~

IDAPA 11 - IDAHO STATE POLICE
ISP COMMERCIAL VEHICLE SAFETY

11.13.01 - THE MOTOR CARRIER RULES

DOCKET NO. 11-1301-1401

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 67-2901 and 49-901, 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 15, 2014.

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:

Idaho has adopted the Federal Motor Carrier Safety Regulations through incorporation by reference. In the past, Idaho has not adopted 49 CFR Part 386, which provides regulations and penalties for out of service provisions for interstate carriers who continue to operate after being declared an imminent hazard and/or have failed to pay outstanding civil penalties.

This rule would adopt 49 CFR Part 386, Subparts F & G only. These changes will provide law enforcement the ability to put interstate carriers, who have been declared an imminent hazard, out of service and thus prohibit the carriers from operating on Idaho's highways until the issue is resolved. Imminent hazard means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur. Currently Idaho does not have the authority to put these carriers out of service and these carriers pose a significant risk to public health and safety. Some carriers may also be out of service for failure to pay fines that were previously imposed for violations. Currently Idaho does not have the authority to place these carriers out of service.

States are required to incorporate these regulations by reference to maintain compliance with the Federal Motor Carrier Safety Administration and remain eligible for grant funding and highway funds.

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

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

Adoption of these rules will not affect general or dedicated funds. If the rules are not adopted Idaho could sustain a reduction in federal grant funding as well as have a negative impact on dedicated funding.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because states are required to adopt these rules by reference to remain in compliance with the Federal Motor Carrier Safety Administration (FMCSA). The rules were adopted by FMCSA in compliance with the federal law and are published in the Federal Register and the Code of Federal 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:

All states adopt the Federal Motor Carrier Safety Regulations for interstate transportation; otherwise, a driver would have to comply with different rules in each state. Standardized rules provide for consistent transportation safety nationwide.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Capt. William Reese, Idaho State Police

Commercial Vehicle Safety (208) 884-7220 or **william.reese@isp.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 October 22, 2014.

DATED this 29th Day of August, 2014.

Colonel Ralph W. Powell, Director
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83642
Tel: (208) 884-7003 / Fax: (208) 884-7090

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1301-1401
(Only those Sections being amended are shown.)

019. CARRIER SAFETY REQUIREMENTS (RULE 19).

01. Adoption of Federal Regulations. Adoption of Federal Regulations 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399 are hereby adopted by reference. Whenever any one (1) of these federal regulations (except Section 391.11(b)(1)) exempts intrastate carriers from any of their requirements, this rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019, removes that exemption and subjects the intrastate carrier to the same requirements. The Department asserts its authority under Section 019 to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-679 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388. (3-30-07)

a. All interstate and foreign carriers and intrastate carriers, except those carriers listed in Subsection 019.01.b., subject to the safety authority of the Idaho State Police while operating in Idaho that transport passengers or property, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). (3-30-07)

b. Intrastate carriers operating commercial motor vehicles transporting property with a GVW, GVWR, GCW or GCWR greater than ten thousand (10,000) pounds and up to twenty-six thousand (26,000) pounds, subject to the authority of the Idaho State Police, must comply with 49 CFR Part 390 Subpart A, Part 391.15, Parts 392, 393, and Part 396.1, 396.3(a), (a)(1), and (a)(2), and 396.5 through 396.9 and the law and rules of the state of Idaho. All intrastate carriers transporting placardable quantities of hazardous material under 49 CFR Part 172, Subpart F and passengers, meeting the definition of a commercial motor vehicle, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). (3-30-07)

c. The subject matter of 49 CFR 391.11(b)(1) is a twenty-one (21) year minimum age for drivers of commercial vehicles subject to federal safety regulation. Intrastate carriers subject to the safety authority of the Idaho State Police may hire drivers who are eighteen (18) years or older as set forth in Section 49-303, Idaho Code. (3-30-07)

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

a. Part 356. Motor Carrier Routing Regulations. (3-29-10)

b. Part 365. Rules Governing Application for Operating Authority. (3-29-10)

c. Part 382. Controlled Substance and Alcohol Use and Testing. (4-5-00)

d. Part 383. Commercial Driver's License Standards; Requirements and Penalties. (4-5-00)

e. Part 385. Safety Fitness Procedures. (3-29-10)

f. Part 386.71-84. Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings. (____)

~~f~~g. Part 387. Minimum Levels of Financial Responsibility. (3-29-10)

~~g~~h. Part 388. Cooperative Agreements with States. (4-5-00)

~~h~~i. Part 390. Federal Motor Carrier Safety Regulations: General. (4-5-00)

~~i~~j. Part 391. Qualifications of Drivers. (4-5-00)

~~j~~k. Part 392. Driving of Commercial Motor Vehicles. (3-29-10)

~~k~~l. Part 393. Parts and Accessories Necessary for Safe Operation. (4-5-00)

~~l~~m. Part 395. Hours of Service of Drivers. (4-5-00)

~~m~~n. Part 396. Inspection, Repair and Maintenance. (4-5-00)

~~n~~o. Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. (4-5-00)

~~o~~p. Part 398. Transportation of Migrant Workers. (4-5-00)

~~p~~q. Part 399. Employee Safety and Health Standards. (4-5-00)

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

04. Version of Federal Regulations Adopted. The federal regulations adopted by reference in this Section 019 are those contained in the compilation of 49 CFR Parts 356, 365, 382, 383, 385, 387, 388, 390 through 399 published in the Code of Federal Regulations volumes dated March 1, 2012. (4-4-13)

05. Availability of Incorporated Documents. The 49 CFRs can be found on the Federal Motor Carrier Safety Administration website at www.fmcsa.dot.gov or copies may be viewed at the office of the Idaho State Police. (3-29-10)

IDAPA 11 - IDAHO STATE POLICE
ISP COMMERCIAL VEHICLE SAFETY

11.13.01 - THE MOTOR CARRIER RULES

DOCKET NO. 11-1301-1402

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 67-2901 and 49-901, 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 15, 2014.

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:

On October 1, 2012, the Federal MAP-21 legislation went into effect. The legislation provides additional exemptions from the Federal Motor Carrier Safety Regulations (FMCSR) for interstate operations of "covered farm" vehicles and vehicles engaged in the "transportation of agricultural commodities and farm supplies."

The rule extends the hours of service exemption for farm and agricultural commodity, retail and wholesale distribution points from 100 to 150 air miles. Covered farm vehicles are exempted from most of the FMCSRs within 150 air mile radius of the farm or ranch, if the gross vehicle weight rating (GVWR) of the vehicle is over 26,001 pounds. If the GVWR of the vehicle is 26,001 pounds or less the vehicle is exempt, regardless of the distance from the farm or ranch. Covered farm vehicles are only required to comply with FMCSRs, 49 CFR Parts 385, 390, 391 (except Subpart E: Physical Qualifications & Examinations), 392 and 393.

States are required to adopt these regulations by reference to maintain compliance with the Federal Motor Carrier Safety Administration and remain eligible for grant funding and highway funds.

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

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

Adoption of these rules will not affect general or dedicated funds. If the rules are not adopted Idaho could sustain a reduction in federal grant funding as well as have a negative impact on dedicated funding.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because states are required to adopt these rules by reference to remain in compliance with the Federal Motor Carrier Safety Administration (FMCSA). The rules were adopted by FMCSA in compliance with the federal law and are published in the Federal Register and the Code of Federal 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:

All states adopt the Federal Motor Carrier Safety Regulations for interstate transportation; otherwise, a driver would have to comply with different rules in each state. Standardized rules provide for consistent transportation safety nationwide.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Capt. William Reese, Idaho State Police Commercial Vehicle Safety (208) 884-7220 or **william.reese@isp.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 October 22, 2014.

DATED this 29th Day of August, 2014.

Colonel Ralph W. Powell, Director
Idaho State Police
700 S. Stratford Dr., Meridian, ID 83642
(208) 884-7003/(208) 884-7090

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-0301-1402
(Only those Sections being amended are shown.)

019. CARRIER SAFETY REQUIREMENTS (RULE 19).

01. Adoption of Federal Regulations. Adoption of Federal Regulations 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399 are hereby adopted by reference. Whenever any one (1) of these federal regulations (except Section 391.11(b)(1)) exempts intrastate carriers from any of their requirements, this rule at IDAPA 11.13.01, "The Motor Carrier Rules," Section 019, removes that exemption and subjects the intrastate carrier to the same requirements. The Department asserts its authority under Section 019 to the maximum extent allowed by Section 67-2901A, Idaho Code, Public Laws 89-679 and 89-170 (see 49 U.S.C. 502(c)(3)), 49 CFR Part 388. (3-30-07)

a. All interstate and foreign carriers and intrastate carriers, except those carriers listed in Subsection 019.01.b., subject to the safety authority of the Idaho State Police while operating in Idaho that transport passengers or property, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers).(3-30-07)

b. Intrastate carriers operating commercial motor vehicles transporting property with a GVW, GVWR, GCW or GCWR greater than ten thousand (10,000) pounds and up to twenty-six thousand (26,000) pounds, subject to the authority of the Idaho State Police, must comply with 49 CFR Part 390 Subpart A, Part 391.15, Parts 392, 393, and Part 396.1, 396.3(a), (a)(1), and (a)(2), and 396.5 through 396.9 and the law and rules of the state of Idaho. All intrastate carriers transporting placardable quantities of hazardous material under 49 CFR Part 172, Subpart F and passengers, meeting the definition of a commercial motor vehicle, must comply with 49 CFR Parts 356, 365, 382, 383, 385, 387, 388 and 390 through 399, and the law and rules of the state of Idaho (except Part 391.11(b)(1) for intrastate carriers). (3-30-07)

c. The subject matter of 49 CFR 391.11(b)(1) is a twenty-one (21) year minimum age for drivers of commercial vehicles subject to federal safety regulation. Intrastate carriers subject to the safety authority of the Idaho State Police may hire drivers who are eighteen (18) years or older as set forth in Section 49-303, Idaho Code. (3-30-07)

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

a. Part 356. Motor Carrier Routing Regulations. (3-29-10)

b. Part 365. Rules Governing Application for Operating Authority. (3-29-10)

c. Part 382. Controlled Substance and Alcohol Use and Testing. (4-5-00)

d. Part 383. Commercial Driver's License Standards; Requirements and Penalties. (4-5-00)

e. Part 385. Safety Fitness Procedures. (3-29-10)

f. Part 387. Minimum Levels of Financial Responsibility. (3-29-10)

g. Part 388. Cooperative Agreements with States. (4-5-00)

h. Part 390. Federal Motor Carrier Safety Regulations: General. (4-5-00)

i. Part 391. Qualifications of Drivers. (4-5-00)

j. Part 392. Driving of Commercial Motor Vehicles. (3-29-10)

k. Part 393. Parts and Accessories Necessary for Safe Operation. (4-5-00)

l. Part 395. Hours of Service of Drivers. (4-5-00)

m. Part 396. Inspection, Repair and Maintenance. (4-5-00)

n. Part 397. Transportation of Hazardous Materials; Driving and Parking Rules. (4-5-00)

o. Part 398. Transportation of Migrant Workers. (4-5-00)

p. Part 399. Employee Safety and Health Standards. (4-5-00)

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

04. Version of Federal Regulations Adopted. The federal regulations adopted by reference in this Section 019 are those contained in the compilation of 49 CFR Parts 356, 365, 382, 383, 385, 387, 388, 390 through 399 published in the Code of Federal Regulations volumes dated March ~~1~~31 20~~12~~14. ~~(4-4-13)~~( )

05. Availability of Incorporated Documents. The 49 CFRs can be found on the Federal Motor Carrier Safety Administration website at www.fmcsa.dot.gov or copies may be viewed at the office of the Idaho State Police. (3-29-10)

IDAPA 12 - DEPARTMENT OF FINANCE

12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-1401

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, 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 October 15, 2014.

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 rules incorporate by reference the most recent changes to Regulation X, Regulation Z, the Real Estate Settlement Procedures Act, and the Truth in Lending Act.

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

No fee or charge is being imposed or increased through this rulemaking.

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

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

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 recent changes to two federal rule and two federal statutes incorporated by reference into the Idaho Residential Mortgage Practices Act. The federal rules and statutes have been amended, and thus the rule needs to be amended.

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, incorporates Regulations X and Z, the Real Estate Settlement Procedures Act, and the Truth in Lending Act into the Idaho Residential Mortgage Practices Act. As these federal provisions are amended, pursuant to Section 26-31-102, Idaho Code, the amendments can be incorporated into Idaho law by administrative rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mike Larsen 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 October 22, 2014.

DATED this 27th Day of August, 2014.

Michael Larsen
Consumer Finance Bureau Chief
Department of Finance
800 Park Blvd.
PO Box 83720
Boise, ID 83720-0031
Office: (208) 332-8060 / Fax: (208) 332-8099

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0110-1401
(Only those Sections being amended 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~~3~~5. The Real Estate Settlement Procedures Act is available for viewing online at: ~~*http://www.gpo.gov/fdsys/pkg/USCODE-2011-title12/html/USCODE-2011-title12-chap27.htm*~~ http://www.gpo.gov/fdsys/pkg/USCODE-2012-title12/html/USCODE-2012-title12-chap27-sec2601.htm. ~~*(4-4-13)*~~(____)

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~~3~~5. Regulation X is available for viewing online at: ~~*http://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/xml/CFR-2012-title12-vol8-part1024.xml*~~ http://www.gpo.gov/fdsys/pkg/CFR-2014-title12-vol8/xml/CFR-2014-title12-vol8-part1024.xml. ~~*(4-4-13)*~~(____)

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~~3~~5. The Truth in Lending Act is available for viewing online at: ~~*http://www.gpo.gov/fdsys/pkg/USCODE-2011-title15/html/USCODE-2011-title15-chap41.htm*~~ http://www.gpo.gov/fdsys/pkg/USCODE-2012-title15/html/USCODE-2012-title15-chap41.htm. ~~*(4-4-13)*~~(____)

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~~3~~5. Regulation Z is available for viewing online at: ~~*http://www.gpo.gov/fdsys/pkg/CFR-2012-title12-vol8/xml/CFR-2012-title12-vol8-part1026.xml*~~ http://www.gpo.gov/fdsys/pkg/CFR-2014-title12-vol9/xml/CFR-2014-title12-vol9-part1026.xml. ~~*(4-4-13)*~~(____)

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, and available at http://mortgage.nationwidelicensingsystem.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 13 - IDAHO FISH AND GAME COMMISSION

13.01.02 - RULES GOVERNING HUNTER EDUCATION AND MENTORED HUNTING

DOCKET NO. 13-0102-1401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2014.

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, 36-401, 36-404 and 36-407, Idaho Code; and House Bill 399 (2014).

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 15, 2014.

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:

Rules that govern the Mentored Hunting program must be amended to reflect that youth that are 10 years of age can hunt big game.

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

Compliance with amendments to governing law.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a straightforward amendment to comply with amended state 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 22, 2014.

DATED this 22nd Day of August, 2014.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 South Walnut
P.O. Box 25, Boise, Idaho 83707
Tel: (208) 334-3715 / Fax: (208) 334-4885

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 13-0102-1401
(Only those Sections being amended are shown.)

010. DEFINITIONS.

01. Accompanied. The term "accompanied" as used in the requirement for ~~*a Youth Hunter Education Graduate License holder or Youth Small Game*~~ youth who are hunting and have a Junior Hunting or Junior Combination License who are younger than twelve (12) years of age or for Nonresident Junior Mentored Hunting License holders or for the Mentored Hunting program shall mean close enough to be within normal conversation or hearing range without shouting or the aid of electronic devices ~~*(4-4-13)*~~(8-1-14)T

(BREAK IN CONTINUITY OF SECTIONS)

100. HUNTER EDUCATION.

01. Mandatory Hunter Education Program. All students being certified under this program must have successfully completed at least ten (10) hours of instruction in firearms safety, wildlife management, wildlife law, hunter ethics, first aid/survival, plus practical experience in the handling and shooting of firearms. This instruction may be completed through classroom study, home study, an on-line computer course, or other approved methods. The Department of Fish and Game shall manage the Hunter Education Program pursuant to the Idaho Hunter Education Policy and Procedure Manual. Only certificates for courses which meet or exceed the standards of the Idaho course are acceptable from other states or countries. (4-7-11)

02. Fees. A fee as established by Section 36-412(c), Idaho Code, shall be charged each student enrolling in the Hunter Education Program. (3-20-04)

03. Parent to Attend ~~***Live Fire Exercise***~~ **Shooting Clinic with Student**. For students under the age of twelve (12), a parent, legal guardian or other adult designated by the parent or legal guardian shall attend ~~*the*~~ any Hunter Education ~~*Live Fire Exercise*~~ Shooting Clinic with the student. Preferably, the adult attending the ~~*live fire Exercise*~~ Shooting Clinic exercise should be the same adult who will accompany the student into the field while hunting. ~~*This requirement is mandatory for successful completion of the Hunter Education Course.*~~
~~*(3-20-04)*~~(8-1-14)T

04. Exemption from Practical Handling and Shooting of Firearms Requirement. An active, former, or retired member of the United States Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) or an active, former or retired peace officer as defined by Section 19-5101(d), Idaho Code, may be exempted from the practical firearms handling and shooting requirement of the Mandatory Hunter Education Program if they received training in firearms handling and shooting. To qualify for the exemption the applicant must submit by mail or in person a signed affidavit provided by the Department, which certifies the applicant meets the criteria for exemption due to training in the practical handling and shooting of firearms provided through either the Armed Forces or as a peace officer. (3-29-12)

101. MENTORED HUNTING PROGRAM.
Nothing in this section shall be construed as altering the requirements of Section 36-411, Idaho Code, to obtain a valid hunting license, or any other statutory or rule requirements for the take of wildlife. (4-4-13)

01. Hunting Passport. A Hunting Passport is a special authorization for any person to take wildlife when they are accompanied by a mentor and participating in the Mentored Hunting Program. (4-4-13)

a. Any person must obtain a Hunting Passport from the Department or a licensed vendor to participate as a mentee in the Mentored Hunting Program. (4-4-13)

b. Hunter education certification is not required for any person to possess a hunting passport. (4-4-13)

c. A Hunting Passport shall expire December 31 of the year for which it is valid. (4-4-13)

d. Any person who has possessed a Hunter Passport may not apply for a Hunter Passport in any subsequent year. (4-4-13)

02. Eligibility of Mentee. (4-4-13)

a. Any person who has not previously possessed a hunting license or equivalent license in any other state may possess a Hunting Passport to participate in the Mentored Hunting Program as a mentee. (4-4-13)

b. Any mentee possessing a Hunting Passport is eligible to possess general big game, turkey, and sandhill crane tags if the mentee is qualified to participate in the hunt. (4-4-13)

c. Any mentee possessing a Hunting Passport is not eligible to possess a control hunt tag but may be designated for a Landowner controlled hunt tag if the mentee is qualified to participate in the hunt. (4-4-13)

d. Any mentee with a Hunting Passport shall be ~~*twelve*~~ ten (1~~2~~0) years of age to hunt big game. ~~*(4-4-13)*~~(8-1-14)T

e. Any mentee with a Hunting Passport must be accompanied by a mentor as provided in Subsection 101.03.a. (4-4-13)

f. Any person shall be eight (8) years or older to possess a Hunting Passport. (4-4-13)

g. Any mentee must possess on his person a hunting passport while hunting and produce the same for inspection upon request of a conservation officer or any other person authorized to enforce fish and game laws. (4-4-13)

03. Eligibility of Mentor. (4-4-13)

a. Any person who possesses a valid Idaho hunting license and who is eighteen (18) years or older may participate in the Mentored Hunting Program as a mentor. (4-4-13)

b. A mentor may not accompany more than two (2) mentees at one (1) time that are participating in the Mentored Hunting Program. (4-4-13)

c. A mentor may hunt while participating in the Mentored Hunting Program if the mentor is qualified to participate in the hunt. (4-4-13)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1402

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2014.

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 36-407, Idaho Code; and Senate Bill 1278 (2014).

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 15, 2014.

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:

Eligibility rules for nonresident disabled American veterans to receive a reduced fee hunting license and certain tags must be amended to comply with new law.

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

Compliance with amendments to governing law.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a straightforward amendment to comply with new state 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 22, 2014.

DATED this 22nd Day of August, 2014.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 South Walnut
P.O. Box 25, Boise, Idaho 83707
Tel: (208) 334-3715 / Fax: (208) 334-4885

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 13-0104-1402
(Only those Sections being amended are shown.)

302. DISABILITY LICENSES.
Disabled Combination Hunting/Fishing, Disabled Fishing, Disabled American Veterans Combination Hunting and Fishing License, Disabled American Veterans Fishing License, and Nonresident Disabled American Veterans Hunting License. (3-29-12)

01. Applicants for Disability Licenses Must Attest to the Disability Requirements. It is a violation for any person to misrepresent any information to obtain a disability license. (3-8-07)

02. Required Documentation. Required documentation must be submitted in person or by mail to the Department of Fish and Game set forth in Section 005 of this rule. Applications must be supported by the documentation noted in either Subsection 302.02.a., 302.02.b., or 302.02.c.~~*, or 302.02.d.*~~ of this rule.
~~*(3-29-12)*~~(8-1-14)T

a. License buyer must present, to an Idaho Department of Fish and Game office or select vendor one (1) of the following: (3-8-07)

i. A current year's award statement in the individuals name showing that he or she is receiving SSI or SSDI benefits for the current year; (3-8-07)

ii. A letter from the Railroad Retirement board verifying disability status and being dated within three years preceding the application for a disabled license; (3-8-07)

iii. A letter from the from the Veterans Affairs office verifying a service-connected disability rating of forty percent (40%) or greater. Such documentation can bear any date prior to license application. Such documentation will be required only for the initial application and will not be required for subsequent disability license application. (5-8-09)

iv. A current year's letter from the Veterans Affairs office showing an individual is receiving a nonservice-connected pension. (5-8-09)

b. License buyer must initially present to an Idaho Fish and Game office a form, prescribed by the Department, showing physician certification of permanent disability, defined in Subsections 010.04 and 010.08 of this rule, or an individual may present their valid Idaho driver's license in lieu of the prescribed department form if the individual meets the disability requirements of Section 49-117(7)(b), Idaho Code, and the driver's license is appropriately marked as disabled. Only eligible applicants may submit such applications. Physician certification will not be required for subsequent disability license application. (3-8-07)

c. Individuals using the department form for a physician's permanent disability certification must complete and sign the application form. Each application submitted on the department form shall be accompanied by certification from the applicant's physician, physician assistant, or nurse practitioner stating which of the criteria set forth in Subsection 010.04 of this rule, qualifies the applicant and why. If the physician, physician assistant, or nurse practitioner is not licensed to practice in Idaho, a photo copy of the physician, physician assistant, or nurse practitioner's medical license must accompany the application. Physicians, physician assistants, or nurse practitioners must check the appropriate box for a permanent disability on the application. (5-8-09)

d. Nonresident Disabled American Veterans must meet the requirements in Subsection 302.02.a.iii. ~~*and provide information, prescribed by the Department, showing they are participating in a hunt in association with a Qualified Organization. Applicant must provide a letter from a Qualified Organization documenting the following:*~~
~~*(3-29-12)*~~(8-1-14)T

~~*i. The license applicant is participating in a hunt in association with the Qualified Organization in the calendar year of the application.* *(3-29-12)*~~

~~*ii. The Qualified Organization is qualified under Internal Revenue Code Section 501(c)(3) as a nonprofit organization with a mission to offer opportunities, experiences, and assistance to disabled veterans or the qualified organization is a government agency with a mission to offer opportunities, experiences, and assistance to disabled veterans.* *(3-29-12)*~~

~~*iii. If the Qualified Organization is a government agency, the letter must be on the government agency letterhead and signed by an employee of the government agency.* *(3-29-12)*~~

~~*iv. If the Qualified Organization is a nonprofit organization, a copy of the IRS determination letter showing IRS Section 501(c)(3) status must be included with the letter.* *(3-29-12)*~~

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1403

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2014.

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, 36-401 and 36-408, Idaho Code; and Senate Bill 1276.

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 15, 2014.

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:

Rules that reference qualified organizations for the disabled veteran big game tag program must be amended to add IRS status 501(c) (4) and 501(c) (19) organizations to comply with new law.

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

Compliance with amendments to governing law.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a straightforward amendment to comply with new state 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 22, 2014.

DATED this 22nd Day of August, 2014.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 South Walnut
P.O. Box 25, Boise, Idaho 83707
Tel: (208) 334-3715 / Fax: (208) 334-4885

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 13-0104-1403
(Only those Sections being amended are shown.)

901. DISABLED VETERANS SPECIAL BIG GAME TAG.

01. Availability. The Department shall make up to five (5) big game tags available for disabled veterans. (3-29-10)

a. Any of the five (5) big game tags described in Section 900 that have not been issued by July 15 each year may also be available for disabled veterans. (3-29-10)

02. Issuance. The Commission delegates discretionary authority to issue a disabled veterans special big game tag to the Director. (3-29-10)

03. Eligibility. In order to receive a disabled veterans special big game tag, a resident or nonresident must be a disabled veteran, as certified by the Department of Veterans Affairs. (3-29-10)

a. A qualified applicant must be sponsored by a nonprofit organization that is qualified under section 501(c) (3), 501 (c) (4), or 501 (c) (19) of the Internal Revenue Code or sponsored by a governmental agency. ~~(3-29-10)~~(8-1-14)T

b. A mission of the sponsoring organization or governmental agency must be to afford opportunities, experiences, and assistance to disabled veterans. (3-29-10)

c. Hunter education requirements are waived for individuals applying for or receiving a disabled veterans special big game tag. (3-29-10)

04. Validity of Tag. The disabled veterans special big game tag shall be valid for one (1) deer, one (1) elk, one (1) pronghorn, one (1) moose, one (1) black bear, or one (1) mountain lion as allowed by Commission proclamation. (3-29-10)

a. A license is not required to apply for or receive a disabled veterans special big game tag. (3-29-10)

b. The disabled veterans special big game tag is valid in any open hunt, controlled or general, as provided by Commission proclamation. (3-29-10)

c. Applicants may only receive one (1) disabled veterans special big game tag in a lifetime. (3-29-10)

05. Application. Applications shall be on a form as prescribed by the Director. (3-29-10)

a. Applications shall be submitted on behalf of applicants by an eligible nonprofit organization or governmental agency. (3-29-10)

b. A copy of the nonprofit organization's IRS determination letter must accompany the application. (3-29-10)

06. Fees. All fees associated with applying for and receiving disabled veterans special big game tag shall be waived. (3-29-10)

07. Hunters with Disabilities Permit Fees. All fees associated with applying for or receiving a Disabled Persons Motor Vehicle Hunting Permit or a Disabled Archery Permit by the recipient of a disabled veterans special big game tag are waived. (3-29-10)

08. Application of Big Game Rules. All rules governing the taking of Big Game Animals, IDAPA 13.01.08, "Rules Governing the Taking of Big Game Animals in the State of Idaho," shall apply to holders of a disabled veterans special big game tag. (3-29-10)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1404

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 2014.

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 36-104, Idaho Code, and House Bill 467 (2014).

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 15, 2014.

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

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

This rule would implement new discretionary Commission authority to add bear tags to the Landowner Appreciation Program.

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

Compliance with amendment to governing state law.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a straightforward amendment to comply with new state 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 22, 2014.

DATED this 22nd Day of August, 2014.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 South Walnut
P.O. Box 25, Boise, Idaho 83707
Tel: (208) 334-3715 / Fax: (208) 334-4885

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 13-0104-1404
(Only those Sections being amended are shown.)

010. DEFINITIONS.
These definitions will provide clarity and consistency in enforcement of these rules. (7-1-93)

01. Authorized Corporate Representative. Any shareholder in a corporation, designated in writing by the corporation as the eligible applicant, who is in actual physical control of the eligible property. (7-1-93)

02. Blind Person. A blind person is one who has a medically documented loss or impairment of his or her vision and includes any person whose visual acuity with correcting lens does not exceed twenty/two hundred (20/200) in the better eye, or whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees. (7-1-93)

03. Domicile. The term "domicile" means the place where an individual has his true, fixed, permanent home and to which place he has the intention of returning whenever he is absent. An individual can have several dwelling places, but only one (1) domicile. Factors to consider to establish domicile include, but are not limited to: (7-1-93)

a. What address does the person use on tax returns and where does the person file a state resident income tax return? (7-1-93)

b. Where is the person registered to vote? (7-1-93)

c. Where does the person and his immediate family live? (7-1-93)

d. Where does the person have his mail sent or forwarded to? (7-1-93)

e. Does the person remain listed in the telephone directory? (7-1-93)

f. Where does he register his automobiles? (7-1-93)

g. Where has the person claimed a homeowner exemption on a personal residence? (7-1-93)

h. Where does he have a driver's license? (7-1-93)

i. Where are his regular physicians and dentists located? (7-1-93)

04. Disabled. A person is disabled if they are deemed disabled by one (1) or more, but not necessarily all of the following: the railroad retirement board pursuant to Title 45 of the United States Code, or certified as eligible for Federal Supplemental Security Income (SSI); or Social Security Disability Income (SSDI); or a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability; or if a physician has certified any of the following - that a person has lost the use of one (1) or both lower extremities or both hands, or is unable to walk two hundred (200) feet or more unassisted by another person, or is unable to walk two hundred (200) feet or more without the aid of a walker, cane, crutches, braces, prosthetic device or a wheelchair, or is unable to walk two hundred (200) feet or more without great difficulty or discomfort due to the following impairments - neurological, orthopedic, respiratory, cardiac, arthritic disorder, blindness, or the loss of function or absence of a limb. (3-8-07)

05. Eligible Applicant. A physically disabled person certified by a physician licensed in the state in which the disabled person resides, as meeting one (1) or more of the criteria set forth in Section 36-1101(b), Idaho Code. (5-8-09)

06. Eligible Property. At least three hundred twenty (320) acres of land in one (1) controlled hunt unit

determined by the Department to be valuable for habitat or propagation purposes for deer, elk, ~~*and/or*~~ pronghorn, and/or black bear, whether owned by one (1) or more persons, a partnership, or corporation. It shall not include any government lands. ~~*(4-7-11)*~~(8-11-14)T

07. Landowner. Any person or corporation whose name appears on a deed as the owner of eligible property or whose name appears on a contract for sale of eligible property as the purchaser, and any affiliates, management companies, associated entities, wholly-owned subsidiaries, corporations, or limited liability corporations wherein fifty percent (50%) or more of the ownership or controlling interest is maintained by a single individual, partnership or corporation. (4-7-11)

08. Permanent Disability. Permanent disability is defined as a medically determinable physical impairment, which a physician has certified that the condition has no expectation for a fundamental or marked change at any time in the future. (3-8-07)

09. Physician. A person licensed to practice medicine pursuant to the Idaho Medical Practice Act (Sections 54-1801 through 54-1820, Idaho Code), or equivalent state licensing authority if the person is not licensed to practice in Idaho. (5-8-09)

10. Qualified Organization. The term "Qualified Organization" is defined in Section 36-408(7), Idaho Code. (3-29-12)

11. Resident. The term "resident" is defined in Section 36-202(s), Idaho Code. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

400. LANDOWNER APPRECIATION PROGRAM.

01. Eligible Applicants. Eligible applicants must be registered with the Department and are limited to landowners. Landowners not complying with prohibitions listed in Subsection 400.08, of these rules, shall not be eligible to participate in the landowner appreciation program for three (3) years. (4-7-11)

02. Hunt Units. Landowner Appreciation Program controlled hunt tags shall be issued only for those controlled hunt units designated by the Director as eligible for such permits. (4-7-11)

03. Qualifying Property. Only property that is used by and provides significant habitat values for deer, elk, ~~*or*~~ pronghorn, and/or black bear qualifies for the Landowner Appreciation controlled hunt tag program. Landowners may receive Landowner Appreciation controlled hunt tags only for the species and sex that use the property. ~~*(4-7-11)*~~(8-11-14)T

04. Applications for Landowner Appreciation Controlled Hunt Tags. Applications for landowner appreciation controlled hunt tag(s) shall be on a form prescribed by the Department. Applicants must be registered with the Department and shall sign the application. (4-7-11)

a. Applications from landowners with six hundred forty (640) acres or more will be accepted on or after June 15 of each year. Applications received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than July 15 of each year will be entered in the random drawing for tags. Each application will be entered in the random drawing one (1) time based upon each six hundred and forty (640) acres of eligible property registered by the landowner that are within the hunt area. For example, if a landowner has six thousand four hundred (6,400) eligible acres, the application will be entered into the random drawing ten (10) times. (4-7-11)

b. One (1) application may be submitted by a landowner with eligible property consisting of six hundred forty (640) acres to four thousand nine hundred ninety-nine (4,999) acres. A second application may be submitted for eligible property consisting of five thousand (5,000) acres or more. (4-7-11)

05. Left Over Tags. Landowners with three hundred twenty (320) acres or more may apply for left-over tags following the random draw. Written applications will be accepted after August 15 of each year on a first-come, first-served basis. Applications must be accompanied by the appropriate application fee as specified in Section 36-416, Idaho Code. (4-7-11)

06. Property and Applicant Registration. (5-15-95)

a. Prior to any eligible applicant applying for a Landowner Appreciation Program controlled hunt, the qualifying property and eligible applicant must be registered with the Department. Registering landowners must notify the Department of any changes in property or applicant eligibility. (4-7-11)

b. Registration of property and eligible applicant must be on a form prescribed by the Department. The landowner must submit the registration form and a copy of the deed(s), and the most recent tax assessment(s), describing the eligible property showing the name(s) of the owner(s), and a map of eligible property to the Department regional office. Department personnel will certify the registration and land description and return a copy to the landowner. (4-5-00)

c. If the person registering is an authorized corporate or partnership representative, he shall submit with his registration written verification from the board of directors, partnership, or an officer of the corporation, other than himself, verifying that he is authorized to register the property and eligible applicants. (4-5-00)

07. Issuance of Controlled Hunt Tag(s). (4-7-11)

a. Once the Department has determined the number of controlled hunt tags to be issued in any controlled hunt unit, an additional ten percent (10%) of the number of controlled hunt tags MAY be issued as Landowner Appreciation Program tags. In subsequent years up to twenty-five percent (25%) of the number of controlled hunt tags MAY be issued only if the hunt is over subscribed by eligible Landowner Appreciation Program applicants. (4-7-11)

b. Where the number of landowner appreciation applicants exceeds the number of landowner appreciation controlled hunt tags available in a unit, successful applicants will be determined by drawing. All eligible landowners in the drawing will be considered for one (1) tag before any landowner is eligible for a second tag. (4-7-11)

c. No more than two (2) Landowner Appreciation Program controlled hunt tags may be issued to any eligible landowner. (4-7-11)

d. Only one (1) leftover Landowner Appreciation Program controlled hunt tag may be issued for eligible property consisting of between three hundred twenty (320) and six hundred thirty nine (639) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. Only one (1) landowner appreciation program controlled hunt tag may be issued for eligible property consisting of between six hundred forty (640) and four thousand nine hundred ninety-nine (4,999) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. One (1) additional controlled hunt tag may be issued to a landowner or designated agent(s) for eligible property in excess of five thousand (5,000) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. No landowner or designated agent(s) is eligible to receive more than one (1) controlled hunt tag for one (1) species in a calendar year. (4-7-11)

e. A successful landowner, corporate or partnership representative drawing a landowner appreciation program controlled hunt tag may designate to whom the controlled hunt tag will be issued pursuant to Subsection 400.08 of this rule. (4-7-11)

08. Prohibitions. Landowner Appreciation Program controlled hunt tags shall not be sold or marketed. (4-7-11)

09. Application of Controlled Hunt Restrictions. (7-1-93)

a. The restriction that applying for a moose, bighorn sheep, or mountain goat controlled hunt makes the applicant ineligible to apply for any other controlled hunt shall not apply to persons who are otherwise eligible to apply for a landowner appreciation program controlled hunt tag. (4-7-11)

b. Landowner appreciation program controlled hunt tags issued to non-residents shall not be considered as part of the non-resident quota. (4-7-11)

c. Landowner appreciation program controlled hunt tags are exempt from the one (1) year waiting periods applicable for certain deer, elk and pronghorn permits. (4-7-11)

10. **Special Restrictions**. Any person hunting with a Landowner appreciation program controlled hunt tag shall hunt only within the boundaries described in the hunt area designated by the Director. Only valid, current-year controlled hunt deer, elk, ~~or~~ pronghorn, or black bear tags may be used in conjunction with a landowner appreciation program. No person shall kill more than one (1) deer, elk or pronghorn during a calendar year EXCEPT: ~~(4-7-11)~~(8-11-14)T

a. Depredation Hunts. In depredation hunts, one (1) additional deer, elk, ~~or~~ pronghorn, or black bear may be taken by persons holding tags for those hunts; EXCEPT: those depredation hunters who were selected for depredation hunts prior to the controlled hunt season for the unit(s) in which they hold a controlled hunt tag must include any animal they harvest within the restrictions imposed by the controlled hunt tag. ~~(4-7-11)~~(8-11-14)T

b. Extra Tag Hunts. In extra tag hunts, one (1) additional deer, elk or pronghorn may be taken by persons holding tags for those hunts. (4-7-11)

c. Limits on Take - Deer, Elk, Pronghorn, Black Bear. In no event shall any person take more deer, elk ~~or~~ pronghorn, or black bear in a calendar year than the number of tags the person legally possesses for each species. ~~(4-7-11)~~(8-11-14)T

(BREAK IN CONTINUITY OF SECTIONS)

404. BLACK BEAR LANDOWNER APPRECIATION SEASONS.
Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (8-11-14)T

40~~4~~5. -- 499. (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. 13-0108-1402

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 36-104, 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 15, 2014.

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:

Some unlimited controlled hunts result in higher-than-desired hunter number because some hunters select these hunts as their second choice (as a backup in case they do not draw their first choice) when applying for a more desirable hunt. A Notice of Intent to Promulgate Rules was filed, and after analyzing the comments from interested parties, the proposal was modified to apply to only deer and elk unlimited controlled hunts. Allow the Commission to designate specific unlimited controlled hunts for deer and elk as “first-choice only.”

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the July 2, 2014 Idaho Administrative Bulletin, **Vol. 14-7, pages 38 and 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jon Rachael, (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 October 22, 2014.

DATED this 22nd Day of August, 2014.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 South Walnut
P.O. Box 25, Boise, Idaho 83707
Tel: (208) 334-3715 / Fax: (208) 334-4885

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 13-0108-1402
(Only those Sections being amended are shown.)

260. TAGS FOR CONTROLLED HUNTS.

01. Use of Controlled Hunt Tags. No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

a. A controlled hunt area with an "X" suffix is an extra tag hunt. (10-26-94)

b. In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

c. Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

iv. Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt-archery, muzzleloader, general or controlled hunt. (4-7-11)

d. Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

iv. Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt-archery, muzzleloader, general or controlled hunt. (4-7-11)

e. Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application

period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)

f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag: EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (4-7-11)

h. Any resident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her resident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to his or her resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-20-14)

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any resident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

i. Any nonresident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates his or her control hunt tag to a resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-20-14)

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any nonresident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

02. Nonresident Tag Limitations. (4-7-11)

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-7-11)

b. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

c. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

d. Governor's Wildlife Partnership Tags for deer, elk, pronghorn, bighorn sheep, mountain goat, and moose shall be taken from the nonresident tag quota and availability is subject to Nonresident Tag Limitations. (4-4-13)

03. Eligibility. Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt.(4-6-05)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. EXCEPT all successful and unsuccessful pronghorn, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled pronghorn/deer/elk tags to hunt in any open general and/or controlled pronghorn, deer or elk hunt in the following hunting season. (4-4-13)

c. Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and pronghorn controlled hunt permit sales. (4-7-11)

d. Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn

ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Bighorn sheep auction tag recipients under IDAPA 13.01.04.700 and lottery tag recipients under IDAPA 13.01.04.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-4-13)

e. No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

f. Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (4-7-11)

g. Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)

h. Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)

i. Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

j. Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

k. Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

l. Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

m. The Commission establishes youth only controlled hunts by proclamation. Only hunters twelve (12) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. (5-8-09)

04. Applications. Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be cancelled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (4-7-11)

a. Spring black bear - Application period - January 15 - February 15. (4-6-05)

b. Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)

c. Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for first drawing - May 1 - June 5. (4-7-11)

d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)

e. Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. (4-7-11)

05. **Applicant Requirements**. Applicants must comply with the following requirements: (7-1-93)

a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (4-7-11)

b. Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)

c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. (4-7-11)

d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. (4-7-11)

e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)

i. Spring Turkey and Spring Bear - April 1. (4-7-11)

ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)

iii. Deer, Elk, Pronghorn and Fall Bear - August 25. (4-7-11)

f. A “group application” for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)

g. A “group application” for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

h. If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

i. Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or

regional offices of the Idaho Department of Fish and Game after July 15. (4-7-11)

j. Deer and elk unlimited controlled hunts as identified by the Fish and Game Commission's Big Game Season Proclamation as "first-choice only" may be applied for only as a first choice controlled hunt during the controlled hunt application process. The Proclamation is published in a brochure available at department offices and license vendors. ( )

06. Refunds of Controlled Hunt Fees. (7-1-93)

a. Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar ($1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

b. Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

c. Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

d. Overpayment of fees of more than five dollars ($5) will be refunded. Overpayment of five dollars ($5) or less will NOT be refunded and will be retained by the Department. (7-1-93)

e. Application fees are nonrefundable. (4-7-11)

f. Fees for resident and nonresident adult control hunt tags that are subsequently designated to a minor child or grandchild are not refundable. (4-4-13)

07. Controlled Hunt Drawing. Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)

08. Unclaimed Tags. Successful applicants for the first deer, elk, black bear, gray wolf, or pronghorn controlled hunt drawing must purchase and pick up their controlled hunt tag by August 1. All controlled hunt tags not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-7-11)

09. Second Drawing Exclusion. The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt. (3-29-10)

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. 13-0108-1403

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2014.

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 36-401 and 36-404, Idaho Code, and House Bill 399 (2014).

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 15, 2014.

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 change to the hunting age is a straightforward amendment to comply with changed state law.

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

Compliance with amendments to governing law.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a straightforward amendment to comply with amended state law on hunting age.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 22, 2014.

DATED this 22nd Day of August, 2014.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 South Walnut
P.O. Box 25, Boise, Idaho 83707
Tel: (208) 334-3715 / Fax: (208) 334-4885

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 13-0108-1403
(Only those Sections being amended are shown.)

260. TAGS FOR CONTROLLED HUNTS.

01. Use of Controlled Hunt Tags. No person may hunt in any controlled hunt without having a valid controlled hunt tag in possession. (4-7-11)

a. A controlled hunt area with an "X" suffix is an extra tag hunt. (10-26-94)

b. In the event a tag is issued based on erroneous information, the tag will be invalidated by the Department and may NOT be used. The Department will notify the hunter of the invalidation of the tag. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (4-7-11)

c. Any person who draws a controlled hunt tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first deer drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a deer controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for deer. (4-7-11)

iv. Any person who draws a controlled hunt extra tag for deer may hunt in any other deer hunt-archery, muzzleloader, general or controlled hunt. (4-7-11)

d. Any person who draws a controlled hunt tag for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT: (4-7-11)

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the first elk drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of an elk controlled hunt tag may purchase a nonresident general season tag as a second tag and may purchase a controlled hunt extra tag for elk. (4-7-11)

iv. Any person who draws a controlled hunt extra tag for elk may hunt in any other elk hunt-archery, muzzleloader, general or controlled hunt. (4-7-11)

e. Any person who draws a controlled hunt tag for pronghorn is prohibited from hunting in any other pronghorn hunt; EXCEPT: (4-7-11)

i. The hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule

for the first pronghorn drawing allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

ii. If the hunter draws an unlimited controlled hunt, the hunter may relinquish the controlled hunt prior to purchasing, allowing the hunter to participate in a general season hunt or the second application period or the leftover controlled hunt tag sale. (4-7-11)

iii. The holder of a pronghorn controlled hunt tag may purchase a controlled hunt extra tag for pronghorn. (4-7-11)

iv. Any person who draws a pronghorn controlled hunt extra tag may apply for a controlled hunt tag for pronghorn. (4-7-11)

f. Any person who draws a spring controlled hunt tag for black bear, may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag. (4-7-11)

g. Any person who draws a fall controlled hunt tag may choose to purchase the controlled hunt bear tag or exchange a general season bear tag for the controlled hunt bear tag. If the hunter chooses to exchange a general season bear tag for the controlled hunt bear tag the hunter must return the unused tag to a Department office to exchange the tag for the appropriate controlled hunt tag: EXCEPT; the hunter may choose not to purchase the controlled hunt tag by the date set by Commission rule for the fall bear drawing. (4-7-11)

h. Any resident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her resident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates a control hunt tag to his or her resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-20-14)

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any resident child or grandchild cannot be designated more than one control hunt tag per species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

i. Any nonresident adult person who possesses any controlled hunt tag may designate the controlled hunt tag to his or her nonresident minor child or grandchild who is qualified to participate in the hunt. (3-20-14)

i. Rules for use of controlled hunt tags in Sections 260 and 261 apply to any resident adult person who possesses and designates his or her control hunt tag to a resident minor child or grandchild. Rules for eligibility in Section 260 apply to any resident adult person who possesses and designates a control hunt tag and to the designated resident minor child or grandchild. Mandatory school as provided in Section 270 shall apply to the designated resident minor child or grandchild. (3-20-14)

ii. Designation of the controlled hunt tag shall be made on a form prescribed by the Department and may be submitted either in person to any Idaho Department of Fish and Game Office or by mail to the License Supervisor at P.O. Box 25, Boise, ID 83707. (4-4-13)

iii. Any nonresident child or grandchild cannot be designated more than one control hunt tag per

species per calendar year. (4-4-13)

iv. Designation of a controlled hunt tag shall be completed before the first opening hunt date for the tag. (4-4-13)

02. Nonresident Tag Limitations. (4-7-11)

a. In controlled hunts with ten (10) or fewer tags, not more than one (1) nonresident tag will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) tags, not more than ten percent (10%) of the tags will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-7-11)

b. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

c. For each species, the total number of outfitter allocated controlled hunt tags shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt tags; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt tags that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (4-7-11)

d. Governor's Wildlife Partnership Tags for deer, elk, pronghorn, bighorn sheep, mountain goat, and moose shall be taken from the nonresident tag quota and availability is subject to Nonresident Tag Limitations. (4-4-13)

03. Eligibility. Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt.(4-6-05)

b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn tag for two (2) years. Except that a person may apply for a bighorn tag in the second application period or a leftover bighorn tag the following year. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat tag for two (2) years. Except that a person may apply for a mountain goat tag in the second application period or a leftover mountain goat tag the following year. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Except that a person may apply for a moose tag in the second application period or a leftover moose tag the following year. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Except that a person may apply for an antlered-only deer tag in the second application period or a leftover antlered-only deer tag the following year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. Except that a person may apply for an antlered-only elk tag in the second application period or a leftover antlered-only elk tag the following year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of tags, Landowner Appreciation Program tags, or Governor's Wildlife Partnership Tags. EXCEPT all successful and unsuccessful pronghorn, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled pronghorn/deer/elk tags to hunt in any open general and/or controlled pronghorn, deer or elk hunt in the following hunting season. (4-4-13)

c. Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, a controlled gray wolf hunt, or a designated depredation or extra tag hunt for deer, elk or pronghorn. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in second application period for deer, elk, and pronghorn and the first-come, first-served deer, elk and pronghorn controlled hunt permit sales. (4-7-11)

d. Any person who has killed a California bighorn ram or a Rocky Mountain bighorn ram on any controlled hunt may not apply for a tag for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain

bighorn ram tag for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram tag for any hunt south of Interstate Highway 84. Bighorn sheep auction tag recipients under IDAPA 13.01.04.700 and lottery tag recipients under IDAPA 13.01.04.800 are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-4-13)

e. No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)

f. Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt tag for five (5) years. The harvest of a bighorn ewe does not make the hunter ineligible to apply for a tag to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (4-7-11)

g. Any person who has killed a mountain goat since 1977 may not apply for a mountain goat tag. (4-7-11)

h. Any person who has killed an antlered moose in Idaho may not apply for a moose tag for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a tag for antlerless moose EXCEPT that any person may apply for tags remaining unfilled after the controlled hunt draw. (4-7-11)

i. Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)

j. Any person may apply for both a controlled hunt tag and a controlled hunt extra tag. (4-7-11)

k. Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs." (7-1-99)

l. Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (4-11-06)

m. The Commission establishes youth only controlled hunts by proclamation. Only hunters ~~*twelve*~~ ten (1~~2~~0) to seventeen (17) years of age with a valid license may apply for youth only controlled hunts, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth only controlled hunt permits. ~~*(5-8-09)*~~(8-1-14)T

04. Applications. Individual applications or group applications for controlled hunts may be submitted electronically through the automated licensing system at any vendor location, through the Internet, over the telephone, or by mail to the Headquarters Office of the Idaho Department of Fish and Game or any Idaho Fish and Game Regional Office and shall be submitted with a postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; EXCEPT: applicants who would like to change their submitted controlled hunt application may request the original application be cancelled to resubmit a new controlled hunt application during the applicable application period. The new application is subject to the appropriate application fees. (4-7-11)

a. Spring black bear - Application period - January 15 - February 15. (4-6-05)

b. Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)

c. Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for first drawing - May 1 - June 5. (4-7-11)

d. Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)

e. Deer, elk, pronghorn, fall black bear, and gray wolves - Application period for second drawing - August 5 - 15. (4-7-11)

05. **Applicant Requirements**. Applicants must comply with the following requirements: (7-1-93)

a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (4-7-11)

b. Only one (1) controlled hunt extra tag will be issued for each person on any application submitted. (4-7-11)

c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt tag hunts or controlled hunt extra tag hunts. (4-7-11)

d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, pronghorn, moose, bighorn sheep, mountain goat, black bear, and gray wolf, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, pronghorn, black bear, or gray wolf. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a tag in the mail. (4-7-11)

e. Any controlled hunt tags, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold by any Point-of-Sale vendor, through the Internet, or over the telephone on a first-come, first-served basis on the dates below UNLESS such day is a Sunday or legal holiday, in which case the permits will go on sale the next legal business day. A controlled hunt application and tag will be issued to successful controlled hunt purchasers. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. (4-7-11)

i. Spring Turkey and Spring Bear - April 1. (4-7-11)

ii. Moose, Bighorn Sheep and Mountain Goat - July 10. (4-7-11)

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f. A “group application” for deer, elk, and pronghorn is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete applications properly. All applicants must abide by the same first and second hunt choices. (4-7-11)

g. A “group application” for moose, bighorn sheep, mountain goat, black bear, and gray wolf, is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (3-29-10)

h. If a group application exceeds the number of tags available in a hunt that group application will not be selected for that hunt. (4-7-11)

i. Landowner permission hunt tags will be sold first-come, first-served basis at the Headquarters or regional offices of the Idaho Department of Fish and Game after July 15. (4-7-11)

06. Refunds of Controlled Hunt Fees. (7-1-93)

a. Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar ($1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

b. Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

c. Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

d. Overpayment of fees of more than five dollars ($5) will be refunded. Overpayment of five dollars ($5) or less will NOT be refunded and will be retained by the Department. (7-1-93)

e. Application fees are nonrefundable. (4-7-11)

f. Fees for resident and nonresident adult control hunt tags that are subsequently designated to a minor child or grandchild are not refundable. (4-4-13)

07. Controlled Hunt Drawing. Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)

08. Unclaimed Tags. Successful applicants for the first deer, elk, black bear, gray wolf, or pronghorn controlled hunt drawing must purchase and pick up their controlled hunt tag by August 1. All controlled hunt tags not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-7-11)

09. Second Drawing Exclusion. The Director may designate certain leftover controlled hunt tags to become immediately available on a first-come, first-served over-the-counter basis due to the dates of the hunt. (3-29-10)

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. 13-0108-1404

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2014.

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 October 15, 2014.

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

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

This amendment reorganizes some of the elk zones, and the units contained within a zone, within the Smoky Mountains, Bennett Hills, Owyhee/South Hills, Teton, Palisades, Island Park, and Bannock elk zones. This amendment is part of the Statewide Elk Management Plan development which has been a three year public process.

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

The reorganized elk zone descriptions allow the Department to better manage elk populations, and benefit the public with more balanced hunting opportunities.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is a simple reorganization of elk zones pursuant to the 2014 Elk Plan.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

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 22, 2014.

DATED this 22nd Day of August, 2014.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 South Walnut
P.O. Box 25, Boise, Idaho 83707
Tel: (208) 334-3715 / Fax: (208) 334-4885

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 13-0108-1404
(Only those Sections being amended are shown.)

605. ELK ZONE DESCRIPTIONS.

01. **Panhandle Zone**. All of Units 1, 2, 3, 4, 4A, 5, 6, 7, and 9. (7-1-99)

02. **Palouse Zone**. All of Units 8, 8A, and 11A. (7-1-99)

03. **Dworshak Zone**. All of Unit 10A. (7-1-99)

04. **Hells Canyon Zone**. All of Units 11, 13, and 18. (7-1-99)

05. **Lolo Zone**. All of Units 10 and 12. (7-1-99)

06. **Elk City Zone**. All of Units 14, 15, and 16. (7-1-99)

07. **Selway Zone**. All of Units 16A, 17, 19, and 20. (7-1-99)

08. **Middle Fork Zone**. All of Units 20A, 26, and 27. (3-29-12)

09. **Salmon Zone**. All of Units 21, 21A, 28, and 36B. (3-29-12)

10. **Weiser River Zone**. All of Units 22, 32, and 32A. (4-5-00)

11. **McCall Zone**. All of Units 19A, 23, 24, and 25. (7-1-99)

12. **Lemhi Zone**. All of Units 29, 37, 37A, and 51. (7-1-99)

13. **Beaverhead Zone**. All of Units 30, 30A, 58, 59, and 59A. (7-1-99)

14. **Brownlee Zone**. All of Unit 31. (7-1-99)

15. **Sawtooth Zone**. All of Units 33, 34, 35, and 36. (7-1-99)

16. **Pioneer Zone**. All of Units 36A, 49, and 50. (7-1-99)

17. **Owyhee *~~South Hill~~* Zone**. All of Units 38, 40, 41, and 42*~~, 46, 47, 54, 55, and 57~~*. *~~(4-5-00)~~*(8-1-14)T

18. **South Hills Zone**. All of Units 46, 47, 54, 55, 56, and 57. (8-1-14)T

1~~8~~9. **Boise River Zone**. All of Unit 39. (7-1-99)

***~~19~~*20.** **Smoky *~~Mountains~~* - Bennett Zone**. All of Units 43, 44, 45, *~~and~~* 48, and 52. *~~(3-15-02)~~*(8-1-14)T

~~20.~~ ***~~Bennett Hills Zone. All of Units 45 and 52.~~*** *~~(7-1-99)~~*

21. **Big Desert Zone**. All of Units 52A and 68. (4-7-11)

22. **Island Park Zone**. All of Units 60, 60A, 61, 62, and 62A. *~~(7-1-99)~~*(8-1-14)T

~~23.~~ ***~~Teton Zone. All of Units 62 and 65.~~*** *~~(7-1-99)~~*

2~~4~~3. **Palisades Zone**. All of Units 64, 65, and 67. ~~*(7-1-99)*~~(8-1-14)T

2~~5~~4. **Tex Creek Zone**. All of Units 66 and 69. (7-1-99)

2~~6~~5. **Bannock Zone**. All of Units ~~*56,*~~ 70, 71, 72, 73, 73A, and 74. ~~*(7-1-99)*~~(8-1-14)T

2~~7~~6. **Bear River Zone**. All of Units 75, 77, and 78. (7-1-99)

2~~8~~7. **Diamond Creek Zone**. All of Units 66A and 76. (7-1-99)

2~~9~~8. **Snake River Zone**. All of Units 53, 63, 63A, and 68A. (3-15-02)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2014.

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 36-104, 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 15, 2014.

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 purpose is to give the Commission the flexibility to modify shooting hours on Wildlife Management Areas where pheasants are stocked. The change is needed to: 1) address human safety concerns where employees/ volunteers stocking upland game birds and vehicles were sprayed with shotgun pellets, 2) to help further distribute stocked upland game birds, and 3) to reduce conflict between waterfowl hunters and upland game bird hunters using the same property.

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: Conferring a benefit.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the February 5, 2014 Idaho Administrative Bulletin, **Vol. 14-2, pages 20 and 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jeff Knetter (208) 287-2747.

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 22, 2014.

DATED this 22nd Day of August, 2014.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 South Walnut
P.O. Box 25, Boise, Idaho 83707
Tel: (208) 334-3715 / Fax: (208) 334-4885

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 13-0109-1401
(Only those Sections being amended are shown.)

300. UPLAND GAME BIRD METHODS OF TAKE.

01. Taking of Upland Game Birds. No person shall take upland game birds: (7-1-93)

a. Except wild turkey, from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise. Wild turkey shall not be taken between sunset and one-half (1/2) hour before sunrise. ~~*Upland game birds shall not be taken before 10 a.m. during the pheasant season on the Fort Boise, Montour, Payette River and C.J. Strike Wildlife Management Areas*~~ The Commission may designate by proclamation the shooting hours on Wildlife Management Areas with Upland Game Bird Permit requirements. ~~*(3-29-12)*~~(8-1-14)T

b. With a trap, snare, net, crossbow, or firearms EXCEPT a shotgun using shells not exceeding three and one-half (3-1/2) inches maximum length, slingshot, hand-held or thrown missiles, EXCEPT forest grouse. Forest grouse shall not be taken with a trap, snare, net, or crossbow. (3-30-01)

c. From any watercraft. (4-7-11)

d. By the use or aid of any electronic call. (7-1-93)

e. By the aid of baiting. Bait is defined as any substance placed to attract upland game birds. (7-1-93)

f. When hunting on Wildlife Management Areas where pheasants are stocked without wearing at least thirty-six (36) square inches of visible hunter orange above the waist. (5-8-09)

02. Wild Turkey. In addition to the methods listed above, wild turkey may not be taken: (7-1-93)

a. With lead shot exceeding BB size. (7-1-93)

b. With steel shot exceeding T size. (7-1-93)

c. By the use of dogs, except during fall hunts. (3-30-01)

IDAPA 15 - OFFICE OF THE GOVERNOR
FOREST PRODUCTS COMMISSION

15.03.01 - RULES OF ADMINISTRATIVE PROCEDURE OF THE IDAHO FOREST PRODUCTS COMMISSION

DOCKET NO. 15-0301-1401

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 38-1508, 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 15, 2014.

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 2014 Idaho Legislature passed House Bill No. 371, which requires changes to the rules. Pursuant to HB 371, changes address the nomination and vacancy of the at-large Commission member and amend the assessment basis of forest landowners.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because changes to the rules were necessary to incorporate statutory changes passed by the 2014 Idaho Legislature in House Bill No. 371.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Betty Munis, Director at (208) 334-3292.

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 October 22, 2014.

DATED this 25th day of August, 2014.

Betty Munis, Director
Idaho Forest Products Commission
350 N. 9th St., Ste. 102
P. O. Box 855
Boise, ID 83701
Phone: (208) 334-3292
Fax: (208) 334-3449

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0301-1401
(Only those Sections being amended are shown.)

100. NOMINATIONS, VACANCIES AND TERMS.

01. Chair and Vice-Chair. The Commission shall nominate and elect, by majority vote, a Chair to serve as presiding officer at all Commission meetings. The Commission may also nominate and elect, by majority vote, a Vice-Chair to accept the duties of the Chair in the event that the Chair is unable to attend a meeting of the Commission. The term of the office of Chair and Vice-Chair shall be one (1) year, commencing July 30 of each year. (11-22-93)

02. Nominations. Nominations for expiring seats on the Commission shall be made by the financial supporters of the Commission from the district in which the seat is expiring, or from all districts in the case of an at-large member, no later than June 1 of that year. The Commission shall provide nomination applications to all financial supporters and shall forward the names of all qualified nominees to the Governor. The Commission may also make recommendations or nominations. In making the appointments, the Governor shall take into consideration recommendations made to him by the Commission and by organizations that represent or are engaged in harvesting, transporting or manufacturing forest products. ~~*(11-22-93)*~~(____)

03. Vacancies. Vacancies in any unexpired term shall be filled by the Governor for the remainder of the unexpired term. The Commission will identify qualified candidates and forward their names to the Governor. The member appointed to fill the vacancy shall represent the same region and interests as the person whose seat has become vacant. The at-large member shall represent all regions. ~~*(11-22-93)*~~(____)

04. Terms. Terms of office for Commission members shall consist of three (3) year terms beginning on July 1 of the year of appointment. (7-1-98)

101. -- 199. (RESERVED)

200. ASSESSMENTS AND FEES.

01. Assessments. An assessment for all logs harvested, measured or processed within the state of Idaho and for all employees, including self employed, engaged in the harvest or transport of timber, logs, unfinished lumber, chips, sawdust, shavings or hog fuel in Idaho, and for each acre of forest land owned by a business entity or person that ~~*has no Idaho manufacturing facilities and*~~ owns more than ~~*fifty*~~ ten thousand (~~5~~10,000) acres of forest land shall be set by the Commission no later than January 1 of the assessment year. Notice of the assessment shall be mailed no later than the last day of the fourth week of May of the assessment year to the last known address of each financial supporter. Assessment shall not be reduced for financial supporters who cease business during an assessment year. ~~*(5-3-03)*~~(____)

a. Financial supporters of the Commission may choose to pay their assessment in either one (1) full payment due thirty (30) days after the date the notice of assessment is mailed, or in four (4) equal payments with payment in full made by December 31 of the assessment year. (5-3-03)

b. Assessments on logs processed into various manufactured products shall be levied against the forest products manufacturer which initiates the manufacturing process. (11-22-93)

c. The Commission shall establish a policy and schedule for insufficient funds checks which will be reviewed annually. This policy and schedule shall be available to the public under the procedures set forth by the Public Records Act, Title 3, Chapter 9, Idaho Code. (5-3-03)

04. Cooperation With Other Departments. In determining assessments levied by the Commission, the Commission may access the records of the Department of Labor, the Board of Scaling Practices, the Tax Commission, the Transportation Department, and the Department of Lands. Such records may include, but are not limited to those reports filed pursuant to Sections 49-434, 49-1001, 38-122, and 38-123, Idaho Code. (5-3-03)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.02 - RULES OF THE IDAHO EMERGENCY MEDICAL SERVICES (EMS) PHYSICIAN COMMISSION

DOCKET NO. 16-0202-1401

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 56-1013A and 56-1023, 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 15, 2014.

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 best protect the public's health and safety, the EMS Physician Commission is revising its Standards Manual that is incorporated by reference in this chapter of rules. The revision to these rules will ensure that the most recent edition of the manual has the force and effect of law.

Rule changes are also needed to bring this chapter of rules into alignment with amendments to state law regarding EMS under Senate Bill 1328 (2014), especially the definition of "Emergency Medical Services" as well as other non-substantive technical/clerical corrections.

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

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

There is no anticipated fiscal impact to the state general fund or any other funds as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted and deemed not feasible because the content of the proposed updates to the EMS Physician Commission Standards Manual and to this chapter of rules already represents extensive input from stakeholders gathered on an ongoing basis during 2014.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 2015-1, is being incorporated by reference into these rules to give it 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 Idaho EMS.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Wayne Denny at (208) 334-4000.

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 October 22, 2014.

DATED this 21st day of August, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0202-1401
(Only those Sections being amended are shown.)

004. INCORPORATION BY REFERENCE.
The Idaho Emergency Medical Services (EMS) Physician Commission has adopted the Idaho Emergency Medical Services (EMS) Physician Commission Standards Manual, edition 201~~4~~5-1, and hereby incorporates this Standards Manual by reference. Copies of the manual may be obtained on the Internet at www.emspc.dhw.idaho.gov or from the Bureau of Emergency Medical Services and Preparedness located at 2224 East Old Penitentiary Road, Boise, ID, 83712-8249, whose mailing address is P.O. 83720, Boise, Idaho 83720-0036. ~~*(7-1-14)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.
In addition to the applicable definitions in Section 56-1012, Idaho Code, and IDAPA 16.0~~2~~1.0~~3~~2, "Rules Governing Emergency Medical Services (EMS) -- Rule Definitions," the following terms are used in this chapter as defined below: ~~*(4-2-08)*~~(____)

~~***01. License**. A license issued by the EMS Bureau to an individual for a specified period of time indicating that minimum standards corresponding to one (1) of several levels of EMS proficiency have been met. (3-29-10)***~~

~~***02. Licensed EMS Personnel**. Individuals who possess a valid license issued by the EMS Bureau. (3-29-10)***~~

0~~3~~1. Credentialed EMS Personnel. Individuals who are authorized to provide medical care by the EMS medical director, hospital supervising physician, or medical clinic supervising physician. (4-2-08)

0~~4~~2. Credentialing. The local process by which licensed EMS personnel are authorized to provide medical care in the out-of-hospital, hospital, and medical clinic setting, including the determination of a local scope of practice. (3-29-10)

0~~5~~3. Designated Clinician. A licensed Physician Assistant (PA) or Nurse Practitioner designated by the EMS medical director, hospital supervising physician, or medical clinic supervising physician who is responsible for direct (on-line) medical supervision of licensed EMS personnel in the temporary absence of the EMS medical director. (3-29-10)

0~~6~~4. Direct (On-Line) Supervision. Contemporaneous instructions and directives about a specific patient encounter provided by a physician or designated clinician to licensed EMS personnel who are providing medical care. (3-29-10)

0~~7~~5. Emergency Medical Services (EMS). ~~*The services utilized in responding to a perceived individual need for immediate care in order to prevent loss of life or aggravation of physiological or psychological*~~

~~*illness or injury.*~~ Under Section 56-1012(12), Idaho Code, emergency medical services or EMS is aid rendered by an individual or group of individuals who do the following: ~~*(4-2-08)*~~( )

a. Respond to a perceived need for medical care in order to prevent loss of life, aggravation of physiological or psychological illness, or injury; ( )

b. Are prepared to provide interventions that are within the scope of practice as defined by the Idaho Emergency Medical Services Physician Commission (EMSPC), under IDAPA 16.02.02, "Rules of the Idaho Emergency Medical Services (EMS) Physician Commission"; ( )

c. Use an alerting mechanism to initiate a response to requests for medical care; and ( )

d. Offer, advertise, or attempt to respond as described in Section 56-1012(12), (a) through (c), Idaho Code. ( )

e. Aid rendered by a ski patroller, as described in Section 54-1804(1)(h), Idaho Code, is not EMS. ( )

0~~*8*~~6. **Emergency Medical Services (EMS) Bureau**. The Bureau of Emergency Medical Services (EMS) and Preparedness of the Idaho Department of Health and Welfare. (4-2-08)

0~~*9*~~7. **Emergency Medical Services (EMS) Physician Commission**. The Idaho Emergency Medical Services Physician Commission as created under Section 56-1013A, Idaho Code, hereafter referred to as "the Commission." (4-2-08)

~~*1*~~08. **EMS Agency**. An organization licensed by the EMS Bureau to provide emergency medical services in Idaho. (4-2-08)

~~*11*~~09. **EMS Medical Director**. A physician who supervises the medical activities of licensed personnel affiliated with an EMS agency. (3-29-10)

1~~*2*~~0. **Hospital**. A facility in Idaho licensed under Sections 39-1301 through 39-1314, Idaho Code, and defined in Section 39-1301(a)(1), Idaho Code. (4-2-08)

1~~*3*~~1. **Hospital Supervising Physician**. A physician who supervises the medical activities of licensed EMS personnel while employed or utilized for delivery of services in a hospital. (3-29-10)

1~~*4*~~2. **Indirect (Off-Line) Supervision**. The medical supervision, provided by a physician, to licensed EMS personnel who are providing medical care including EMS system design, education, quality management, patient care guidelines, medical policies, and compliance. (3-29-10)

13. **License**. A license issued by the EMS Bureau to an individual for a specified period of time indicating that minimum standards corresponding to one (1) of several levels of EMS proficiency have been met. ( )

14. **Licensed EMS Personnel**. Individuals who possess a valid license issued by the EMS Bureau. ( )

15. **Medical Clinic**. A place devoted primarily to the maintenance and operation of facilities for outpatient medical, surgical, and emergency care of acute and chronic conditions or injury. (4-2-08)

16. **Medical Clinic Supervising Physician**. A physician who supervises the medical activities of licensed EMS personnel while employed or utilized for delivery of services in a medical clinic. (3-29-10)

17. **Medical Supervision**. The advice and direction provided by a physician, or under the direction of a physician, to licensed EMS personnel who are providing medical care, including direct and indirect supervision. (3-29-10)

18. **Medical Supervision Plan**. The written document describing the provisions for medical supervision of licensed EMS personnel. (3-29-10)

19. **Nurse Practitioner**. An Advanced Practice Professional Nurse, licensed in the category of Nurse Practitioner, as defined in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (4-2-08)

20. **Out-of-Hospital**. Any setting outside of a hospital, including inter-facility transfers, in which the provision of emergency medical services may take place. (4-2-08)

21. **Physician**. In accordance with Section 54-1803, Idaho Code, a person who holds a current active license issued by the Board of Medicine to practice medicine and surgery, osteopathic medicine and surgery, or osteopathic medicine in Idaho and is in good standing with no restriction upon, or actions taken against, his license. (3-29-10)

22. **Physician Assistant**. A person who meets all the applicable requirements to practice as a licensed physician assistant under Title 54, Chapter 18, Idaho Code, and IDAPA 22.01.03, "Rules for the Licensure of Physician Assistants." (4-2-08)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.19 - FOOD SAFETY AND SANITATION STANDARDS FOR FOOD ESTABLISHMENTS (THE IDAHO FOOD CODE)

DOCKET NO. 16-0219-1401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2014.

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 37-121 and 39-1603, Idaho Code.

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

Tuesday, October 14, 2014, 1:00 p.m.

Hilton Garden Inn
7699 W. Spectrum Street
Garden East Room
Boise, Idaho

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 is proposing changes to allow individuals who have harvested wild game meat and would like to donate it to food banks and other organizations that help feed Idaho's citizens, and that are willing to accept wild game meat, to do so. The provisions in this proposed rule provides a way for these organizations to be able to accept donated wild game meat.

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

To provide for the public health, safety, or welfare by allowing donations of wild game meat to feed Idaho's citizens that are hungry and want to accept this meat for their families. The temporary rule is needed in order to allow hunters to donate during this year's hunting season. The provisions also provide a way for these organizations to be able to accept donated wild game meat.

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

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

This rulemaking will have no fiscal impact to state general funds or any other funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted and the Negotiated Rulemaking Notices for Docket 16-0219-1401 published in both the March 5, 2014, Idaho Administrative Bulletin, **Vol. 14-3, page 21** and the April 2, 2014, Idaho Administrative Bulletin, **Vol. 14-4, page 13**.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Patrick Guzzle, at (208) 334-5936.

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 October 22, 2014.

DATED this 21 st day of August, 2014.

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

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 16-0219-1401
(Only those Sections being amended are shown.)

325. GAME ANIMALS.
Modification to Section 3-201.l7(A)(4), is made by deleting Section 3-201.17(A)(4) and replacing it with Subsections 325.01 through 325.0~~3~~4 of these rules. ~~*(4-6-05)*~~(9-1-14)T

01. Field Dressed Game Animals. Uninspected wild game animals and wild poultry may be custom processed or prepared and served upon request by an individual having ownership of the animal~~;~~. ~~*and*~~ Except as allowed in Subsection 325.04 of this rule, uninspected wild game animals and wild poultry must be processed for or served to that owner and for the family or guests of that individual animal owner only. ~~*(4-6-05)*~~(9-1-14)T

02. Processing Game Animals. Game animals and birds are to be completely separated from other food during storage, processing, preparation and service with the use of separate equipment or areas or by scheduling and cleaning, providing there is compliance with the following: (4-6-05)

a. Slaughtering and cleaning of game animals or birds can not be done in the food establishment, except for meat processing establishments with kill floors; and (4-6-05)

b. Game animals and other animal carcasses are free of any visible dirt, filth, fecal matter or hair before such carcasses enter the food establishment, except for meat processing establishments with kill floors; and (4-6-05)

c. An identifying tag with the owner's name must be on each carcass or divided parts and packaged or wrapped parts; and (4-6-05)

d. Each carcass or divided parts and packaged or wrapped parts are marked or tagged with a "Not for sale" label. Except as allowed in Subsection 325.04 of this rule, ~~T~~these may not be sold, given away, or served to any members of the public. ~~*(4-6-05)*~~(9-1-14)T

03. Un-Inspected Game Animals. Any un-inspected game animals prepared and served in a food establishment may only be prepared and served at the request of the owner of the animals for the owner and invited

family or friends at a private dinner. Except as allowed in Subsection 325.04 of this rule, ~~T~~these animals may not be served, sold, or given away to any members of the public. ~~(4-6-05)~~(9-1-14)T

04. **Donated Game Meat**. Legally harvested game meat may be donated to a food bank or food pantry when the following conditions are met: (9-1-14)T

a. The end recipient of the donated game meat signs an acknowledgement statement indicating that he is aware that the meat has been donated and that the meat itself is uninspected, wild harvested game meat. (9-1-14)T

b. The game meat must have been processed by: (9-1-14)T

i. A facility that is subject to inspection by the regulatory authority with jurisdiction over meat products; (9-1-14)T

ii. The facility packages the game meat into portions that require no further processing or cutting by the food bank or food pantry; and (9-1-14)T

c. The meat is labeled by the processor with the following: (9-1-14)T

i. Species identification; (9-1-14)T

ii. The name and address of the meat processing facility; and (9-1-14)T

iii. The words “Processed for Donation or Private Use” and “Cook to 165° F.” (9-1-14)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1401

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, 56-203, 56-209, 56-236 through 56-240, 56-242, 56-250 through 56-257, 56-260 through 56-266, Idaho Code, and 42 CFR 435.

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 15, 2014.

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 principle issues involved:

These rule changes are being made to clarify definitions and to align with federal regulations to ensure that the Department is in compliance with those regulations. These changes include amending eligibility and presumptive eligibility rules with regard to parent and caretaker relatives.

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

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

There is no anticipated fiscal impact to the state general fund, or to any other funds, due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because the changes being made are simple in nature and are being made for clarification and alignment with federal regulations.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 28th day of August, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0301-1401
(Only those Sections being amended are shown.)

010. DEFINITIONS (A THROUGH L).
For the purposes of this chapter, the following terms apply. (3-20-14)

01. Advanced Payment of Premium Tax Credit. Payment of federal tax credits specified in 26 U.S.C. Part 36B (as added by section 1401 of the Affordable Care Act) which are provided on an advance basis to an eligible individual enrolled in a Qualified Health Plan (QHP) through an exchange in accordance with sections 1402 and 1412 of the Affordable Care Act. (3-20-14)

02. Adult. Any individual who has passed the month of his nineteenth birthday. (3-20-14)

03. Affordable Care Act. The Patient Protection and Affordable Care Act of 2010 (Pub. L. 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152). (3-20-14)

04. Applicant. A person applying for public assistance from the Department, including individuals referred to the Department from a Health Insurance Exchange or Marketplace. (3-20-14)

05. Application. An application for benefits including an Application for Assistance (AFA) or other application recognized by the Department, including referrals from a Health Insurance Exchange or Marketplace. (3-20-14)

06. Application Date. The date the Application for Assistance (AFA) is received by the Department or by the Health Insurance Exchange or Marketplace electronically, telephonically, in person, or the date the application is postmarked, if mailed. (3-20-14)

07. Caretaker Relative. A caretaker relative is a relative of a ~~*dependent*~~ child by full- or half-blood, adoption, or marriage with whom the child is living and who assumes primary responsibility for the child's care. A caretaker relative is one of the following: ~~*(3-20-14)*~~(____)

a. A child's natural, adoptive, or step-parents; (3-20-14)

b. A child's natural, adoptive, or step-grandparents; (3-20-14)

c. A child's natural, adoptive, half- or step-siblings; (3-20-14)

d. A child's natural, adoptive, half- or step-uncle, aunt, first cousin, nephew, niece; first cousin once removed; or (3-20-14)

e. A current or former spouse of a qualified relative listed above. (3-20-14)

08. Child. Any individual from birth through the end of the month of his nineteenth birthday. (3-20-14)

09. Citizen. A person having status as a “national of the United States” defined in 8 U.S.C. 1101(a)(22) that includes both citizens of the United States and non-citizen nationals of the United States. (3-20-14)

10. Cost-Sharing. A participant payment for a portion of Medicaid service costs such as deductibles, co-insurance, or co-payment amounts. (3-20-14)

11. Creditable Health Insurance. Creditable health insurance is coverage that provides benefits for inpatient and outpatient hospital services and physicians' medical and surgical services. Creditable coverage excludes liability, limited scope dental, vision, specified disease, or other supplemental-type benefits. (3-20-14)

12. Department. The Idaho Department of Health and Welfare. (3-20-14)

13. Disenrollment. The end of an individual's participation in a Health Care Assistance program. (3-20-14)

14. **Electronic Account**. An electronic file that includes all information collected and generated by the state regarding each individual's Health Care Assistance eligibility and enrollment, including all documentation required and information collected as part of an eligibility review, or during the course of an appeal. (3-20-14)

15. **Eligibility**. The determination of whether or not an individual is eligible for participation in a Health Care Assistance program. (3-20-14)

16. **Enrollment**. The process of adding eligible individuals to a Health Care Assistance program. (3-20-14)

17. **Extended Medicaid**. Extended Medicaid is four (4) additional months of medical assistance for a parent or relative caretaker who becomes ineligible for Title XIX Medicaid due to an increase in spousal support payments. (3-20-14)

18. **Federal Poverty Guidelines (FPG)**. The federal poverty guidelines issued annually by the Department of Health and Human Services (HHS).The Federal Poverty Guidelines (FPG) are available on the U.S. Health and Human Services website at http://aspe.hhs.gov/poverty. (3-20-14)

19. **Health Assessment**. Health Assessment is an examination performed by a primary care provider in order to determine the appropriate health plan for a Medicaid-eligible individual. (3-20-14)

20. **Health Care Assistance (HCA)**. Health coverage, including Title XIX or Title XXl benefits granted by the Department for persons or families under the authority of Title 56, Chapter 2, Idaho Code, as well as private health insurance plans purchased with a Premium Tax Credit described in Subsection 010.01 of this rule. (3-20-14)

21. **Health Insurance Exchange or Marketplace**. A resource where individuals, families, and small businesses can: (3-20-14)

a. Learn about their health coverage options; (3-20-14)

b. Compare health insurance plans based on costs, benefits, and other important features: (3-20-14)

c. Choose a health coverage plan; and (3-20-14)

d. Enroll in health coverage. (3-20-14)

22. **Health Insurance Premium Program (HIPP)**. The Premium Assistance program in which Title XIX and Title XXI participants may participate. (3-20-14)

23. **Health Plan**. A set of health services paid for by Idaho Medicaid, or health insurance coverage obtained through the Health Insurance Exchange or Marketplace. (3-20-14)

24. **Health Questionnaire**. A tool used to assist Health and Welfare staff in determining the correct Health Plan for the Medicaid applicant. (3-20-14)

25. **Internal Revenue Code**. The federal tax law used to determine eligibility under Title 26 U.S.C. for individual income and self-employment income. (3-20-14)

26. **Internal Revenue Service (IRS)**. The U.S. government agency in charge of tax laws. These laws are used to determine income eligibility. The IRS website is at http://www.irs.gov. (3-20-14)

27. **Insurance Affordability Programs**. Insurance affordability programs include Title XIX title XXI and all insurance programs available in the Health Insurance Exchange or Marketplace. (3-20-14)

28. **Lawfully Present**. An individual who is a qualified non-citizen as described in Section 221 of

these rules. (3-20-14)

29. Lawfully Residing. An individual who is lawfully present in the United States and is a resident of the state in which they are applying for health care coverage. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

400. PARENTS AND CARETAKER RELATIVES ELIGIBLE FOR MEDICAID COVERAGE.
In order for an ~~*adult*~~ individual in a household budget unit to be eligible for Medicaid coverage, the adult must meet the requirements in Subsections 400.01 through 400.06 of this rule. ~~*(3-20-14)*~~( )

01. Parent, Caretaker Relative, or a Pregnant Woman. The ~~*adult*~~ individual must be a parent, caretaker relative, or a pregnant woman in the household budget unit. ~~*(3-20-14)*~~( )

02. Responsible for Eligible Dependent Child. The ~~*adult*~~ individual must be responsible for an eligible dependent child, which includes the unborn child of a pregnant woman. ~~*(3-20-14)*~~( )

03. Live in Same Household. The ~~*adult*~~ individual must live in the same household with the eligible dependent child. ~~*(3-20-14)*~~( )

04. MAGI Income Eligibility. The ~~*adult*~~ individual must meet all income requirements of the Medicaid program for eligibility determined according to MAGI methodologies identified in Sections 300 through 303, and 411 of these rules. Eligibility is based on: ~~*(3-20-14)*~~( )

a. The number of members included in the household budget unit; and (3-20-14)

b. All countable income for the household budget unit. (3-20-14)

05. Member of More Than One Budget Unit. No person may receive benefits in more than one (1) budget unit during the same month. (3-20-14)

06. More Than One Medicaid Budget Unit in Home. If there is more than one (1) Medicaid budget unit in a home, each budget unit is considered a separate unit. (3-20-14)

(BREAK IN CONTINUITY OF SECTIONS)

545. PRESUMPTIVE ELIGIBILITY FOR CHILDREN AND PARENTS.
Presumptive eligibility determination for qualifying medical coverage groups can only be provided by a qualified hospital defined in Section 011 or these rules. (3-20-14)

01. Presumptive Eligibility Decisions. Decisions of presumptive eligibility can only be made for children up to age nineteen (19), parents or caretaker relatives with an eligible child~~*ren*~~ in their household, ~~*caretaker relatives,*~~ or pregnant women, who meet program requirements for MAGI-based Medicaid coverage for families and children. ~~*(3-20-14)*~~( )

02. Presumptive Eligibility Determination. Presumptive eligibility determinations are made by a qualified hospital when an individual receiving medical services is not covered by health care insurance and the financial assessment by hospital staff indicates the individual is eligible for Medicaid Coverage in Idaho. This determination is made by hospital staff through an online presumptive application process: (3-20-14)

a. Prior to completion of a full Medicaid application; and (3-20-14)

b. Prior to a determination being made by the Department on the full application. (3-20-14)

03. Presumptive Eligibility Period. The presumptive eligibility period begins on the date the presumptive application is filed online and ends with the earlier of the following: (3-20-14)

a. The date the full eligibility determination is completed by the Department; or (3-20-14)

b. The end of the ~~*current*~~ month after the month the qualified hospital completed the presumptive eligibility determination. ~~*(3-20-14)*~~( )

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.03 - RULES GOVERNING CHILD SUPPORT SERVICES

DOCKET NO. 16-0303-1401

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 7-1206, 32-1209, 32-1214G, 32-1217, 56-203A, and 56-1004, Idaho Code, and 42 CFR 435.

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

Friday, October 10, 2014, 9:30 a.m.

Department of Health & Welfare
2nd Floor Conference Room
450 West State Street
Boise, Idaho

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 principle issues involved:

These rule changes are being made to update references for current statutes, and the income withholding processes by removing an outdated form in Appendix A. Changes are also being made to clarify good cause factors that can be considered during suspension of license proceedings and which may not be appropriate when applying the factors to recreational licenses. Definitions and appropriate factors are being added to these rules around license suspension proceedings for the enforcement of child support orders.

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

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

There is no anticipated fiscal impact to the state general funds, or to any other funds, due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because the Department determined that the income withholding changes are technical corrections and the recreational license suspension rule changes would not likely be a change on which the Department and those whose licenses may be affected could reach consensus.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kandace Yearsley (208) 334-0620.

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 October 22, 2014.

DATED this 28th day of August, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0303-1401
(Only those Sections being amended are shown.)

000. LEGAL AUTHORITY.
The Department of Health and Welfare is authorized to promulgate these rules under Sections 7-1206, 32-1207, 32-1209, 32-1214G, 32-1217, 56-203A, and 56-1004, Idaho Code. ~~*(5-8-09)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

602. FORM OF INCOME WITHHOLDING ORDER.
Income withholding orders issued ~~*pursuant to*~~ under Section ~~*7-1204*~~ 32-1207, Idaho Code, ~~*shall be in substantially the following form set forth in Appendix A at the end of this chapter*~~ will use the Income Withholding For Support form found online at: http://healthandwelfare.idaho.gov/Portals/0/Children/Child%20Support/IWO.pdf.
~~*(7-1-98)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

604. GOOD CAUSE DETERMINATION IN LICENSE SUSPENSION PROCEEDINGS.

01. Definitions. ~~*"Person" means an individual.*~~ The following definitions apply for this section of rules: ~~*(7-1-98)*~~( )

a. "Obligor" means an individual who is ordered to pay child support under an order issued by a court or authorized administrative authority. ( )

b. "Obligee" means an individual who is ordered to receive child support under an order issued by a court or authorized administrative authority. ( )

c. "Motor Vehicle License" means a license required to operate any type of motor vehicle. ( )

d. "Occupational or Professional License" means a license issued to allow a person to practice or engage in any business, occupation, or profession. ( )

e. "Recreational License" means a license, certificate, or permit authorizing an individual to engage in any recreational activity including, but not limited to, hunting, fishing, and trapping. ( )

02. Res Judicata. No issues that have been previously litigated may be considered at the license suspension hearing. (7-1-98)

03. Good Cause in Motor Vehicle and Occupational License Suspension Proceedings. ~~*A*~~ The

license suspension shall be denied or stayed if the obligor proves ~~*that*~~ one (1) of the following ~~*has resulted in a current inability to pay the child support obligation*~~ conditions exist: ~~*(7-1-98)*~~( )

a. The obligor ~~*is*~~ has been declared physically disabled by Social Security, workman's compensation, or another competent authority that works with disabled individuals, and that disability has directly resulted in the current inability to pay the child support obligation; ~~*(7-1-98)*~~( )

b. The obligor is experiencing the effects of an extended illness or accident that has directly resulted in the current inability to pay the child support obligation; ~~*(7-1-98)*~~( )

c. The obligor is a student whose enrollment is a result of a referral from Vocational Rehabilitation, workman's compensation, or other competent authority working with disabled individuals; ~~*or*~~ ~~*(7-1-98)*~~( )

d. The obligor is incarcerated in any county, ~~*or*~~ state, or federal correctional facility, and proves that he or she has no assets. ~~*(7-1-98)*~~( )

e. The obligor is receiving TAFI~~.~~ or Supplemental Security Income benefits; ~~*(7-1-99)*~~( )

f. The obligor has court-ordered physical custody of all of the children listed in the order or orders for support~~.~~; ~~*(3-30-01)*~~( )

g. Child support is being collected directly from the obligor's income through an income withholding order issued by the Department to the obligor's employer or other income source. (7-1-99)

04. Not Good Cause in Motor Vehicle and Occupational License Suspension Proceedings. Any factor not defined as good cause in Subsection 604.03 is not good cause for a denial or stay of a license suspension, including but not limited to the following: ~~*(7-1-98)*~~( )

a. The obligor is unemployed, underemployed, or has difficulty maintaining consistent employment; (7-1-98)

b. The obligor ~~*is*~~ claims to be disabled but has not applied for disability or other benefits, or has been refused benefits; ~~*(7-1-98)*~~( )

c. The obligor asserts that the child support obligation is too high; (7-1-98)

d. The obligor has been denied full visitation with the child or children; or (7-1-98)

e. The obligor alleges the obligee misuses the child support. (7-1-98)

05. Good Cause in Recreational License Suspension Proceedings. The license suspension shall only be stayed if the obligor proves one (1) of the following conditions exist: ( )

a. The obligor is receiving TAFI or Supplemental Security Income benefits; or ( )

b. The obligor has court-ordered physical custody of all of the children listed in the order or orders for support. ( )

(BREAK IN CONTINUITY OF SECTIONS)

~~***APPENDIX A – ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT***~~

ORDER/NOTICE TO WITHHOLD INCOME FOR CHILD SUPPORT

State _____ *Original Order/Notice*

Co./City/Dist. of _____ _____ *Amended Order/Notice*

Date of Order/Notice _____ _____ *Terminate Order/Notice*

Court/Case Number _____ _____

Employer/Withholder's Federal EIN Number) *RE: **

) *Employee/Obligor's Name (Last, First, MI)*

) *Employee/Obligor's Social Security Number*

Employer/Withholder's Name) **

Employer/Withholder's Name) *Employee/Obligor's Case Identifier*

) *Custodial Parent's Name (Last, First, MI)*

)

Child(ren)'s Name(s): ***DOB*** ***Child(ren)'s Name(s):*** ***DOB***

ORDER INFORMATION: *This is an Order/Notice to Withhold Income for Child Support based upon an order for support from _____. By law, you are required to deduct these amounts from the above-named employee's/obligor's income until _____ even if the Order/Notice is not issued by your State.*

_ If checked, you are required to enroll the child(ren) identified above in any health insurance coverage available through the employee's/obligor's employment. _____

$_____ per_____ in current support
$_____ per_____ in past-due support *Arrears 12 weeks or greater? _ yes _ no*
$_____ per_____ in medical support
$_____ per_____ in other (specify)
$_____ per_____ in other (specify)

for a total of $_____ per_____ to be forwarded to the payee below.

You do not have to vary your pay cycle to be in compliance with the support order. If your pay cycle does not match the ordered support payment cycle, use the following to determine how much to withhold:
$_____ per weekly pay period. $_____ per semimonthly pay period (twice a month).
$_____ per biweekly pay period (every two weeks). $_____ per monthly pay period.

REMITTANCE INFORMATION: *Follow the laws and procedures of the employee's/obligor's principal place of employment even if such laws and procedures are different from this paragraph:*

> *You must begin withholding no later than the first pay period occurring _____ working days after the date of this Order/Notice. Send payment within _____ working days of the paydate date of withholding. You are entitled to deduct a fee of _____ to defray the cost of withholding. The total withheld amount, including your fee, cannot exceed _____% the employee/obligor's aggregate disposable weekly earnings. For the purpose of the limitation on withholding, the following information is needed (see #9 below):*

When remitting payment provide the paydate/date of withholding and the case identifier _____.
*If remitting by EFT/EDI, use this FIPS code: *; _ _ _ _ _ _; Bank routing code:*_____;*
*Bank account number:*_____.*

~~*Make it payable to:* ***Payee and case identifier***~~

~~*Send check to:* ***Payee's Address***~~

~~*Authorized by* _____~~

~~*Print Name* _____~~

~~***ADDITIONAL INFORMATION TO EMPLOYERS AND OTHER WITHHOLDERS***~~
~~____ ***If checked you are required to provide a copy of this form to your employee.***~~

~~*1.* ***Priority:*** *Withholding under this Order/Notice has priority over any other legal process under State law against the same income. Federal tax levies in effect before receipt of this order have priority. If there are Federal tax levies in effect please contact the requesting agency listed below.*~~

~~*2.* ***Combining Payments:*** *You can combine withheld amounts from more than one employee/obligor's income in a single payment to each agency requesting withholding. You must, however, separately identify the portion of the single payment that is attributable to each employee/obligor.*~~

~~*3.* ***Reporting the Paydate/Date of Withholding:*** *You must report the paydate/date of withholding when sending the payment. The paydate/date of withholding is the date on which the employee is paid and controls the income, i.e. the date the income check or cash is given to the employee, or the date in which the income is deposited directly in his/her account.*~~

~~*4.* ***Employee/Obligor with Multiple Support Withholdings:*** *If you receive more than one Order/Notice against this employee/obligor and you are unable to honor them all in full because together they exceed the withholding limit of the State of the employee's principal place of employment (see #9 below), you must allocate the withholding based on the law of the State of the employee's principal place of employment. If you are unsure of that State's allocation law, you must honor all Orders/Notices' current support withholdings before you withhold for any arrearages, to the greatest extent possible under the withholding limit. You should immediately contact the last agency that sent you an Order/Notice to find the allocation law of the state of the employee's principal place of employment.*~~

~~*5.* ***Termination Notification:*** *You must promptly notify the payee when the employee/obligor is no longer working for you. Please provide the information requested and return a copy of this order/notice to the agency identified below.*~~

~~***EMPLOYEE'S/OBLIGOR'S NAME:*** _____~~
~~***EMPLOYEE'S CASE IDENTIFIER:*** _____ ***DATE OF SEPARATION:*** _____.~~
~~***LAST KNOWN HOME ADDRESS*** _____.~~
~~***NEW EMPLOYER'S ADDRESS*** _____.~~

~~*6.* ***Lump Sum Payments:*** *You may be required to report and withhold from lump sum payments such as bonuses, commissions, or severance pay. If you have any questions about lump sum payments, contact the person or authority below.*~~

~~*7.* ***Liability:*** *If you fail to withhold income as the Order/Notice directs, you are liable for both the accumulated amount you should have withheld from the employee/obligor's income and any other penalties set by State law.*~~

~~_____~~
~~_____~~
~~_____~~

~~*8.* ***Anti-discrimination:*** *You are subject to a fine determined under State law for discharging an employee/obligor from employment, refusing to employ, or taking disciplinary action against any employee/obligor because of a child support withholding.*~~

~~_____~~
~~_____~~

_____
_____

~~9. **Withholding Limits:** You may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 U.S.C. Section 1673(b)); or 2) the amounts allowed by the State of the employee's/obligor's principal place of employment. The Federal limit applies to the aggregate disposable weekly earnings (ADWE). ADWE is the net income left after making mandatory deductions such as: State, Federal, local taxes; Social Security taxes; and Medicare taxes. The Federal CCPA limit is 50% of the ADWE for child support and alimony, which is increased by: 1) 10% if the employee does not support a second family; and/or 2) 5% if arrears are more than 12 weeks old. (see boxes on front)~~

~~10.~~ _____
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_____

~~**Requesting Agency:**~~ _____
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_____
_____
_____
_____

~~If you or your employee/obligor have any questions, contact:~~

~~by telephone at _____ or~~
~~by FAX at _____ or~~
~~by Internet _____.~~

~~(7-1-98)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO

DOCKET NO. 16-0304-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-203, Idaho Code, and 7 CFR 271.2.

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 15, 2014.

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 will align the definition of "trafficking," in this chapter with the revised federal definition under 7 CFR 271.2. This rulemaking expands the definition of "trafficking" to include fraudulent activities previously not considered to be program violations.

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

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

There is no anticipated fiscal impact to the state general fund or any other funds as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Negotiated rulemaking was deemed not feasible as this rule change is simple in nature.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Malinda Jones at (208) 334-5779.

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 October 22, 2014.

DATED this 29th day of August, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0304-1401
(Only those Sections being amended are shown.)

698. INTENTIONAL PROGRAM VIOLATION (IPV).
An IPV includes the actions listed in Subsections 698.01 through 698.06 of these rules. The client must intentionally, knowingly, and willfully commit a program violation. (3-30-07)

01. False Statement. A person makes a false statement to the Department, either orally or in writing, to get Food Stamps. (6-1-94)

02. Misleading Statement. A person makes a misleading statement to the Department, either orally or in writing, to get Food Stamps. (6-1-94)

03. Misrepresenting. A person misrepresents facts to the Department, either orally or in writing, to get Food Stamps. (6-1-94)

04. Concealing. A person conceals or withholds facts to get Food Stamps. (6-1-94)

05. Violation of Regulations. A person commits any act violating the Food Stamp Act, Federal regulations, or State Food Stamp regulations. The violation may relate to use, presentation, transfer, acquisition, receipt, or possession of Food Stamps. (3-30-07)

06. Trafficking in Food Stamps. Trafficking in Food Stamps means ~~*the buying or selling of Food Stamps or other benefit instruments for cash, or consideration other than eligible food. Trafficking includes the exchange of firearms, ammunition, explosives, or controlled substances, as defined in Section 802 of Title 21, USC, for benefit instruments.*~~ any of the following: ~~*(3-30-07)*~~( )

a. The buying, selling, stealing, or otherwise effecting an exchange of food stamp benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signature, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; ( )

b. Attempting to buy, sell, steal, or otherwise affect an exchange of food stamp benefits issued and accessed via Electronic Benefit Transfer (EBT) cards, card numbers and personal identification numbers (PINs), or by manual voucher and signatures, for cash or consideration other than eligible food, either directly, indirectly, in complicity or collusion with others, or acting alone; ( )

c. The exchange of firearms, ammunition, explosives, or controlled substances, as defined in Section 802 of Title 21, U.S.C., for food stamp benefits; ( )

d. Purchasing a product with food stamp benefits that has a container requiring a return deposit with the intent of obtaining cash by discarding the product and returning the container for the deposit amount, intentionally discarding the product, and intentionally returning the container for the deposit amount; ( )

e. Purchasing a product with food stamp benefits with the intent of obtaining cash or consideration other than eligible food by reselling the product, and subsequently intentionally reselling the product purchased with food stamp benefits in exchange for cash or consideration other than eligible food; or ( )

f. Intentionally purchasing products originally purchased with food stamp benefits in exchange for cash or consideration other than eligible food. ( )

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0305-1401

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: 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 15, 2014.

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:

These rule changes are needed to clarify participant liability for pre-existing medical expenses based on guidance received from the Centers for Medicaid and Medicare (CMS). The Department is also changing the rules to improve the administration of the AABD program for participants in long-term care settings, which include a change to the share of cost determination for participants who enter or leave a nursing home during the middle of the month.

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

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

The anticipated annual fiscal impact for this rulemaking for the change in nursing home patient liability is a total impact of $571,536, with federal matching funds at 71.82% and state matching funds at 28.18%. The anticipated annual fiscal impact for the share of cost for patient liability uses the same federal and state matching funds for a total impact of $403,200.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because the changes being made are simple in nature and are being made for clarification and alignment with federal regulations.

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

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th day of August, 2014.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0305-1401
(Only those Sections being amended are shown.)

304. PROSPECTIVE ELIGIBILITY.
Eligibility for AABD cash and Medicaid is prospective. Expected income for the month is compared to the participant's income limit that month. ~~*See Section 612 for patient liability income rules.*~~ ~~*(7-1-99)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

722. PATIENT LIABILITY.
Patient liability is the participant's income counted toward the cost of long-term care. Patient liability ~~*starts*~~ begins the month after the first full calendar month the patient ~~*lives*~~ is receiving benefits in a long-term care facility.
~~*(7-1-99)*~~( )

723. PATIENT LIABILITY FOR PERSON WITH NO COMMUNITY SPOUSE.
For a participant with no community spouse, patient liability is computed as described in Subsections 723.01 through 723.03 of this rule. (5-3-03)

01. Income of Participants in Long-Term Care. For a single participant, or participant whose spouse is also in long-term care and chooses the SSI method of calculating the amount of income and resources, the patient liability is his total income less the deductions in Subsection 723.03 of this rule. (5-3-03)

02. Community Property Income of Long-Term Care Participant with Long-Term Care Spouse. Patient liability income for a participant, whose spouse is also in long-term care, choosing the community property method, is one-half (1/2) his share of the couple's community income, plus his own separate income. The deductions in Table 723.03 are subtracted from his income. (7-1-99)

03. Income of Participant in Facility. A participant residing in the long-term care facility at least one (1) full calendar month, beginning with his most recent admission, must have the deductions in Subsection 723.03 subtracted from his income, after the AABD exclusions are subtracted from the income. Total monthly income includes income paid into an income (Miller) trust that month. The income deductions must be subtracted in the order listed. Remaining income is patient liability. (3-15-02)

a. AABD Income Exclusions. Subtract income excluded in determining eligibility for AABD cash. (7-1-99)

b. Aid and Attendance and UME Allowances. Subtract a VA Aid and Attendance allowance and Unusual Medical Expense (UME) allowance for a veteran or surviving spouse, unless the veteran lives in a state operated veterans' home. (3-30-01)

c. SSI Payment Two (2) Months. Subtract the SSI payment for a participant entitled to receive SSI at his at-home rate for up to two (2) months, while temporarily in a long-term care facility. (7-1-99)

d. AABD Payment. Subtract the AABD payment, and income used to compute the AABD payment, for a participant paid continued AABD payments up to three (3) months in long-term care. (7-1-99)

e. First Ninety ($90) Dollars of VA Pension. Subtract the first ninety ($90) dollars of a VA pension for a veteran in a private long-term care facility or a State Veterans Nursing Home. (5-3-03)

f. Personal Needs. Subtract forty dollars ($40) for the participant's personal needs. For a veteran or surviving spouse in a private long-term care facility or a State Veterans Nursing Home the first ninety ($90) dollars of VA pension substitutes for the forty dollar ($40) personal needs deduction. (5-3-03)

g. Employed and Sheltered Workshop Activity Personal Needs. For an employed participant or participant engaged in sheltered workshop or work activity center activities, subtract the lower of the personal needs deduction of two hundred dollars ($200) or his gross earned income. The participant's total personal needs allowance must not exceed two hundred and thirty dollars ($230). For a veteran or surviving spouse with sheltered workshop or earned income, and a protected VA pension, the total must not exceed two hundred dollars ($200). This is a deduction only. No actual payment can be made to provide for personal needs. (3-30-01)

h. Home Maintenance. Subtract two hundred and twelve dollars ($212) for home maintenance cost if the participant had an independent living situation, before his admission for long-term care. His physician must certify in writing the participant is likely to return home within six (6) months, after the month of admission to a long-term care facility. This is a deduction only. No actual payment can be made to maintain the participant's home. (7-1-99)

i. Maintenance Need. Subtract a maintenance need deduction for a family member, living in the long-term care participant's home. A family member is claimed, or could be claimed, as a dependent on the Federal Income Tax return of the long-term care participant. The family member must be a minor or dependent child, dependent parent, or dependent sibling of the long-term care participant. The maintenance need deduction is the AFDC payment standard for the dependents, computed according to the AFDC State Plan in effect before July 16, 1996. (7-1-99)

j. Medicare and Health Insurance Premiums. Subtract expenses for Medicare and other health insurance premiums, and deductibles or coinsurance charges, not subject to payment by a third party. Deduction of Medicare Part B premiums is limited to the first two (2) months of Medicaid eligibility. Medicare Part B premiums must not be subtracted, if the participant got SSI or AABD cash the month prior to the month for which patient liability is being computed. (7-1-99)

k. Mandatory Income Taxes. Subtract taxes mandatorily withheld from unearned income for income tax purposes. To qualify for deduction of mandatory taxes, the tax must be withheld from income before the participant receives the income. (7-1-99)

l. Guardian Fees. Subtract court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty-five dollars ($25). Where the guardian and trustee is the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars ($25) monthly. (3-20-14)

m. Trust Fees. Subtract up to twenty-five dollars ($25) monthly paid to the trustee for administering the participant's trust. (7-1-99)

n. Impairment Related Work Expenses. Subtract impairment-related work expenses for an employed participant who is blind or disabled under AABD criteria. Impairment-related work expenses are purchased or rented items and services that are purchased or rented to perform work. The items must be needed because of the participant's impairment. The actual monthly expense of the impairment-related items is subtracted. Expenses must not be averaged. (3-20-14)

o. Income Garnished for Child Support. Subtract income garnisheed for child support to the extent the expense is not already accounted for in computing the maintenance need standard. (3-30-01)

p. Incurred Medical Expenses. Subtract amounts for certain limited medical or remedial care expenses that have current balances owed and are deemed medically necessary as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." Current medical expenses that are not covered by the Idaho Medicaid Plan, or by a third party, may be deducted from the base participation amount. ( )

(BREAK IN CONTINUITY OF SECTIONS)

725. PATIENT LIABILITY FOR PARTICIPANT WITH COMMUNITY SPOUSE.

After income ownership is decided, patient liability is determined using steps in Table 725.

TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY		
Step		**Procedure**
01.	AABD Income Exclusions	Subtract income excluded in determining eligibility for AABD cash.
02.	Aid and Attendance and UME Allowances	Subtract a VA Aid and Attendance allowance and Unusual Medical Expense (UME) allowance for a veteran or surviving spouse, unless the veteran lives in a state operated veterans' home.
03.	SSI Payment Two (2) Months	Subtract the SSI payment for a participant entitled to receive SSI at his at-home rate for up to two (2) months, while temporarily in a long-term care facility.
04.	AABD Cash	Subtract the AABD cash payment and income used to compute AABD cash, for a participant eligible to have his AABD cash continued up to three (3) months, while he is in long-term care.
05.	VA Pension	Subtract the first ninety (90$) of the VA pension for a veteran.
06.	Personal Needs	Subtract forty dollars ($40) for the participant's personal needs. Do not allow this deduction for a veteran.
07.	Employed and Sheltered Workshop Activity Needs	For an employed participant or participant engaged in sheltered workshop or work activity center activities subtract the lower of two hundred dollars ($200) or his earned income.
08.	Community Spouse Allowance: Step a.	Compute the Community Spouse Allowance (CSA) using Step a. through Step c. Compute the Shelter Adjustment. Add the current Food Stamp Program Standard Utility Allowance to the community spouse's shelter costs. Shelter costs include rent, mortgage principal and interest, homeowner's taxes, insurance, and condominium or cooperative maintenance charges. The Standard Utility Allowance must be reduced by the value of any utilities included in maintenance charges for a condominium or cooperative. Subtract the Shelter Standard from the shelter and utilities. The Shelter Standard is thirty percent (30%) of one hundred fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined by the Federal Office of Management and Budget (OMB) for a family of two (2) persons. The Shelter Adjustment is the positive balance remaining.
09.	Community Spouse Allowance: Step b.	Compute the Community Spouse Need Standard (CSNS). Add the Shelter Adjustment to the minimum CSNS. The minimum CSNS equals one hundred fifty percent (150%) of one-twelfth (1/12) of the income official poverty line defined by the OMB for a family unit of two (2) members. The minimum CSNS is revised annually in July. The total CSNS may not exceed the maximum CSNS. The maximum CSNS is computed by multiplying one thousand five hundred dollars ($1,500) by the percentage increase in the consumer price index for all urban Consumers (all items; U.S. city average) between September 1988 and the September before the current calendar year. The maximum CSNS is revised annually in January.

TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY		
Step		**Procedure**
10.	Community Spouse Allowance: Step c.	Compute the Community Spouse Allowance. Subtract the community spouse's gross income from the CSNS. The community spouse's income includes income produced by his resources. Round any remaining cents to the next higher dollar. Any positive balance remaining is the CSA. The CSA is subtracted as actually paid to the community spouse, up to the computed maximum. A larger spouse support amount must be used as the CSA, if court-ordered. The CSA ordered by a court is not subject to the CSA limit.
11.	Family Member Allowance (FMA)	Compute the family member's gross income. Subtract the family member's gross income from the minimum CSNS. Divide the difference by three (3). Round cents to the next higher dollar. Any remainder is the FMA for that family member. The FMA is allowed, whether or not it is actually paid by the participant. A family member is, or could be claimed, as a dependent on the Federal income tax return of either spouse. The family member must be a minor or dependent child, dependent parent or dependent sibling of either spouse. The family member must live in the community spouse's home.
12.	Medicare and Health Insurance Premiums	Subtract expenses for Medicare and other health insurance premiums, and deductibles or coinsurance charges, not subject to payment by a third party. Deduction of Medicare Part B premiums is limited to the first two (2) months of Medicaid eligibility. Do not subtract the Medicare Part B premiums if the participant got SSI or AABD cash the month prior to the month for which patient liability is being computed.
13.	Mandatory Income Taxes	Subtract taxes mandatorily withheld from unearned income for income tax purposes. To qualify for deduction of mandatory taxes, the tax must be withheld from income before the participant receives the income.
14.	Guardian Fees	Subtract court-ordered guardianship fees of the lesser of ten percent (10%) of the monthly benefit handled by the guardian, or twenty-five dollars ($25). Where the guardian and trustee are the same person, the total deduction for guardian and trust fees must not exceed twenty-five dollars ($25) monthly.
15.	Trust Fees	Subtract up to twenty-five dollars ($25) monthly paid to the trustee for administering the participant's trust.
16.	Impairment Related Work Expenses	Subtract impairment-related work expenses for an employed participant who is blind or disabled under AABD criteria. Impairment-related work expenses are purchased or rented items and services, purchased or rented to perform work. The items must be needed because of the participant's impairment. The actual monthly expense of the impairment-related items is subtracted. Expenses must not be averaged.
17.	Income Garnisheed for Child Support	Subtract income garnisheed for child support to the extent the expense is not already accounted for in computing the Family Member Allowance.

TABLE 725 - INCOME DEDUCTIONS FOR PARTICIPANT IN FACILITY		
Step		**Procedure**
18.	Incurred Medical Expenses	Subtract amounts for certain limited medical or remedial care expenses that have current balances owed and are deemed medically necessary as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits." Current medical expenses that are not covered by the Idaho Medicaid Plan, or by a third party, may be deducted from the base participation amount.

~~(5-3-03)~~(____)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.07 - THE INVESTIGATION AND ENFORCEMENT OF FRAUD, ABUSE, AND MISCONDUCT

DOCKET NO. 16-0507-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), 56-203(1) & (2), 56-209, 56-209(h), 56-227, 56-227A through D, 56-1001, and 56-1003, 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 15, 2014.

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 principle issues involved:

The Department has determined that the current practice concerning reinstatement of an individual or entity who has been excluded from the Medicaid program should be added to these rules for consistency within the Department. These proposed rules are based on the current reinstatement process for individuals or entities whose exclusions are over and who would like to be reinstated by the Department.

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

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

There is no anticipated fiscal impact to the state general fund or to any other funds due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was conducted and the Notice of Negotiated Rulemaking was published in the July 2, 2014, Idaho Administrative Bulletin, **Vol. 14-7, Page 80**.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lori Stiles at (208) 334-0653.

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 October 22, 2014.

DATED this 18th Day of August, 2014.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-003
Tel (208) 334-5564 / Fax (208) 334-6558
dhwrules@dhw.idaho.gov e-mail

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0507-1401
(Only those Sections being amended are shown.)

261. REINSTATEMENT AFTER EXCLUSION FROM MEDICAID PROGRAM.
An individual or entity who has been excluded from the Medicaid Program is not automatically reinstated at the end of the exclusion period. An individual or entity excluded by the Department must submit a written application for reinstatement to the Department. An applicant excluded by the Department must receive written notice of reinstatement from the Department before reinstatement is complete. ( )

01. Conditions for Reinstatement. In order to be reinstated, the applicant for reinstatement must meet all criteria in Subsections 261.01.a. through 261.01.i. of this rule. The applicant must be an individual or entity: ( )

a. Who is not currently excluded from the Medicaid program by the federal government or by any state Medicaid agency; ( )

b. Whose Medicaid provider number is not currently terminated by any state Medicaid agency; ( )

c. Whose debts to the Department are paid in full; ( )

d. Who is not the subject of any civil, criminal, or state licensing authority investigation; ( )

e. Who has not been convicted of any crime during the exclusion period; ( )

f. Who has all the required, valid licensure and credentials necessary to provide services; ( )

g. Who has met and continues to meet all terms and conditions of any court-ordered probation;( )

h. Who did not work in any capacity as an employee or contractor for any individual or entity receiving Medicaid funds during the applicant's exclusion period; and ( )

i. Who did not submit claims or cause claims to be submitted for Medicaid reimbursement for services or supplies provided, ordered, or prescribed by an excluded individual or entity during the applicant's exclusion period. ( )

02. Applying for Reinstatement. An individual or entity may not begin the process of reinstatement earlier than one hundred twenty (120) days before the end of the exclusion period specified in the exclusion notice. The Department will not consider a premature application. An applicant that appears on the federal or any state exclusion list may apply for reinstatement, but consideration of the application will not start until after the excluding agency has reinstated the individual or entity. ( )

03. Request for Reinstatement. An excluded individual or entity must request an application form in writing from the Department and specifically request reinstatement. The request for reinstatement must include: ( )

a. The applicant's name, address, and phone number; and ( )

b. Copies of any required license, credentials, and provider number, if they exist. ( )

04. Complete Application for Reinstatement. The applicant must complete the reinstatement application form and return the fully executed and notarized form to the Department. ( )

05. Department Decision. The Department will issue a written decision to grant or deny a request for

reinstatement. ( )

06. Reinstatement Denied. When an application for reinstatement is denied, the applicant is ineligible to reapply for one (1) year from the date the decision of denial becomes final. ( )

26~~1~~2. -- 264. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

300. DEPARTMENT OF HEALTH AND HUMAN SERVICES.
The Department will notify the Office of Inspector General within fifteen (15) days after a final action in which a person has been excluded, ~~or~~ convicted of a criminal offense related to participation in the delivery of health care items or services under the Medicaid program, or reinstated from a prior exclusion. ~~(3-30-07)~~( )
Z

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.33 - ADULT MENTAL HEALTH SERVICES

DOCKET NO. 16-0733-1401

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 39-3133, Idaho Code,

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

ORIGINATING LOCATION -- LIVE MEETING
Friday, October 17, 2014
10:00 a.m. (MDT) / 9:00 a.m. (PDT)
Idaho Department of Health & Welfare, Central Office **Conference Room 3A (3rd floor)** **450 West State Street** **Boise, ID 83702**

VIDEOCONFERENCE LOCATIONS	
Region I Office – Coeur d'Alene **Main Conference Room** **2195 Ironwood Court** **Coeur d'Alene, ID 83814**	**Region II Office – Lewiston** **1st Floor Conference Rm.** **1118 "F" Street** **Lewiston, ID 83501**
Region III Office – Caldwell **Owyhee Conference Room (Rm. 226)** **3402 Franklin Road** **Caldwell, ID 83605**	**Region IV Office – Boise** **Room 142** **1720 Westgate Drive, Suite A** **Boise, ID 83704**
Region V Office – Twin Falls **Room 116** **823 Harrison** **Twin Falls, ID 83301**	**Region VI Office – Pocatello** **Room 225** **421 Memorial Drive** **Pocatello, ID 83201**
Region VII Office – Idaho Falls **Room 240** **150 Shoup Ave.** **Idaho Falls, ID 83402**	**State Hospital South – Blackfoot** **Administration Bldg., Classroom A09** **700 E. Alice Street** **Blackfoot, ID 83221**

VIDEOCONFERENCE LOCATIONS, Continued

State Hospital North
Administration Conference Room 234
300 Hospital Drive
Orofino, ID 83544

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:

These rule changes update and align this chapter of rules with the current environment and best practices being utilized in the adult mental health field. The current rules do not reflect changes that have been made to adult mental health services through Medicaid and other federal and state laws. In order for eligible participants to have better outcomes and to use best practices in the treatment of adult mental health services, these proposed rules:

1. Amend and add definitions for current terminology;
2. Remove obsolete language and sections of rules that are no longer applicable; and
3. Clarify current mental health services available through the Department.

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

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

There is no anticipated fiscal impact to the state general fund or to any other funds due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not feasible because these rules are being amended based on current policies, best practices, laws, and regulations for adult mental health services the Department provides.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the Department is updating a document incorporated by reference in this chapter to a newer edition. The American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, DSM-5, is incorporated in this chapter.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Treena Clark at (208) 364-6611.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Tamara Prisock
DHW - Administrative Rules Unit
450 W. State Street - 10th Floor
P.O. Box 83720
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0733-1401
(Only those Sections being amended are shown.)

001. TITLE AND SCOPE.

01. Title. The title of these rules is~~,~~ IDAPA 16.07.33, "Adult Mental Health Services." ~~*(5-8-09)*~~( )

02. Scope. ~~*(5-8-09)*~~

~~***a.***~~ This chapter defines the scope of ~~*voluntary adult mental health*~~ services, ~~*administered under the Department's Division of Behavioral Health*~~, ~~*and describes the*~~ eligibility criteria, application requirements, individualized treatment plan requirements, and appeal process ~~*under these rules. This chapter is not intended to, and does not, establish an entitlement for or to receive adult mental health services, nor is it intended to be applicable to individuals ordered by the court to receive mental health services.*~~ for the provision of adult mental health services administered under the Department's Division of Behavioral Health. ~~*(5-8-09)*~~( )

~~***b.***~~ ~~*The priority population for this chapter is adult individuals, voluntarily seeking mental health services, who are residents of Idaho and have a primary diagnosis of serious and persistent mental illness. However, under certain circumstances, in accordance with the waiver provision in Section 400 of these rules, adult mental health services may be available to those who do not have a primary diagnosis of serious and persistent mental illness.*~~ ~~*(5-8-09)*~~

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.
American Psychiatric Association: Diagnostic and Statistical Manual of Mental Disorders, ~~*Fourth*~~ Fifth Edition, ~~*Text Revision*~~ (DSM-~~*IV TR*~~5) Washington, DC, American Psychiatric Association, 20~~*00*~~13, is hereby incorporated by reference under this chapter of rules. 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. ~~*(5-8-09)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS - A THROUGH F.
For the purposes of these rules, the following terms are used as defined below: (5-8-09)

01. Adult. An individual eighteen (18) years of age or older. (5-8-09)

02. Adult Mental Health Services. Adult mental health services ~~*include psychiatric clinical services, case management, individual therapy, group therapy, psychosocial rehabilitation (PSR), assertive community treatment (ACT), patient assistance program (PAP), benefit assistance, co-occurring disorders treatment, and pharmacological education. Mental health services do not include educational or vocational services related to traditional academic subjects or vocational training, experimental procedures, habilitation, or any other services which are primarily recreational or diversional in nature*~~ are listed in Section 301 of these rules. These services are provided in response to the mental health needs of adults eligible for services required in Title 39, Chapter 31, Idaho Code, the Regional Behavioral Health Service Act, and under Section 102 of these rules. ~~*(5-8-09)*~~( )

03. Applicant. An adult individual who is seeking mental health services through the Department who has completed, or had completed on his behalf, an application for mental health services. (5-8-09)

04. **Assessment**. The gathering of historical and current clinical information through a clinical interview and from other available resources to identify a client's mental health issues, strengths, and service needs. ( )

05. **Assertive Community Services**. Comprehensive, intensive, and long-term rehabilitative services provided to clients who suffer from serious and persistent mental illness (SPMI) who have not benefited from traditional outpatient programs. ( )

06. **Behavioral Health**. An integrated system for evaluation and treatment of mental health and substance use disorders. ( )

07. **Behavioral Health Center**. State-operated community-based centers located in each of the seven (7) geographical regions of Idaho that provide or arrange for adult mental health services listed under Section 301 of these rules. ( )

08. **Case Management**. A change-oriented service provided to clients that assures and coordinates the provision of an assessment, treatment planning, treatment and other services, protection, advocacy, review and reassessment, documentation, and timely closure of a case. ( )

0~~4~~9. **Client**. A person receiving mental health services through the Department. The term "client" is synonymous with the following terms: patient, participant, resident, consumer, or recipient of treatment or services. (5-8-09)

~~05~~10. **Clinical Judgment**. Refers to observations and perceptions based upon education, experience, and clinical assessment. This may include psychometric, behavioral, and clinical interview assessments that are structured, integrated, and then used to reach decisions, individually or collectively, about an individual's functional, mental, and behavioral attributes and mental health service needs. (5-8-09)

~~06~~11. **Clinical Necessity**. Adult mental health services are deemed clinically necessary when the Department, in the exercise of clinical judgment, recommends services to an applicant for the purpose of evaluating, diagnosing, or treating a mental illness and that are: (5-8-09)

a. Clinically appropriate, in terms of type, frequency, extent, site, and duration, and considered effective for treating the applicant's mental illness; and (5-8-09)

b. Not primarily for the convenience of the applicant or service provider, not more costly than an alternative service or sequence of services, and at least as likely to produce equivalent therapeutic or diagnostic results as to the diagnosis or treatment of the applicant's mental illness. (5-8-09)

~~07~~12. **Clinical Team**. A proposed client's clinical team may include: qualified clinicians, behavioral health professionals, professionals other than behavioral health professionals, behavioral health technicians, and any other individual deemed appropriate and necessary to ensure that the treatment is comprehensive and meets the needs of the proposed client. (5-8-09)

13. **Crisis Intervention Services**. A set of planned activities designed to reduce the risk of life-threatening harm to self or another person. Crisis intervention services include evaluation, assessment, intervention, stabilization, and follow-up planning. ( )

~~08~~14. **Department**. The Idaho Department of Health and Welfare or its designee. The Department is designated as the State Mental Health Authority under Section 39-3124, Idaho Code. (5-8-09)

~~***09.*** ***Emergency****. An emergency exists if an adult individual is gravely disabled due to mental illness or there is a substantial risk that physical harm will be inflicted by the proposed client:* *(5-8-09)*~~

~~***a.*** *Upon his own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on himself; or* *(5-8-09)*~~

~~***b.*** *Upon another person, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm.* *(5-8-09)*~~

1~~*0*~~5. **Federal Poverty Guidelines**. Guidelines issued annually by the Federal Department of Health and Human Services establishing the poverty income limits. The federal poverty guidelines for the current year may be found at: http://aspe.hhs.gov/poverty/. (5-8-09)

1~~*1*~~6. **Functional Impairment**. Difficulties that substantially impair or limit role functioning with an individual's basic daily living skills, or functioning in social, family, vocational, or educational contexts including psychiatric, health, medical, financial, and community or legal area, or both. (5-8-09)

011. DEFINITIONS - G THROUGH Z.
For the purposes of these rules, the following terms are used as defined below: ( )

~~***12***~~01. **Good Cause**. A valid and sufficient reason for not complying with the time frame set for submitting a written request for a waiver by an individual who does not receive a criminal history and background check clearance. (7-1-14)

~~***13***~~02. **Gravely Disabled**. An adult who, as a result of mental illness, is in danger of serious physical harm due to the person's inability to provide for any of his basic needs for nourishment, essential medical care, shelter, or safety. (5-8-09)

~~***14***~~03. **Individualized Treatment Plan**. A written action plan based on an intake eligibility assessment, that identifies the applicant's clinical needs, the strategy for providing services to meet those needs, treatment goals and objectives, and the criteria for terminating the specified interventions. (5-8-09)

~~***15.*** ***Intake Eligibility Assessment****. The collection of data, analysis, and review that the Department uses to screen and determine whether an applicant is eligible for mental health services available through the Department.* *(5-8-09)*~~

04. Medication Management. The in-depth management of medications for psychiatric disorders for relief of a client's signs and symptoms of mental illness, provided by a physician or mid-level practitioner. ( )

05. Mental Health Crisis. A mental health crisis occurs when a sudden loss of an adult individual's ability to use effective problem-solving and coping skills leads to an imminent risk of harm to self or others, or decompensation to the point of the individual's inability to protect himself or herself. ( )

06. Outpatient Services. Mental health services provided to a client who is not admitted to a psychiatric hospital or in a residential care setting. ( )

07. Psychiatric Services. Medically necessary outpatient and inpatient services provided to treat and manage psychiatric disorders. ( )

08. Rehabilitative and Community-Based Services. Skill-building services that foster rehabilitation and recovery provided to client recovering from a mental illness. ( )

09. Residential Care. A setting for the treatment of mental health that provides twenty-four (24) hours per day, seven (7) days a week, living accommodations for clients. ( )

1~~*6*~~0. **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-I~~*V TR)*~~5, incorporated in Section 004 of these rules: ~~*(5-8-09)*~~( )

a. Schizophrenia spectrum and other psychotic disorders; ~~*(5-8-09)*~~( )

~~***b.*** *Paranoia and other psychotic disorders;* *(5-8-09)*~~

~~e~~**b.** Bipolar disorders (mixed, manic and depressive); (5-8-09)

~~d~~**c.** Major depressive disorders (single episode or recurrent); (5-8-09)

~~e. Schizoaffective disorders; and (5-8-09)~~

~~f~~**d.** Obsessive-compulsive disorders. (5-8-09)

1~~7~~1. **Serious and Persistent Mental Illness (SPMI)**. A primary diagnosis under DSM-~~IV-TR~~5 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: ~~(5-8-09)~~( )

a. Vocational or educational, or both. (5-8-09)

b. Financial. (5-8-09)

c. Social relationships or support, or both. (5-8-09)

d. Family. (5-8-09)

e. Basic daily living skills. (5-8-09)

f. Housing. (5-8-09)

g. Community or legal, or both. (5-8-09)

h. Health or medical, or both. (5-8-09)

1~~8~~2. **Sliding Fee Scale**. A scale used to determine an individual's financial obligation for services based on Federal Poverty Guidelines and found in IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules." (5-8-09)

1~~9~~3. **Substantial Material Change in Circumstances**. A substantial and material change in circumstances which renders the Department's decision denying mental health services arbitrary and capricious. (5-8-09)

01~~1~~2. -- 099. (RESERVED)

100. ACCESSING ADULT MENTAL HEALTH SERVICES.
Adult mental health services may be accessed ~~by eligible applicants~~ either through an application ~~and request for initial intake eligibility assessment~~ for services, or through a court order for services. ~~(5-8-09)~~( )

011. ELIGIBILITY SCREENING AND ~~INTAKE ELIGIBILITY~~ MENTAL HEALTH ASSESSMENT.

01. Eligibility Screening. A screening for eligibility for adult mental health services through the Department is based on the eligibility criteria under Section 102 of these rules. If an applicant meets the eligibility criteria, he may be eligible for adult mental health services through the Department. If an applicant does not meet the eligibility criteria, he may be referred to other appropriate services. All applicants are required to complete an Application for Mental Health Services. If an applicant refuses to complete the Application for Mental Health Services, the Department reserves the right to discontinue the screening process for eligibility. The eligibility screening must be directly related to the applicant's mental illness and level of functioning and will include: ~~(5-8-09)~~( )

a. Application for Mental Health Services; ( )

b. Notice of Privacy Practice; and ( )

c. Authorization for Disclosure. ( )

02. ~~***Intake Eligibility***~~ **Mental Health Assessment**. ~~*A qualified clinician will complete an intake eligibility assessment on the Department-approved form. The intake eligibility assessment and supplemental psychiatric, psychological, or other specialty evaluations and tests must be dated, signed, and retained in the applicant's medical record. The intake eligibility assessment must be directly related to the applicant's mental illness and level of functioning, and will include:*~~ Once a signed application or court order has been received for adult mental health services, the Department will schedule and conduct a mental health assessment. Each mental health assessment will be completed by a Department clinician and will be documented using the Department's Idaho Standard Mental Health Assessment Report. ~~*(5-8-09)*~~( )

~~***a.*** *Application for Mental Health Services, pending document approval;* *(5-8-09)*~~

~~***b.*** *Notice of Privacy Practice (HW 0320);* *(5-8-09)*~~

~~***c.*** *Mental Health Client Profile;* *(5-8-09)*~~

~~***d.*** *Fee Determination Form (HW 0735);* *(5-8-09)*~~

~~***e.*** *Adult Health History Form (HW 0713);* *(5-8-09)*~~

~~***f.*** *Family Health History Form (HW 0715); and* *(5-8-09)*~~

~~***g.*** *Authorization for Disclosure.* *(5-8-09)*~~

102. ELIGIBILITY DETERMINATION.

01. The Department Determines Eligibility for Mental Health Services. The total number of adults 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. (5-8-09)

02. Eligibility Requirements. To be eligible for mental health services through a voluntary application to the Department, the applicant must: (5-8-09)

a. Be an adult; and (5-8-09)

b. Be a resident of the state of Idaho; and (5-8-09)

c. Have a primary diagnosis of SMI or SPMI; or ~~*(5-8-09)*~~( )

d. Be determined eligible under the waiver provisions in Section 400 of these rules. (5-8-09)

03. Court-Ordered Assessment, Treatment, and Services. The court may order the Department to provide assessment, treatment, and services according to Sections 18-212, 19-2524, and 66-329, Idaho Code. ( )

0~~3~~4. Ineligible Conditions. An applicant who has epilepsy, an intellectual disability, dementia, a developmental disability, physical disability, or who is aged or impaired by chronic alcoholism or drug abuse, is not eligible for mental health services, unless, in addition to such condition, he has a primary diagnosis of SMI or SPMI or is determined eligible under the waiver provisions in Section 400 of these rules. ~~*(5-8-09)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

104. ~~*EMERGENCY*~~ CRISIS INTERVENTION SERVICES.
Crisis intervention services are available twenty-four (24) hours per day, seven (7) days per week to adults experiencing a mental health crisis as defined under Section 011 of these rules. Crisis intervention services include evaluation, assessment, intervention, stabilization, and follow-up planning. ( )

01. Determination of the Need for ~~*Emergency*~~ Crisis Intervention Services. ~~*At an applicant's first visit, and prior to making a final determination of eligibility, t*~~The Department will assess an adult experiencing a mental health crisis to determine whether ~~*an applicant needs*~~ services are needed to alleviate ~~*an emergency as defined under Section 010 of these rules*~~ the crisis. ~~*(5-8-09)*~~( )

02. Identification of the ~~*Emergency*~~ Crisis Intervention Services Needed. If ~~*emergency*~~ crisis intervention services are clinically necessary, as determined by the Department, the Department will: ( )

a. ~~*i*~~Identify the ~~*emergency*~~ services ~~*that are consistent with the applicant's needs and the preliminary findings of the intake eligibility assessment or subsequent assessments and:*~~ needed to stabilize the crisis; ~~*(5-8-09)*~~( )

~~*a*~~**b.** Arrange for the provision of the ~~*emergency*~~ crisis intervention services; and ~~*(5-8-09)*~~( )

~~*b*~~**c.** Document in the ~~*applicant's*~~ individual's record the ~~*emergency*~~ crisis services that are to be provided to the ~~*applicant*~~ individual. ~~*(5-8-09)*~~( )

03. Immediate Intervention. If the Department determines that a~~*n emergency*~~ mental health crisis exists necessitating immediate intervention, ~~*emergency or*~~ crisis services will be arranged immediately. ~~*(5-8-09)*~~( )

105. NOTICE OF DECISION ON ELIGIBILITY.

01. Notification of Eligibility Determination. Within ~~*ten*~~ fourteen (1~~*0*~~4) ~~*business*~~ calendar days of ~~*a*~~ receiving a ~~*completed intake eligibility assessment*~~ signed application, the Department will notify the applicant or the applicant's designated representative in writing of its eligibility determination. The written notice will include: ~~*(5-8-09)*~~( )

a. The applicant's name and identifying information; (5-8-09)

b. A statement of the decision; (5-8-09)

c. A concise statement of the reasons for the decision; and (5-8-09)

d. The process for pursuing an administrative appeal regarding eligibility determinations. (5-8-09)

02. Right to Accept or Reject Mental Health Services. If the Department determines that an applicant is eligible for mental health services through the Department, an individual has the right to accept or reject mental health services offered by the Department, unless imposed by law or court order. (5-8-09)

03. Reapplication for Mental Health Services. If the Department determines that an applicant is not eligible for mental health services through the Department, the applicant may reapply after six (6) months or at any time upon a showing of a substantial material change in circumstances. (5-8-09)

106. -- 1~~*9*~~19. (RESERVED)

120. CLIENT'S RIGHTS AND RESPONSIBILITIES.
Each individual client receiving adult mental health services through the Department must be notified of his rights and responsibilities prior to the delivery of adult mental health services. ( )

01. Client to Be Informed of Rights and Responsibilities. The Department must inform each client

of his rights and responsibilities. Each client must be given a written statement of client rights and responsibilities, which includes who the client may contact with questions, concerns, or complaints regarding services provided. ( )

02. Content of Client's Rights. The Department must assure and protect the fundamental human, civil, constitutional, and statutory rights of each client. The written client rights statement must, at a minimum, address the following: ( )

a. The right to impartial access to treatment and services, regardless of race, creed, color, religion, gender, national origin, age, or disability; ( )

b. The right to a humane treatment environment that ensures protection from harm, provides privacy to as great a degree as possible with regard to personal needs and promotes respect and dignity for each individual; ( )

c. The right to communication in a language and format understandable to the individual client; ( )

d. The right to be free from mental, physical, sexual, and verbal abuse, as well as neglect and exploitation; ( )

e. The right to receive services within the least restrictive environment possible; ( )

f. The right to an individualized treatment plan, based on assessment of current needs; ( )

g. The right to actively participate in planning for treatment and recovery support services; ( )

h. The right to have access to information contained in one's record, unless access to particular identified items of information is specifically restricted for that individual client for clear treatment reasons in the client's treatment plan; ( )

i. The right to confidentiality of records and the right to be informed of the conditions under which information can be disclosed without the individual client's consent; ( )

j. The right to refuse to take medication unless a court of law has determined the client lacks capacity to make decisions about medications and is an imminent danger to self or others; ( )

k. The right to be free from restraint or seclusion unless there is imminent risk of physical harm to self or others; ( )

l. The right to refuse to participate in any research project without compromising access to program services; ( )

m. The right to exercise rights without reprisal in any form, including the ability to continue services with uncompromised access; ( )

n. The right to have the opportunity to consult with independent specialists or legal counsel, at one's own expense; ( )

o. The right to be informed in advance of the reason(s) for discontinuance of any service provision, and to be involved in planning for the consequences of that event; ( )

p. The right to receive an explanation of the reasons for denial of service. ( )

121. -- 199. (RESERVED)

200. INDIVIDUALIZED TREATMENT PLAN *~~AND SELECTION OF SERVICE PROVIDERS~~*.

The Department will prepare an individualized treatment plan for every client that addresses the mental health effects on the major life areas and is based on an assessment of the client's mental health needs. (5-8-09)

01. Individualized Treatment Plan. Overall responsibility for development and implementation of the plan will be assigned to a qualified ~~*professional staff member*~~ clinician. A detailed individualized treatment plan will be developed within thirty (30) calendar days ~~*following*~~ from the date of the Department's eligibility determination ~~*that an applicant is eligible for mental health services through the Department. The individualized treatment plan will include the following:*~~ or date of any court order for services. ~~*(5-8-09)*~~(____)

~~***a.*** *The services clinically necessary to meet the client's mental health needs;* *(5-8-09)*~~

~~***b.*** *Referrals for needed services not provided under these rules;* *(5-8-09)*~~

~~***c.*** *Goals that the client is to achieve;* *(5-8-09)*~~

~~***d.*** *Specific objectives that relate to the goals, written in measurable terms, with expected achievement dates;* *(5-8-09)*~~

~~***e.*** *Frequency of services;* *(5-8-09)*~~

~~***f.*** *Specific criteria to be met for discharge from treatment; and* *(5-8-09)*~~

~~***g.*** *A specific plan for including the family or significant others.* *(5-8-09)*~~

~~***02.*** ***Selection of Providers****. Within five (5) days of completing the individualized treatment plan, the clinical team will identify and select service providers most appropriate to meet the client's mental health needs. The case manager will promptly contact the identified providers to determine their ability to serve the client.* *(5-8-09)*~~

02. Individualized Treatment Plan Requirements. The individualized treatment plan must include the following: (____)

a. The services deemed necessary to meet the client's mental health needs; (____)

b. A prioritized list of problems and needs; (____)

c. Referrals for needed services not provided by the program; (____)

d. Goals that are based on the client's unique strengths, preferences, and needs; (____)

e. Specific objectives that relate to the goals written in simple, measurable, attainable, realistic terms with expected achievement dates; (____)

f. Interventions that describe the kinds of services, frequency of services, activities, supports, and resources the client needs to achieve short-term changes described in the objectives; (____)

g. The goals and objectives must be individualized and must reflect the choices of the client; (____)

h. Documentation of who participated in the development of the individualized treatment plan;(____)

i. The client or legal guardian must sign the treatment plan indicating their agreement with service needs identified and their participation in its development. If these signatures indicating participation in the development of the treatment plan are not obtained, then it must be documented in the client's record the reason the signatures were not obtained, including the reason for the client's refusal to sign. A copy of the treatment plan must be given to the client and legal guardian. (____)

ii. The treatment plan must be based on the findings of the assessment process. (____)

i. A specific plan for including the family or significant others; and ( )

j. Discharge criteria and aftercare plans. ( )

03. One Hundred Twenty Day Review. Treatment plans are to be reviewed with the client and updated as needed at least every one hundred twenty (120) days. ( )

a. The treatment plan review must assess and process the status, applicability, obstacles, and possible solutions of the client's goals, objectives, interventions, and timeframes of the treatment plan. ( )

b. Treatment plans for medication management only clients are not subject to a one hundred twenty (120) day review. ( )

04. Treatment Plan Renewals. A new treatment plan will be developed with the client every twelve (12) months. ( )

201. -- 299. (RESERVED)

300. FINANCIAL RESPONSIBILITY FOR MENTAL HEALTH SERVICES.
Individuals receiving adult mental health services through the Department are responsible for paying for the services ~~*provided. Individuals must complete a "Fee Determination Form" prior to the delivery of adult mental health services*~~ they receive. The financial responsibility for each service will be ~~*in accordance with*~~ based on the individual's ability to pay as determined under ~~*Sections 300 and 400 of*~~ IDAPA 16.07.01, "Behavioral Health Sliding Fee Schedules~~.~~," Sections 300 and 400. ~~*(5-8-09)*~~( )

301. ADULT MENTAL HEALTH SERVICES.
The Department is the lead agency in establishing and coordinating community supports, services, and treatment for adults eligible for services under Section 102 of these rules. The following services, as defined under Section 010 of these rules are provided by, or arranged for the delivery of by, the behavioral health center in each region: ( )

01. Assessment. ( )

02. Assertive Community Services. ( )

03. Case Management. ( )

04. Crisis Intervention. ( )

05. Medication Management. ( )

06. Psychiatric Services. ( )

07. Outpatient Services. ( )

08. Rehabilitative and Community-Based Services. ( )

09. Residential Care. ( )

30~~1~~2. -- 399. (RESERVED)

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

17.02.04 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- BENEFITS

DOCKET NO. 17-0204-1401

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 72-508, 72-408, 72-103, 72-102, 72-207, 72-419, 72-602 and 72-432, 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 15, 2014.

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 rule allows for the reimbursement of health care travel expenses of an injured worker who attends necessary medical appointments as a result of an industrial injury or occupational disease, pursuant to Section 72-432(1), Idaho Code; and the rule removes the form for the reimbursement of health care travel expenses from the actual rule and directs the injured worker to the Commission address or website to obtain the form.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fiscal impact.

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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, which included representatives of insurance carriers and medical providers, has been providing input to the Industrial Commission on the issue.

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 documents have been incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Matt Vook, Benefits Analyst Employer Education and Evaluation Coordinator, (208) 334-6003.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
PO Box 83720
Boise, Idaho 83720-0041
Phone: (208) 334-6000
Fax: (208) 334-5145

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0204-1401
(Only those Sections being amended are shown.)

321. RULE GOVERNING REIMBURSEMENT FOR TRAVEL EXPENSES.

01. Calculating Distance. As used in Section 72-432(1), Idaho Code, the phrase "... such reasonable medical, surgical or other attendance or treatment, ..." shall include the cost of transportation to and from a physician (as defined in Section 72-102(21), Idaho Code, and hospital appointments, where such transportation is reasonably related to or necessitated by the diagnosis, treatment, or care of claimant's industrial injury or occupational disease; provided, however, that claimant shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round-trip distance of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel. (8-22-91)

02. Mileage Rate. If claimant has access to, and is able to operate, a vehicle for transportation envisioned in Subsection 321.01, employer shall reimburse claimant at the mileage rate then allowed by the State Board of Examiners for State employees. Such rate shall be published annually by the Industrial Commission, together with the average state wage for the upcoming period. All such miles shall be reimbursed, with fractions of a mile greater than one-half (1/2) mile rounded to the next higher mile and fractions of a mile below one-half (1/2) mile disregarded. (8-22-91)

03. Commercial Transportation. If claimant has no vehicle, or has access to a vehicle and is reasonably unable to utilize the vehicle for transportation envisioned in Subsection 321.01 above, claimant's employer shall reimburse claimant the actual cost of commercial transportation as evidenced by actual receipts. Notwithstanding the above provision, no claimant shall be eligible for reimbursement of the actual cost of commercial transportation where such claimant is unable to operate a motor vehicle due to the revocation or suspension of driving privileges because claimant was under the influence of alcohol and/or drugs. (8-22-91)

04. Request for Reimbursement. It shall be claimant's responsibility to submit a travel reimbursement request to the employer. Such request shall be made on a form substantially the same as Industrial Commission Form IC 432(1), ~~*which is substantially shown in draft format below*~~ available from the Commission and posted on the Commission's website at www.iic.idaho.gov. The claimant must attach to the form a copy of a bill or receipt showing that the visit occurred. The employer shall furnish the claimant with copies of this form.
~~*(8-22-91)*~~(____)

~~***IC Form 432(1):***~~

~~***REIMBURSEMENT FOR HEALTH CARE TRAVEL EXPENSES***~~
~~***PURSUANT TO SECTION 72-432(1), IDAHO CODE***~~

~~*Name of Injured Worker* _____~~

~~*Claim #* _____ *SSN:* _____~~

~~*Address* _____~~

~~_____~~

~~*Phone #* _____~~

~~*1. Use this form when claiming reimbursement for travel expenses incurred while pursuing reasonable or necessitated diagnosis, treatment, or care of an industrial injury or occupational disease.*~~

~~*2. Only mileage in excess of fifteen (15) miles for any given round trip is reimbursable. However, you should*~~

~~*report the total mileage for each round trip. You are expected to take the shortest practical route of travel.*~~

~~*3. Reimbursement shall be made at the mileage rate allowed by the State Board of Examiners for state employees. The current rate for this mileage is available through your insurance company or by contacting the Idaho Industrial Commission.*~~

~~*4. While prompt submittal of your claim for travel reimbursement is important, you should not submit requests for reimbursement more frequently than once every thirty (30) days.*~~

~~*5. YOU MUST ATTACH TO THIS FORM A COPY OF A BILL OR RECEIPT SHOWING THAT EACH VISIT OCCURRED*~~

~~*A sample copy of IC Form 432(1) is available from the Industrial Commission,*~~
~~*Compensation Consultants,*~~
~~*700 S. Clearwater Lane,*~~
~~*P. O. Box 83720, Boise, Idaho 83720-0041, telephone (208) 334-6000.*~~

~~*(8-22-91)*~~

05. Frequency of Requests. Claimant shall not request transportation reimbursement more frequently than once every thirty (30) days. However, notwithstanding this provision, should a claimant request transportation reimbursement more frequently than every thirty (30) days, employer need not issue more than one reimbursement check in any thirty-day (30) period. (8-22-91)

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

17.02.06 - EMPLOYERS' REPORTS

DOCKET NO. 17-0206-1401

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 72-508, 72-432, 72-602, and 72-707, 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 15, 2014.

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 rule eliminates the language that extends the deadline for filing of a summary of payments for adjusters who do not timely make indemnity payments; and changes the time period from sixty (60) days to one-hundred twenty (120) days to file a summary of payments in case of default by an employer for reason of insolvency or bankruptcy.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fiscal impact.

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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, which included representatives of insurance carriers and self-insured employers, has been providing input to the Industrial Commission on the issue.

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 documents have been incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Matt Vook, Benefits Analyst Employer Education and Evaluation Coordinator, (208) 334-6003.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
PO Box 83720
Boise, Idaho 83720-0041
Phone: (208) 334-6000
Fax: (208) 334-5145

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0206-1401
(Only those Sections being amended are shown.)

021. SUMMARIES OF PAYMENT.

01. Authority and Definitions. Pursuant to Sections 72-432, 72-508, 72-602 and 72-707, Idaho Code, the Industrial Commission of the State of Idaho promulgates this rule governing the procedure for submission of summaries of payment to the Industrial Commission. This procedure applies to all workers' compensation claims. The following definitions shall be applicable to this Rule. (2-20-95)

a. "Commission," means the Idaho Industrial Commission. (2-20-95)

b. "Medical Only Claim," means the injured worker will neither suffer a disability lasting more than five calendar days as a result of a job-related injury or occupational disease nor be admitted to a hospital as an in-patient. (2-20-95)

c. "Time loss claim," means the injured worker will suffer, or has suffered, a disability that lasts more than five calendar days as a result of a job-related injury or occupational disease, or the injured worker requires, or required, in-patient treatment as a result of such injury or disease. (2-20-95)

d. "Impairment rated claim," means those claims in which a provider establishes an impairment rating for the injured worker. (2-20-95)

e. "Termination of disability," means the date upon which the obligation of the Employer/Surety/Adjuster becomes certain as to duration and amount whether by settlement, decision or periodic payments in the ordinary course of claims processing. If resolved by lump sum settlement (LSS), the termination of disability shall occur on the date the LSS is approved and an order approving is filed by the Industrial Commission. If resolved by decision, the termination of disability shall occur on the date the decision resolving all issues becomes final. ~~*In the context of periodic payments in the ordinary course of business, the termination of disability shall occur on the date on which final payment is made to the claimant.* *(2-20-95)*~~(____)

f. "Death claim," means the injured worker died as a result of a work-related injury or occupational disease. (2-20-95)

g. "Employer" is defined in Idaho Code, Section 72-102(11) and includes agents of employers such as attorneys, sureties and adjusters. (2-20-95)

h. "Closure," means that the file will be retired following an audit by the Commission. (2-20-95)

02. Summaries Requirement. A summary of payment shall be filed, in duplicate, by the Employer/Surety/Adjuster within one hundred twenty (120) days of termination of disability for all time-loss claims upon which an Employer/Surety/Adjuster has made payments, except for those claims which are resolved by lump sum settlement. In the case of medical and related benefits only cases, no summaries of payment need to be filed. In the context of death claims and permanent total disability claims, interim summaries of payments shall be filed annually within the first quarter of each calendar year. Interim summaries shall be submitted setting forth substantially the same information required by Final Summaries of Payment, including the balance of payments made to the beginning of the current calendar year, payments during the calendar year, and a total of payments made. This total balance shall be carried forward as the amount of payments made to the beginning of the current year. The Final Summary shall be so designated. Supporting documentation shall be attached to any summary of payment filed with the Commission. (3-30-07)

03. Form. The summary of payment forms are available, pre-printed, from the Industrial Commission, which has designated the form as IC Form 6. The summary of payment shall be submitted on eight and one-half by eleven inch (8 1/2" X 11") paper in a format substantially similar to the following: (2-20-95)

a. For death claims:

SUMMARY OF PAYMENTS
FATAL CASE

Surety No. _____ I.C. No. _____
Injured Person: Employer:
Social Security Number: Address:
Address:
Character of Injury:
Date of Accident: Actual Weekly Wages:

DEPENDENTS

Name of Dependent	Relationship	Date of Birth (if under 18)

AWARDS OF PAYMENTS
COMPENSATION

Payments % AWSW	Amount	Weeks	Total	Remarks
Total Compensation Payments:				

BURIAL AND OTHER EXPENSES

Payment for funeral expenses $ Payment to hospital(s) $
Payment to doctor(s) $ Payment for misc. $
Total Medical Expenses (do not include funeral expenses) $
COMMENTS:

Claims Examiner Date

INDUSTRIAL COMMISSION APPROVAL

APPROVED: _____, 20____
BY: _____

b. For time-loss claims:

SUMMARY OF PAYMENTS
TIME-LOSS CASE

Surety No. _____ I.C. No. _____
Injured Person:
Social Security Number: Employer:
Address: Address:
Character of Injury:

Date of Accident: Actual Weekly Wages:
Date Able to Resume Work: Compensation
Rate:
Actual Time Lost: Weeks Days
Date of First Payment:

AWARDS OF PAYMENTS

Payments of Compensation		Amount		Type (TT or PP)
Begin	Weeks	Days	Return to Work	
Payment of Medical Benefits		Amount		
Doctor(s)				
Hospital(s)				
Physical Therapy				
Mileage				
Miscellaneous				
Comments:				

Claims Examiner Date

INDUSTRIAL COMMISSION APPROVAL

APPROVED: , 20

BY:

(2-20-95)

04. Approval. Within ninety (90) days of receipt of Summary of Payment as set forth above, the Industrial Commission shall notify the Employer/Surety/Adjuster that such summary has been approved or shall notify of its inability to reconcile the summary to its records and request additional information. If the Employer/Surety/Adjuster does not receive either an approval or request for additional information within the ninety (90) day period, the Employer/Surety/Adjuster may proceed with closure. In the event the Commission requests additional information, whether in writing or telephonic, the Employer/Surety/Adjuster shall submit the requested information within fifteen (15) working days. If the Employer/Surety/Adjuster is unable to furnish the requested information, the Employer/Surety/Adjuster shall notify the Commission, in writing, of its inability to respond and the reasons therefor within the fifteen (15) working days. The Commission may schedule a show cause hearing to determine whether or not the Employer/Surety/Adjuster should be allowed to continue its status under the workers' compensation laws, including whether the Employer should be allowed to continue self-insured status. (3-30-07)

05. Changes in Status. In case of any default by the Employer or in the event the Employer shall fail to pay any final award or awards, by reason of insolvency or because a receiver has been appointed, the Employer shall submit a summary of payments for every time-loss and death claim within ~~*sixty (60)*~~ one hundred twenty (120) days of the default, insolvency, or appointment of a receiver. This summary will be designated as an interim summary and does not relieve the Employer, successor or receiver from continued reporting requirements. The receiver or successor shall continue to report to the Commission, including the submission of summaries of payments and schedules of outstanding awards. ~~*(2-20-95)*~~( )

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-1401

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 72-508, 72-404, 72-707, 72-735, and 72-803, 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 15, 2014.

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 rule provides the Industrial Commission's mailing address; and removes the form notice to claimants of a status change, pursuant to Section 72-806, Idaho Code, from the actual rule and directs the constituent to the Commission address or website to obtain the form.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fiscal impact.

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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, which included representatives of insurance carriers and self-insured employers, has been providing input to the Industrial Commission on the issue.

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 documents have been incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Matt Vook, Benefits Analyst Employer Education and Evaluation Coordinator, (208) 334-6003.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
PO Box 83720
Boise, Idaho 83720-0041
Phone: (208) 334-6000
Fax: (208) 334-5145

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0208-1401
(Only those Sections being amended are shown.)

033. RULE GOVERNING APPROVAL OF ATTORNEY FEES IN WORKERS' COMPENSATION CASES.

01. Authority and Definitions. Pursuant to Sections 72-404, 72-508, 72-707, 72-735 and 72-803, Idaho Code, the Commission promulgates this rule to govern the approval of attorney fees. (4-7-11)

a. "Available funds" means a sum of money to which a charging lien may attach. It shall not include any compensation paid or not disputed to be owed prior to claimant's agreement to retain the attorney. (4-7-11)

b. "Approval by Commission" means the Commission has approved the attorney fees in conjunction with an award of compensation or a lump sum settlement or otherwise in accordance with this rule upon a proper showing by the attorney seeking to have the fees approved. (4-7-11)

c. "Charging lien" means a lien, against a claimant's right to any compensation under the Workers' Compensation laws, which may be asserted by an attorney who is able to demonstrate that: (4-7-11)

i. There are compensation benefits available for distribution on equitable principles; (4-7-11)

ii. The services of the attorney operated primarily or substantially to secure the fund out of which the attorney seeks to be paid; (4-7-11)

iii. It was agreed that counsel anticipated payment from compensation funds rather than from the client; (4-7-11)

iv. The claim is limited to costs, fees, or other disbursements incurred in the case through which the fund was raised; and (4-7-11)

v. There are equitable considerations that necessitate the recognition and application of the charging lien. (4-7-11)

d. "Fee agreement" means a written document evidencing an agreement between a claimant and counsel, in conformity with Rule 1.5, Idaho Rules of Professional Conduct (IRPC). (4-7-11)

e. "Reasonable" means that an attorney's fees are consistent with the fee agreement and are to be satisfied from available funds, subject to the element of reasonableness contained in IRPC 1.5. (4-7-11)

i. In a case in which no hearing on the merits has been held, twenty-five percent (25%) of available funds shall be presumed reasonable; or (4-7-11)

ii. In a case in which a hearing has been held and briefs submitted (or waived) under Judicial Rules of Practice and Procedure (JRP), Rules X and XI, thirty percent (30%) of available funds shall be presumed reasonable; or (4-7-11)

iii. In any case in which compensation is paid for total permanent disability, fifteen percent (15%) of such disability compensation after ten (10) years from date such total permanent disability payments commenced. (4-7-11)

02. Statement of Charging Lien. (4-7-11)

a. All requests for approval of fees shall be deemed requests for approval of a charging lien. (4-7-11)

b. An attorney representing a claimant in a Workers' Compensation matter shall in any proposed lump sum settlement, or upon request of the Commission, file with the Commission, and serve the claimant with a copy of the fee agreement, and an affidavit or memorandum containing: (4-7-11)

i. The date upon which the attorney became involved in the matter; (4-7-11)

ii. Any issues which were undisputed at the time the attorney became involved; (4-7-11)

iii. The total dollar value of all compensation paid or admitted as owed by employer immediately prior to the attorney's involvement; (4-7-11)

iv. Disputed issues that arose subsequent to the date the attorney was hired; (4-7-11)

v. Counsel's itemization of compensation that constitutes available funds; (4-7-11)

vi. Counsel's itemization of costs and calculation of fees; and (4-7-11)

vii. Counsel's itemization of medical bills for which claim was made in the underlying action, but which remain unpaid by employer/surety at the time of lump sum settlement, along with counsel's explanation of the treatment to be given such bills/claims following approval of the lump sum settlement. (4-7-11)

viii. The statement of the attorney identifying with reasonable detail his or her fulfillment of each element of the charging lien. (4-7-11)

c. Upon receipt and a determination of compliance with this Rule by the Commission by reference to its staff, the Commission may issue an Order Approving Fees without a hearing. (4-7-11)

03. Procedure if Fees Are Determined Not to Be Reasonable. (4-7-11)

a. Upon receipt of the affidavit or memorandum, the Commission will designate staff members to determine reasonableness of the fee. The Commission staff will notify counsel in writing of the staff's informal determination, which shall state the reasons for the determination that the requested fee is not reasonable. Omission of any information required by Subsection 033.02 may constitute grounds for an informal determination that the fee requested is not reasonable. (4-7-11)

b. If counsel disagrees with the Commission staff's informal determination, counsel may file, within fourteen (14) days of the date of the determination, a Request for Hearing for the purpose of presenting evidence and argument on the matter. Upon receipt of the Request for Hearing, the Commission shall schedule a hearing on the matter. A Request for Hearing shall be treated as a motion under Rule III(e), JRP. (4-7-11)

c. The Commission shall order an employer to release any available funds in excess of those subject to the requested charging lien and may order payment of fees subject to the charging lien which have been determined to be reasonable. (4-7-11)

d. The proponent of a fee which is greater than the percentage of recovery stated in Subsections 033.01.e.i., 033.01.e.ii., or 033.01.e.iii. shall have the burden of establishing by clear and convincing evidence entitlement to the greater fee. The attorney shall always bear the burden of proving by a preponderance of the evidence his or her assertion of a charging lien and reasonableness of his or her fee. (4-7-11)

04. Disclosure. Upon retention, the attorney shall provide to claimant a copy of a disclosure statement. No fee may be taken from a claimant by an attorney on a contingency fee basis unless the claimant acknowledges receipt of the disclosure by signing it. Upon request by the Commission, an attorney shall provide a copy of the signed disclosure statement to the Commission. The terms of the disclosure may be contained in the fee agreement, so long as it contains the text of the numbered paragraphs one (1) and two (2) of the disclosure. A copy of the agreement must be given to the client. The disclosure statement shall be in a format substantially similar to the following:

State of Idaho
Industrial Commission

Client's name printed or typed_____

Attorney's name and address_____
printed or typed

DISCLOSURE STATEMENT

1. In workers' compensation matters, attorney's fees normally do not exceed twenty-five percent (25%) of the benefits your attorney obtains for you in a case in which no hearing on the merits has been completed. In a case in which a hearing on the merits has been completed, attorney's fees normally do not exceed thirty percent (30%) of the benefits your attorney obtains for you.

2. Depending upon the circumstances of your case, you and your attorney may agree to a higher or lower percentage which would be subject to Commission approval. Further, if you and your attorney have a dispute regarding attorney fees, either of you may petition the Industrial Commission, PO Box 83720, Boise, ID 83720-0041, to resolve the dispute.

I certify that I have read and understand this disclosure statement.

Client's Signature Date _____

Attorney's Signature Date_____

~~(4-7-11)~~(____)

034. -- 060. (RESERVED)

061. RULE GOVERNING NOTICE TO CLAIMANTS OF STATUS CHANGE PURSUANT TO SECTION 72-806, IDAHO CODE.

01. Notice of Change of Status. As required and defined by Idaho Code, Section 72-806, a worker shall receive written notice within fifteen (15) days of any change of status or condition. (4-7-11)

02. By Whom Given. Any notice to a worker required by Idaho Code, Section 72-806 shall be given by: the surety if the employer has secured Workers' Compensation Insurance; or the employer if the employer is self-insured; or the employer if the employer carries no Workers' Compensation Insurance. (4-7-11)

03. Form of Notice. Any notice to a worker required by Idaho Code, Section 72-806 shall be mailed within ten (10) days by regular United States Mail to the last known address of the worker, as shown in the records of the party required to give notice as set forth above. The Notice shall be given ~~*on*~~ in a format substantially similar to IC Form 8, ~~*as prescribed by the Commission for this purpose, as substantially set forth below:*~~ available from the Commission and posted on the Commission's website at www.iic.idaho.gov.

~~**IC Form 8:**~~	
~~**NOTICE OF CLAIM STATUS**~~	
~~*Injured Worker*~~	~~*SSN*~~
~~*Date of Injury*~~	
~~*Employer*~~	
~~*Insurance Company*~~	

~~IC Form 8:~~		
~~NOTICE OF CLAIM STATUS~~		
~~*Address*~~	~~*State*~~	~~*Zip*~~
~~*This is to notify you of the denial or change of status of your workers' compensation claim as indicated in the statement checked below.*~~		
~~*Your claim is denied.*~~		
~~*Reason*~~		
~~*Your benefit payments will be*~~	~~*Reduced*~~	~~*Increased*~~
~~*Effective date*~~		
~~*Reason*~~		
~~*Your benefit payments will be stopped.*~~	~~*Effective date*~~	
~~*Reason*~~		
~~*Your claim is being investigated.*~~		
~~*A decision should be made by*~~		
~~*Other*~~		~~*Effective date*~~
~~*Explanation*~~		
~~*See attached medical reports*~~		
~~*Signature of insurance company adjuster/examiner*~~		~~*Date*~~
~~*Name (typed or printed)*~~		
~~*A sample copy of IC Form 8 is available from the;*~~ ~~*Industrial Commission*~~ ~~*700 S. Clearwater Lane*~~ ~~*P. O. Box 83720,*~~ ~~*Boise, Idaho 83720-0041*~~ ~~*Telephone (208) 334-6000.*~~		

~~*(4-7-11)*~~(_____)

04. **Medical Reports**. As required by Idaho Code, Section 72-806, if the change is based on a medical report, the party giving notice shall attach a copy of the report to the notice. (4-7-11)

05. **Copies of Notice**. The party giving notice pursuant to Idaho Code, Section 72-806 shall send a copy of any such notice to the Industrial Commission, the employer, and the worker's attorney, if the worker is represented, at the same time notice is sent to the worker. (4-7-11)

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

17.02.09 - MEDICAL FEES

DOCKET NO. 17-0209-1401

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 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803, 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 15, 2014.

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 implements an update to the facility fee schedule to reflect market conditions. A change to the CPT code range affecting psychiatric diagnostic evaluations is made to align with coding changes implemented by the American Medical Association. A change to the reimbursement for certain hospital outpatient diagnostic lab services is made to align with a change made by Centers for Medicare & Medicaid Services (CMS). The allowable period for prompt payment by a payer is changed to commence upon acceptance of liability if made after receipt of the provider's bill.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fiscal impact.

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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, which included representatives of insurance carriers and medical providers, has been providing input to the Industrial Commission on the issue.

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 documents have been incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Medical Fee Schedule Analyst (208) 334-6084.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
PO Box 83720
Boise, Idaho 83720-0041
Phone: (208) 334-6000
Fax: (208) 334-5145

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0209-1401
(Only those Sections being amended are shown.)

031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY PHYSICIANS UNDER THE IDAHO WORKERS' COMPENSATION LAW.
Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter "the Commission") hereby adopts the following rule for determining acceptable charges for medical services provided by physicians under the Idaho Workers' Compensation Law. (4-7-11)

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by physicians. (4-7-11)

02. Adoption of Standard for Physicians. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law by physicians. (4-7-11)

03. Conversion Factors. The following conversion factors shall be applied to the total facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	**CODE RANGE(S)**	**DESCRIPTION**	**CONVERSION FACTOR**
Anesthesia	00000 - 09999	Anesthesia	$60.33
Surgery - Group One	22000 - 22999 23000 - 24999 25000 - 27299 27300 - 27999 29800 - 29999 61000 - 61999 62000 - 62259 63000 - 63999	Spine Shoulder, Upper Arm, & Elbow Forearm, Wrist, Hand, Pelvis & Hip Leg, Knee, & Ankle Endoscopy & Arthroscopy Skull, Meninges & Brain Repair, Neuroendoscopy & Shunts Spine & Spinal Cord	$135.00
Surgery - Group Two	28000 - 28999 64550 - 64999	Foot & Toes Nerves & Nervous System	$124.00
Surgery - Group Three	10000 - 19999 20000 - 21999 29000 - 29799 30000 - 39999 40000 - 49999 50000 - 59999 60000 - 60999 62260 - 62999 64000 - 64549 65000 - 69999	Integumentary System Musculoskeletal System Casts & Strapping Respiratory & Cardiovascular Digestive System Urinary System Endocrine System Spine & Spinal Cord Nerves & Nervous System Eye & Ear	$88.54

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	**CODE RANGE(S)**	**DESCRIPTION**	**CONVERSION FACTOR**
Radiology	70000 - 79999	Radiology	$88.54
Pathology & Laboratory	80000 - 89999	Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 907~~9~~49 94000 - 94999 97000 - 97799 97800 - 98999	Immunization, Injections, & Infusions Pulmonary / Pulse Oximetry Physical Medicine & Rehabilitation Acupuncture, Osteopathy, & Chiropractic	$49.00
Medicine - Group Two	90~~80~~750 - 92999 93000 - 93999 95000 - 96020 96040 - 96999 99000 - 99607	Psychiatry & Medicine Cardiography, Catheterization, Vascular Studies Allergy / Neuromuscular Procedures Assessments & Special Procedures E / M & Miscellaneous Services	$70.00

~~(3-20-14)~~(_____)

04. **Anesthesiology**. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996. (4-7-11)

05. **Adjustment of Conversion Factors**. The conversion factors set out in this rule shall be adjusted each fiscal year (FY) by the Commission to reflect changes in inflation or market conditions in accordance with Section 72-803, Idaho Code. (4-7-11)

06. **Services Without CPT Code, RVU or Conversion Factor**. The acceptable charge for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 031.03, above, determine the acceptable charge for that service, based on all relevant evidence in accordance with the procedures set out in Section 035, below. (3-20-14)

07. **Coding**. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows: (4-7-11)

a. Modifier 50: Additional fifty percent (50%) for bilateral procedure. (4-7-11)

b. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. (4-7-11)

c. Modifier 80: Twenty-five percent (25%) of coded procedure. (4-7-11)

d. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. (4-7-11)

08. Medicine Dispensed By Physicians. Reimbursement to physicians for any medicine shall not exceed the acceptable charge calculated for that medicine as if provided by a pharmacy under Section 033 of this rule without a dispensing or compounding fee. Reimbursement to physicians for repackaged medicine shall be the Average Wholesale Price (AWP) for the medicine prior to repackaging, identified by the National Drug Code (NDC) reported by the original manufacturer. Reimbursement may be withheld until the original manufacturer's National Drug Code (NDC) is provided by the physician. (7-1-13)

032. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY HOSPITALS AND AMBULATORY SURGERY CENTERS UNDER THE IDAHO WORKERS' COMPENSATION LAW. Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Commission hereby adopts the following rule for determining acceptable charges for medical services provided by hospitals and ambulatory surgery centers under the Idaho Workers' Compensation Law. (1-1-12)

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by hospitals and ambulatory surgery centers. (1-1-12)

02. Adoption of Standards for Hospitals and ASCs. The following standards shall be used to determine the acceptable charge for hospitals and ambulatory surgery centers. (1-1-12)

a. Critical Access and Rehabilitation Hospitals. The standard for determining the acceptable charge for inpatient and outpatient services provided by a critical access or rehabilitation hospital is ninety percent (90%) of the reasonable charge. Implantable hardware charges shall be reimbursed at the rate of the actual cost plus fifty percent (50%). (1-1-12)

b. Hospital Inpatient Services. The standard for determining the acceptable charge for inpatient services provided by hospitals, other than critical access and rehabilitation hospitals, is calculated by multiplying the base rate by the current MS-DRG weight for that service. The base rate for inpatient services is ten thousand two hundred dollars ($10,~~0~~200). Inpatient services that do not have a relative weight shall be paid at eighty-five percent (85%) of the reasonable charge; however, implantable hardware charges billed for services without an MS-DRG weight shall be reimbursed at the rate of actual cost plus fifty percent (50%). ~~(1-1-12)~~( )

c. Hospital Outpatient and Ambulatory Surgical Center (ASC) Services. The standard for determining the acceptable charge for outpatient services provided by hospitals (other than critical access and rehabilitation hospitals) and for services provided by ambulatory surgical centers is calculated by multiplying the base rate by the Medicare Hospital Outpatient Prospective Payment System (OPPS) APC weight in effect on the first day of January of the current calendar year. The base rate for hospital outpatient services is one hundred ~~and thirty-eight~~ forty dollars and seventy-five cents ($~~138~~140.75). The base rate for ASC services is ninety-one dollars and fifty cents ($9~~0~~1.50). ~~(1-1-12)~~( )

i. Medical services for which there is no APC weight listed shall be reimbursed at seventy-five percent (75%) of the reasonable charge. (7-1-12)

ii. Status code N items ~~(other than implantable hardware)~~ or items with no CPT or Healthcare Common Procedure Coding System (HCPCS) code shall receive no payment except as provided in Subsection 032.02.c.ii.(1). or 032.02.c.ii.(2). of this rule. ~~(1-1-12)~~( )

(1) Implantable Hardware may be eligible for separate payment under Subsection 032.02.e.iii. of this rule. ( )

(2) Outpatient laboratory tests provided with no other hospital outpatient service on the same date, or outpatient laboratory tests provided on the same date of service as other hospital outpatient services that are clinically unrelated may be paid separately if billed with modifier L1. Payment shall be made in the same manner that services with no APC weight are paid under Subsection 032.02.c.i. of this rule. ( )

iii. Two (2) or more medical procedures with a status code T on the same claim shall be reimbursed with the highest weighted code paid at one hundred percent (100%) of the APC calculated amount and all other status code T items paid at fifty percent (50%). (1-1-12)

iv. Status code Q items with an assigned APC weight will not be discounted. (1-1-12)

d. Hospitals Outside of Idaho. Reimbursement for services provided by hospitals outside the state of Idaho may be based upon the agreement of the parties. If there is no agreement, services shall be paid in accordance with the workers' compensation fee schedule in effect in the state in which services are rendered. If there is no hospital fee schedule in effect in such state, or if the fee schedule in that state does not allow reimbursement for the services rendered, reimbursement shall be paid in accordance with these rules. (1-1-12)

e. Additional Hospital Payments. When the charge for a medical service provided by a hospital (other than a critical access or rehabilitation hospital) meets the following standards, additional payment shall be made for that service, as indicated. (1-1-12)

i. Inpatient Threshold Exceeded. When the charge for a hospital inpatient MS-DRG coded service exceeds the sum of thirty thousand dollars ($30,000) plus the payment calculated under the provisions of Subparagraph 032.02.b. of this rule, then the total payment for that service shall be the sum of the MS-DRG payment and the amount charged above that threshold multiplied by seventy-five percent (75%). Implantable charges shall be excluded from the calculation for an additional inpatient payment under this Subparagraph. (1-1-12)

ii. Inpatient Implantable Hardware. Hospitals may seek additional reimbursement beyond the MSDRG payment for invoiced implantable hardware where the aggregate invoice cost is greater than ten thousand dollars ($10,000). Additional reimbursement shall be the invoice cost plus an amount which is equal to ten percent (10%) of the invoice cost, but which does not exceed three thousand dollars ($3,000). Handling and freight charges shall be included in invoice cost. (1-1-12)

iii. Outpatient Implantable Hardware. Hospitals and ASCs may seek additional reimbursement beyond the APC payment for invoiced implantable hardware where the aggregate invoice cost is greater than five hundred dollars ($500). Additional reimbursement shall be the invoice cost plus an amount which is equal to ten percent (10%) of the invoice cost, but which does not exceed one thousand dollars ($1,000). Handling and freight charges shall be included in invoice cost. (1-1-12)

03. Disputes. The Commission shall determine the acceptable charge for hospital and ASC services that are disputed based on all relevant evidence in accordance with the procedures set out in Section 035 of this rule. (1-1-12)

04. Adjustment of Hospital and ASC Base Rates. The Commission may periodically adjust the base rates set out in Subparagraphs 032.02.b. and 032.02.c. of this rule to reflect changes in inflation or market conditions. (1-1-12)

(BREAK IN CONTINUITY OF SECTIONS)

035. BILLING AND PAYMENT REQUIREMENTS FOR MEDICAL SERVICES AND PROCEDURES PRELIMINARY TO DISPUTE RESOLUTION.

01. Authority. Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission hereby promulgates this rule governing billing and payment requirements for medical services provided under the Workers' Compensation Law and the procedures for resolving disputes between payors and providers over those bills or payments. (4-7-11)

02. Time Periods. None of the periods herein shall begin to run before the Notice of Injury/Claim for Benefits has been filed with the Employer as required by law. (4-7-11)

03. Provider to Furnish Information. A Provider, when submitting a bill to a Payor, shall inform the Payor of the nature and extent of medical services furnished and for which the bill is submitted. This information shall include, but is not limited to, the patient's name, the employer's name, the date the medical service was

provided, the diagnosis, if any, and the amount of the charge or charges. Failure to submit a bill complying with this Subsection 035.03 to the Payor within one hundred twenty (120) days of the date of service will result in the ineligibility of the Provider to utilize the dispute resolution procedures of the Commission set out in Subsection 035.10 for that service. (7-1-13)

a. A Provider's bill shall, whenever possible, describe the Medical Service provided, using the American Medical Association's appropriate Current Procedural Terminology (CPT) coding, including modifiers, the appropriate Healthcare Common Procedure Coding System (HCPCS) code, the diagnostic and procedure code set version required by the Centers for Medicare and Medicaid Services (CMS) and the original National Drug Code (NDC) for the year in which the service was performed. (7-1-13)

b. The bill shall also contain the name, address and telephone number of the individual the Payor may contact in the event the Payor seeks additional information regarding the Provider's bill. (4-7-11)

c. If requested by the Payor, the bill shall be accompanied by a written report as defined by IDAPA 17.02.04, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Benefits." Subsection 322.01.f. Where a bill is not accompanied by such Report, the periods expressed in Subsections 035.04 and 035.06, below, shall not begin to run until the Payor receives the Report. (7-1-13)

04. Prompt Payment. Unless the Payor denies liability for the claim or, pursuant to Subsection 035.06, below, sends a Preliminary Objection, a Request for Clarification, or both, as to any charge, the Payor shall pay the charge within thirty (30) calendar days of receipt of the bill or upon acceptance of liability, if made after bill is received from Provider. ~~(7-1-13)~~(____)

05. Partial Payment. If the Payor acknowledges liability for the claim and, pursuant to Subsection 035.06, below, sends a Preliminary Objection, a Request for Clarification, or both, as to only part of a Provider's bill, the Payor must pay the charge or charges, or portion thereof, as to which no Preliminary Objection or Request for Clarification has been made, within thirty (30) calendar days of receipt of the bill. (7-1-13)

06. Preliminary Objections and Requests for Clarification. (4-7-11)

a. Whenever a Payor objects to all or any part of a Provider's bill on the ground that such bill contains a charge or charges that do not comport with the applicable administrative rule, the Payor shall send a written Preliminary Objection to the Provider within thirty (30) calendar days of the Payor's receipt of the bill explaining the basis for each of the Payor's objections. (4-7-11)

b. Where the Payor requires additional information, the Payor shall send a written Request for Clarification to the Provider within thirty (30) calendar days of the Payor's receipt of the bill, and shall specifically describe the information sought. (4-7-11)

c. Each Preliminary Objection and Request for Clarification shall contain the name, address and phone number of the individual located within the state of Idaho that the Provider may contact regarding the Preliminary Objection or Request for Clarification. (4-7-11)

d. Where a Payor does not send a Preliminary Objection to a charge set forth in a bill or a Request for Clarification within thirty (30) calendar days of receipt of the bill, or provide an in-state contact in accord with Subsection 035.06.c., it shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. (7-1-13)

07. Provider Reply to Preliminary Objection or Request for Clarification. (4-7-11)

a. Where a Payor has timely sent a Preliminary Objection, Request for Clarification, or both, the Provider shall send to the Payor a written Reply, if any it has, within thirty (30) calendar days of the Provider's receipt of each Preliminary Objection or Request for Clarification. (4-7-11)

b. If a Provider fails to timely reply to a Preliminary Objection, the Provider shall be deemed to have acquiesced in the Payor's objection. (4-7-11)

c. If a Provider fails to timely reply to a Request for Clarification, the period in which the Payor shall pay or issue a Final Objection shall not begin to run until such clarification is received. (4-7-11)

08. Payor Shall Pay or Issue Final Objection. The Payor shall pay the Provider's bill in whole or in part or shall send to the Provider a written Final Objection, if any it has, to all or part of the bill within thirty (30) calendar days of the Payor's receipt of the Reply. (4-7-11)

09. Failure of Payor to Finally Object. Where the Payor does not timely send a Final Objection to any charge or portion thereof to which it continues to have an objection, it shall be precluded from further objecting to such charge as unacceptable. (4-7-11)

10. Dispute Resolution Process. If, after completing the applicable steps set forth above, a Payor and Provider are unable to agree on the appropriate charge for any Medical Service, a Provider which has complied with the applicable requirements of this rule may move the Commission to resolve the dispute as provided in the Judicial Rule Re: Disputes Between Providers and Payors, as referenced in Sections 031, 032, 033, and 034 of this rule. If Provider's motion disputing CPT or MS-DRG coded items prevails, Payor shall pay the amount found by the Commission to be owed, plus an additional thirty percent (30%) of that amount to compensate Provider for costs and expenses associated with using the dispute resolution process. For motions filed by a Provider disputing items without CPT or MS-DRG codes, the additional thirty percent (30%) shall be due only if the Payor does not pay the amount found due within thirty (30) days of the administrative order. (7-1-13)

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

17.05.01 - RULES UNDER THE CRIME VICTIMS COMPENSATION ACT

DOCKET NO. 17-0501-1401

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 72-1004 and 72-1026, 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 15, 2014.

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 rule is necessary to implement updates under the CVC Medical Fee Schedule and clarify the calculations of the allowable payment of CPT Codes established by the American Medical Association; and provide direction and a consistent method for calculating mileage reimbursement for the necessary treatment and services for eligible victims of the program.

The rule is also necessary to clarify the limitations on how long providers have to file their claims with the program for payment consideration. It is difficult and time-consuming to gather the appropriate supporting documentation for claims that are several years old.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fiscal impact.

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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the amendments are necessary to implement the changes in the Current Procedural Terminology Codes, published by the American Medical Association. The Crime Victims Compensation Medical Fee Schedule is not correctly reimbursing providers for some services delivered to eligible victims of crime; and the rule amendment would allow the program to appropriately reimburse providers for eligible services.

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 documents have been incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact George Gutierrez, Crime Victims Bureau Chief, (208) 334-6070.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
PO Box 83720
Boise, Idaho 83720-0041
Phone: (208) 334-6000
Fax: (208) 334-5145

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0501-1401
(Only those Sections being amended are shown.)

011. APPLICATIONS FOR COMPENSATION.

01. Claim for Benefits. To claim benefits under the Crime Victims Compensation Act, the claimant shall file an Application for Compensation with the Commission. Applications for Compensation shall be made using the form approved by the Commission. An Application for Compensation shall be deemed filed when it is received at the Commission's office in Boise. (4-7-11)

02. Providing Information. Before paying benefits to any claimant, the Commission shall gather sufficient information to establish that the claimant is eligible for benefits. The Commission may require the claimant to assist the Commission in obtaining that information. (11-17-86)

03. Employment Verification. To verify information concerning a victim's employment, the Commission may require the victim's employer or employers to complete an Employment Verification form or the Commission may obtain such information from an employer by telephone. (11-17-86)

04. Order. After sufficient information has been gathered pursuant to Subsection 011.02 of this rule, the Commission may enter an award granting or partially granting benefits or an order denying benefits. The Commission may also enter orders necessary to further the purposes of the Act. (4-7-11)

05. Finality of Order. An award or order issued by the Commission shall be final and conclusive as to all matters considered in the award or order; provided that within twenty (20) days from the date that such an award or order is issued, the claimant may file a request that the Commission reconsider the order or award, or the Commission may reconsider the matter on its own motion, and the award or order of the Commission shall be final upon issuance of the order on reconsideration; and provided further that, within forty five (45) days from the date that any award or order is issued by the Commission, a claimant may file a Request for Hearing before the Commissioners. The Hearing shall be held in accordance with the procedures set out in Section 012 of these rules. Requests for Hearing and requests that the Commission reconsider an order or award shall be deemed filed when received at the Commission's office in Boise. (4-7-11)

06. Recipients of Payments for Medical Services. If, pursuant to any order of the Commission or the Crime Victims Supervisor, it is determined that a claimant is entitled to payment of medical expenses as provided in Section 72-1019(2), Idaho Code, or funeral or burial expenses as provided in Section 72-1019(4), Idaho Code, payment shall be made directly to the medical provider or the provider of funeral or burial services unless the claimant has already paid the provider; if the claimant has already paid the provider, payment shall be made to the claimant. (4-7-11)

07. Allowable Payments for Medical Services. The Commission shall pay providers the allowable payment for medical services under these rules adopted in accordance with Section 72-1026, Idaho Code. (4-7-11)

a. Adoption of Standard. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and

Human Services, as amended, as the standard to be used for determining the allowable payment under the Crime Victims Compensation Act for medical services provided by providers other than hospitals and ASCs. The standard for determining the allowable payment for hospitals and ASCs shall be: (4-7-11)

i. For large hospitals: Eighty-five percent (85%) of the reasonable inpatient charge. (4-7-11)

ii. For small hospitals: Ninety percent (90%) of the reasonable inpatient charge. (4-7-11)

iii. For ambulatory surgery centers (ASCs) and hospital outpatient charges: Eighty percent (80%) of the reasonable charge. (4-7-11)

iv. Surgically implanted hardware shall be reimbursed at the rate of actual cost plus fifty percent (50%). (4-7-11)

v. Paragraph 011.07.e. of this rule, shall not apply to hospitals or ASCs. The Commission shall determine the allowable payment for hospital and ASC services based on all relevant evidence. (4-7-11)

b. Conversion Factors. The following conversion factors shall be applied to the fully-implemented facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE			
DESCRIPTION	**CODE RANGE(S)**		**CONVERSION FACTOR**
Anesthesia	00000 - 09999		$60.05
Surgery - Group One	22000 - 22999 23000 - 24999 25000 - 27299 27300 - 27999 29800 - 29999 61000 - 61999 62000 - 62259 63000 - 63999	Spine Shoulder, Upper Arm, & Elbow Forearm, Wrist, Hand, Pelvis & Hip Leg, Knee, & Ankle Endoscopy & Arthroscopy Skull, Meninges & Brain Repair, Neuroendoscopy & Shunts Spine & Spinal Cord	$144.48
Surgery - Group Two	28000 - 28999 64550 - 64999	Foot & Toes Nerves & Nervous System	$129.00
Surgery - Group Three	13000 - 19999 20650 - 21999	Integumentary System Musculoskeletal System	$113.52

MEDICAL FEE SCHEDULE			
DESCRIPTION	**CODE RANGE(S)**		**CONVERSION FACTOR**
Surgery - Group Four	20000 - 20615 30000 - 39999 40000 - 49999 50000 - 59999 60000 - 60999 62260 - 62999 64000 - 64549 65000 - 69999	Musculoskeletal System Respiratory & Cardiovascular Digestive System Urinary System Endocrine System Spine & Spinal Cord Nerves & Nervous System Eye & Ear	$87.72
Surgery - Group Five	10000 - 12999 29000 - 29799	Integumentary System Casts & Strapping	$69.14
Radiology	70000 - 79999	Radiology	$87.72
Pathology & Laboratory	80000 - 89999	Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 907~~9~~49 94000 - 94999 97000 - 97799 97800 - 98999	Immunization, Injections, & Infusions Pulmonary / Pulse Oximetry Physical Medicine & Rehabilitation Acupuncture, Osteopathy, & Chiropractic	$46.44
Medicine - Group Two	90~~80~~750 - 92999 96040 - 96999 99000 - 99607	Psychiatry & Medicine Assessments & Special Procedures E / M & Miscellaneous Services	$66.56
Medicine - Group Three	93000 - 93999 95000 - 96020	Cardiography, Catheterization, & Vascular Studies Allergy / Neuromuscular Procedures	$72.24

~~(4-7-11)~~(_____)

c. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996. (4-7-11)

d. Adjustment of Conversion Factors. The conversion factors set out in this rule may be adjusted each fiscal year (FY), starting with FY 2012, as determined by the Commission. (4-7-11)

e. Services Without a CPT Code, RVU or Conversion Factor. The allowable payment for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 011.07.b. of this rule, determine the allowable payment for that service, based on all relevant evidence. (4-7-11)

f. Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows: (4-7-11)

i. Modifier 50: Additional fifty percent (50%) for bilateral procedure. (4-7-11)

ii. Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. (4-7-11)

iii. Modifier 80: Twenty-five percent (25%) of coded procedure. (4-7-11)

iv. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. (4-7-11)

08. Wage Loss Benefits. For the purpose of determining compensation benefits under Sections 72-1019(1) and 72-1019(3), Idaho Code, "wages received at the time of the criminally injurious conduct" shall be the victim's gross weekly wage; which shall be determined as follows: (4-7-11)

a. If the wages were fixed by the year, the weekly wage shall be the yearly wage divided by fifty-two (52). (11-17-86)

b. If the wages were fixed by the month, the weekly wage shall be the monthly wage multiplied by twelve (12) and divided by fifty-two (52). (11-17-86)

c. If the wages were fixed by the week, the amount so fixed shall be the weekly wage. (11-17-86)

d. If the wages were fixed by the hour, and the victim worked or was scheduled to work the same number of hours each week, the weekly wage shall be the hourly rate times the number of hours that the victim worked or was scheduled to work each week, plus one-half (1/2) the hourly wage times the number of hours worked or scheduled each week in excess of forty (40) hours if the victim was paid time-and-a-half for work in excess of forty (40) hours per week. (11-17-86)

e. If the wages were fixed by the hour and the victim did not work the same number of hours each week, or if the victim was paid on a piecework or commission basis, the weekly wage shall be computed by averaging the amounts that the victim was paid during his last four completed pay periods prior to the criminally injurious conduct and converting that amount to a weekly basis using a method consistent with parts 1 through 3 of this rule; provided that, if the victim was employed for less than four (4) pay periods before the criminally injurious conduct, the average shall be computed based upon the time period that he worked. (11-17-86)

f. If none of the above methods are applicable, the weekly wage shall be computed in a manner consistent with the above methods. (11-17-86)

09. Treating Physician. A victim may choose his own treating physician. If, after filing an Application for Compensation, a victim changes physicians without prior approval of the Commission, or if, without prior approval of the Commission, he seeks treatment or examination by a physician to whom he was referred by his treating physician, the Commission may deny payment for such treatment or examination. (11-17-86)

10. Overpayment. If the Commission erroneously makes payments to which a claimant is not entitled,

the Commission may reduce future payments to that claimant by an amount equal to the overpayment or request a refund when overpayments are made to either the claimant or the provider. (4-7-11)

11. Limit on Compensation. Compensation payable under Sections 72-1019(7)(a) and 72-1019(7)(b), Idaho Code, may not exceed twenty thousand dollars ($20,000). Compensation payable to a victim or his dependents under Sections 72-1019(7)(a) and 72-1019(7)(b), Idaho Code, when added to compensation payable under Sections 72-1019(2) and 72-1019(4), Idaho Code, may not exceed twenty-five thousand dollars ($25,000). (4-7-11)

12. Weekly Compensation Benefits If Victim Employable But Not Employed. If a victim was employable, but not employed at the time of the criminally injurious conduct and as a result of that conduct has no reasonable prospect of being regularly employed in the normal labor market, he shall receive benefits pursuant to Section 72-1019(7)(a), Idaho Code, as follows, only until the victim has a reasonable prospect of being regularly employed in the normal labor market, or for a shorter period as determined by the Commission,: (4-7-11)

a. If at the time of the injurious conduct the victim was receiving unemployment benefits and as a result of that conduct the victim becomes ineligible for those benefits, the claimant's weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred and fifty dollars ($150) or his weekly benefit amount under the Employment Security Law. (4-7-11)

b. If at the time of the criminally injurious conduct the victim was unemployed, but scheduled to begin employment on a date certain and if he was unable to work for one (1) week as a result of that conduct, weekly benefits under the Crime Victims Compensation Act shall be the lesser of one hundred and fifty dollars ($150) or two-thirds (2/3) of the amount that he would have earned at his scheduled employment, and those benefits shall be payable beginning on the date that his employment was scheduled to begin. (4-7-11)

c. If prior to the criminally injurious conduct the victim was performing necessary household duties which he is disabled from performing as a result of that conduct and it is necessary to employ a person who does not reside in the victim's house to perform those duties, the victim shall receive weekly benefits under the Crime Victims Compensation Act equal to the amount paid to the person so employed, but not exceeding one hundred and fifty dollars ($150) per week. (4-7-11)

d. In other circumstances, the Commission may award an amount it deems appropriate. (11-17-86)

13. Effective Date. Benefits shall be paid only to claimants whose Applications for Compensation are based upon criminally injurious conduct which occurred on or after July 1, 1986. (11-17-86)

14. Reimbursement for Transportation Expenses. If the claimant utilizes a private vehicle, reimbursement shall be at the mileage rate allowed by the state board of examiners for state employees. Reimbursement shall be provided only if services are not available in the local area and shall be limited to one (1) round trip per day. The claimant shall not be reimbursed for the first fifteen (15) miles of any round trip, nor for traveling any round trip of fifteen (15) miles or less. Such distance shall be calculated by the shortest practical route of travel. The mileage reimbursement amount shall be credited to the medical benefit. ( )

15. Payment of Bills. Bills for treatment and sexual assault forensic examinations must be submitted within two (2) years from the date of treatment or the date of eligibility, whichever is later, to be compensable.( )

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.02.01 - RULES OF THE BOARD OF BARBER EXAMINERS

DOCKET NO. 24-0201-1401

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 54-521, 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 15, 2014.

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 rules are being updated to simplify and clarify the licensing of contiguous barber shops which allows a licensee to practice as an independent contractor. Currently a license is issued to the space or station within a primary barber shop and a new application is required if the licensee changes the space they are working in. The updates will allow the issuance of a contiguous barber shop license to the address of the primary shop which will allow licensees to move their workspace within the primary shop without reapplying for a new license. The sanitation rules are also being updated to standardize the inspection process.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules of the Idaho Board of Barber Examiners are being updated to simplify and clarify the licensing of contiguous shops which allows a licensee to practice as an independent contractor. The change will allow a contiguous barber shop license to be issued to the location address of the primary shop rather than a specific station within the primary barber shop. The Board has worked with interested parties including licensees, representatives from the Idaho Department of Labor and the Industrial Commission in order to protect a contiguous licensee's independent contractor status.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 October 22, 2014.

DATED this 28th Day of August, 2014.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233 / Fax: (208) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0201-1401
(Only those Sections being amended are shown.)

010. DEFINITIONS (RULE 10).

01. Approved or Approval. Approved by or approval of the Board as evidenced by formal action of the Board by a written instrument signed by the chairman of the Board or its agent. (3-13-02)

02. Barber College. A school or college approved by the Board to teach the practice of barbering as required by Section 54-507, Idaho Code, and these rules. (3-13-02)

03. Board. The Board of Barber Examiners as prescribed in Section 54-521, Idaho Code. (7-1-93)

04. First Aid Kit. First-aid kit means an identifiable assortment of medical supplies, including adhesive bandages, skin antiseptic, disposable gloves, and gauze, which may be used for cleaning and protecting minor emergency traumas of the human body. (3-13-02)

05. Hospital Grade. Hospital Grade means a sanitizing agent registered by the Environmental Protection Agency as an effective germicidal/bactericidal, fungicidal, and virucidal disinfectant when used in accordance with the manufacturer's instructions. (7-1-98)

06. Practice of Barbering. Practice of barbering as defined by Section 54-502(2), Idaho Code. (3-13-02)

07. Practice of Barber-Styling. Practice of Barber-Styling as defined by Section 54-502(1), Idaho Code or under the supervision of an instructor as provided in Section 54-507, Idaho Code. (3-13-02)

08. Barber. Any person who holds a valid license authorizing said person to practice as a barber pursuant to Section 54-501, Idaho Code. (3-13-02)

09. Barber-Stylist. Any person who holds a valid license authorizing said person to practice as a barber-stylist pursuant to Section 54-501, Idaho Code. (3-13-02)

10. Barber Teacher or Instructor. Any person who holds a valid license pursuant to Section 54-502, Idaho Code, authorizing said person to teach or practice barbering and barber-styling. The words "Teacher" and "Instructor" mean the same and are used synonymously. (5-8-09)

11. Theoretical Scientific Study. The study of theoretical subjects of instruction in the practice of barbering which shall include the subjects set forth in Section 54-507, Idaho Code. (7-1-93)

12. Barber Shop. Any establishment licensed pursuant to Section 54-501, Idaho Code, in which barbering or barber-styling is practiced. (3-13-02)

13. Access. For the purpose of licensed ~~*establishments*~~ shops, access shall be defined as a minimum three (3) foot wide unobstructed path within a primary ~~*establishment*~~ shop that allows passage to and from entrances, common areas, water sources, restrooms, and contiguous ~~*establishments and does not encroach on or overlap any contiguous establishment*~~ shops. ~~*(3-13-02)*~~( )

14. Direct Personal Supervision. Direct personal supervision shall be defined as supervision by a properly licensed person who is physically present within the licensed area of a school or shop. (3-13-02)

15. Bureau. The Bureau of Occupational Licenses as prescribed in Sections 54-605 and 67-2602, Idaho Code. (3-13-02)

(BREAK IN CONTINUITY OF SECTIONS)

450. BARBER SHOP REQUIREMENTS (RULE 450).
Except as otherwise provided in statute, a duly licensed individual must practice within a licensed barber shop. A barber shop may be licensed as a primary shop or a contiguous shop that operates within a primary shop. ( )

01. Primary Shop, Licensure and Operation Requirements. A primary shop license may be issued and annually renewed only under the following conditions: ~~(7-1-93)~~( )

a. Application for a primary shop license shall be made on forms available from the Bureau and shall include plans and specifications complying with the Board's sanitation requirements, local ordinances, and zoning requirements. All applications shall be submitted to the Idaho Barber Board for approval and a license must be issued before a new shop may open for business; ~~(3-13-02)~~( )

b. There is a clearly defined and designated working floor space of adequate dimension to allow the safe and sanitary practice of barbering or barber-styling for all individual stations that may be in operation in addition to any restroom and access areas; (3-13-02)

c. Business other than cosmetology, ~~or~~ barber shops, ~~and~~ or living quarters shall be separated by ~~solid and immovable walls or partitions and solid closable doors~~ substantial partitions not less than 7 feet high or a complete wall and a closable door separating the business and domestic areas. Doors of separation shall remain closed at all times; ~~(3-13-02)~~( )

d. There is an approved hot and cold running water source and drainage system(s) within the perimeters of the primary shop, ~~and~~ which is separate from the toilet facilities. ~~that is~~ The source and drainage system shall be accessible and available ~~also~~ to any areas designated for the operation of contiguous cosmetology or barber shops ~~that may not have said facility within~~ when the ~~defined~~ designated area ~~of the~~ for a contiguous shop does not contain a separate approved hot and cold running water source and drainage system; ~~(3-13-02)~~( )

~~**e.** The primary shop area does not overlap any portion of a contiguous or other primary shop designated area; (3-13-02)~~

~~**f**~~**e.** There is access to restroom~~s~~ facilities from within the building in which the shop is located~~;~~ and which shall be accessible from the primary area to all areas designated for the operation of contiguous shops; ~~(3-13-02)~~( )

~~**g**~~**f.** Home shops must provide a separate outside entrance directly into the shop. All doors to a shop from adjacent rooms shall be closed~~.~~; ~~(7-1-93)~~()

g. Any areas designated by the primary shop for the operation of contiguous shops shall be clearly defined, fixed, and shall provide adequate dimension to allow the safe and sanitary practice of any one (1) or combination of the allowed and defined practices for all stations that may be operated in that area; and ( )

h. The holder of the primary shop license will be responsible for complying with the sanitation requirements and all other applicable statutes and rules for the designated licensed area of the primary shop, including access pathways, entrances, common areas, water sources, and restrooms. ( )

02. Contiguous Shop, Licensure and Operation Requirements. A contiguous shop license may be issued and annually renewed only under the following conditions: ~~(7-1-93)~~( )

a. Application for a contiguous shop license shall be made on forms available from the Bureau ~~and shall include plans and specifications complying with local ordinances and zoning requirements~~. All applications shall be submitted to the Idaho Barber Board for approval and a license must be issued before a new shop may open for business~~.~~; ~~(3-13-02)~~( )

b. ~~*The area licensed as a contiguous shop shall be contiguous by a minimum three (3) foot access to an area licensed as a primary cosmetology establishment or primary barber shop.*~~ The contiguous shop is associated with a currently licensed primary shop and a holder of the primary shop license provides proof that the primary shop is located and equipped to meet the sanitary requirements and rules of the Board; ~~*(3-13-02)*~~( )

c. ~~*The licensed contiguous shop area shall not overlap any portion of another contiguous shop designated area*~~ The contiguous shop shall only operate in the contiguous shop designated areas within the associated primary shop. ~~*(3-13-02)*~~( )

d. ~~*The licensed contiguous shop area shall provide adequate dimension to allow the safe and sanitary practice of barbering or barber styling for all individual stations that may be in operation*~~ The holder of the contiguous shop license will be responsible for complying with the sanitation requirements and all other applicable statutes and rules for the contiguous designated area where it operates. ~~*(3-13-02)*~~( )

~~**e.**~~ ~~*There is access to restrooms from within the building.*~~ ~~*(7-1-93)*~~

03. Barber Shop Changes in Ownership or Location. (3-13-02)

a. Whenever a change of ownership or fixed location of a primary or contiguous barber shop occurs, an original registration fee must be paid and compliance with all rules concerning a new ~~*establishment*~~ shop met, before a new license will be issued. SHOP LICENSES ARE NOT TRANSFERABLE. ~~*(3-13-02)*~~( )

b. Deletion of an owner from multiple ownership does not constitute a change in ownership. (7-1-93)

c. Addition of an owner to multiple ownership constitutes a change in ownership. (7-1-93)

d. Whenever any shop ceases operation at the licensed location, the ~~*owner*~~ holder(s) of the license shall notify the Board in writing that the shop is out of business and the ~~*establishment*~~ shop license shall be submitted to the Bureau. In addition, for a contiguous shop license, a holder of the associated primary shop license may notify the Board in writing that the contiguous shop is out of business. ~~*A new primary or contiguous establishment license will not be issued for any location that is currently licensed as an establishment at the time of application.*~~ ~~*(3-13-02)*~~( )

e. A new primary shop license will not be issued for any location that is currently licensed as a primary shop at the time of application. ( )

(BREAK IN CONTINUITY OF SECTIONS)

550. INSPECTION AND SANITARY RULES. (RULE 550).
Each cosmetological establishment and school of cosmetology and barber shop and school of barbering is subject to inspection by agents of the board or bureau in accordance with the following rules (reference Section 54-824, and 54-524, Idaho Code). Grade score is indicated by number following rule. (7-1-93)

01. Premises. All shops and schools shall be open to inspection during business hours to authorized agents of the Cosmetology/Barber Boards. Shops and schools must be separated from living areas by substantial walls and/or closable doors. All shops and schools must be maintained in an orderly manner and shall be heated, lighted, and ventilated so as to be safe and comfortable to the operators and patrons. Score - 5 (7-1-98)

02. Floors, Walls, and Ceilings. Floors, walls, ceilings, furniture, and all other fixtures shall be kept clean and in good repair at all times. Score - 5 (7-1-98)

03. Instrument Cleaning. All instruments used by operators shall be thoroughly cleaned after each use and prior to storage and/or sanitation. Score - 15 (7-1-98)

04. Instrument Sanitation. All instruments used by operators shall be sanitized, after cleaning and

prior to use on the public, with a sanitizing agent registered by the Environmental Protection Agency as Hospital Grade or better. Every precaution shall be taken to prevent the transfer of disease-causing pathogens from person to person. Score - 15 ~~(7-1-98)~~(____)

05. **Towels**. Clean towels shall be used for each patron served. A clean paper or cloth neckband shall be used to provide a sanitary barrier which shall be maintained between each patron's neck and all multi-use capes. Paper towels and paper neckstrips shall be disposed of after one (1) use. Score - 5 (7-1-98)

06. **Storage of Equipment**. All instruments, towels, and linens shall be stored in clean, closed cabinets, drawers, and/or containers after they are cleaned and sanitized. Score - 5 (7-1-98)

07. **Dispensers**. All solutions and/or compounds shall be clearly labeled, maintained, and dispensed in a sanitary manner. All single-use applicators shall be disposed of after one (1) use. Paraffins, waxes, and all other solutions and/or compounds shall be maintained free of any foreign contaminants. Score - 5 ~~(7-1-98)~~(____)

08. **Uniforms**. All clothing worn by operators shall be clean and washable. Score - 5 (7-1-98)

09. **Water Supply**. Water supplies shall be from an approved source. Sufficient basins with hot and cold running water, approved drainage systems, soap and single-use towels shall be conveniently located within the work area. Every operator and/or student shall wash their hands prior to providing service to any patron. Score - 10 (7-1-98)

10. **Toilet Facilities**. Clean adequate and convenient toilet facilities located and accessible from within the building where the shop or school is located, shall be available for use by operators and patrons. A basin with hot and cold running water, approved drainage systems, soap and single-use towels shall be provided within said facilities. Score - 10 (7-1-98)

11. **Safety**. Each shop and school shall have a clearly identifiable first-aid kit readily accessible on the premises. No animals are allowed in shops or schools except ~~*those animals*~~ service dogs trained to ~~*provide service to the physically impaired*~~ do work or perform tasks for persons with disabilities. The definition of service animal and disabilities shall be as set forth in U.S. Department of Justice Regulations at 28 C.F.R. Section 36.104 effective March 15, 2011. Score - 5 ~~(7-1-98)~~(____)

12. **Licenses and Certificates**. All shops and schools must be licensed prior to their operation and must be under the direct supervision of a licensed operator. A current shop and/or school license, valid operator license(s) or permit(s), a copy of these sanitary rules, and a valid classification card shall be conspicuously displayed in the work area of each shop and/or school for the information of operators, board agents, and the public in general. Score - 15 ~~(7-1-98)~~(____)

13. **Classification of Shops and Schools**. Following an inspection, each shop and school will receive classification as follows: 100% - 90% = "A"; 89% - 80% = "B"; 79% - 0% = "C." The "C" classification denotes an unacceptable rating and improvements are required within thirty (30) days for continued operation. (7-1-98)

~~*IDAHO BOARD OF BARBER EXAMINERS*~~
~~*Bureau of Occupational Licenses*~~
~~*700 W. State Street*~~
~~*Boise, Idaho 83702*~~ ~~*(7-1-93)*~~

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.04.01 - RULES OF THE IDAHO BOARD OF COSMETOLOGY

DOCKET NO. 24-0401-1401

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 54-803 and 54-831, 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 15, 2014.

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 rules are being updated to simplify and clarify the licensing of contiguous establishments which allows a licensee to practice as an independent contractor. Currently the licenses are issued to the space or station within a primary establishment and requires a new application if the licensees changes the space they are working in. The updates will allow the issuance of a contiguous license to the address of the primary establishment which will allow licensees to move their workspace within the primary establishment without reapplying for a new establishment license.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rules of the Idaho Board of Cosmetology are being updated to simplify and clarify the licensing of contiguous establishments which allows a licensee to practice as an independent contractor. The change will allow a contiguous establishment license to be issued to the location address of the primary establishment rather than a specific station within the primary establishment. The Board has worked with interested parties including licensees, representatives from the Idaho Department of Labor and the Industrial Commission in order to protect a contiguous licensee's independent contractor status.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 October 22, 2014.

DATED this 28th Day of August, 2014.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233 / Fax: (208) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-0401-1401
(Only those Sections being amended are shown.)

300. LICENSURE AND OPERATION OF PRIMARY AND CONTIGUOUS ESTABLISHMENTS (RULE 300).
Except as otherwise provided in statute, a duly licensed individual must practice within a licensed cosmetological establishment. A cosmetological establishment may be licensed as a primary establishment or a contiguous establishment that operates within a primary establishment. ( )

01. Applications. Application for establishment license shall be made on forms furnished by the Board. The fully completed application form, with the required fees, must be submitted to the Board and a license issued prior to the opening or operation of any cosmetological establishment. (7-1-97)

02. Primary Establishment License. A primary establishment license may be issued and annually renewed only under the following conditions: ~~(7-1-97)~~( )

a. Compliance with Subsection 300.01; and (7-1-97)

b. There is a clearly defined and designated working floor space of adequate dimension to allow the safe and sanitary practice of any one (1) or combination of defined practices of cosmetology for all individual stations that may be in operation in addition to any restroom and access areas; and (5-3-03)

c. There is an approved hot and cold running water source and drainage system that is available to any contiguous cosmetology establishment or barber shop that may exist; and must be within the perimeters of the licensed establishment and separate from the toilet facilities~~.~~; and ~~(7-1-97)~~( )

~~***d.*** *The licensed area does not overlap any portion of a contiguous or other primary establishment designated area; and* *(7-1-97)*~~

~~***e***~~**d.** There are restroom facilities in the building in which the primary establishment is located and which shall be accessible from the primary area and to all areas designated for the operation of contiguous establishments. Said restroom facilities shall contain an approved hot and cold running water source and approved drainage system. Said water source shall be in addition to the work area facilities~~.~~; and ~~(4-9-09)~~( )

~~***f***~~**e.** All primary areas shall be connected by an access area not less than three (3) feet wide and said access shall not be part of any contiguous establishment~~'s~~ designated area~~.~~; and ~~(7-1-97)~~( )

f. Any areas designated by the primary establishment for the operation of contiguous establishments shall be clearly defined, fixed, and shall provide adequate dimension to allow the safe and sanitary practice of any one (1) or combination of the defined practices of cosmetology for all stations that may be operated in that area. ( )

g. The holder of the primary establishment license will be responsible for complying with the sanitation requirements and all other applicable statutes and rules for the designated licensed area of the primary establishment, including areas that are cooperatively or jointly used as "common areas" such as shampoo bowls, restrooms, entrance or reception areas. ( )

03. Contiguous Establishment License. A contiguous establishment license may be issued and annually renewed only under the following conditions: ~~(7-1-97)~~( )

a. Compliance with Subsection 300.01; and (7-1-97)

b. ~~*The licensed area is contiguous to an area licensed as a primary cosmetology establishment or barber shop and which is accessible from the primary area by not less than a three (3) foot wide access area*~~ The contiguous establishment is associated with a currently licensed primary establishment; and ~~(7-1-97)~~( )

c. ~~*The licensed area does not overlap any portion of a primary or other contiguous establishments' designated area. "Overlap" will not include the cooperative or joint use of "common areas" such as shampoo bowls, restrooms, entrance or reception areas or the like, which are physically located within the designated licensed area of the primary shop but which are not within the designated licensed area of any contiguous shop. As these common areas are within the designated area licensed by the primary establishment, the holder of the primary license will be responsible for any violations which occur there; and*~~ The contiguous establishment shall only operate in the contiguous establishment designated areas within the associated primary establishment. ~~*(7-1-97)*~~( )

d. ~~*The licensed contiguous shop area shall provide adequate dimension to allow the safe and sanitary practice of any one (1) or combination of the defined practices of cosmetology for all individual stations that may be in operation; and*~~ The holder of the contiguous establishment license will be responsible for complying with the sanitation requirements and all other applicable statutes and rules for the contiguous designated area where it operates. ~~*(5-3-03)*~~( )

~~**e.** *There is access to restrooms from within the building.* *(7-1-97)*~~

04. Businesses Other Than Cosmetological Establishments or Barber Shops. Businesses other than cosmetological establishments or barber shops, and living quarters shall be separate and apart. Home establishments must provide a separate outside entrance directly into the establishment and substantial partitions or walls shall extend from the floor to not less than seven (7) feet high, separating the establishment from adjoining rooms used for business or domestic purposes. All doors to an establishment from adjacent rooms shall be closed. (7-1-97)

05. Adequate Toilet Facilities. Adequate toilet facilities shall be conveniently located and accessible from within the building where the establishment is located. (7-1-97)

06. Conditions for Issuance. No cosmetological primary establishment license may be issued which includes or overlaps all or any portion of an existing establishment license. ~~*(7-1-97)*~~( )

301. COSMETOLOGICAL ESTABLISHMENT CHANGES IN - OWNERSHIP - LOCATION - LICENSURE REQUIREMENTS (RULE 301).

01. Change of Ownership or Location. Whenever a change of ownership or fixed location of an establishment occurs, an original license fee must be paid and compliance with all rules concerning a new establishment must be met, before a new license will be issued. ~~*In the event of the relocation of a contiguous establishment within the same primary establishment, an original license fee shall not be required provided the contiguous establishment is currently licensed at the time of the relocation.*~~ LICENSES ARE NOT TRANSFERABLE. ~~*(5-3-03)*~~( )

02. Board Must Be Informed of All Changes. The Board must be informed in writing of any and all changes of ownership and location of establishments. (5-3-03)

03. Deletion of an Owner. Deletion of an owner in a multiple ownership may be effected by filing a written statement with the Board signed by the person withdrawing and/or the remaining owner(s). (7-1-97)

04. Transfer of Owner. If the transfer involves change of corporate structure or deleting one (1) or more owners, a written notarized statement signed by all former owners as registered with the Board shall be accepted. If the existing establishment license has expired, the procedure as set forth in Subsection 300.01 shall be followed. (7-1-97)

05. Addition of an Owner. Addition of an owner to multiple ownership constitutes a change in ownership and the requirements for a new establishment apply. (7-1-97)

06. Supervision in an Establishment. A properly licensed establishment must operate under proper supervision, refer to Section 54-803, Idaho Code. (7-1-97)

07. Out of Business. Whenever any ~~*shop*~~ establishment ceases operation at the licensed location, the

owner(s) or authorized agent of the ~~*shop*~~ establishment shall notify the Board by submitting ~~*either*~~: ~~*(5-3-03)*~~( )

a. A signed letter advising that the ~~*shop*~~ establishment is out of business; or ~~*(5-3-03)*~~( )

b. The establishment license bearing the signature of the owner(s) or authorized agent and marked out-of-business~~.~~; or ~~*(5-3-03)*~~( )

c. For a contiguous establishment license, a signed statement by the associated primary establishment advising that the contiguous establishment is out of business. ( )

08. **License Status**. A new primary ~~*or contiguous*~~ establishment license will not be issued for any location that is currently licensed as a~~*n*~~ primary establishment at the time of application. ~~*(5-3-03)*~~( )

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.06.01 - RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

DOCKET NO. 24-0601-1401 (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 54-3712 and 54-3717, 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 15, 2014.

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 State Occupational Therapy Board operates on dedicated funds from fees paid by its licensees and applicants. This change would decrease the initial licensure fee, limited permit or temporary license fee, annual active license renewal, and inactive license renewal in an effort to reduce the Board's dedicated fund balance and convey a benefit to licensees and applicants through these lower fees.

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

Rule 041 is being amended to decrease the initial license fee for occupational therapists from $115 to $100; initial license fee for occupational therapy assistants from $85 to $75; limited permit or temporary license fee from $30 to $25; active license renewal fee for occupational therapists from $70 to $55; active license renewal for occupational therapy assistants from $50 to $35; and inactive license renewal fee from $50 to $25.

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

This rulemaking will have no impact on general funds. This rulemaking is anticipated to reduce the amount of dedicated fund fees collected by the Board by approximately $11,770.00 based on the current number of licensees and an estimated number of applications received in the last year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed revisions to the fee rule are simple in nature and confer a benefit to the licensees and applicants. No opposition to this proposed fee reduction is anticipated. This proposal was discussed during noticed, open meetings of the Board.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 October 22, 2014.

DATED this 28th Day of August, 2014.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233 / Fax: (208) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-0601-1401
(Only those Sections being amended are shown.)

041. FEES.

01. Fees. Necessary fees shall accompany applications. Fees shall not be refundable. (3-29-10)

02. Initial Licensure. The fee for initial licensure of occupational therapists shall be one hundred ~~*fifteen*~~ dollars ($1~~*15*~~00) and the fee for occupational therapy assistants shall be ~~*eighty*~~ seventy-five dollars ($~~*8*~~75). ~~*(3-29-10)*~~(____)

03. Limited Permit or Temporary License. The fee for a limited permit or temporary license shall be ~~*thirty*~~ twenty-five dollars ($~~*30*~~25). ~~*(3-29-10)*~~(____)

04. Active License Renewal Fee. The annual renewal fee for an active license shall be ~~*seventy*~~ fifty-five dollars ($~~*70*~~55) for occupational therapists and ~~*fifty*~~ thirty-five dollars ($35~~*0*~~) for occupational therapy assistants. ~~*(4-7-11)*~~(____)

05. Reinstatement Fee. The fee to reinstate a lapsed license shall be thirty-five dollars ($35). (3-29-10)

06. Inactive License Renewal Fee. The annual renewal fee for an inactive license shall be ~~*fifty*~~ twenty-five dollars ($25~~*0*~~) for occupational therapists and occupational therapy assistants. ~~*(4-7-11)*~~(____)

07. Inactive to Active License Fee. The fee for reinstating an inactive license to an active license is the difference between the current inactive and active license renewal fees. (4-7-11)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.09.01 - RULES OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

DOCKET NO. 24-0901-1401 (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 54-1604 and 54-1608, 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 15, 2014.

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 Examiners of Nursing Home Administrators operates on dedicated funds from fees paid by its licensees and applicants. The Board's expenses have been exceeding its revenues. This change will help balance the Board's annual budget while maintaining the services necessary to protect the health and safety of the public.

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

Rule 600 is being amended to increase the original application fee from $100 to $200; the endorsement application fee from $100 to $200; the annual renewal fee from $175 to $200; the original license fee from $150 to $200; and the Administrator-in-training registration fee from $100 to $150.

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

This rulemaking will have no impact on general funds. The rule change will result in an annual increase of approximately $8,625.00 in the Board's dedicated fund based on the current number of licensees and an estimated number of applications received in the last year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Board of Examiners of Nursing Home Administrators operates on dedicated funds. The proposed rule is needed because the Board's expenses have been exceeding its revenues. The change was discussed during a noticed, open meeting of the Board.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 October 22, 2014.

DATED this 28th Day of August, 2014.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.

P O Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233 / Fax: (208) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-0901-1401
(Only those Sections being amended are shown.)

600. FEES (RULE 600).

01. Original License and Annual Renewal Fee. (3-13-02)

a. Original license fee -- ~~*one*~~ two hundred ~~*fifty*~~ dollars ($~~*15*~~200). ~~*(3-13-02)*~~(____)

b. Annual renewal fee -- ~~*one*~~ two hundred ~~*seventy-five*~~ dollars ($~~*175*~~200). ~~*(3-13-02)*~~(____)

02. Application Fees. (3-10-00)

a. Original application fee -- ~~*one*~~ two hundred dollars ($~~*1*~~200). ~~*(3-13-02)*~~(____)

b. Endorsement application fee -- ~~*one*~~ two hundred dollars ($~~*1*~~200). ~~*(3-13-02)*~~(____)

03. Temporary Fee. (3-13-02)

a. Temporary permit fee -- one hundred dollars ($100). (3-13-02)

b. Administrator-In-Training registration fee -- one hundred dollars ($100). (3-13-02)

04. License Reinstatement Fee. License reinstatement fee -- one hundred dollars ($100). (3-13-02)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS

DOCKET NO. 24-1401-1401 (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 54-3204 and 54-3209, 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 15, 2014.

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 State Board of Social Work Examiners operates on dedicated funds from fees paid by its licensees and applicants. The Board's expenses have been exceeding its revenues. This change will help balance the Board's annual budget while maintaining the services necessary to protect the health and safety of the public.

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

Rule 300 is being amended to increase the initial application fee from $60 to $70; the endorsement fee from $60 to $90; the annual renewal fee for Clinical Social Worker from $70 to $90; the annual renewal fee for Social Worker and Masters Social Worker from $60 to $80; the annual renewal fee for Inactive Clinical Social Worker from $35 to $45; and the annual renewal fee for Inactive Social Worker and Inactive Masters Social Worker from $30 to $40.

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 rule will have no impact on general funds. The rule change will result in an annual increase of approximately $77,080.00 in the Board's dedicated fund, based on the current number of licensees and an estimate of original applications received in a year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Board of Social Work Examiners operates on dedicated funds. The proposed rule is needed because the Board's expenses have been exceeding its revenues. The change was discussed during a noticed, open meeting of the Board.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 October 22, 2014.

DATED this 28th Day of August, 2014.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.

P O Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233 / Fax: (208) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-1401-1401
(Only those Sections being amended are shown.)

300. FEES (RULE 300).
To administer and carry out the provisions of this Act, the following fees are established: (7-1-93)

01. Application and Original License Fee. Application and Original License Fee for licensed clinical social worker or licensed masters social worker or licensed social worker - ~~*sixty*~~ seventy dollars ($~~*6*~~70). ~~*(4-9-09)*~~(____)

02. Examination Fee. Examination fee will be set by the Board in concordance with the testing service fees. (7-1-93)

03. Endorsement and License Fee. Endorsement and License Fee for licensed clinical social worker or licensed masters social worker or licensed social worker - ~~*sixty*~~ ninety dollars ($~~*6*~~90). ~~*(4-9-09)*~~(____)

04. Renewal Fee. Renewal Fee: (7-1-93)

a. Licensed Clinical Social Worker -- ~~*Seventy*~~ Ninety dollars ($~~*7*~~90). ~~*(4-9-09)*~~(____)

b. Licensed Masters Social Worker -- ~~*Sixty*~~ Eighty dollars ($~~*6*~~80). ~~*(4-9-09)*~~(____)

c. Licensed Social Worker -- ~~*Sixty*~~ Eighty dollars ($~~*6*~~80). ~~*(4-9-09)*~~(____)

d. Inactive Licensed Clinical Social Worker -- ~~*Thirty*~~ Forty-five dollars ($~~*3*~~45). ~~*(4-9-09)*~~(____)

e. Inactive Licensed Masters Social Worker -- ~~*Thirty*~~ Forty dollars ($~~*3*~~40). ~~*(4-9-09)*~~(____)

f. Inactive Licensed Social Worker -- ~~*Thirty*~~ Forty dollars ($~~*3*~~40). ~~*(4-9-09)*~~(____)

05. Reinstatement Fee. Reinstatement fees in accordance with Section 67-2614, Idaho Code. (7-1-93)

06. All Fees Under This Act Are Non-Refundable. All fees under this Act are non-refundable. (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.15.01 - RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-1401

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 54-3404, 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 15, 2014.

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 American Counseling Association (ACA) Code of Ethics was amended effective 2014 and the Board is adopting the updated version and incorporating the code of ethics in its rules by reference.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the American Counseling Association (ACA) Code of Ethics has been updated for 2014 and the Board would like to adopt the updated version. The rule change was discussed during a noticed, open meeting of the Board.

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 American Counseling Association (ACA) Code of Ethics was amended effective 2014 and the Board is adopting the updated version and incorporating the code of ethics in its rules by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 October 22, 2014.

DATED this 28th day of August, 2014.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233 / Fax: (208) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1501-1401
(Only those Sections being amended are shown.)

004. INCORPORATION BY REFERENCE (RULE 4).

01. ACA Code of Ethics. "ACA Code of Ethics," as published by the American Counseling Association (ACA), effective 20~~05~~14, is herein incorporated by reference and is available from the Board's office and on the Board web site. ~~(4-4-13)~~( )

02. AAMFT Code of Ethics. The document titled "AAMFT Code of Ethics," as published by the American Association for Marriage and Family Therapy (AAMFT), effective July 1, 2012 and referenced in Subsections 350, and 450.01, is herein incorporated by reference and is available from the Board's office and on the Board web site. (4-4-13)

03. Guidelines. The document titled "Approved Supervision Designation Handbook" that provides supervision guidelines for supervisors, as published by the American Association for Marriage and Family Therapy (AAMFT), dated October 2007 referenced in Subsection 239.03.a. of these rules, is herein incorporated by reference and is available from the Board's office and on the Board web site at http://www.ibol.idaho.gov. (4-4-13)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.26.01 - RULES OF THE IDAHO BOARD OF MIDWIFERY

DOCKET NO. 24-2601-1402

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 54-5505, 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 15, 2014.

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 Midwifery is adding a section to its rules to clarify when newborns must be transferred and when newborn consultation is required. The need for this rule was brought to the Board by interested parties during the 2014 Legislative Session when the Act was being reauthorized. The addition will further protect the public.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the State Board of Midwifery is updating its rules to add a section regarding conditions that require newborn transfer of care or consultation. This rule change was discussed during a noticed open meeting of the Board.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

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 October 22, 2014.

DATED this 28th Day of August, 2014.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
Boise, ID 83720-0063
Tel: (208) 334-3233 / Fax: (208) 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-2601-1402
(Only those Sections being amended are shown.)

357. -- ~~44~~359. (RESERVED)

360. NEWBORN TRANSFER OF CARE OR CONSULTATION (RULE 360).

01. Newborn Transfer of Care. Conditions for which a licensed midwife must facilitate the immediate transfer of a newborn to a hospital for emergency care: ( )

a. Respiratory distress defined as respiratory rate greater than eighty (80) or grunting, flaring, or retracting for more than one (1) hour. ( )

b. Any respiratory distress following delivery with meconium stained fluid. ( )

c. Central cyanosis or pallor for more than ten (10) minutes. ( )

d. Apgar score of six (6) or less at five (5) minutes of age. ( )

e. Abnormal bleeding. ( )

f. Any condition requiring more than eight (8) hours of continuous postpartum evaluation. ( )

g. Any vesicular skin lesions. ( )

h. Seizure-like activity. ( )

i. Any green emesis. ( )

j. Poor feeding effort due to lethargy or disinterest in nursing for more than two (2) hours immediately following birth. ( )

02. Newborn Consultation Required. Conditions for which a licensed midwife must consult a Pediatric Provider (Neonatologist, Pediatrician, Family Practice Physician, Advanced Practice Registered Nurse, or Physician Assistant): ( )

a. Temperature instability, defined as a temperature less than ninety-six point eight (96.8) degrees Fahrenheit or greater than one hundred point four (100.4) degrees Fahrenheit documented two (2) times more than fifteen (15) minutes apart. ( )

b. Murmur lasting more than twenty-four (24) hours immediately following birth. ( )

c. Cardiac arrhythmia. ( )

d. Congenital anomalies. ( )

e. Birth injury. ( )

f. Clinical evidence of prematurity, including but not limited to, low birth weight of less than two thousand five hundred (2,500) grams, smooth soles of feet, or immature genitalia. ( )

g. Any jaundice in the first twenty-four (24) hours after birth or significant jaundice at any time. ( )

h. No stool for more than twenty-four (24) hours immediately following birth. ( )

i. No urine output for more than twenty-four (24) hours. ( )

j. Development of persistent poor feeding effort at any time. ( )

361. -- 449. (RESERVED)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1401

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 54-1717, Idaho Code.

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

Wednesday, October 22, 2014, 1:00 p.m.

Idaho Capitol Building
700 W. Jefferson St., Room WW53
Boise, Idaho 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:

Federal law has created a new drug category, biosimilars, which are federally allowed to be substituted for a prescribed biological product. Idaho law is currently more restrictive than federal law, so such substitution is not permissible without this rule promulgation. This proposed rule allows a biosimilar product to be substituted for a prescribed biological product, upon the determination by the FDA that the biosimilar product is interchangeable.

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

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

There is no fiscal impact of this proposed rule to the Board of Pharmacy; however, the State of Idaho will save money when biosimilars are dispensed to Health and Welfare recipients and state employees.

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 2, 2014 Idaho Administrative Bulletin, **Vol. 14-7, page 125**, and in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mark Johnston, Executive Director, (208) 334-2356.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Mark Johnston, R.Ph.
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Tel: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1401
(Only those Sections being amended are shown.)

010. DEFINITIONS AND ABBREVIATIONS (A -- I).

01. Accredited School or College of Pharmacy. A school or college that meets the minimum standards of the ACPE and appears on its list of accredited schools or colleges of pharmacy. (3-21-12)

02. ACPE. Accreditation Council for Pharmacy Education. (3-21-12)

03. Acute Care Hospital. A facility in which concentrated medical and nursing care is provided by, or under the supervision of, physicians on a twenty-four (24) hour basis to inpatients experiencing acute illnesses. (3-21-12)

04. ADS -- Automated Dispensing and Storage. A mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing, or distribution of drugs and that collects, controls, and maintains transaction information. (3-21-12)

05. Biological Product. A virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product, protein (except any chemically synthesized polypeptide), or analogous product, or arsphenamine or derivative of arsphenamine (or any other trivalent organic arsenic compound), that is applicable to the prevention, treatment, or cure of a disease or condition of human beings. ( )

06. Biosimilar. A biological product that is highly similar to the reference product notwithstanding minor differences in clinically inactive components; and there are no clinically meaningful differences between the biological product and the reference product in terms of the safety, purity, and potency of the product. ( )

0~~5~~7. CDC. United States Department of Health and Human Services, Centers for Disease Control and Prevention. (3-21-12)

0~~6~~8. Central Drug Outlet. A resident or nonresident pharmacy, drug outlet or business entity employing or contracting pharmacists to perform centralized pharmacy services. (7-1-13)

0~~7~~9. Central Pharmacist. A pharmacist performing centralized pharmacy services. (7-1-13)

~~08~~10. Central Pharmacy. A pharmacy performing centralized pharmacy services. (7-1-13)

~~09~~11. Centralized Pharmacy Services. The processing by a central drug outlet or central pharmacist of a request from another pharmacy to fill, refill, or dispense a prescription drug order, perform processing functions, or provide cognitive or pharmaceutical care services. Each function may be performed by the same or different persons and at the same or different locations. (7-1-13)

1~~0~~2. Change of Ownership. A change of majority ownership or controlling interest of a drug outlet

licensed or registered by the Board. (3-21-12)

1~~1~~3. **Charitable Clinic or Center -- Authorized Personnel**. A person designated in writing and authorized by the qualifying charitable clinic or center's medical director or consultant pharmacist to perform specified duties within the charitable clinic or center under the supervision of a pharmacist, physician, dentist, optometrist, physician assistant, or an advanced practice professional nurse with prescriptive authority. (3-21-12)

1~~2~~4. **Chart Order**. A lawful drug order for a drug or device entered on the chart or a medical record of an inpatient or resident of an institutional facility. (3-21-12)

1~~3~~5. **CME**. Continuing medical education. (3-21-12)

1~~4~~6. **COE -- Central Order Entry**. A pharmacy that processes information related to the practice of pharmacy, engages solely in centralized prescription processing but from which drugs are not dispensed, is physically located outside the institutional pharmacy of a hospital, and is part of a hospital system. (3-21-12)

1~~5~~7. **Collaborative Pharmacy Practice**. A pharmacy practice whereby one (1) or more pharmacists jointly agree to work under a protocol authorized by one (1) or more prescribers to provide patient care and DTM services not otherwise permitted to be performed by a pharmacist under specified conditions or limitations. (3-21-12)

1~~6~~8. **Collaborative Pharmacy Practice Agreement**. A written agreement between one (1) or more pharmacists and one (1) or more prescribers that provides for collaborative pharmacy practice. (3-21-12)

1~~7~~9. **Continuous Quality Improvement Program**. A system of standards and procedures to identify and evaluate quality-related events and to constantly enhance the efficiency and effectiveness of the structures and processes of a pharmacy system. (3-21-12)

~~18~~20. **Correctional Facility**. Any place used for the confinement of persons charged with or convicted of an offense or otherwise confined under a court order. (4-4-13)

~~19~~21. **CPE**. Continuing pharmacy education. (3-21-12)

2~~0~~2. **DEA**. United States Drug Enforcement Administration. (3-21-12)

2~~1~~3. **Distributor**. A supplier of drugs manufactured, produced, or prepared by others to persons other than the ultimate consumer. (3-21-12)

2~~2~~4. **DME**. Durable medical equipment. (3-21-12)

2~~3~~5. **Drug Order**. A prescription drug order issued in the unique form and manner permitted for a patient or resident of an institutional facility or as permitted for other purposes by these rules. Unless specifically differentiated, rules applicable to a prescription drug order are also applicable to a drug order. (3-21-12)

2~~4~~6. **Drug Product Selection**. The act of selecting either a brand name drug product or its therapeutically equivalent generic. (3-21-12)

2~~5~~7. **Drug Product Substitution**. Dispensing a drug product other than prescribed. (4-4-13)

2~~6~~8. **DTM -- Drug Therapy Management**. Selecting, initiating, or modifying drug treatment pursuant to a collaborative practice agreement. (3-21-12)

2~~7~~9. **Emergency Drugs**. Drugs required to meet the immediate therapeutic needs of one (1) or more patients that are not available from any other authorized source in sufficient time to avoid risk of harm due to the delay that would result from obtaining the drugs from another source. (3-21-12)

~~28~~30. **Executive Director**. The Idaho State Board of Pharmacy executive director created by Sections 54-1713 and 54-1714, Idaho Code. (3-21-12)

~~29~~31. **FDA**. United States Food and Drug Administration. (3-21-12)

3~~0~~2. **Flavoring Agent**. An additive used in food or drugs when the additive is used in accordance with the principles of good pharmacy practices and in the minimum quantity required to produce its intended effect. (3-21-12)

3~~1~~3. **Floor Stock**. Drugs or devices not labeled for a specific patient that are maintained at a nursing station or other department of an institutional facility, excluding the pharmacy, for the purpose of administering to patients of the facility. (3-21-12)

3~~2~~4. **FPGEC**. Foreign Pharmacy Graduate Examination Committee. (4-4-13)

3~~3~~5. **HIPAA**. Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191). (3-21-12)

3~~4~~6. **Hospital System**. A hospital or hospitals and at least one (1) on-site institutional pharmacy under common ownership. A hospital system may also include one (1) or more COE pharmacies under common ownership. (3-21-12)

3~~5~~7. **Idaho State Board of Pharmacy or Idaho Board of Pharmacy**. The terms Idaho State Board of Pharmacy, Idaho Board of Pharmacy, State Board of Pharmacy, and Board of Pharmacy are deemed synonymous and are used interchangeably to describe the entity created under the authority of Title 54, Chapter 17, Idaho Code. Unless specifically differentiated, "the Board" or "Board" also means the Idaho State Board of Pharmacy. (3-21-12)

3~~6~~8. **Individually Identifiable Health Information**. Information that is a subset of health information, including demographic information, collected from an individual and that: (3-21-12)

a. Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (3-21-12)

b. Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual that: (3-21-12)

i. Identifies the individual; or (3-21-12)

ii. With respect to which there is a reasonable basis to believe the information can be used to identify the individual. (3-21-12)

3~~7~~9. **Institutional Pharmacy**. A pharmacy located in an institutional facility. (3-21-12)

40. **Interchangeable**. A biological product that may be substituted for the reference product without the intervention of the health care provider who prescribed the reference product. ( )

(BREAK IN CONTINUITY OF SECTIONS)

130. DRUG PRODUCT: SUBSTITUTION.
Drug product substitutions are allowed only as follows: (4-4-13)

01. **Hospital**. Pursuant to a formulary or drug list prepared by the pharmacy and therapeutics committee of a hospital; (4-4-13)

02. **Skilled Nursing Facility**. At the direction of the quality assessment and assurance committee of a skilled nursing facility consisting of the director of nursing services, a physician designated by the facility, a consultant pharmacist, and at least two (2) other members of the facility's staff; or (4-4-13)

03. Drug Shortage. Upon a drug shortage, a pharmacist, using his best professional judgment, without contacting the prescriber, may substitute an alternative dose of a prescribed drug, so long as the prescriber's directions are also modified, to equate to an equivalent amount of drug dispensed as is prescribed. (4-4-13)

04. Biosimilars. Upon the determination by the FDA that the biosimilar product is interchangeable with the prescribed biological product, provided however, no substitution is permitted if the prescriber orders by any means that the prescribed biological product must be dispensed. If a biological product is substituted, the name of the drug and the manufacturer or the NDC number must be documented in the patient medication record. ( )

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1402 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2014.

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 54-1717, Idaho Code.

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

Wednesday, October 22, 2014, 1:00 p.m.

Idaho Capitol Building
700 W. Jefferson St., Room WW53
Boise, Idaho 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 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 federal Drug Quality and Security Act created a new type of drug outlet doing business into Idaho and potentially in Idaho: the outsourcing facility. This rulemaking defines outsourcing facilities, creates a new registration category, establishes a fee, and establishes practice standards for such outsourcing facilities.

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

The federal Drug Quality and Security Act created a new category of drug outlet registration: outsourcing facilities. As of July 14, 2014, fifty-one (51) outsourcing facilities are registered federally; all are nonresident, distributing into Idaho. Waiting until sine die of the 2015 Legislature will cause confusion and force the Board to register outsourcing facilities at a lower fee without practice standards. This rulemaking protects public safety by properly registering, including a registration fee, and instituting practice standards for outsourcing facilities.

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

This rulemaking is being promulgated due to the federal change that necessitates a state change and protects public safety by properly registering, including a registration fee, and instituting practice standards for outsourcing facilities. Pursuant to the board's authority set forth in Section 54-1720, Idaho Code, this rulemaking establishes fees for outsourcing facility registrations: five hundred dollar ($500) initial nonresident registration; two hundred fifty dollar ($250) initial resident registration; and two hundred fifty-dollar ($250) registration annual renewal.

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:

These rules will generate a small increase in the number of Board of Pharmacy registrants at either five hundred dollars ($500) or two hundred fifty dollars ($250) per initial registration and two hundred fifty dollars ($250) per renewal. Currently the number of federally registered outsourcing facilities that are not already registered in another category appears to be three (3) - and the federal law has been in place since November of 2013.

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 under Docket No. 27-0101-1401 in the July 2, 2014 Idaho Administrative Bulletin, **Vol. 14-7, page 125**, and in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Mark Johnston, Executive Director, (208) 334-2356.

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 22, 2014.

DATED this 29th Day of August, 2014.

Mark Johnston, R.Ph.
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Tel: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF FEE DOCKET NO. 27-0101-1402
(Only those Sections being amended are shown.)

011. DEFINITIONS AND ABBREVIATIONS (J -- R).

01. LTCF -- Long-Term Care Facility. An institutional facility that provides extended health care to resident patients. (3-21-12)

02. Mail Service Pharmacy. A nonresident pharmacy that ships, mails, or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law. (7-1-13)

03. MPJE. Multistate Pharmacy Jurisprudence Exam. (3-21-12)

04. MTM -- Medication Therapy Management. A distinct service or group of services that optimize therapeutic outcomes for individual patients. MTM services are independent of, but can occur in conjunction with, the provision or administration of a drug or a device and encompass a broad range of activities and responsibilities. The MTM service model in pharmacy practice includes the following five core elements: (3-21-12)

a. Medication therapy review; (3-21-12)

b. Personal medication record; (3-21-12)

c. Medication-related action plan; (3-21-12)

d. Intervention or referral, or both; (3-21-12)

e. Documentation and follow-up. (3-21-12)

05. **NABP**. National Association of Boards of Pharmacy. (3-21-12)

06. **NAPLEX**. North American Pharmacists Licensure Examination. (3-21-12)

07. **NDC**. National Drug Code. (3-21-12)

08. **Non-Institutional Pharmacy**. A pharmacy located in a drug outlet that is not an institutional facility. (3-21-12)

09. **Outsourcing Drug Outlet**. A drug outlet that is registered by the United States Food and Drug Administration pursuant to 21 U.S.C. Section 353b and either registered or endorsed by the Board. (9-1-14)T

~~09~~10. **Parenteral Admixture**. The preparation and labeling of sterile products intended for administration by injection. (3-21-12)

1~~0~~1. **Pharmaceutical Care Services**. A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and encompasses services provided by way of DTM under a collaborative practice agreement, pharmacotherapy, clinical pharmacy practice, pharmacist independent practice, and MTM. Except as permitted pursuant to a collaborative practice agreement, nothing in these rules allows a pharmacist, beyond what is statutorily allowed, to engage in the unlicensed practice of medicine or to diagnose, prescribe, or conduct physical examinations. Pharmaceutical care services are not limited to, but may include one (1) or more of the following, according to the individual needs of the patient: (4-4-13)

a. Performing or obtaining necessary assessments of the patient's health status, including the performance of health screening activities that may include, but are not limited to, obtaining finger-stick blood samples; (3-21-12)

b. Reviewing, analyzing, evaluating, formulating or providing a drug utilization plan; (3-21-12)

c. Monitoring and evaluating the patient's response to drug therapy, including safety and effectiveness; (3-21-12)

d. Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems, including adverse drug events; (3-21-12)

e. Documenting the care delivered; (3-21-12)

f. Communicating essential information or referring the patient when necessary or appropriate; (3-21-12)

g. Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; (3-21-12)

h. Conducting a drug therapy review consultation with the patient or caregiver; (3-21-12)

i. Preparing or providing information as part of a personal health record; (3-21-12)

j. Identifying processes to improve continuity of care and patient outcomes; (3-21-12)

k. Providing consultative drug-related intervention and referral services; (3-21-12)

l. Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; and (3-21-12)

m. Other services as allowed by law. (3-21-12)

1~~1~~2. **Pharmacist Extern**. A person enrolled in an accredited school or college of pharmacy who is pursuing a professional degree in pharmacy. (4-4-13)

1~~2~~3. **Pharmacist Intern**. A person who has successfully completed a course of study at an accredited school or college of pharmacy, has received a professional degree in pharmacy, and is obtaining practical experience under the supervision of a pharmacist. (3-21-12)

1~~3~~4. **Pharmacy Operations**. Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. (3-21-12)

1~~4~~5. **PHI -- Protected Health Information**. Individually identifiable health information that is: (3-21-12)

a. Transmitted by electronic media (as defined by the HIPAA Privacy Rule at 45 CFR 160.103); (3-21-12)

b. Maintained in electronic media; and (3-21-12)

c. Transmitted or maintained in any other form or medium. (3-21-12)

d. PHI excludes individually identifiable health information in: (3-21-12)

i. Education records covered by the Family Education Right and Privacy Act, as amended (20 U.S.C. Section 1232g); (3-21-12)

ii. Records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv); and (3-21-12)

iii. Employment records held by a covered entity (as defined by the HIPAA Privacy Rule at 45 CFR 160.103) in its role as an employer. (3-21-12)

1~~5~~16. **PIC**. Pharmacist-in-charge. (3-21-12)

1~~6~~17. **PMP**. Prescription Monitoring Program. (3-21-12)

1~~7~~18. **Prepackaging**. The act of transferring a drug, manually or using an automated system, from a manufacturer's original container to another container prior to receiving a prescription drug order. (3-21-12)

1~~8~~19. **Prescriber**. An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. (3-21-12)

~~19~~20. **Prescriber Drug Outlet**. A drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples. (3-21-12)

2~~0~~1. **Readily Retrievable**. Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. (3-21-12)

2~~1~~2. **Relative Contraindication**. A condition that renders a particular treatment or procedure inadvisable, but not prohibitive. (3-21-12)

2~~2~~3. **Remote Dispensing Site**. A licensed pharmacy staffed by one or more certified technicians at which telepharmacy services are provided through a supervising pharmacy. (3-21-12)

2~~3~~4. **Remote Office Location**. A secured area that is restricted to authorized personnel, adequately protects private health information, and shares a secure common electronic file or a private, encrypted connection with a pharmacy, from which a pharmacist who is contracted or employed by a central drug outlet performs centralized pharmacy services. (7-1-13)

2~~4~~5. **Retail Non-Pharmacy Drug Outlet**. A retail outlet that sells non-prescription drugs or devices that is not a pharmacy. (3-21-12)

2~~5~~6. **Retail Pharmacy**. A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. (3-21-12)

2~~6~~7. **R.N**. Registered nurse. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

021. FEE SCHEDULE.

01. Licenses -- Professionals. (3-21-12)

a. Original pharmacist license: one hundred dollars ($100). (3-21-12)

b. Licensure by reciprocity: two hundred fifty dollars ($250). (3-21-12)

c. Pharmacist license annual renewal. (3-21-12)

i. Active: ninety dollars ($90). (3-21-12)

ii. Inactive: fifty dollars ($50). (3-21-12)

d. Late payment processing: fifty dollars ($50). (3-21-12)

e. License reinstatement fee: seventy-five dollars ($75). (3-21-12)

02. Certificates of Registration -- Professionals. (3-21-12)

a. Pharmacist registration or annual renewal: two hundred fifty dollars ($250). (7-1-13)

b. Pharmacist intern - registration or annual renewal: fifty dollars ($50). (3-21-12)

c. Pharmacist extern registration and annual renewal: fifty dollars ($50) due upon enrollment in an accredited school or college of pharmacy and renewed annually at no charge. (3-21-12)

d. Technician - registration or annual renewal: thirty-five dollars ($35). (3-21-12)

e. Veterinary drug technician - registration or annual renewal: thirty-five dollars ($35). (3-21-12)

f. Registration reinstatement: one-half (1/2) the amount of the annual fee. (3-21-12)

03. Certificates of Registration and Licensure - Facilities. (3-21-12)

a. Retail pharmacy - registration or annual renewal: one hundred dollars ($100). (3-21-12)

b. Institutional facility - registration or annual renewal. (3-21-12)

i. Hospital pharmacy: one hundred dollars ($100). (3-21-12)

ii. Nursing home: thirty-five dollars ($35). (3-21-12)

c. Manufacturer (including a repackager that is a manufacturer's authorized distributor of record) - registration or annual renewal: one hundred dollars ($100). (3-21-12)

d. Wholesaler. (3-21-12)

i. License or annual renewal: one hundred thirty dollars ($130); or (3-21-12)

ii. Registration or annual renewal: one hundred dollars ($100). (3-21-12)

e. Veterinary drug outlet - registration or annual renewal: one hundred dollars ($100). (3-21-12)

f. Nonresident central drug outlet. (7-1-13)

i. Initial license: five hundred dollars ($500). (7-1-13)

ii. License annual renewal: two hundred fifty dollars ($250). (7-1-13)

g. Mail service pharmacy. (3-21-12)

i. Initial license: five hundred dollars ($500). (3-21-12)

ii. License annual renewal: two hundred fifty dollars ($250). (3-21-12)

h. Limited service outlet - registration or annual renewal. (3-21-12)

i. Limited service outlet, if not listed: one hundred dollars ($100). (3-21-12)

ii. Sterile product pharmacy: one hundred dollars ($100). (4-4-13)

iii. Remote dispensing pharmacy: one hundred dollars ($100). (3-21-12)

iv. Facility operating a narcotic treatment program: one hundred dollars ($100). (3-21-12)

v. Durable medical equipment outlet: fifty dollars ($50). (3-21-12)

vi. Prescriber drug outlet: thirty five dollars ($35). (3-21-12)

vii. Outsourcing facilities: (9-1-14)T

(1) Initial nonresident registration: five hundred dollars ($500). (9-1-14)T

(2) Initial resident registration: two hundred fifty dollars ($250). (9-1-14)T

(3) Registration annual renewal: two hundred fifty dollars ($250). (9-1-14)T

i. Analytical or research lab -- registration or annual renewal: forty dollars ($40). (3-21-12)

j. Retail non-pharmacy outlets - registration or annual renewal. (3-21-12)

i. "A" (Stocks more than fifty (50) drug items): sixty dollars ($60). (3-21-12)

ii. "B" (Stocks fifty (50) or fewer drug items): twenty-five dollars ($25). (3-21-12)

iii. "V" (Vending machines): ten dollars ($10) per machine. (3-21-12)

k. Supplemental facility registrations or annual renewals. (3-21-12)

i. Laminar flow or other hood, biological safety cabinet, or barrier isolator -- single registration required for one (1) or more hoods: no charge. (3-21-12)

ii. ADS system -- single registration required for one (1) or more systems: no charge. (3-21-12)

l. Reinstatement: one-half (1/2) the amount of the annual fee. (3-21-12)

04. Controlled Substance Registration. (3-21-12)

a. Controlled substance - registration or annual renewal: sixty dollars ($60). (3-21-12)

b. Wholesaler or distributor-controlled substance - registration or annual renewal: one hundred dollars ($100). (3-21-12)

c. Controlled substance registration reinstatement: seventy-five dollars ($75). (3-21-12)

05. Administrative Services and Publications. (3-21-12)

a. Experiential hours certification: twenty-five dollars ($25). (3-21-12)

b. Duplicate pharmacist certificate of licensure: thirty-five dollars ($35). (3-21-12)

c. Duplicate registration or license card: ten dollars ($10). (3-21-12)

d. Commercial lists. (3-21-12)

i. Pharmacy list: fifty dollars ($50). (3-21-12)

ii. Pharmacist list: fifty dollars ($50). (3-21-12)

iii. Controlled Substances Act ("CSA") registrant list: one hundred fifty dollars ($150). (3-21-12)

e. Official Idaho Register: fifteen dollars ($15). (3-21-12)

f. Idaho Pharmacy Laws and Rules book: thirty-five dollars ($35). (3-21-12)

g. Hearing transcript: five dollars ($5) per page. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

074. OUTSOURCING FACILITY REGISTRATION.
An outsourcing facility must be registered with the Board in order to distribute compounded drug product in or into Idaho. (9-1-14)T

01. Application. An applicant must submit an application in the manner and form prescribed by the Board, including, but not limited to: (9-1-14)T

a. A copy of a valid FDA registration as an outsourcing facility as required by 21 U.S.C. Section 353b; (9-1-14)T

b. Identity of a pharmacist licensed or registered in Idaho who is designated the PIC of the outsourcing facility; and (9-1-14)T

c. An inspection report indicating compliance with applicable state and federal law. (9-1-14)T

02. Coincidental Activity. An outsourcing facility applicant currently registered by the Board as a pharmacy or mail service pharmacy will be considered for an outsourcing facility registration with a supplemental pharmacy or mail service pharmacy registration at no additional fee. Exemption from registration fees does not excuse compliance with all laws and rules pertaining to pharmacies and mail service pharmacies. (9-1-14)T

0745. -- 079. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

731. -- 7439. (RESERVED)

740. OUTSOURCING FACILITY.

01. Federal Act Compliance. An outsourcing facility must ensure compliance with 21 U.S.C. Section 353b of the Federal Food, Drug and Cosmetic Act. (9-1-14)T

02. Policies and Procedures. An outsourcing facility must adopt policies and procedures for maintaining records pertaining to compounding, process control, labeling, packaging, quality control, distribution, complaints, and any information required by state or federal law. (9-1-14)T

741. -- 749. (RESERVED)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1403

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 54-1717, Idaho Code.

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

Wednesday, October 22, 2014, 1:00 p.m.

Idaho Capitol Building
700 W. Jefferson St., Room WW53
Boise, Idaho 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:

Note, the overwhelming majority of this docket contains pending language from 2014 that the Board asked the Legislature to reject via concurrent resolution, while the Board studied the new federal Compounding Quality Act. Such study is complete and edits have been made. In addition to such 2014 pending compounding rules, this docket of rules contains an additional hazardous drug compounding rule pursuant to the recently released draft United State Pharmacopeia Chapter 800. This docket is necessary to protect public safety post New England Compounding Center tragedy whereby over seventy (70) Americans have died so far from tainted, injectable, compounded drug product. This docket creates a labeling rule for distributed compounded drug product, establishes general compounding standards, limits pharmacy distribution of non-sterile compounded drug product, and expands a sterile compounding rule and a hazardous drug sub-rule.

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

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

The Board received fourteen thousand dollars ($14,000) in appropriation for FY2015 to train its inspectors.

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 under Docket No. 27-0101-1401 in the July 2, 2014 Idaho Administrative Bulletin, **Vol. 14-7, page 125**, and in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mark Johnston, Executive Director, (208) 334-2356.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Mark Johnston, R.Ph.
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Tel: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1403
(Only those Sections being amended are shown.)

144. ~~*(RESERVED)*~~ LABELING OF DISTRIBUTED COMPOUNDED DRUG PRODUCT.
Compounded and sterile prepackaged drug product distributed in the absence of a patient specific prescription drug order, solely as permitted for outsourcing facilities and pharmacies herein, must be labeled with the following information: ( )

01. **Drug Name**. The name of each drug included; ( )

02. **Strength or Concentration**. The strength or concentration of each drug included; ( )

03. **Base or Diluents**. If a sterile compounded drug product, the name and concentration of the base or diluents; ( )

04. **Administration**. If applicable, the dosage form or route of administration; ( )

05. **Quantity**. The total quantity of the drug product; ( )

06. **Date**. The expiration or beyond use date; ( )

07. **Compounder Identifier**. The initials or unique identifier of the compounder responsible for the accuracy of the drug product; ( )

08. **Resale**. The statement "not for resale;" and ( )

09. **Instructions, Cautions, and Warnings**. Handling, storage or drug specific instructions, cautionary information, and warnings as required or deemed appropriate for proper use and patient safety. ( )

(BREAK IN CONTINUITY OF SECTIONS)

231. -- 23~~9~~8. (RESERVED)

239. COMPOUNDING DRUG PRODUCTS.
Any compounding that is not permitted herein is considered manufacturing. ( )

01. **Application**. This rule applies to any person, including any business entity, authorized to engage in the practice of non-sterile compounding, sterile compounding, and sterile prepackaging of drug products in or into Idaho, except these rules do not apply to: ( )

a. Compound positron emission tomography drugs; ( )

b. Radiopharmaceutics; ( )

c. The reconstitution of a non-sterile drug or a sterile drug for immediate administration; and ( )

d. The addition of a flavoring agent to a drug product. ( )

02. General Compounding Standards. ( )

a. Bulk Substances. All bulk drug substances must be obtained from an FDA registered manufacturer. FDA registration as a foreign manufacturer satisfies this requirement. ( )

b. Certificate of Analysis. Unless the bulk drug substance complies with the standards of an applicable USP-NF monograph, a COA issued by a firm located in the United States must be obtained for all bulk drug substances procured for compounding and retained for a period of not less than three (3) years from the date the container is emptied. The following minimum information is required on the COA: ( )

i. Product name; ( )

ii. Lot number; ( )

iii. Expiration date; and ( )

iv. Assay. ( )

c. Equipment. Equipment and utensils must be of suitable design and composition and cleaned, sanitized, or sterilized as appropriate prior to use. ( )

d. Disposal of Compromised Drugs. When the correct identity, purity, strength, and sterility of ingredients and components cannot be confirmed (in cases of, for example, unlabeled syringes, opened ampoules, punctured stoppers of vials and bags, and containers of ingredients with incomplete labeling) or when the ingredients and components do not possess the expected appearance, aroma, and texture, they must be removed from stock and isolated for return, reclamation, or destruction. ( )

03. Prohibited Compounding. Compounding any drug product for human use that the FDA has identified as presenting demonstrable difficulties in compounding or has withdrawn or removed from the market for safety or efficacy reasons is prohibited. ( )

04. Limited Compounding. ( )

a. Triad Relationship. A pharmacist may compound a drug product in the usual course of professional practice for an individual patient pursuant to an established prescriber/patient/pharmacist relationship and a valid prescription drug order. ( )

b. Commercially Available Products. A drug product that is commercially available may only be compounded if not compounded regularly or in inordinate amounts and if: ( )

i. It is medically warranted to provide an alternate ingredient, dosage form, or strength of significance; or ( )

ii. The commercial product is not reasonably available in the market in time to meet the patient's needs. ( )

c. Anticipatory Compounding. Limited quantities of a drug product may be compounded or sterile prepackaged prior to receiving a valid prescription drug order based on a history of receiving valid prescription drug orders for the compounded or sterile prepackaged drug product. ( )

05. Drug Compounding Controls. ( )

a. Policies and Procedures. In consideration of the applicable provisions of USP 795 concerning pharmacy compounding of non-sterile preparations, USP 797 concerning sterile preparations, Chapter 1075 of the USP-NF concerning good compounding practices, and Chapter 1160 of the USP-NF concerning pharmaceutical calculations, policies and procedures for the compounding or sterile prepackaging of drug products must ensure the safety, identity, strength, quality, and purity of the finished product, and must include any of the following that are applicable to the scope of practice compounding being performed: ( )

i. Appropriate packaging, handling, transport, and storage requirements; ( )

ii. Accuracy and precision of calculations, measurements, and weighing; ( )

iii. Determining ingredient identity, quality, and purity; ( )

iv. Labeling accuracy and completeness; ( )

v. Beyond use dating; ( )

vi. Auditing for deficiencies, including routine environmental sampling, quality and accuracy testing, and maintaining inspection and testing records; ( )

vii. Maintaining environmental quality control; and ( )

viii. Safe limits and ranges for strength of ingredients, pH, bacterial endotoxins, and particulate matter. ( )

b. Accuracy. Components including, but not limited to, bulk drug substances, used in the compounding or sterile prepackaging of drug products must be accurately weighed, measured, or subdivided, as appropriate. The amount of each active ingredient contained within a compounded drug product must not vary from the labeled potency by more than the drug product's acceptable potency range listed in the USP-NF monograph for that product. If USP-NF does not publish a range for a particular drug product, the active ingredients must not contain less than ninety percent (90%) and not more than one hundred ten percent (110%) of the potency stated on the label. If any drug potency analysis is conducted, records must be maintained in a readily retrievable manner. ( )

c. Non-Patient Specific Records. Except for drug products that are being compounded or sterile prepackaged for direct administration, a production record of drug products compounded or sterile prepackaged in anticipation of receiving prescription drug orders or distributed in the absence of a patient specific prescription drug order ("office use") solely as permitted in these rules, must be prepared and kept for each drug product prepared, including: ( )

i. Production date; ( )

ii. Beyond use date; ( )

iii. List and quantity of each ingredient; ( )

iv. Internal control or serial number; and ( )

v. Initials or unique identifier of all persons involved in the process or the compounder responsible for the accuracy of these processes. ( )

240. STERILE PRODUCT PREPARATION.

01. Application. In addition to all other applicable rules in this chapter, including the rules governing Compounding Drug Products, these rules apply to all persons, including any business entity, engaged in the practice of sterile compounding and sterile prepackaging in or into Idaho. ( )

02. **Dosage Forms Requiring Sterility**. The sterility of compounded biologics, diagnostics, drugs, nutrients, and radiopharmaceuticals must be maintained or the compounded drug product must be sterilized when prepared in the following dosage forms: ( )

a. Aqueous bronchial and nasal inhalations, except sprays intended to treat bronchial mucosa only; ( )

b. Baths and soaks for live organs and tissues; ( )

c. Injections (for example, colloidal dispersions, emulsions, solutions, suspensions); ( )

c. Irrigations for wounds and body cavities; ( )

d. Ophthalmic drops and ointments; and ( )

e. Tissue implants. ( )

03. **Compounder Responsibilities**. Compounders and sterile prepackagers are responsible for ensuring that sterile products are accurately identified, measured, diluted, and mixed and are correctly purified, sterilized, packaged, sealed, labeled, stored, dispensed, and distributed, as well as prepared in a manner that maintains sterility and minimizes the introduction of particulate matter; ( )

a. Unless following manufacturer's guidelines or another reliable literature source, opened or partially used packages of ingredients for subsequent use must be properly stored as follows; ( )

i. Opened or entered (such as needle-punctured) single-dose containers, such as bags, bottles, syringes, and vials of sterile products and compounded sterile products shall be used within one (1) hour if opened in non-sterile conditions, and any remaining contents must be discarded; ( )

ii. Single-dose vials needle-punctured in a sterile environment may be used up to six (6) hours after initial needle puncture; ( )

iii. Opened single-dose ampules shall not be stored for any time period; and ( )

iv. Multiple-dose containers (for example, vials) that are formulated for removal of portions on multiple occasions because they contain antimicrobial preservatives, may be used for up to twenty-eight (28) days after initial opening or entering, unless otherwise specified by the manufacturer; ( )

b. Water-containing compounded sterile products that are non-sterile during any phase of the compounding procedure must be sterilized within six (6) hours after completing the preparation in order to minimize the generation of bacterial endotoxins; ( )

c. Food, drinks, and materials exposed in patient care and treatment areas shall not enter ante-areas, buffer areas, or segregated areas where components and ingredients of sterile products are prepared. ( )

0~~1~~4. **Environmental Controls**. Except when prepared for immediate administration, the environment for the preparation of sterile products in a drug outlet must be in an isolated area, designed to avoid unnecessary traffic and airflow disturbances, and equipped to accommodate aseptic techniques and conditions. (3-21-12)

a. Hoods and aseptic environmental control devices must be certified for operational efficiency as often as recommended by the manufacturer or at least every ~~*twelve*~~ six (~~*12*~~6) months or if relocated. ~~*(3-21-12)*~~( )

b. ~~*Pref*~~Filters must be inspected and replaced in accordance with the manufacturer's recommendations. ~~*(3-21-12)*~~( )

0~~2~~5. **Sterile Product Preparation Equipment**. A drug outlet in which sterile products are prepared must be equipped with at least the following: (3-21-12)

a. Protective apparel including ~~non-vinyl gloves,~~ gowns, ~~and~~ masks, and sterile (or the ability to sterilize) non-vinyl gloves, unless the PIC or director can provide aseptic isolator manufacturer's written documentation that any component of garbing is not required; ~~(3-21-12)~~( )

b. A sink with hot and cold water in close proximity to the hood; (3-21-12)

c. A refrigerator for proper storage of additives and finished sterile products prior to delivery when necessary; and ~~(3-21-12)~~( )

d. An appropriate laminar airflow hood or other aseptic environmental control device such as a laminar flow biological safety cabinet~~;~~. ~~(3-21-12)~~( )

~~**e.** *A separate vertical flow biohazard safety hood, if hazardous materials are prepared; and* (3-21-12)~~

~~**f.** *Supplies necessary for handling both hazardous and biohazardous spills and disposal of wastes must be available and maintained in the area at all times.* (3-21-12)~~

~~**03.** ***Cytotoxic Drugs**. A drug outlet in which cytotoxic drugs are prepared must also:* (3-21-12)~~

~~**a.** *Be equipped with and prepare the drugs in a vented class II biological safety cabinet or a barrier isolator of appropriate design to meet the personnel exposure limits described in product material safety data sheets;* (3-21-12)~~

~~**b.** *Require appropriate containment techniques;* (3-21-12)~~

~~**c.** *Clearly identify prepared doses of cytotoxic drugs, label them with proper precautions, and dispense them in a manner to minimize risk of cytotoxic spills;* (3-21-12)~~

~~**d.** *Comply with applicable local, state, and federal laws in the disposal of cytotoxic waste; and* (3-21-12)~~

~~**e.** *Include procedures for handling cytotoxic spills in the policies and procedures manual.* (3-21-12)~~

0~~4~~6. **Documentation Requirements**. The following documentation must also be maintained by a drug outlet in which sterile products are prepared: (3-21-12)

a. Justification of ~~expiration~~ beyond use dates ~~chosen~~ assigned, pursuant to direct testing or extrapolation from reliable literature sources; ~~(3-21-12)~~( )

b. ~~Employee t~~Training records, evidencing that personnel are trained on a routine basis and are adequately skilled, educated, and instructed; ~~(3-21-12)~~( )

c. ~~Technique a~~Audits~~; and~~ appropriate for the risk of contamination for the particular sterile product including: ~~(3-21-12)~~( )

i. Visual inspection to ensure the absence of particulate matter in solutions, the absence of leakage from bags and vials, and the accuracy of labeling with each dispensing; ( )

ii. Periodic hand hygiene and garbing competency; ( )

iii. Media-fill test procedures (or equivalent), aseptic technique, and practice related competency evaluation at least annually by each compounder or sterile prepackager; ( )

iv. Environmental sampling testing at least upon registration of a new drug outlet, following the servicing or re-certification of facilities and equipment, or in response to identified problems with end products, staff techniques or patient-related infections, or every six (6) months, including: ( )

(1) Total particle counts; ( )

(2) Viable air sampling; ( )

(3) Gloved fingertip sampling; ( )

(4) Surface sampling; ( )

v. Sterility testing of high risk batches of more than twenty-five (25) identical packages (ampules, bags, vials, etc.) before dispensing or distributing; ( )

d. Temperature, logged daily; ( )

e. Beyond use date and accuracy testing, when appropriate; and ( )

~~d~~f. Measuring, mixing, sterilizing, and purification ~~E~~equipment inspection, monitoring, cleaning, and maintenance to ensure accuracy and effectiveness for their intended use. ~~(3-21-12)~~( )

0~~5~~7. **Policies and Procedures**. Policies and procedures appropriate to the practice setting must be adopted by a drug outlet ~~compounding~~ preparing sterile pharmaceutical products and must~~:~~ ~~(3-21-12)~~

~~**a.** Be designed and sufficiently detailed to protect the health and safety of persons preparing or receiving sterile products; and~~ ~~(3-21-12)~~

~~**b.**~~ ~~I~~include a continuous quality improvement program for monitoring personnel qualifications and training in sterile technique, ~~product storage, stability standards, and infection control.~~ including: ~~(3-21-12)~~( )

a. Antiseptic hand cleansing; ( )

b. Disinfection of non-sterile compounding surfaces; ( )

c. Selecting and appropriately donning protective garb; ( )

d. Maintaining or achieving sterility of sterile products while maintaining the labeled strength of active ingredients; ( )

e. Manipulating sterile products aseptically, including mixing, diluting, purifying, and sterilizing in the proper sequence; ( )

f. Choosing the sterilization method, pursuant to the risk of a contamination of particular compounded sterile product; and ( )

g. Inspecting for quality standards before dispensing or distributing. ( )

241. HAZARDOUS DRUGS PREPARATION.
In addition to all other applicable rules in this chapter, including the rules governing Compounding Drug Products and Sterile Product Preparation, these rules apply to all persons, including any business entity, engaged in the practice of compounding or sterile prepackaging with hazardous drugs. Such persons must: ( )

01. Ventilation. Ensure the storage and compounding areas have sufficient general exhaust ventilation to dilute and remove any airborne contaminants. ( )

02. Ventilated Cabinet. Utilize a ventilated cabinet designed to reduce worker exposures while preparing hazardous drugs. ( )

a. Sterile hazardous drugs must be prepared in a dedicated Class II biological safety cabinet or a

barrier isolator of appropriate design to meet the personnel exposure limits described in product material safety data sheets; ( )

b. When asepsis is not required, a Class I BSC, powder containment hood or an isolator intended for containment applications may be sufficient. ( )

c. A ventilated cabinet that re-circulates air inside the cabinet or exhausts air back into the room environment is prohibited, unless the hazardous drugs in use will not volatilize while they are being handled. ( )

03. **Clear Identification**. Clearly identify storage areas, compounding areas, containers, and prepared doses of hazardous drugs; ( )

04. **Labeling**. Label hazardous drugs with proper precautions, and dispense them in a manner to minimize risk of hazardous spills; ( )

05. **Protective Equipment and Supplies**. Provide and maintain appropriate personal protective equipment and supplies necessary for handling hazardous drugs, spills and disposal; ( )

06. **Contamination Prevention**. Unpack, store, prepackage, and compound hazardous drugs separately from other inventory in a restricted area in a manner to prevent contamination and personnel exposure until hazardous drugs exist in their final unit does or unit-of-use packaging; ( )

07. **Compliance With Laws**. Comply with applicable local, state, and federal laws including for the disposal of hazardous waste; ( )

08. **Training**. Ensure that personnel working with hazardous drugs are trained in: ( )

a. Hygiene; ( )

b. Garbing; ( )

c. Receipt; ( )

d. Storage; ( )

e. Handling; ( )

f. Transporting; ( )

g. Compounding; ( )

h. Spill control; ( )

i. Clean up; ( )

j. Disposal; ( )

k. Dispensing; ( )

l. Medical surveillance; and ( )

m. Environmental quality and control. ( )

09. **Policy and Procedures Manual**. Maintain a policy and procedures manual to ensure compliance with this rule. ( )

242. OFFICE USE.

Compounded drug product may be distributed in or into Idaho in the absence of a patient specific prescription drug order to licensed practitioners in the usual course of professional practice by: ( )

01. **Outsourcing Facility**. An outsourcing facility or a pharmacy distributing compound positron emission tomography drugs or radiopharmaceutics, if in compliance with applicable federal law; or ( )

02. **Pharmacy**. A pharmacy if: ( )

a. The compounded drug product is not sterile and not intended to be sterile; ( )

b. The compounded drug product is not further dispensed or distributed by the practitioner; and( )

c. The quantity of compounded drug product distributed is limited to five percent (5%) of the total number of compounded drug products dispensed and distributed on an annual basis by the pharmacy, which may include a drug compounded for the purpose of, or incident to, research, teaching, or chemical analysis. ( )

24~~1~~3. -- 259. (RESERVED)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1404

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 54-1717, Idaho Code.

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

Wednesday, October 22, 2014, 1:00 p.m.

Idaho Capitol Building
700 W. Jefferson St., Room WW53
Boise, Idaho 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:

This docket of rules provides various forms of clarification, and harmony with 2014 statute changes. This docket also addresses the situation whereby a patient cannot use their dispensed drugs when being admitted to an institutional facility because the drugs are not unit dosed packaged. This docket of rules clarifies that a pharmacist foreign graduate is required to obtain 1,500 student pharmacist hours; clarifies that a technician-in-training may only renew two times; harmonizes the standard drug labeling rule with 2014 statutory changes; creates a new limited pharmacy repackaging rule; clarifies when a controlled substance inventory is to be taken; allows pharmacist immunizers to utilize all forms of injectible epinephrine; clarifies that statutory requirements of nonresident registered pharmacists also pertain to nonresident licensed pharmacists; clarifies pharmacy security requirements; combines various pharmacy authorized entry rules into one rule; and updates remote dispensing site security and training requirements, also requiring a continuous quality improvement program.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published under Docket No. 27-0101-1401 in the July 2, 2014 Idaho Administrative Bulletin, **Vol. 14-7, page 125**, and in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mark Johnston, Executive Director, (208) 334-2356.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Mark Johnston, R.Ph.
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Tel: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1404
(Only those Sections being amended are shown.)

031. PHARMACIST LICENSURE BY EXAMINATION: FOREIGN PHARMACY GRADUATES.

01. Licensure Submission Requirements. To be considered for licensure, a graduate of a school or college of pharmacy located outside of the United States must submit an application for licensure by examination, ~~*certification by the FPGEC, and*~~ certification of completion of a minimum of fifteen hundred (1500) experiential hours~~.~~, and; ~~*(4-4-13)*~~( )

a. Certification by the FPGEC; or ( )

b. Certification of graduation from a doctorate of pharmacy program from an accredited school or college of pharmacy within the United States. ( )

02. Affidavit. An Idaho State Board of Pharmacy Employer's Affidavit certifying the experiential hours of a foreign pharmacy graduate must be signed by a pharmacist licensed and practicing in the United States and submitted to the Board. The Board may also request verifiable business records to document the hours. (3-21-12)

(BREAK IN CONTINUITY OF SECTIONS)

041. TECHNICIAN-IN-TRAINING REGISTRATION.
A person who has not obtained or maintained technician certification may apply for registration as a technician-in-training if the person satisfies all other requirements for registration as a technician and obtains and maintains employment as a technician-in-training. (4-4-13)

01. Duties. Upon registration, a technician-in-training may perform any of the duties allowed by statute or rule to be delegated to a registered technician under the supervision of a pharmacist. (3-21-12)

02. Renewal. The registration of a technician-in-training must be renewed by June 30 annually, ~~*but is*~~ however a technician-in-training may only renew~~*able two (2) times*~~ a technician-in-training registration twice. ~~*(4-4-13)*~~( )

03. Registration Expiration. Upon the final expiration of a technician-in-training registration, a person must satisfy the technician certification and registration requirements of these rules to be lawfully employed as, or otherwise perform the duties of, a technician. (3-21-12)

04. Cancellation of Registration. Failure to maintain employment will result in the cancellation of the registration. (4-4-13)

(BREAK IN CONTINUITY OF SECTIONS)

140. STANDARD PRESCRIPTION DRUG LABELING.
Unless otherwise directed by these rules, a prescription drug must be dispensed in an appropriate container that bears the following information: (3-21-12)

01. Dispenser Information. The name, address, and telephone number of the dispenser (person or business); (3-21-12)

02. Serial Number. The serial number; (4-4-13)

03. Date. The date the prescription is filled; (3-21-12)

04. Prescriber. The name of the prescriber; (3-21-12)

05. ~~*Patient*~~ Name. ~~*The name of the patient, and if the patient is an animal, the species;*~~ ~~*(3-21-12)*~~(____)

a. If a person, the name of the patient; (____)

b. If an animal, the name and species of the patient; or (____)

c. If a school for epinephrine auto-injectors pursuant to Section 33-520A, Idaho Code, the name of the school. (____)

06. Drug Name and Strength. Unless otherwise directed by the prescriber, the name and strength of the drug (the generic name and its manufacturer's name or the brand name); (3-21-12)

07. Quantity. The quantity of item dispensed; (3-21-12)

08. Directions. The directions for use; (3-21-12)

09. Cautionary Information. Cautionary information as required or deemed appropriate for proper use and patient safety; (3-21-12)

10. Expiration. An expiration date that is the lesser of: (3-21-12)

a. One (1) year from the date of dispensing; (3-21-12)

b. The manufacturer's original expiration date; (3-21-12)

c. The appropriate expiration date for a reconstituted suspension or beyond use date for a compounded product; or (3-21-12)

d. A shorter period if warranted; (3-21-12)

11. Refills. The number of refills remaining, if any, or the last date through which the prescription is refillable; and (3-21-12)

12. Warning. The warning: "Caution: State or federal law, or both, prohibits the transfer of this drug to any person other than the patient for whom it was prescribed." (3-21-12)

13. ~~*Pharmacist*~~ Identification. The initials or other unique identifier of the dispensing pharmacist or dispensing prescriber. ~~*(4-4-13)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

146. REPACKAGING.
A pharmacy may repackage a drug previously dispensed to a patient, pursuant to the patient or the patient's agent's request, if: ( )

01. Unit Dose. The drugs are repackaged into unit dose packaging; ( )

02. Pharmacist Verification. The repackaging pharmacist verifies: ( )

a. The identity of the previously dispensed drugs as matching the label on the container that the drugs were initially dispensed within; and ( )

b. The validity and accuracy of the original prescription drug order; ( )

03. Adulterated Drugs. In the repackaging pharmacist's best professional judgment, the drug has not been adulterated; ( )

04. Intermingled Drugs. The drugs are never intermingled with the repackaging pharmacy's regular stock; ( )

05. Time for Repackaging. The pharmacy repackages the entire amount that was delivered to it for repackaging no later than three (3) days after receipt; ( )

06. Date of Repackaging. The date of repackaging is less than one (1) year from the original date of dispensing and the original expiration date is also used on the repackaged drug's label; ( )

07. Labeling. The repackaging pharmacy affixes to the container of the repackaged drug a label that complies with the standard labeling rule and includes: ( )

a. The original dispensed prescription's serial number; ( )

b. The name, address, and phone number of the original dispensing pharmacy; and ( )

c. A statement that indicates that the drug has been repackaged, such as the words "repackaged by" followed by the name of the repackaging pharmacy. ( )

08. Record. The repackaging pharmacy makes a record of: ( )

a. All required components of the standard prescription drug labeling rule; ( )

b. The original dispensing pharmacy's name, address, and phone number; ( )

c. The original dispensed prescription's serial number; and ( )

d. The name of the pharmacist responsible for compliance with this rule. ( )

09. Policy and Procedures. The repackaging pharmacy develops policy and procedures to ensure compliance with this rule. ( )

146~~7~~. -- 199. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

206. CONTROLLED SUBSTANCES: INVENTORIES.

01. Annual Inventory of Stocks of Controlled Substances. Each registrant must conduct an inventory of controlled substances on hand annually ~~*within*~~ no later than seven (7) days ~~*of*~~ after the date of the prior year's inventory in a form and manner that satisfies the inventory requirements of federal law. ~~*(4-4-13)*~~( )

02. Separate Inventories for Each Location. A separate controlled substances inventory must be taken and retained at each registered location. (3-21-12)

03. Inventory on PIC or Director Change. A complete controlled substance inventory must be conducted in the event of a change of PIC or director on or by the first day of employment of the incoming PIC or director. (4-4-13)

04. Inventory After Discovery of Theft or Loss. A complete controlled substance inventory must be conducted within forty-eight (48) hours of the discovery of a theft or reportable loss of a controlled substance. (3-21-12)

05. Inventory on Addition to Schedule of Controlled Substances. On the effective date of an addition of a substance to a schedule of controlled substances, each registrant that possesses that substance must take an inventory of the substance on hand, and thereafter, include the substance in each inventory. (3-21-12)

06. Annual Inventory Compliance. Complete inventories otherwise conducted ~~*as otherwise required by these rules*~~ may also be considered in complying with the annual inventory requirement. ~~*(3-21-12)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

~~***304. PHARMACIST: AUTHORIZED PHARMACY ENTRANCE.***~~
~~*A pharmacist must not permit a person other than a pharmacist, student pharmacist, or technician to enter or work in the secured pharmacy, except that a pharmacist may authorize other persons to be present temporarily in the pharmacy for legitimate business purposes if under the direct supervision of a pharmacist at all times.* *(3-21-12)*~~

30~~5~~4. -- 309. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

330. PHARMACIST: ADMINISTERED IMMUNIZATIONS.

01. Patient Eligibility. A pharmacist may administer an immunization to a healthy patient without immunization contraindications pursuant to the latest recommendations by the CDC or other qualified government authority or to any patient pursuant to a prescription drug order issued by another prescriber. (3-21-12)

02. Pharmacist Qualifications. To qualify to administer immunizations, a pharmacist must first: (3-21-12)

a. Successfully complete an ACPE-accredited or comparable course that meets the standards for pediatric, adolescent, and adult immunization practices recommended and approved by the CDC's Advisory Committee on Immunization Practices and includes at least the following: (3-21-12)

i. Basic immunology, vaccine, and immunization protection; (3-21-12)

ii. Diseases that may be prevented by vaccination or immunization; (3-21-12)

iii. Current recommended immunization schedules; (3-21-12)

iv. Vaccine and immunization storage and management; (3-21-12)

v. Informed consent; (3-21-12)

vi. Physiology and techniques for administration of immunizations; (3-21-12)

vii. Pre-immunization and post-immunization assessment and counseling; (3-21-12)

viii. Immunization reporting and records management; and (3-21-12)

ix. Identification response, documentation, and reporting of adverse events. (3-21-12)

b. Hold a current certification in basic life support for healthcare providers offered by the American Heart Association or a comparable Board-recognized certification program that includes cardiopulmonary resuscitation (CPR) and automated electronic defibrillator (AED) training and requires a hands-on skills assessment by an authorized instructor. (3-21-12)

03. Maintaining Qualification. To maintain qualification to administer immunizations, a pharmacist must annually complete a minimum of one (1) CPE hour of ACPE-approved CPE related to vaccines, immunizations, or their administration, which may also be applied to the general CPE requirements of these rules. (4-4-13)

04. Student Pharmacist Administration. A pharmacist may not delegate authority to administer immunizations; however, a student pharmacist who has satisfied the qualifications may administer immunizations under the direct supervision of a qualified immunizing pharmacist. (3-21-12)

05. Waste Disposal. An immunizing pharmacist must properly dispose of used or contaminated supplies. (3-21-12)

06. Required Reports. An immunizing pharmacist must report: (3-21-12)

a. Adverse events to the healthcare provider identified by the patient, if any, and to the Vaccine Adverse Event Reporting System (VAERS); and (3-21-12)

b. Administration of immunizations to the Idaho Immunization Reminder Information System (IRIS), as required. (3-21-12)

07. Required Resources. A pharmacist must have a current copy of, or on-site access to, the CDC's Epidemiology and Prevention of Vaccine-Preventable Diseases. (3-21-12)

08. Vaccine Information Statements. A corresponding, current CDC-issued VIS must be provided to the patient or the patient's representative for each administered immunization. (3-21-12)

09. Recordkeeping. For each administered immunization, the following information must be collected and maintained in the patient profile: (3-21-12)

a. The patient's name, address, date of birth, and known allergies; (3-21-12)

b. The date of administration; (3-21-12)

c. The product name, manufacturer, dose, lot number, and expiration date of the vaccine; (3-21-12)

d. Documentation identifying the VIS provided; (3-21-12)

e. The site and route of administration and, if applicable, the dose in a series (e.g. one (1) of three (3)); (3-21-12)

f. The name of the patient's healthcare provider, if any; (3-21-12)

g. The name of the immunizing pharmacist and of the student pharmacist, if any; (3-21-12)

h. Adverse events observed or reported, if any, and documentation including at least the dates of any subsequent required reporting; and (3-21-12)

i. Completed informed consent forms. (3-21-12)

10. Emergencies. (3-21-12)

a. An immunizing pharmacist must maintain an immediately retrievable emergency kit sufficiently stocked to manage an acute allergic reaction to an immunization. At a minimum, the kit must include: ~~(3-21-12)~~(____)

i. Intramuscular diphenhydramine; (____)

ii. Oral diphenhydramine; (____)

iii. Appropriate needles and syringes for injection; (____)

iv. Alcohol; and (____)

v. At least one (1) of the following: (____)

(1) Auto-inject epinephrine; (____)

(2) A vial of epinephrine with a dosing chart based on average body mass by age for patients under the age of fourteen (14); or (____)

(3) An ampule of epinephrine with a dosing chart based on average body mass by age for patients under the age of fourteen (14) and filter needles. (____)

b. An immunizing pharmacist may initiate and administer ~~*auto-inject*~~ epinephrine, intramuscular diphenhydramine, or oral diphenhydramine to treat an acute allergic reaction to an immunization pursuant to guidelines issued by the American Pharmacy Association. ~~(3-21-12)~~(____)

331. -- 3~~5~~39. (RESERVED)

340. NONRESIDENT PHARMACIST PRACTICE STANDARDS.
An Idaho licensed or registered nonresident pharmacist practicing pharmacy into Idaho must comply with the Board's laws and rules of this state unless compliance would violate the laws or rules in the state in which the registrant is located, except as follows: (____)

01. Pharmacy Technician. A pharmacist must not allow a technician to exceed the practice limitations for a technician in Idaho; (____)

02. Drug Product Substitution. A pharmacist must only substitute drug products in accordance with Idaho law; (____)

03. Drug Product Selection. A pharmacist must only select drug products in accordance with Idaho law; and (____)

04. Staffing Ratio. A pharmacist must not exceed the pharmacy staffing ratio, as defined in rule. (____)

341. -- 359. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

604. PHARMACY PRODUCT STORAGE AND REMOVAL.
Prescription drugs, devices, and other products restricted to sale or dispensing by, or under the supervision of, a pharmacist must be stored in the pharmacy and must not be sold, delivered, or otherwise removed from a pharmacy unless a pharmacist is present, except: (3-20-14)

01. Emergency Drug Access and Pharmacist Absence. As allowed by these rules for emergency access to an institutional pharmacy; (3-20-14)

02. Institutional Facility Alternative Storage. In an institutional facility these restricted products may also be stored in an alternative designated area that is appropriately equipped to ensure compliance with drug product storage requirements, to provide adequate security and protection from diversion, and that otherwise complies with applicable requirements of these rules; (3-20-14)

03. Storage for Delivery. Filled prescriptions may be picked up for delivery from a pharmacy when the pharmacy is closed for business if: (3-20-14)

a. The prescriptions are placed in a secured delivery area equipped with adequate security, including an alarm or comparable monitoring system, to prevent unauthorized entry, theft and diversion; (3-20-14)

b. The secured delivery area has walls that extend to the roof and solid core or metal doors, and all doors and other access points must be equipped with locking devices and be constructed in a manner so that the hinge hardware is ~~*accessible only from inside the secured delivery area*~~ tamper-proof when closed; ~~*(3-20-14)*~~( )

c. The secured delivery area appropriately safeguards product integrity in accordance with USP-NF requirements; (3-20-14)

d. The secured delivery area is attached or located adjacent to the pharmacy that filled the prescriptions; (3-20-14)

e. The PIC, or a pharmacist designated by the PIC, and the approved transport agent solely have access to the secure delivery area. Two (2) factor credentialing is required for entry, which must include two (2) of the following: (3-20-14)

i. Something ~~*you*~~ known (a knowledge factor); ~~*(3-20-14)*~~( )

ii. Something ~~*you have*~~ possessed (a hard token stored separately from the computer being accessed); and ~~*(3-20-14)*~~( )

iii. Something ~~*you are*~~ biometric (~~*biometric information*~~ fingerprint, retinal scan, etc.);~~*(3-20-14)*~~( )

f. The pharmacy has a means of recording the time of entry and the identity of all persons who access the secured delivery area; (3-20-14)

g. The pharmacy maintains immediately retrievable records of all persons who have accessed the secured delivery area and each prescription stored and removed for delivery; (3-20-14)

h. The pharmacy maintains written policies and procedures for secured delivery area storage and removal of prescriptions; and (3-20-14)

i. The PIC of a pharmacy that ships drugs by common carrier must require the common carrier to conduct criminal background checks on its employees who have access to the secured delivery area. (3-20-14)

04. Qualified Returns to the Secured Delivery Area. A pharmacist or a pharmacy, by means of its agent, may accept the return of the following drugs or devices to the secured delivery area: (3-20-14)

a. Emergency kits; (3-20-14)

b. Prescriptions that were unsuccessfully delivered by the pharmacy, a pharmacist, or its agent; and (3-20-14)

c. Those deemed qualified for return pursuant to the Restricted Return of Drugs or Devices rule. (3-20-14)

605. PHARMACY SECURITY.

01. Basic Security Standards. A pharmacy must be constructed and equipped with adequate security*, and at least while closed, utilize an alarm or other comparable monitoring system* to protect its equipment, records, and supply of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use. *Pharmacies without an alarm or other monitoring system as of the effective date of this rule must comply with this rule upon completion of a structural remodel.* New construction or a remodeled pharmacy must meet the following minimum security requirements: *(3-21-12)*( )

0*2*1. *Non-Institutional Pharmacy Security During Pharmacist Absence* Alarm. *A non-institutional pharmacy must be* At least while closed *for business and secured during all times a pharmacist is not present except:* an alarm or other comparable monitoring system is required. *(4-4-13)*( )

a. *If a technician or student pharmacist is on to duty, to allow brief pharmacist absences within the business establishment; or* *(4-4-13)*

b. *To perform professional services in the peripheral areas immediately outside of the pharmacy.* *(4-4-13)*

0*3*2. *Structural Security Requirements* Walls. *If a pharmacy is located within an establishment that is open to the public for business at times when a pharmacist is not present, the pharmacy must be totally enclosed in a manner sufficient to provide adequate security for the pharmacy, as required by this rule and approved by the Board. All pharmacies must meet the following security requirements:* *(3-20-14)*

a. Pharmacy walls must extend to the roof or the pharmacy must be similarly secured from unauthorized entry. *(3-21-12)*( )

***b*03. Doors**. Solid core or metal doors are required *for new or remodeled pharmacies after the effective date of this rule*. *(4-4-13)*( )

***c*04. Hinges and Locks**. Doors and other access points must be constructed in a manner that the hinge hardware is *accessible only from inside of the pharmacy and must be equipped with locking devices* tamper-proof when closed. *(3-21-12)*( )

05. Differential Hours. When closed for business, a pharmacy must be: ( )

a. Completely enclosed in a manner sufficient to provide adequate security; or ( )

b. Located within a larger business establishment that is also closed. In such cases, the establishment must meet these minimum security requirements, and no person is allowed entry to the establishment unless a pharmacist is present. ( )

***d*06. Drop Box**. If used, a "drop box" or "mail slot" allowing delivery of prescription drug orders to the pharmacy during hours closed must be appropriately secured against theft, and the pharmacy hours must be prominently visible to the person depositing the prescription drug order. Prescriptions must not be accepted for

delivery to the pharmacy or for depositing in the drop box by non-pharmacy employees of a retail establishment. ~~(3-21-12)~~(____)

~~***04.*** ***Restricted Access to the Pharmacy****. No one must be allowed entrance to the closed and secured pharmacy unless under the direct supervision of a pharmacist or except as permitted by these rules for an institutional pharmacy.*~~ ~~(3-21-12)~~

(BREAK IN CONTINUITY OF SECTIONS)

611. PHARMACY AUTHORIZED ENTRY.

01. Open Pharmacy. A person other than a pharmacist, student pharmacist, or technician must not enter or work in the secured pharmacy, except that a pharmacist may authorize other persons to be present temporarily in the pharmacy for legitimate business purposes if under the direct supervision of a pharmacist at all times. (____)

02. Closed Pharmacy. No one must be allowed entrance to the closed and secured pharmacy unless under the direct supervision of a pharmacist. (____)

03. Non-Institutional Temporary Pharmacist Absence. A non-institutional pharmacy must be closed for business and secured during all times a pharmacist is not present except: (____)

a. If a technician or student pharmacist is on duty to allow brief pharmacist absences within the business establishment; or (____)

b. When a pharmacist performs professional services in the peripheral areas immediately outside of the pharmacy. (____)

04. Institutional Pharmacy Temporary Pharmacist Absence. To accommodate periods of temporary absence of a pharmacist from the institutional pharmacy, pharmacy students and technicians may remain within the pharmacy under the following conditions: (____)

a. No other person may be allowed access or entrance to the pharmacy; (____)

b. Drugs or devices may not leave the pharmacy except if requested by, and immediately delivered to, the pharmacist; and (____)

c. Neither student pharmacists nor technicians may remain in the pharmacy during periods of pharmacist absence from the institutional facility. (____)

61~~1~~2. -- 619. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

631. INSTITUTIONAL FACILITY: EMERGENCY DRUG ACCESS~~*AND PHARMACIST ABSENCE*~~. The director must make advance arrangements necessary to facilitate continuity of patient care and for the provision of drugs to the medical staff and other authorized personnel of the institutional facility in emergencies and during the absences of a pharmacist in compliance with this rule. ~~(3-21-12)~~(____)

01. Emergency Pharmacy Access. If a drug is unavailable from any other authorized emergency source in sufficient time to prevent risk of harm to a patient that would result from a delay in obtaining the drug and in the absence of a pharmacist from the premises of the institutional facility, it may be retrieved from an institutional pharmacy by an R.N. as follows: (3-21-12)

a. One (1) R.N. may be designated per shift for emergency access to the pharmacy; (3-21-12)

b. Access may only occur if controlled substances are secured in a locked cabinet or other appropriate means to prevent unauthorized access; and (3-21-12)

c. Only a non-controlled substance may be removed and only in an amount necessary to treat a patient's immediate need until the pharmacy is again attended by a pharmacist. (3-21-12)

02. Emergency Cabinets. A cabinet or similar enclosure located outside an institutional pharmacy may be used for emergency access of drugs by an R.N. as follows: (3-21-12)

a. The emergency cabinet must be accessible only by key, combination, or otherwise sufficiently secured to deny access to unauthorized persons; and (3-21-12)

b. Drugs stocked in the emergency cabinet must be approved, prepared, stored, and handled as specified by these rules for emergency drug supplies. (3-21-12)

03. Emergency Drug Access ***Conditions and Documentation***. Emergency access by an R.N. to an institutional pharmacy or an emergency cabinet or similar enclosure must be documented as follows:*(3-21-12)*( )

a. Removal of a drug must be pursuant to a valid drug order; (3-21-12)

b. Removal of a drug must be documented in a record that includes at least: (3-21-12)

i. The patient's name and location; (3-21-12)

ii. The name and strength of the drug; (3-21-12)

iii. The amount; (3-21-12)

iv. The date and time; and (3-21-12)

v. The initials or other unique identifier of the designated nurse. (4-4-13)

c. The removal record and a copy of the drug order must be left conspicuously in the pharmacy, emergency cabinet, or alternative location to facilitate prompt accuracy verification and initialing by a pharmacist. (3-21-12)

04. Temporary Pharmacist Absence*. To accommodate periods of temporary absence of a pharmacist from the institutional pharmacy, pharmacy students and technicians may remain within the pharmacy under the following conditions:* *(3-21-12)*

a. *No other person may be allowed access or entrance to the pharmacy;* *(3-21-12)*

b. *Drugs or devices may not leave the pharmacy except if requested by, and immediately delivered to, the pharmacist; and* *(3-21-12)*

c. *Neither student pharmacists nor technicians may remain in the pharmacy during periods of pharmacist absence from the institutional facility.* *(3-21-12)*

(BREAK IN CONTINUITY OF SECTIONS)

710. RETAIL TELEPHARMACY WITH REMOTE DISPENSING SITES.
Pharmacies and pharmacists commencing retail telepharmacy operations with a remote dispensing site after

August 23, 2011, must comply with the following requirements: (3-21-12)

01. Telepharmacy Practice Sites and Settings. Prior to engaging in the practice of telepharmacy with a remote dispensing site, the supervising pharmacy must demonstrate that there is limited access to pharmacy services in the community in which the remote site is located. (3-21-12)

a. Information justifying the need for the remote dispensing site must be submitted with the initial registration application. (3-21-12)

b. The Board will consider the availability of pharmacists in the community, the population of the community to be served by the remote dispensing site, and the need for the service. (3-21-12)

c. The remote dispensing site must be located in a medical care facility operating in areas otherwise unable to obtain pharmaceutical care services on a timely basis. (3-21-12)

d. The Board will not approve a remote dispensing site if a retail pharmacy that dispenses prescriptions to outpatients is located within the same community as the proposed remote dispensing site. (3-21-12)

02. Independent Entity Contract. Unless jointly owned, a supervising pharmacy and a remote dispensing site must enter into a written contract that outlines the services to be provided and the responsibilities and accountability of each party in fulfilling the terms of the contract. (3-21-12)

a. A copy of the contract must be submitted to the Board with the initial registration application and at any time there is a substantial change in a contract term. (3-21-12)

b. The contract must be retained by the supervising pharmacy. (3-21-12)

03. PIC Responsibility. Unless an alternative PIC from the supervising pharmacy is specifically designated in writing, the PIC of the supervising pharmacy is also considered the responsible PIC for the remote dispensing site. (3-21-12)

04. Remote Dispensing Site Limitations. The Board may limit the number of remote dispensing sites under the supervision and management of a single pharmacy. (3-21-12)

05. Technician Staffing. Unless staffed by a pharmacist, ~~A~~a remote dispensing site must be staffed by at least one (1) ~~or more~~ certified technician~~s~~ with two thousand (2,000) hours pharmacy technician experience in Idaho and under the supervision of a pharmacist at the supervising pharmacy at all times that the remote site is open. Supervision does not require the pharmacist to be physically present at the remote dispensing site, but the pharmacist must supervise telepharmacy operations electronically from the supervising pharmacy. ~~(3-21-12)~~( )

06. Common Electronic Recordkeeping System. The remote dispensing site and the supervising pharmacy must utilize a common electronic recordkeeping system that must be capable of the following: (3-21-12)

a. Electronic records must be available to, and accessible from, both the supervising pharmacy and the remote dispensing site; and (3-21-12)

b. Prescriptions dispensed at the remote dispensing site must be distinguishable from those dispensed from the supervising pharmacy. (3-21-12)

07. Records Maintenance. Controlled substance records must be maintained at the registered location unless specific approval is granted for central storage as permitted by, and in compliance with, federal law. (3-21-12)

08. Video and Audio Communication Systems. A supervising pharmacy of an ADS system used in a remote dispensing site must maintain a video and audio communication system that provides for effective communication between the supervising pharmacy and the remote dispensing site personnel and consumers. The system must provide an adequate number of views of the entire site, facilitate adequate pharmacist supervision and allow the appropriate exchanges of visual, verbal, and written communications for patient counseling and other

matters involved in the lawful transaction or delivery of drugs. The remote dispensing site must retain a recording of such video and audio surveillance for a minimum of ninety (90) days. ~~(3-21-12)~~( )

a. Adequate supervision by the pharmacist in this setting is maintaining constant visual supervision and auditory communication with the site and full supervisory control of the automated system that must not be delegated to another person or entity. (3-21-12)

b. Video monitors used for the proper identification and communication with persons receiving prescription drugs must be a minimum of twelve inches (12") wide and provided at both the pharmacy and the remote location for direct visual contact between the pharmacist and the patient or the patient's agent. (3-21-12)

c. Each component of the communication system must be in good working order. Unless a pharmacist is present onsite, the remote dispensing site must be, or remain, closed if any component of the communication system is malfunctioning until system corrections or repairs are completed. (3-21-12)

09. Access and Operating Limitations. Unless a pharmacist is present, a remote dispensing site must not be open or its employees allowed access to it during times the supervising pharmacy is closed. The security system must allow for tracking of entries into the remote dispensing site, and the PIC must periodically review the record of entries. (3-21-12)

10. Delivery and Storage of Drugs. If controlled substances are maintained or dispensed from the remote dispensing site, transfers of controlled substances from the supervising pharmacy to the remote dispensing site must comply with applicable state and federal requirements. (3-21-12)

a. Drugs must only be delivered to the remote dispensing site in a sealed container with a list identifying the drugs, drug strength, and quantities included in the container. Drugs must not be delivered to the remote dispensing site unless a technician or pharmacist is present to accept delivery and verify that the drugs sent were actually received. The technician or pharmacist who receives and checks the order must verify receipt by signing and dating the list of drugs delivered. (3-21-12)

b. If performed by a technician, a pharmacist at the supervising pharmacy must ensure, through use of the electronic audio and video communications systems or bar code technology, that a technician has accurately and correctly restocked drugs into the ADS system or cabinet. (3-21-12)

c. Drugs at the remote dispensing site must be stored in a manner to protect their identity, safety, security, and integrity and comply with the drug product storage requirements of these rules. (3-21-12)

d. Drugs, including previously filled prescriptions, not contained within an ADS system must be stored in a locked cabinet within a secured area of a remote dispensing site and access must be limited to pharmacists from the supervising pharmacy and the technicians authorized in writing by the PIC. (3-21-12)

11. Wasting or Discarding of Drugs Prohibited. Wasting or discarding of drugs resulting from the use of an ADS system in a remote dispensing site is prohibited. (3-21-12)

12. Returns Prohibited. The technician at a remote dispensing site must not accept drugs returned by a patient or patient's agent. (3-21-12)

13. Security. A remote dispensing site must be equipped with adequate security. ( )

a. At least while closed, a remote dispensing site must utilize an alarm or other comparable monitoring system to protect its equipment, records, and supply of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use. The site must have a means of recording the time of entry and the identity of all persons who access the site, which must be retained for ninety (90) days. Two (2) factoring credentialing is required for entry, which must include two (2) of the following: ( )

i. Something known (a knowledge factor); ( )

ii. Something possessed (a hard token stored separately from the computer being accessed); and ( )

iii. Something biometric (finger print, retinal scan, etc.); ( )

b. A remote dispensing site must be totally enclosed in a manner sufficient to provide adequate security for the pharmacy, as required by this rule and approved by the Board. All remote dispensing sites must meet the following security requirements: ( )

i. Walls must extend to the roof or the pharmacy must be similarly secured from unauthorized entry. ( )

ii. Solid core or metal doors are required. ( )

iii. Doors and other access points must be constructed in a manner that the hinge hardware is tamper-proof when closed. ( )

c. Access to the area of the remote dispensing site where prescription drugs are prepared, distributed, dispensed or stored must be limited to technicians and pharmacists. Any other persons requiring access to the remote dispensing site for legitimate business reasons may only be present in the secured area with the permission and under the supervision of a pharmacist, which may be satisfied via audio/video communication. ( )

d. A remote dispensing site must be closed for business and secured during all times a pharmacist or technician is not present. ( )

1~~3~~4. **Patient Counseling**. A remote dispensing site must include an appropriate area for patient counseling. (3-21-12)

a. The area must be readily accessible to patients and must be designed to maintain the confidentiality and privacy of a patient's conversation with the pharmacist. (3-21-12)

b. Unless onsite, a pharmacist must use the video and audio communication system to counsel each patient or the patient's caregiver on new medications. (3-21-12)

1~~4~~5. **Remote Dispensing Site Sign**. A remote dispensing site must display a sign, easily visible to the public, that informs patients that: (3-21-12)

a. The location is a remote dispensing site providing telepharmacy services supervised by a pharmacist located in another pharmacy; (3-21-12)

b. Identifies the city or township where the supervising pharmacy is located; and (3-21-12)

c. Informs patients that a pharmacist is required to speak with the patient using audio and video communication systems each time a new medication is delivered or if counseling is accepted at a remote dispensing site. (3-21-12)

1~~5~~6. **Pharmacist Inspection of Remote Dispensing Site**. A pharmacist must complete and document a monthly in-person inspection of a remote dispensing site and inspection reports must be retained. (3-21-12)

17. Continuous Quality Improvement Program. The PIC of the remote dispensing site must develop and implement a continuous quality improvement program. ( )

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1405

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 54-1717, Idaho Code.

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

Wednesday, October 22, 2014, 1:00 p.m.

Idaho Capitol Building
700 W. Jefferson St., Room WW53
Boise, Idaho 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:

Congress passed the Drug Quality and Security Act in November of 2013, which mandates that states regulate wholesale distribution consistently with this new federal law. This docket of rules will fulfill our federal responsibility by striking the affected, existing rules promulgated for the Idaho Wholesale Drug Distribution Act and inserting language consistent with this new federal requirement.

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

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

This docket of rules is expected to increase the number of Board registrants slightly, at one hundred thirty dollars ($130) per.

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 under Docket No. 27-0101-1401 in the July 2, 2014 Idaho Administrative Bulletin, **Vol. 14-7, page 125**, and in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mark Johnston, Executive Director, (208) 334-2356.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Mark Johnston, R.Ph.
Executive Director
Board of Pharmacy
1199 W. Shoreline Ln., Ste. 303
P. O. Box 83720
Boise, ID 83720-0067
Tel: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 27-0101-1405
(Only those Sections being amended are shown.)

270. ~~*EMERGENCY*~~ DRUG DISTRIBUTION BY A DISPENSER.
~~*For an emergency medical reason, pursuant to Section 54-1752(16), Idaho Code,*~~ The distribution of a drug by a dispenser ~~*may distribute (without obtaining a wholesale distribution registration) a drug to another dispenser,*~~ is permitted only as follows: ~~*(3-21-12)*~~(____)

01. Authorized Recipients. A dispenser may distribute prescription drugs only to a person licensed or registered by the appropriate state licensing agency to dispense or prescribe such prescription drugs. A dispenser may distribute controlled substances only to a person who holds a valid federal and Idaho state controlled substance registration, unless exempted by federal or state law. (____)

02. Authorized Dispensing. (____)

~~***01.***~~**a.** Emergency Medical Reasons. ~~*For purposes of this rule, an emergency medical reason is a situation where a quantity of a*~~ A prescription drug ~~*is needed by a dispenser without an*~~ may be distributed by a dispenser to an authorized recipient if a legitimate alternative source for the drug is not reasonably available ~~*and the drug is unavailable through a normal distribution channel*~~ in sufficient time to prevent risk of harm to a patient that would result from a delay in obtaining the drug. ~~*(3-21-12)*~~

~~***02. Allowable Amount.***~~ The amount of the drug distributed ~~*must*~~ in an emergency may not reasonably exceed the amount required for immediate ~~*dispensing*~~ use. ~~*(3-21-12)*~~(____)

b. Office Use. Minimal quantities of prescription drugs may be distributed by a pharmacy to a prescriber for in office administration (and not for subsequent dispensing or distribution). (____)

03. Delivery Requirements. Prescription drugs distributed by a dispenser may be delivered only to the premises listed on the authorized recipient's license or registration. (____)

04. Suspicious Order Monitoring. A dispenser must have adequate processes in place for monitoring purchase activity of authorized recipients and must identify suspicious ordering patterns that identify potential diversion or criminal activity related to controlled substances, such as orders of unusual size, orders deviating substantially from a normal pattern, orders for drugs outside of the prescriber's scope of practice, and orders of unusual frequency. (____)

0~~*3*~~5. ~~*Controlled Substance Distribution*~~ Invoice. Distributions must be pursuant to an invoice and not a prescription drug order. For controlled substances, each dispenser must retain a signed receipt of the distribution that includes at least: ~~*(3-21-12)*~~(____)

a. The date of the transaction; (3-21-12)

b. The name, address, and DEA registration number of the distributing dispenser; (3-21-12)

c. The name, address, and DEA registration number of the receiving dispenser; (3-21-12)

d. The drug name, strength, and quantity for each product distributed; and (3-21-12)

e. The signature of the person receiving the drugs. (3-21-12)

06. **Reporting**. Specified data on controlled substances distributed by dispensers must be reported at least monthly to the Board in a form and manner prescribed by the Board. ( )

(BREAK IN CONTINUITY OF SECTIONS)

~~***809. PRESCRIPTION DRUG PEDIGREES.***~~
~~*Each person, including repackagers but excluding the original manufacturer of the finished form of the prescription drug, engaged in wholesale distribution of prescription drugs that leave or have left the normal distribution channel must tender a pedigree to the person receiving the drug upon delivery. A retail pharmacy or chain pharmacy warehouse must comply with these pedigree requirements only if engaging in wholesale distribution.* (3-21-12)~~

~~***01.*** ***Pedigree Contents****. A pedigree for each prescription drug must contain the following information:* (3-21-12)~~

~~***a.*** *The proprietary and established name of the drug;* (3-21-12)~~

~~***b.*** *The container size;* (3-21-12)~~

~~***c.*** *The number of containers;* (3-21-12)~~

~~***d.*** *The dosage form;* (3-21-12)~~

~~***e.*** *The dosage strength;* (3-21-12)~~

~~***f.*** *The lot number with expiration dates and the NDC;* (3-21-12)~~

~~***g.*** *The name of the manufacturer and repackager, if applicable, of the finished product;* (3-21-12)~~

~~***h.*** *The name, address, telephone number, and, if available, the e-mail address, of each owner and each wholesale distributor of the drug;* (3-21-12)~~

~~***i.*** *The name and address of each location from which the drug was shipped, if different from the owner's;* (3-21-12)~~

~~***j.*** *The dates of each transaction;* (3-21-12)~~

~~***k.*** *A certification that each recipient has authenticated the pedigree; and* (3-21-12)~~

~~***l.*** *The name and address of each recipient.* (3-21-12)~~

~~***02.*** ***Authentication****. Each person engaged in wholesale distribution who is provided a pedigree must affirmatively verify each listed transaction before further wholesale distribution may occur.* (3-21-12)~~

~~***03.*** ***Availability of Records for Inspection****. Pedigrees must be retained and made available to the Board upon request.* (3-21-12)~~

8~~1~~09. -- 849. (RESERVED)

IDAPA 28.04.01 - IDAHO DEPARTMENT OF COMMERCE

28.04.01 - RULES GOVERNING THE IDAHO REIMBURSEMENT INCENTIVE ACT

DOCKET NO. 28-0401-1401 (NEW CHAPTER)

NOTICE OF RULEMAKING - AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: A temporary rule was adopted under this docket number in the August 6, 2014 Idaho Administrative Bulletin, Volume 14-8, and is being amended. The effective date of the amended temporary rule is August 29, 2014.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given this agency has amended a temporary rule. The action is authorized pursuant to Section 67-4702, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation and the reasons for amending the previously adopted temporary rule:

The adoption of the temporary rules was necessary to fulfill the requirements of the new Idaho Reimbursement Incentive Act as enacted in House Bill H0546, as amended in the Senate. House Bill H0546 formally established the Idaho Reimbursement Incentive Act, branded by the Idaho Department of Commerce as the Tax Reimbursement Incentive (TRI). Adopting the rule as temporary was necessary to commence the possible award of a TRI to qualifying businesses seeking expansion within the state of Idaho.

This rule is also being promulgated as a proposed rule in this Bulletin under Docket No. 28-0401-1402 and rather than keep the temporary rule as previously adopted, the agency has amended the temporary rule to align it with the language of the proposed rule which accompanies this docket and is being promulgated in this Bulletin under Docket No. 28-0401-1402.

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

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, Megan Ronk at **megan.ronk@commerce.idaho.gov** or (208) 287-3153.

DATED this 29th Day of August, 2014.

Megan Ronk
Chief Operating Officer
Department of Commerce
700 W State Street
PO Box 83720
Boise, ID 83720-0093
(208) 287-3153 phone
(208) 334-2631 fax

THE FOLLOWING IS THE AMENDED TEMPORARY RULE FOR DOCKET NO. 28-0401-1401

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 28.04.01, "Rules Governing the Idaho Reimbursement

Incentive Act." (7-1-14)T

02. Scope. These rules implement House Bill No. 546, as amended in the Senate, and enacted by the Second Regular Session of the Sixty-second Legislature and signed into law on April 3, 2014. These rules amend Chapter 47, Title 67, Idaho Code, by the addition of new sections 67-4737 through 67-4744, Idaho Code. The seven (7) new sections provide rulemaking authority to the Director of the Department of Commerce, a short title and legislative intent, an application and pre-application process, formation of agreements with the business entity, reimbursement to the business entity through an earned tax credit, annual reporting procedure and requirement of an annual report to the Legislature by the Director of the Department of Commerce. ~~*(7-1-14)T*~~(8-29-14)T

(BREAK IN CONTINUITY OF SECTIONS)

100. DEFINITIONS AND ABBREVIATIONS.
Unless defined below, all words shall have the meaning ascribed in Chapter 47, Title 67, Sections 67-4737 through 67-4744, Idaho Code. The statutory definitions can be found here: http://legislature.idaho.gov/idstat/Title67/T67CH47SECT67-4738.htm. (7-1-14)T

01. Incentive Agreement. A reimbursement contract between the Department and the business entity which details any instruction provided by the Council in addition to the requirements detailed in Chapter 47, Title 67, Section 4740, Idaho Code. Also referred to as an Agreement. (8-29-14)T

0~~1~~2. Pre-Application. A form, paper or electronic, that is completed ~~*when pertinent details are not fully known for an application. A pre-application necessitates that an application is completed*~~ by the business entity or on behalf of the business entity by an authorized economic development or local government representative when details about the Meaningful Project are not fully known. A pre-application necessitates that an application is completed by the business entity or its authorized representative at a later time, and prior to award of a tax credit. ~~*(7-1-14)T*~~(8-29-14)T

0~~2~~3. Tax Reimbursement Incentive Act (TRI). A performance based tax reimbursement mechanism available to existing Idaho businesses and new businesses creating jobs in Idaho. Also known as the Idaho Reimbursement Incentive Act. (7-1-14)T

101. -- 129. (RESERVED)

130. PROGRAM INTENT.
The TRI is designed to accelerate the growth of new business opportunities, ~~*accelerate*~~ encourage the creation of high-paying jobs, and diversify the state's economy. The Tax Reimbursement Incentive is a performance-based economic development tool that provides a refundable tax credit up to thirty percent (30%) for up to fifteen (15) years on new ~~*corporate*~~ business entity income tax, sales tax, and payroll taxes paid as a result of meaningful project. The TRI will perpetually generate the revenues needed to fund the incentive. ~~*(7-1-14)T*~~(8-29-14)T

01. Available Credit. This credit is available to both existing and new companies seeking expansion in the state. The tax credit percentage and project term are negotiated based upon the quantity and quality of jobs created, state/regional economic impact and return on investment for Idaho, among others. The credit authorized shall be the lowest approved percentage and term that will incentivize creation of new jobs and New State Revenue. ~~*(7-1-14)T*~~(8-29-14)T

02. Evaluation and Recommendation. Incentives will be evaluated and recommended to the Council by the Director, with final approval by the Council. The TRI will be governed by detailed agreements between the Department and business entity. (7-1-14)T

131. -- 149. (RESERVED)

150. ELIGIBILITY.

01. Eligible ~~***Applicants***~~ **Recipients**. ~~*Applicants for*~~ Recipients of the TRI are limited to existing business entities located in Idaho ~~*and*~~ seeking to expand their companies within the state of Idaho, and business entities, new to Idaho, seeking to relocate to, or expand in, the state of Idaho. ~~*(7-1-14)T*~~(8-29-14)T

02. Eligible Projects. An eligible project is an expansion of an existing business located in Idaho or the creation of new business operations in Idaho that generate the minimum required new jobs based on rural or urban location. (7-1-14)T

151. JOB CREATION CRITERIA.

01. Rural Community. The minimum new jobs required for a rural community is not less than twenty (20) over the term of the project. (7-1-14)T

02. Urban Community. The minimum new jobs required for an urban community is not less than fifty (50) over the term of the project. (7-1-14)T

03. New Jobs. New jobs must exceed the business entity's maximum number of full times jobs in Idaho during the twelve (12) months immediately preceding the date of the application. (7-1-14)T

04. Job Shift. A job that shifts from one (1) location within the state of Idaho to another location within the state of Idaho is not considered a new job. (7-1-14)T

05. New Jobs Wages. New jobs wages must equal or exceed the average annual county wage in the county where the jobs are located. The Department will annually publish the average county wage based on the most recent, non-preliminary information, obtained from the Idaho Department of Labor. (8-29-14)T

152. APPLICATION PROCESS.

01. Inquiry. The business entity, or its authorized representative, may engage an authorized representative from the Department to complete an initial screening process. The screening process will~~:~~ assist the business entity in determining to proceed with a pre-application or application. Information necessary during screening includes general details about the Project, the number of full-time jobs, the number of new jobs, the minimum new jobs, the rural or urban area under consideration, the industry, the community contribution, as well as any other information requested to determine eligibility. The business entity, in consultation with the Department's representative, shall make a determination to proceed with a pre-application or a full application depending on the project timeline, known project details or other factors associated with the project. ~~*(7-1-14)T*~~(8-29-14)T

~~***a.*** *Detail the meaningful project;* *(7-1-14)T*~~

~~***b.*** *Detail the number of full-time jobs;* *(7-1-14)T*~~

~~***c.*** *Detail the number of new jobs;* *(7-1-14)T*~~

~~***d.*** *Detail the minimum new jobs;* *(7-1-14)T*~~

~~***e.*** *Detail the rural or urban area under consideration, the industry, the community match and an optional statement of dependency; and* *(7-1-14)T*~~

~~***f.*** *Detail any other information required to determine eligibility.* *(7-1-14)T*~~

~~***g.*** *During the screening process, and in consultation with the Department's representative, the business entity shall make a determination to proceed with a pre-application or a full application depending on the timeline and other factors associated with the project.* *(7-1-14)T*~~

02. Pre-Application. After the business entity's determination to proceed with a pre-application, the business entity, or its authorized representative, will be provided with a pre-application. A pre-application may be completed by the business entity or an authorized representative of the business entity, such as an economic

development or local government representative. A pre-application ~~*that*~~ shall detail the following: ~~*(7-1-14)T*~~(8-29-14)T

a. A complete description of the proposed project and the estimated economic benefit that will accrue to the state as a result of the project; (7-1-14)T

b. A~~*n affidavit*~~ statement of dependency explaining whether the project will occur or how it will be altered if the ~~*tax credit A*~~application is denied by the council; ~~*(7-1-14)T*~~(8-29-14)T

c. A letter from the city ~~*and/*~~or county, or both, expressing a commitment to supply community ~~*match*~~ contribution; ~~*(7-1-14)T*~~(8-29-14)T

d. ~~*A detailed d*~~Detailed description of the proposed capital investment; ~~*(7-1-14)T*~~(8-29-14)T

e. ~~*A detailed d*~~Detailed description of jobs to be created, an approximation of the number of such jobs to be created and the projected wages to be paid for such jobs; and ~~*(7-1-14)T*~~(8-29-14)T

f. ~~*A detailed d*~~Detailed description of the estimated new state tax revenues by tax to be generated by the project. ~~*(7-1-14)T*~~(8-29-14)T

03. Pre-Application ~~*Commitment*~~ Estimate Letter. Upon review and acceptance of a pre-application, the Director may issue an estimate letter ~~*of commitment*~~ to the business entity or its authorized representative, or both, which ~~*details*~~ describes the ~~*"not less than"*~~ estimated amount of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. This letter is not a binding commitment but an estimate based on the initial information supplied in the pre-application. ~~*(7-1-14)T*~~(8-29-14)T

04. Application. After the business entity's determination to proceed with an application, the~~*y*~~ business entity will be given access to the ~~*Department's online*~~ application, ~~*portal to complete a full application. The application will be submitted online via the Department's portal. The application*~~ which shall include, but not be limited to, the following information: ~~*(7-1-14)T*~~(8-29-14)T

a. A complete description of the proposed project and the estimated economic benefit that will accrue to the state as a result of the project; (7-1-14)T

b. An affidavit of criticality explaining ~~*whether the project will occur or how it will be altered if the tax credit application is denied by the council*~~ that without the TRI incentive, the business entity would be forced to alter its project or not choose Idaho; ~~*(7-1-14)T*~~(8-29-14)T

c. A letter from the city or county, or both, ~~*expressing a*~~ describing their commitment to supply community ~~*match*~~ contribution, a specific description of the contribution, and the amount of the contribution; ~~*(7-1-14)T*~~(8-29-14)T

d. ~~*An affidavit*~~ Business enties currently doing business in Idaho will supply a letter from the Idaho State ~~*t*~~Tax commission confirming that the business entity is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission; ~~*(7-1-14)T*~~(8-29-14)T

e. ~~*A detailed statement with a*~~An estimate of Idaho goods and services to be consumed or purchased by the business entity during the term; ~~*(7-1-14)T*~~(8-29-14)T

f. Known or expected detriments to the ~~*state*~~ environment or existing industries in the state; ~~*(7-1-14)T*~~(8-29-14)T

g. An anticipated project inception date and proposed schedule of progress; (7-1-14)T

h. Any ~~*P*~~proposed performance requirements and measurements that must be met prior to issuance of the tax credit; ~~*(7-1-14)T*~~(8-29-14)T

i. A ~~*detailed*~~ description of ~~*the*~~ any proposed capital investment; ~~*(7-1-14)T*~~(8-29-14)T

j. A detailed schedule and description of the projected jobs to be created, ~~*an approximation of the number of such jobs to be created and*~~ the projected wages to be paid for ~~*such*~~ those jobs, and the anticipated hiring schedule for those jobs; and ~~*(7-1-14)T*~~(8-29-14)T

k. ~~*A detailed description of t*~~The estimated new state tax revenues to be generated by the project. ~~*(7-1-14)T*~~(8-29-14)T

05. ~~***Award Estimate***~~ **Application Recommendation Letter**. Upon review of an application, the Director may issue a letter ~~*which*~~ that details the ~~*estimated amount*~~ Director's anticipated recommendation to the Council. The letter may include the percentage of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. All ~~*award*~~ application recommendation letters shall ~~*be issued with*~~ contain a "subject to Economic Advisory Council approval" contingency clause. ~~*(7-1-14)T*~~(8-29-14)T

06. Technical Review - Pre-Application. The Director and Department staff will complete a technical review of each pre-application. Upon satisfaction that all pre-application requirements are met, the Director may issue an estimate letter. (8-29-14)T

0~~*6*~~7. Technical Review - Application. The Director of the Department and Department staff will complete a technical review and economic impact analysis of ~~*the*~~ each application~~*. and upon satisfaction that all requirements are met, the Director and Department staff shall submit the application to the Council*~~. The technical review ~~*shall*~~ will consider many economic factors and external information sources such as, but not limited to, the region, industry, financial health and history of the business entity, as well as the quality, quantity and economic impact of new jobs and new state revenue. Upon satisfaction that all application requirements are met, the Director may submit a recommendation for award to the Council. ~~*(7-1-14)T*~~(8-29-14)T

0~~*7*~~8. Economic Advisory Council. The Council shall review the application and the Director recommendations. Following review the council shall have the following three (3) options as follows: ~~*(7-1-14)T*~~(8-29-14)T

a. Request additional information or action from the Director in order to obtain necessary information to approve or reject the application; or (7-1-14)T

b. Approve the application and instruct the Director to enter into an Incentive ~~*a*~~Agreement with the business entity; or ~~*(7-1-14)T*~~(8-29-14)T

c. Reject the application. (7-1-14)T

d. An approval or rejection from the council shall not be considered a contested case pursuant to Chapter 52, Title 67, Idaho Code, provided, however, that nothing in this section shall prohibit an aggrieved business entity from seeking judicial review as provided in Chapter 52, Title 67, Idaho Code. (7-1-14)T

09. Pre-Application Schedule. The pre-application is open year round. Review of pre-applications are subject to the meeting schedule of Department staff. (8-29-14)T

~~***08***~~**10. Application Schedule**. The application is open year round. Review of applications is subject to the meeting schedule of Department Staff and the Council. The Council will meet no less than quarterly and has the ability to meet more often at the request of the Director. ~~*(7-1-14)T*~~(8-29-14)T

153. -- 159. (RESERVED)

160. CONFLICT OF INTEREST.
Conflict of Interest is defined by Idaho's Office of the Attorney General as any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or member of the person's household, or a business with which the person or a

member of the person's household is associated. In the event Department staff, including the Director has a conflict of interest regarding an application, the conflict shall be fully disclosed to the Director and the Council, and that person shall abstain from decision making or evaluation of the application. In the event a Council member has a conflict of interest regarding an application, the Council member shall fully disclose such conflict to the Director and the Council, and that Council member shall abstain from discussing or voting on the application. ~~*(7-1-14)T*~~(8-29-14)T

161. -- 169. (RESERVED)

170. AGREEMENTS.

01. ~~***Reimbursement***~~ **Incentive Agreement**. At the direction of the Council, and in accordance with the criteria established by these rules, the Director shall enter into an ~~*reimbursement*~~ incentive agreement with the business entity. ~~*(7-1-14)T*~~(8-29-14)T

02. Agreement Terms Defined. The agreement shall contain any terms as approved by the Council, or deemed necessary by the state Deputy Attorney General, as well as define the following: ~~*(7-1-14)T*~~(8-29-14)T

a. Maximum term that shall not exceed fifteen (15) years; (7-1-14)T

b. Projected new state revenues to be generated during the term; (7-1-14)T

c. Method and recordkeeping requirements to determine projected new state revenue to be generated; (7-1-14)T

d. The approved tax credit percentage applied to new state revenue each year the business entity is entitled to receive the reimbursement during the term of the meaningful project; (7-1-14)T

e. The projected new jobs; (7-1-14)T

f. The terms and conditions of any and all performance requirements and measurements that must be met prior to the issuance of a tax credit authorization; (7-1-14)T

g. The agreed upon and necessary proof of compliance required prior to tax credit issuance. Proof of compliance provided by the business entity must be adequate to demonstrate to the director that all requirements and measurements have been met for the business entity to receive the tax credit; (7-1-14)T

h. The consequences of default by the business entity; (7-1-14)T

i. The period to be used to determine the taxes paid at the date of application; (7-1-14)T

j. Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641, Idaho Code, or is required to obtain a separate seller's permit pursuant to Chapter 36, Title 63, Idaho Code. (7-1-14)T

k. The federal employer identification ~~*and*~~ or social security number for each individual or entity ~~*included within the definition of*~~ stated as the business entity ~~*and that is included within the filing of the application*~~ in the Agreement; and ~~*(7-1-14)T*~~(8-29-14)T

l. Identification of the individual or entity that is or will be claiming the refundable credit. (7-1-14)T

171. -- 179. (RESERVED)

180. TAX CREDIT AUTHORIZATION.

01. Claiming Tax Credit. No business entity may claim a tax credit unless the business entity has a tax credit authorization issued by the Department. An business entity may claim a tax credit on its tax return, in the amount listed on the tax credit authorization for the year listed on the tax credit authorization. ~~*The tax credit*~~

~~*authorization shall be the lowest approved percentage that will incentivize creation of new jobs and new state revenue.*~~ ~~*(7-1-14)T*~~(8-29-14)T

02. Duplicate Copy. The Department shall provide a duplicate copy of any tax credit authorization to the Tax Commission. (7-1-14)T

181. -- 189. (RESERVED)

190. ANNUAL REPORTING BY ~~*APPLICANT*~~ BUSINESS ENTITY.
Required Annual ~~*required*~~ reporting shall be outlined in the agreement and will include, but not be limited to, the following: ~~*(7-1-14)T*~~(8-29-14)T

01. New State Revenues. Supporting documentation of the new state revenues from the business entity's new project that were paid during the preceding calendar year. (7-1-14)T

02. New Jobs Created. Supporting documentation of the new jobs that were created during the preceding ~~*calendar*~~ tax year and the corresponding payroll information associated with the new jobs. ~~*(7-1-14)T*~~(8-29-14)T

03. Known or Expected Detriments. Known or expected detriments to the ~~*state*~~ environment or existing industries in the state. ~~*(7-1-14)T*~~(8-29-14)T

04. Authorization Document. A document that expressly directs and authorizes the Tax Commission and Department of Labor to allow the Department access to the business entity's returns, filings and other information that may be necessary to verify or otherwise confirm the declared new state revenues, the new jobs and the associated payroll information. ~~*(7-1-14)T*~~(8-29-14)T

05. Tax Commission ~~*Affidavit*~~ Letter. A~~*n affidavit*~~ letter from the Idaho State ~~*t*~~Tax ~~*c*~~Commission confirming that the business entity is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission. ~~*(7-1-14)T*~~(8-29-14)T

06. Other Entitle to Rebate. Identification of any individual or entity included within the ~~*A*~~application that is entitled to a rebate pursuant to section 63-3641 or 63-4408, Idaho Code, or is required to obtain a separate seller's permit pursuant to Chapter 36, Title 63, Idaho Code. (7-1-14)T

07. Supporting Documentation. Supporting documentation that the business entity has satisfied the measurements and requirements outlined in the agreement. (7-1-14)T

191. ANNUAL REPORTING BY DEPARTMENT.
The Department shall create an annual written report for the Governor and the Legislature describing the following: (7-1-14)T

01. Successes. The Department's success under this act in attracting new jobs; (7-1-14)T

02. Estimated Tax Credit Commitments. The estimated amount of tax credit commitments made by the Department and the period of time over which tax credits will be paid; (7-1-14)T

03. Economic Impact to State. The economic impact ~~*on*~~ to the state related to generating new state revenue and providing tax credits under this act; ~~*(7-1-14)T*~~(8-29-14)T

04. Estimated Costs and Benefits. The estimated costs and economic benefits of the tax credit commitments that the Department made; and (7-1-14)T

05. Actual Costs and Benefits. The actual costs and economic benefits of the tax credit commitments the Department made. (7-1-14)T

06. Submittal of Report. The report shall be submitted to the Office of the Governor and the

appropriate legislative committee chairmen in a timely manner following the close of the state's fiscal year. (7-1-14)T

192. -- 199. (RESERVED)

200. AUDIT.
On or before November 1, 2015, and every year thereafter, the Department shall ~~*conduct*~~ arrange for an independent third party audit pursuant to Chapter 47, Title 67, Idaho Code. The Department shall consider any audit recommendations provided during the ~~*applicant's annual review for continuation of the tax credit*~~ audit and implement changes as necessary of a result of those recommendations. ~~*(7-1-14)T*~~(8-29-14)T

201. -- 209. (RESERVED)

210. CONTINUATION OF TAX CREDIT.
During the term of the project for each business entity, the Department shall review the business entity's annual report. ~~*Subject to any audit recommendations and p*~~Provided the business entity provides a reasonable justification for authorizing or continuing a tax credit, the Department shall determine the amount of the tax credit to be granted, issue a tax credit authorization to the business entity, and provide a duplicate copy of the tax credit authorization to the Tax Commission. The amount of the tax credit to be continued shall be ~~*the lowest approved percentage that will incentivize creation of new jobs and new state revenue*~~ in accordance with the credit percentages specified in the Incentive Agreement. The TRI shall not be extended beyond the term and length specified in the Agreement. ~~*(7-1-14)T*~~(8-29-14)T

211. TERMINATION OR SUSPENSION OF TAX CREDIT.
During the term of the project for each business entity, the Department shall review the business entity's annual report and if the information provided is inadequate or inaccurate to provide a reasonable justification for authorizing or continuing a tax credit, the Department shall: (7-1-14)T

01. Denial of Tax Credit. Deny the tax credit for that tax year; or (7-1-14)T

02. Termination of Agreement. Terminate the agreement for failure to meet the performance standards established in accordance with the terms outlined in the incentive Agreement; or ~~*(7-1-14)T*~~(8-29-14)T

03. Request for Additional Documentation. Request the business entity to submit additional documentation. (7-1-14)T

IDAPA 28.04.01 - IDAHO DEPARTMENT OF COMMERCE

28.04.01 - RULES GOVERNING THE IDAHO REIMBURSEMENT INCENTIVE ACT

DOCKET NO. 28-0401-1402 (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 67-4702, 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 15, 2014.

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:

On July 1, 2014, the Idaho Department of Commerce adopted the temporary rules of the Idaho Reimbursement Incentive Act. The adoption of temporary rules was necessary to fulfill the requirements of the new Idaho Reimbursement Incentive Act as enacted in House Bill H0546a and to commence the possible award of a Tax Reimbursement Incentive (TRI) credit to businesses seeking expansion within the state of Idaho. While operating under temporary rules, the Department further refined and established the necessary applications, templates, workflow processes, incentive agreements and other supporting documentation necessary to execute the Idaho Reimbursement Incentive Act. During the development of processes, the Department sought the input of key stakeholders including other agencies, economic development professionals, and companies through solicited feedback and meetings.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no fee or charge.

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 incur no cost to the general fund to initiate. The program is designed to reimburse taxes actually paid and will perpetually generate the revenues needed to fund the incentive. Incentives will be no more than 30% of taxes paid leaving a minimum of 70% of all new state tax revenue in the treasury. Incentives will last a maximum of 15 years.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. However, the Department sought the input of a variety of parties throughout the state with specific information, knowledge, expertise and technical information about economic development and business expansion. Feedback was gathered from the Office of the Attorney General, Idaho State Tax Commission, local economic development professionals, site selectors, corporate decision makers, and corporate legal counsels.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Megan Ronk, Chief Operating Officer at 208-287-3153.

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 October 22, 2014.

DATED this 26th Day of August, 2014

Megan Ronk
Chief Operating Officer
Department of Commerce
Tel (208) 287-3153 / Fax (208) 334-2631

PO Box 83720
700 W State Street
Boise, ID 83720-0093

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 28-0401-1402

IDAPA 28
TITLE 04
CHAPTER 01

28.04.01 - RULES GOVERNING THE IDAHO REIMBURSEMENT INCENTIVE ACT

000. LEGAL AUTHORITY.
These rules are promulgated under the legal authority of Section 67-4744, Idaho Code. ( )

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 28.04.01, "Rules Governing the Idaho Reimbursement Incentive Act." ( )

02. Scope. These rules implement House Bill No. 546, as amended in the Senate, and enacted by the Second Regular Session of the Sixty-second Legislature and signed into law on April 3, 2014. These rules amend Chapter 47, Title 67, Idaho Code, by the addition of new sections 67-4737 through 67-4744, Idaho Code. The seven (7) new sections provide rulemaking authority to the Director of the Department of Commerce, a short title and legislative intent, an application and pre-application process, formation of incentive agreements with the business entity, reimbursement to the business entity through an earned tax credit, annual reporting procedure and requirement of an annual report to the Legislature by the Director of the Department of Commerce. ( )

002. WRITTEN INTERPRETATIONS.
The Department may have written statements that pertain to the interpretation of these rules or to the documentation of compliance with these rules. These documents are available for public inspection at the Department's office. ( )

003. ADMINISTRATIVE APPEALS.
The award of a credit under the Tax Reimbursement Incentive Act is made at the recommendation of the Director of the Department of Commerce and approval of the Economic Advisory Council (Council). In light of the negotiated nature of awarding the Tax Reimbursement Incentive (TRI), there is no administrative appeal under these rules. Nothing in this section shall prohibit an aggrieved applicant from seeking judicial review as provided in Chapter 52, Title 67, Idaho Code. ( )

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 mailing address of the Department for information regarding the Tax Reimbursement Incentive Act is: 700 West State Street, PO Box 83720, Boise, ID 83702-0093; the telephone number is (208) 334-2470; and the facsimile number is (208) 334-2631. Documents may be filed at the state office during regular business hours of 8am to 5pm, Monday through Friday, excluding holidays. ( )

006. PUBLIC RECORDS ACT COMPLIANCE.
All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act (Title 9, Chapter 3, Idaho Code). ( )

007. -- 099. (RESERVED)

100. DEFINITIONS AND ABBREVIATIONS.
Unless defined below, all words shall have the meaning ascribed in Chapter 47, Title 67, Sections 67-4737 through 67-4744, Idaho Code. The statutory definitions can be found here: http://legislature.idaho.gov/idstat/Title67/T67CH47SECT67-4738.htm. ( )

01. Incentive Agreement. A reimbursement contract between the Department and the business entity which details any instruction provided by the Council in addition to the requirements detailed in Chapter 47, Title 67, Section 4740, Idaho Code. Also referred to as an Agreement. ( )

02. Pre-Application. A form, paper or electronic, that is completed by the business entity or on behalf of the business entity by an authorized economic development or local government representative when details about the Meaningful Project are not fully known. A pre-application necessitates that an application is completed by the business entity or its authorized representative at a later time, and prior to award of a tax credit. ( )

03. Tax Reimbursement Incentive Act (TRI). A performance based tax reimbursement mechanism available to existing Idaho businesses and new businesses creating jobs in Idaho. Also known as the Idaho Reimbursement Incentive Act. ( )

101. -- 129. (RESERVED)

130. PROGRAM INTENT.
The TRI is designed to accelerate the growth of new business opportunities, encourage the creation of high-paying jobs, and diversify the state's economy. The Tax Reimbursement Incentive is a performance-based economic development tool that provides a refundable tax credit up to thirty percent (30%) for up to fifteen (15) years on new business entity income tax, sales tax, and payroll taxes paid as a result of meaningful project. The TRI will perpetually generate the revenues needed to fund the incentive. ( )

01. Available Credit. This credit is available to both existing and new companies seeking expansion in the state. The tax credit percentage and project term are negotiated based upon the quantity and quality of jobs created, state/regional economic impact and return on investment for Idaho, among others. The credit authorized shall be the lowest approved percentage and term that will incentivize creation of new jobs and New State Revenue. ( )

02. Evaluation and Recommendation. Incentives will be evaluated and recommended to the Council by the Director, with final approval by the Council. The TRI will be governed by detailed incentive agreements between the Department and business entity. ( )

131. -- 149. (RESERVED)

150. ELIGIBILITY.

01. Eligible Recipients. Recipients of the TRI are limited to existing business entities located in Idaho seeking to expand their companies within the state of Idaho, and business entities, new to Idaho, seeking to relocate to, or expand in, the state of Idaho. ( )

02. Eligible Projects. An eligible project is an expansion of an existing business located in Idaho or the creation of new business operations in Idaho that generate the minimum required new jobs based on rural or urban location. ( )

151. JOB CREATION CRITERIA.

01. Rural Community. The minimum new jobs required for a rural community is not less than twenty (20) over the term of the project. ( )

02. Urban Community. The minimum new jobs required for an urban community is not less than fifty (50) over the term of the project. ( )

03. **New Jobs**. New jobs must exceed the buisness entities' maximum number of full times jobs in Idaho during the twelve (12) months immediately preceding the date of the application. ( )

04. **Job Shift**. A job that shifts from one (1) location within the state of Idaho to another location within the state of Idaho is not considered a new job. ( )

05. **New Jobs Wages**. New jobs wages must equal or exceed the average annual county wage in the county where the jobs are located. The Department will annually publish the average county wage based on the most recent, non-preliminary information, obtained from the Idaho Department of Labor. ( )

152. APPLICATION PROCESS.

01. **Inquiry**. The business entity, or its authorized representative, may engage an authorized representative from the Department to complete an initial screening process. The screening process will assist the business entity in determining to proceed with a pre-application or application. Information necessary during screening includes general details about the Project, the number of full-time jobs, the number of new jobs, the minimum new jobs, the rural or urban area under consideration, the industry, the community contribution, as well as any other information requested to determine eligibility. The business entity, in consultation with the Department's representative, shall make a determination to proceed with a pre-application or a full application depending on the project timeline, known project details or other factors associated with the project. ( )

02. **Pre-Application**. After the business entity's determination to proceed with a pre-application, the business entity, or its authorized representative, will be provided with a pre-application. A pre-application may be completed by the business entity or an authorized representative of the business entity, such as an economic development or local government representative. A pre-application shall detail the following: ( )

a. A complete description of the proposed project and the estimated economic benefit that will accrue to the state as a result of the project; ( )

b. A statement of dependency explaining whether the project will occur or how it will be altered if the application is denied by the council; ( )

c. A letter from the city or county, or both, expressing a commitment to supply community contribution; ( )

d. Detailed description of the proposed capital investment; ( )

e. Detailed description of jobs to be created, an approximation of the number of such jobs to be created and the projected wages to be paid for such jobs; and ( )

f. Detailed description of the estimated new state tax revenues by tax to be generated by the project. ( )

03. **Pre-Application Estimate Letter.** Upon review and acceptance of a pre-application, the Director may issue an estimate letter to the business entity or its authorized representative, or both, which describes the estimated amount of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. This letter is not a binding commitment but an estimate based on the initial information supplied in the pre-application. ( )

04. **Application**. After the business entity's determination to proceed with an application, the business entity will be given access to the application, which shall include, but not be limited to, the following information: ( )

a. A complete description of the proposed project and the estimated economic benefit that will accrue to the state as a result of the project; ( )

b. An affidavit of criticality explaining that without the TRI incentive, the business entity would be forced to alter its project or not choose Idaho; ( )

c. A letter from the city or county, or both, describing their commitment to supply community contribution, a specific description of the contribution, and the amount of the contribution; ( )

d. Business entities currently doing business in Idaho will supply a letter from the Idaho State Tax commission confirming that the business entity is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission; ( )

e. An estimate of Idaho goods and services to be consumed or purchased by the business entity during the term; ( )

f. Known or expected detriments to the environment or existing industries in the state; ( )

g. An anticipated project inception date and proposed schedule of progress; ( )

h. Any proposed performance requirements and measurements that must be met prior to issuance of the tax credit; ( )

i. A description of any proposed capital investment; ( )

j. A detailed schedule and description of the projected jobs to be created, the projected wages to be paid for those jobs, and the anticipated hiring schedule for those jobs; and ( )

k. The estimated new state tax revenues to be generated by the project. ( )

05. Application Recommendation Letter. Upon review of an application, the Director may issue a letter that details the Director's anticipated recommendation to the Council. The letter may include the percentage of the tax credit, the term of the tax credit, and any other contingencies determined necessary by the Department. All application recommendation letters shall contain a “subject to Economic Advisory Council approval” contingency clause. ( )

06. Technical Review - Pre-Application. The Director and Department staff will complete a technical review of each pre-application. Upon satisfaction that all pre-application requirements are met, the Director may issue an estimate letter. ( )

07. Technical Review - Application. The Director of the Department and Department staff will complete a technical review and economic impact analysis of each application. The technical review will consider many economic factors and external information sources such as, but not limited to, the region, industry, financial health and history of the business entity, as well as the quality, quantity and economic impact of new jobs and new state revenue. Upon satisfaction that all application requirements are met, the Director may submit a recommendation for award to the Council. ( )

08. Economic Advisory Council. The Council shall review the application and the Director recommendations. Following review the council shall have the following three (3) options as follows: ( )

a. Request additional information or action from the Director in order to obtain necessary information to approve or reject the application; or ( )

b. Approve the application and instruct the Director to enter into an incentive agreement with the business entity; or ( )

c. Reject the application. ( )

d. An approval or rejection from the council shall not be considered a contested case pursuant to Chapter 52, Title 67, Idaho Code, provided, however, that nothing in this section shall prohibit an aggrieved applicant from seeking judicial review as provided in Chapter 52, Title 67, Idaho Code. ( )

09. **Pre-Application Schedule**. The pre-application is open year round. Review of pre-applications are subject to the meeting schedule of Department staff. ( )

10. **Application Schedule**. The application is open year round. Review of applications is subject to the meeting schedule of Department Staff and the Council. The Council will meet no less than quarterly and has the ability to meet more often at the request of the Director. ( )

153. -- 159. (RESERVED)

160. CONFLICT OF INTEREST.
Conflict of Interest is defined by Idaho's Office of the Attorney General as any official action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit of the person or member of the person's household, or a business with which the person or a member of the person's household is associated. In the event Department staff, including the Director has a conflict of interest regarding an application, the conflict shall be fully disclosed to the Director and the Council, and that person shall abstain from decision making or evaluation of the application. In the event a Council member has a conflict of interest regarding an application, the Council member shall fully disclose such conflict to the Director and the Council, and that Council member shall abstain from discussing or voting on the application. ( )

161. -- 169. (RESERVED)

170. AGREEMENTS.

01. **Incentive Agreement**. At the direction of the Council, and in accordance with the criteria established by these rules, the Director shall enter into an incentive agreement with the business entity. ( )

02. **Agreement Terms Defined**. The incentive agreement shall contain any terms as approved by the Council, or deemed necessary by the state Deputy Attorney General, as well as define the following: ( )

a. Maximum term that shall not exceed fifteen (15) years; ( )

b. Projected new state revenues to be generated during the term; ( )

c. Method and recordkeeping requirements to determine projected new state revenue to be generated; ( )

d. The approved tax credit percentage applied to new state revenue each year the business entity is entitled to receive the reimbursement during the term of the meaningful project; ( )

e. The projected new jobs; ( )

f. The terms and conditions of any and all performance requirements and measurements that must be met prior to the issuance of a tax credit authorization; ( )

g. The agreed upon and necessary proof of compliance required prior to tax credit issuance. Proof of compliance provided by the business entity must be adequate to demonstrate to the director that all requirements and measurements have been met for the business entity to receive the tax credit; ( )

h. The consequences of default by the business entity; ( )

i. The period to be used to determine the taxes paid at the date of application; ( )

j. Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641, Idaho Code, or is required to obtain a separate seller's permit pursuant to Chapter 36, Title 63, Idaho Code. ( )

k. The federal employer identification or social security number for each individual or entity stated as the business entity in the incentive agreement; and ( )

l. Identification of the individual or entity that is or will be claiming the refundable credit. ( )

171. -- 179. (RESERVED)

180. TAX CREDIT AUTHORIZATION.

01. Claiming Tax Credit. No business entity may claim a tax credit unless the business entity has a tax credit authorization issued by the Department. A business entity may claim a tax credit on its tax return, in the amount listed on the tax credit authorization for the year listed on the tax credit authorization. ( )

02. Duplicate Copy. The Department shall provide a duplicate copy of any tax credit authorization to the Tax Commission. ( )

181. -- 189. (RESERVED)

190. ANNUAL REPORTING BY APPLICANT.
Required Annual reporting shall be outlined in the incentive agreement and will include, but not be limited to, the following: ( )

01. New State Revenues. Supporting documentation of the new state revenues from the business entity's new project that were paid during the preceding calendar year. ( )

02. New Jobs Created. Supporting documentation of the new jobs that were created during the preceding tax year and the corresponding payroll information associated with the new jobs. ( )

03. Known or Expected Detriments. Known or expected detriments to the environment or existing industries in the state. ( )

04. Authorization Document. A document that expressly directs and authorizes the Tax Commission and Department of Labor to allow the Department access to the business entity's returns, filings and other information that may be necessary to verify or otherwise confirm the declared new state revenues, the new jobs and the associated payroll information. ( )

05. Tax Commission Letter. A letter from the Idaho State Tax Commission confirming that the business entity is in good standing in the state of Idaho and is not in unresolved arrears in the payment of any state tax or fee administered by the tax commission. ( )

06. Other Entitle to Rebate. Identification of any individual or entity included within the application that is entitled to a rebate pursuant to section 63-3641 or 63-4408, Idaho Code, or is required to obtain a separate seller's permit pursuant to Chapter 36, Title 63, Idaho Code. ( )

07. Supporting Documentation. Supporting documentation that the business entity has satisfied the measurements and requirements outlined in the incentive agreement. ( )

191. ANNUAL REPORTING BY DEPARTMENT.
The Department shall create an annual written report for the Governor and the Legislature describing the following: ( )

01. Successes. The Department's success under this act in attracting new jobs; ( )

02. Estimated Tax Credit Commitments. The estimated amount of tax credit commitments made by the Department and the period of time over which tax credits will be paid; ( )

03. Economic Impact to State. The economic impact to the state related to generating new state revenue and providing tax credits under this act; ( )

04. Estimated Costs and Benefits. The estimated costs and economic benefits of the tax credit commitments that the Department made; and ( )

05. Actual Costs and Benefits. The actual costs and economic benefits of the tax credit commitments the Department made. ( )

06. Submittal of Report. The report shall be submitted to the Office of the Governor and the appropriate legislative committee chairmen in a timely manner following the close of the state's fiscal year. ( )

192. -- 199. (RESERVED)

200. AUDIT.
On or before November 1, 2015, and every year thereafter, the Department shall arrange for an independent third party audit pursuant to Chapter 47, Title 67, Idaho Code. The Department shall consider any audit recommendations provided during the audit and implement changes as necessary of a result of those recommendations. ( )

201. -- 209. (RESERVED)

210. CONTINUATION OF TAX CREDIT.
During the term of the project for each business entity, the Department shall review the business entity's annual report. Provided the business entity provides a reasonable justification for authorizing or continuing a tax credit, the Department shall determine the amount of the tax credit to be granted, issue a tax credit authorization to the business entity, and provide a duplicate copy of the tax credit authorization to the Tax Commission. The amount of the tax credit to be continued shall be in accordance with the credit percentages specified in the incentive agreement. The TRI shall not be extended beyond the term and length specified in the incentive agreement. ( )

211. TERMINATION OR SUSPENSION OF TAX CREDIT.
During the term of the project for each business entity, the Department shall review the business entity's annual report and if the information provided is inadequate or inaccurate to provide a reasonable justification for authorizing or continuing a tax credit, the Department shall: ( )

01. Denial of Tax Credit. Deny the tax credit for that tax year; or ( )

02. Termination of Agreement. Terminate the incentive agreement for failure to meet the performance standards established in accordance with the terms outlined in the incentive agreement; or ( )

03. Request for Additional Documentation. Request the business entity to submit additional documentation. ( )

212. -- 219. (RESERVED)

220. SUSPENSION OF IDAHO REIMBURSEMENT INCENTIVE ACT.
The Director shall suspend the issuance of all new incentive agreements with business entities upon the occurrence of the following conditions: ( )

01. Temporary Spending Reduction. The governor orders a temporary reduction of general fund spending authority, pursuant to Section 67-3512A, Idaho Code; and ( )

02. Suspension of New Agreements. The governor issues an executive order directing the Department

to suspend the issuance of new incentive agreements during the tax year in which the temporary reduction of general fund spending authority has been ordered and the executive order issued. ( )

03. Existing Approved Agreements. In the case of suspension all agreements that have been approved by the Council prior to the governor issuing an executive order, as provided in Subsections 026.01 and 026.02 of these rules, shall remain in full force and effect and shall not be modified or impaired as a result of the executive order. ( )

04. Support of Existing Agreements. During the period of time that new incentive agreements have been suspended, the Director shall maintain the necessary services required to support all existing agreements and comply with all required reporting and review responsibilities. ( )

05. Removal of Suspension. The governor may remove the suspension issued by executive order. ( )

221. -- 999. (RESERVED)

IDAPA 33 - REAL ESTATE COMMISSION

33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

DOCKET NO. 33-0101-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. That action is authorized pursuant to Sections 54-2007 of the Idaho Code.

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

Wednesday, October 22, 2014 -- 10:00 a.m.

Idaho Real Estate Commission
575 E. Parkcenter Blvd. Suite 180
Boise, ID 83706

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:

This rulemaking is housekeeping in nature and makes a technical correction and deletes obsolete references. No substantive changes are being made.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Commission has already consulted with industry representatives about the text of the proposed change and they are in agreement with the desirability and need for this rule change.

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 documents are 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 Jeanne Jackson-Heim, (208) 334-3285.

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 October 22, 2014.

DATED this 25th day of August, 2014.

Jeanne Jackson-Heim
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 575 E. Parkcenter Blvd. Suite 180
Boise ID 83706
(208) 334-3285; (208) 334-2050 (fax)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 33-0101-1401
(Only those Sections being amended are shown.)

117. CERTIFICATION OF MANDATORY ERRORS AND OMISSIONS INSURANCE.
Every licensee, upon obtaining or renewing an active real estate license in the state of Idaho~~*, including nonresident and reciprocal licensees,*~~ shall have in effect and maintain a policy of errors and omissions insurance when required by Section 54-2013, Idaho Code, to cover all activities contemplated under Chapter 20, Title 54, Idaho Code and shall certify such coverage to the Commission in the form and manner prescribed by statute and in these rules.
~~*(3-15-02)*~~( )

01. Certification of Licensees Under Group Insurance Plan. Licensees covered under the Group Insurance Plan, as provided for in Section 118 of these rules, shall be deemed to have satisfied the certification requirement of Section 117. The effective date of coverage, however, shall be the day of final license approval. (4-2-03)

02. Certification of Licensees Obtaining Independent Coverage. Licensees obtaining independent coverage, as provided for in Section 119 of these rules, shall obtain a Certificate of Coverage, signed by an authorized agent or employee of the insurance carrier, which certificate shall be in a form approved by the Commission, reflecting proof of insurance meeting the requirements established by the Commission. Upon request by the Commission the licensee shall produce for inspection the Certificate of Insurance. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

121. FAILURE TO MAINTAIN INSURANCE.
Failure of a licensee to obtain and maintain insurance coverage required by Section 117 shall result in inactivation of any active license issued pursuant to Idaho Real Estate License Law or denial of any application for issuance or renewal of an active license. Failure to maintain insurance as required herein shall be deemed insufficient application for licensure under Section 67-5254, Idaho Code. (4-2-03)

01. Notice of Noncompliance. Within five (5) ~~*working*~~ business days of the date the Commission is notified that a licensee does not have required coverage, the Commission shall notify the affected licensee of noncompliance. Notice shall be sent by first class mail to the licensee's business or residence address, as reflected in the Commission's records, and a copy of the notice shall be sent to the licensee's broker, if any. The notice shall provide that the licensee has ten (10) business days in which to comply with the law and these rules regarding errors and omissions insurance. Failure to comply at the end of ten (10) business days shall result in the license being automatically inactivated.
~~*(4-2-08)*~~( )

~~***02. Reactivation****. Any licensee whose license has been inactivated for failure to comply with these rules shall be entitled to activate said license, relating back to and including the date of inactivation, provided that, within thirty (30) days of the date of inactivation, the licensee or Group Plan Administrator files with the Commission a certificate of coverage showing that such coverage has been and is currently in effect on and from the date of inactivation, with no lapse in coverage. Further, the licensee must submit required documents and fees to activate said license. In the event the certificate of coverage shows an effective date later than the date of inactivation, said license shall be activated as of the effective date of said insurance, as reflected in the certificate of coverage, and upon submission of any required documents and fees.*~~ ~~*(3-15-02)*~~

0~~3~~2. Failure to Maintain Insurance. Any failure of a licensee to maintain errors and omissions insurance while on active license status, regardless whether coverage is later obtained and made retroactive by the carrier, shall constitute a violation of these rules, and shall be grounds for disciplinary action as provided in Sections 54-2059 and 54-2060, Idaho Code, including but not limited to the assessment of civil fines. A late renewal is considered failure to maintain insurance and constitutes a violation of the law. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

304. ***~~OFFICE OPERATIONS AND BROKER SUPERVISION.~~*** **(RESERVED)**
~~*A designated broker is required to adequately supervise the activities of licensees and unlicensed personnel for whom he is responsible. The following factors will be among those used to determine adequacy of supervision; however, the Commission is not limited to making a determination on these factors alone, but will examine all pertinent evidence.* (3-15-02)~~

~~***01. Designated Broker Physically Available to Supervise****. Was the designated broker physically available to supervise?* (3-15-02)~~

~~***02. Experience Level of the Licensed Associate****. What was the experience level of the licensed associate?* (3-15-02)~~

~~***03. Designated Broker Contracted to Avoid Supervisory Responsibility****. Has the designated broker contracted to avoid supervisory responsibility?* (3-15-02)~~

~~***04. Types of Activity****. What types of activity were licensed sales associates or unlicensed personnel engaged in?* (3-15-02)~~

~~***05. Established Written or Oral Policies and Procedures****. Had the designated broker established written or oral policies and procedures?* (3-15-02)~~

~~***06. Determine That Policies and Procedures Are Being Properly Implemented****. Does the designated broker hold regular staff meetings and follow-up meetings to determine that policies and procedures are being properly implemented?* (3-15-02)~~

~~***07. Corrective or Remedial Action****. What corrective or remedial action does the designated broker take if a misdeed of a sales associate or unlicensed personnel is discovered?* (3-15-02)~~

IDAPA 33 - REAL ESTATE COMMISSION

33.01.02 - RULES OF PRACTICE AND PROCEDURE OF THE IDAHO REAL ESTATE COMMISSION GOVERNING CONTESTED CASES

DOCKET NO. 33-0102-1401

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. That action is authorized pursuant to Sections 54-2007 of the Idaho Code.

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

Wednesday, October 22, 2014 -- 10:00 a.m.

Idaho Real Estate Commission
575 E. Parkcenter Blvd. Suite 180
Boise, ID 83706

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:

This rulemaking will clarify the agency office hours, delete gender specific and obsolete terms that are unnecessary to the chapter, and provide for electronic service of process.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Commission has already consulted with industry representatives about the text of the proposed change and they are in agreement with the desirability and need for this rule change.

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 documents are 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 Jeanne Jackson-Heim, (208) 334-3285.

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 October 22, 2014.

DATED this 25th day of August, 2014.

Jeanne Jackson-Heim
Executive Director
Agency: Idaho Real Estate Commission
Physical Address: 575 E. Parkcenter Blvd. Suite 180
Boise ID 83706
(208) 334-3285; (208) 334-2050 (fax)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 33-0102-1401
(Only those Sections being amended are shown.)

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

01. Office Hours. The office hours are 8 a.m. to 5 p.m., mountain time, Monday through Friday, excluding holidays. ~~(5-3-03)~~( )

02. Mailing Address. The mailing address is 575 E. Parkcenter Blvd., Suite 180, Boise ID 83706. (5-3-03)

03. Street Address. The street address is 575 E. Parkcenter Blvd., Suite 180, Boise ID 83706. (5-3-03)

04. Telephone Numbers. The Commission can be reached by telephone at (208) 334-3285 and by fax at (208) 334-2050. A toll-free number for JTRS Relay Service (telecommunications for the hearing impaired) is 1-800-377-3529. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Administrative Code. The Idaho administrative code established in Chapter 52, Title 67, Idaho Code. (7-1-93)

02. Agency. The Idaho Real Estate Commission as created in Chapter 20, Title 54, Idaho Code. (7-1-93)

03. Agency Head. The body of individuals appointed pursuant to Section 54-2005, Idaho Code, and in whom ultimate legal authority of the Commission is vested. (5-3-03)

~~***04. Chairman**. Chairman of the Idaho Real Estate Commission.* (7-1-93)~~

0~~5~~4. Commission. Idaho Real Estate Commission. (7-1-93)

0~~6~~5. Contested Case. A proceeding which results in the issuance of an order. (7-1-93)

0~~7~~6. Executive Director. Executive director of the Idaho Real Estate Commission. (7-1-93)

0~~8~~7. Hearing Officer. Person appointed by the executive director to hear contested cases before the agency. (7-1-93)

~~***09. License**. A real estate broker, associate broker or salesman, corporate, limited liability company or partnership license as provided in Chapter 20, Title 54, Idaho Code.* (7-1-96)~~

~~1~~08. Order. An agency action of particular applicability that determines the legal rights, duties, privileges, immunities, or other legal interests of one (1) or more specific persons. (7-1-93)

~~11~~09. Party. Each person or agency named or admitted as a party, or properly seeking and entitled as a right to be admitted as a party. (7-1-93)

1~~2~~0. Person. Any individual, partnership, corporation, limited liability company, association,

governmental subdivision or agency, or public or private organization or entity of any character. (7-1-96)

1~~3~~1. **Provision of Law**. The whole or a part of the state or federal constitution, or of any state or federal: (7-1-93)

a. Statute; or (7-1-93)

b. Rule or decision of the court. (7-1-93)

1~~4~~2. **Rule**. The whole or a part of an agency statement of general applicability that has been promulgated in compliance with the provisions of Chapter 52, Title 67, Idaho Code, and that implements, interprets, or prescribes: (7-1-93)

a. Law or policy; or (7-1-93)

b. The procedure or practice requirements of an agency. The term includes the amendment, repeal, or suspension of an existing rule, but does not include: (7-1-93)

i. Statements concerning only the internal management or internal personnel policies of an agency and not affecting private rights of the public or procedures available to the public; (7-1-93)

ii. Declaratory rulings issued pursuant to Section 67-5232, Idaho Code; (7-1-93)

iii. Intra-agency memoranda; or (7-1-93)

iv. Any written statements given by an agency which pertain to an interpretation of a rule or to the documentation of compliance with a rule. (7-1-93)

1~~5~~3. **Rulemaking**. The process for formulation, adoption, amendment or repeal of a rule. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

104. SERVICE BY AGENCY.

01. Personal Service and Service by Mail. The officer designated by the agency ~~may~~ to serve notices, summonses, administrative complaints, or orders and other documents may serve these documents by regular mail, or by certified mail, return receipt requested, to a party's last known mailing address, or by personal service upon the party~~,~~ pursuant to Idaho Rules of Civil Procedure, or by state statute. The ~~agency~~ designated officer must serve all orders and notices in a proceeding on the representatives of each party designated pursuant to these rules for that proceeding and upon other persons designated by these rules or by the agency. ~~(5-3-03)~~( )

02. Electronic Service. If a party has appeared in a contested case, or if a party has not appeared but has consented or agreed in writing to service by facsimile transmission (FAX) or e-mail as an alternative to personal service or service by mail, the officer designated to serve notices and orders in a contested case may serve those notices and orders by FAX or by e-mail in lieu of service by mail or personal service. ( )

03. When Service Complete. Unless otherwise provided by statute, these rules, order, or notice, service of orders and notices is complete when a copy, properly addressed and stamped, is deposited in the United States mail, or the Statehouse mail if the party is a State employee or State agency or when there is an electronic verification that a facsimile transmission or an e-mail has been sent. Service upon a party by mail shall not enlarge the prescribed period of time within which the party served has the right or is required to act. ( )

04. Proof of Service. Every notice and order that the agency serves in a contested case must be accompanied by a proof of service stating the service date, each party or other person who was served, and the method of service. The agency may use a proof of service similar to those used by parties. See Rule 303. ( )

(BREAK IN CONTINUITY OF SECTIONS)

106. ~~*FEES AND REMITTANCES.*~~ (RESERVED)
~~*Fees and remittances to the agency must be paid by money order, bank draft or check payable to agency. Remittances in currency or coin are wholly at the risk of the remitter, and the agency assumes no responsibility for their loss.*~~
~~*(7-1-93)*~~

(BREAK IN CONTINUITY OF SECTIONS)

152. REPORT CONTENTS AND PROCEDURE.
The report submitted by the Executive Director to the agency head shall be in writing and signed by the executive director and shall contain a summary of alleged relevant facts determined through the investigation and a summary of potential violations committed by a licensee or other individual. ~~*Such report shall also contain a statement indicating whether a settlement had been offered prior to seeking authorization to file an administrative complaint.*~~ The report shall not disclose names, locations or other identifying information regarding the accused, nor shall the report make any reference to the penalty that Commission staff will seek or to the terms of any offered or potential settlement that may be negotiated in future. ~~*(5-3-03)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

209. SERVICE ON REPRESENTATIVES OF PARTIES AND OTHER PERSONS.

01. Service by Parties. From the time a party files its initial pleading in a contested case, that party must serve and all other parties must serve all future documents intended to be part of the agency record upon all other parties' representatives unless otherwise directed by order or notice or by the presiding officer on the record. The presiding officer may order parties to serve past documents filed in the case upon those representatives. The presiding officer may order parties to serve past or future documents filed in the case upon persons not parties to the proceedings before the agency. ~~*(7-1-93)*~~(____)

02. Method of Service. A party required to serve documents upon another party under these rules may serve such party by regular mail, or by certified mail, return receipt requested, to the other party's last known mailing address, or by personal service upon the party. (____)

03. Electronic Service. If the party or person to be served has appeared in the contested case, or if the party or person has not appeared but has consented or agreed in writing to service by facsimile transmission (FAX) or e-mail as an alternative to personal service or service by mail, such party may be served by FAX or by e-mail in lieu of service by mail or personal service unless otherwise ordered by the agency's designated officer. (____)

04. When Service Complete. Unless otherwise provided by statute, these rules, order or notice, service of a document is complete when a copy, properly addressed and stamped, is deposited in the United States mail or the Statehouse mail if the party is a State employee or State agency or when there is an electronic verification that a facsimile transmission or an e-mail has been sent. Service upon a party by mail shall not enlarge the prescribed period of time within which the party served has the right or is required to act. (____)

05. Proof of Service. Every document served by a party in a contested case must be attached to or accompanied by a proof of service in the same or similar form provided in Rule 303. (____)

(BREAK IN CONTINUITY OF SECTIONS)

303. PROOF OF SERVICE.
Every document filed with and intended to be part of the agency record must be attached to or accompanied by proof of service by the following or similar certificate:

I HEREBY CERTIFY (swear or affirm) that I have this
_____ day of _____, served the foregoing
(name(s) of document(s)) upon all parties of record
in this proceeding, (by delivering a copy thereof
in person: (list names)) (by mailing a copy thereof,
properly addressed with postage prepaid, to:
(list names and addresses))
(by facsimile transmission to: (list names and FAX numbers))
(by e-mail to: (list names and e-mail addresses)).

(Signature) ~~(7-1-93)~~(____)

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1401

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 and 63-3039, 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 15, 2014.

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 560 is being amended consistent with language from the MTC (Multistate Tax Commission). The current version of this rule is an enactment of the model regulation drafted by the MTC in 1973. In 2010, the MTC revised the model regulation language to remove the phrase about "unusual fact situations (which ordinarily will be unique and non-recurring)." This newer version of the rule follows the reasoning found in the Idaho Supreme Court's holding in the Union Pacific case, 139 Idaho 572 (2004). Enacting this revised version of the rule provides interpretation and application of Section 63-3027(s), Idaho Code, that is consistent with the Idaho Supreme Court's interpretation and application of the statute.

Rule 750 is being amended to provide additional guidance regarding the carryover period for the broadband tax credit. As a result of taxpayer inquiry, this version of the rule clarifies the broadband equipment tax credit and its allowable 14 year carryover period.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014 Idaho Administrative Bulletin, **Vol. 14-6, page 71**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 Wednesday, October 22, 2014.

DATED this 27th day of August, 2014.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1401
(Only those Sections being amended are shown.)

560. SPECIAL RULES (RULE 560).
Section 63-3027(s), Idaho Code.

01. In General. A departure from the allocation and apportionment provisions of Section 63-3027, Idaho Code, is permitted only in limited and specific cases~~. *Section 63-3027(s), Idaho Code, may be invoked only when unusual fact situations that ordinarily are unique and nonrecurring produce incongruous results pursuant to*~~ where the apportionment and allocation provisions contained in Section 63-3027, Idaho Code, produce incongruous results. ~~*(3-20-97)*~~( )

02. Alternate Methods. If the allocation and apportionment provisions of Section 63-3027, Idaho Code, do not fairly represent the extent of all or any part of a taxpayer's business activity in Idaho, the taxpayer may petition for or the Tax Commission may require: (3-20-97)

a. Separate accounting; (3-20-97)

b. The exclusion of one (1) or more of the factors; (3-20-97)

c. The inclusion of one (1) or more additional factors that fairly represent the taxpayer's business activity in Idaho; or (3-20-97)

d. The use of any other method to achieve an equitable allocation and apportionment of the taxpayer's income. (3-20-97)

03. Special Industry Methods. Rules 460 through 559 of these rules do not set forth appropriate procedures for determining the apportionment factors of certain industries. Nothing in Section 63-3027(s), Idaho Code, or in Rules 560 through 599 of these rules precludes the Tax Commission from establishing appropriate procedures pursuant to Sections 63-3027(k) through 63-3027(r), Idaho Code, for determining the apportionment factors for each of these industries. These procedures ~~*shall*~~ will be applied uniformly. See Rule 580 of these rules for the list of the special industries. ~~*(3-20-97)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

750. BROADBAND EQUIPMENT INVESTMENT CREDIT: IN GENERAL (RULE 750).
Section 63-3029I, Idaho Code.

01. Credit Allowed. The broadband equipment investment credit allowed by Section 63-3029I, Idaho Code, applies to investments made during taxable years beginning on and after January 1, 2001. The investment must also meet the requirements of Section 63-3029B, Idaho Code, and related rules as to what constitutes qualified investment. (4-6-05)

02. Limitations. The broadband equipment investment credit allowable in any taxable year ~~*shall*~~ will be limited as follows: ~~*(3-15-02)*~~( )

a. The broadband equipment investment credit claimed during a taxable year may not exceed the lesser of: (3-15-02)

i. Seven hundred fifty thousand dollars ($750,000); or (3-15-02)

ii. One hundred percent (100%) of the tax, after allowing all other income tax credits that may be

claimed before the broadband equipment investment credit, regardless of whether this credit results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-15-02)

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the broadband equipment investment credit is limited by the provisions of Section 63-3029F, Idaho Code. (3-15-02)

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-15-02)

d. Transferred Credit. Limitations apply to each transferee as if the transferee had earned the credit. (3-15-02)

03. Carryovers. (3-15-02)

a. The carryover period for the broadband equipment investment credit is fourteen (14) years. (3-15-02)

i. The fourteen (14) year carryover period provided by section 63-3029I(7), Idaho Code, extends throughout the fourteen (14) taxable years following the year in which the equipment was installed. The fourteen (14) year carryover period begins to run regardless of whether the taxpayer has sought and received approval from the Idaho public utilities commission (PUC). ( )

ii. Once a taxpayer has received the approval order from the PUC, the broadband tax credit may be claimed or transferred. If the statute of limitations has expired for filing a return to claim the credit for the taxable year of the installation, the taxpayer cannot claim any credit for that taxable year, but must calculate how much of the credit the taxpayer could have used to determine the amount of credit available to carry forward pursuant to section 63-3029I(7), Idaho Code. ( )

iii. Example: A calendar year filer installed qualifying equipment on July 20, 2001. However, it was not until 2013 that the taxpayer sought and received the approval order from the PUC. The fourteen (14) year carryover period already began to run based on the installation date and will expire at the end of the 2015 taxable year. On March 10, 2013 the taxpayer is preparing his tax returns and considering how much broadband credit is available and to which taxable years it could be applied to. The taxpayer can file an amended return to claim the credit starting with taxable year 2009 (prior years would be out of the statute of limitations for filing an amended return assuming all returns had been timely filed and no other special circumstances had held the period open). The taxpayer must look back to taxable year 2001 (the year of installation) to see how much credit the taxpayer could have used in each taxable year up to 2009 to determine how much credit carryover amount is still available pursuant to the carryover limitations of section 63-3029I(7), Idaho Code. The taxpayer must use up or transfer any unused credit before taxable year 2016; after taxable year 2015, the carry forward period will expire and any unused credit will no longer be available for the taxpayer to apply or transfer. ( )

b. See Rule 793 of these rules for the rules regarding the carryover of transferred credit. (3-15-02)

04. Taxpayers Entitled to the Credit. Rule 711 of these rules ~~*shall*~~ will apply to the broadband equipment investment credit except that limitations referenced in Subsection 711.01 of these rules ~~*shall*~~ will be those limitations as provided in Section 63-3029I, Idaho Code. ~~*(4-6-05)*~~( )

05. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-15-02)

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1402

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 and 63-3039, 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 15, 2014.

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 268 is being promulgated to provide guidance on the order in which a nonresident or part-year resident can deduct suspended losses.

Rule 275 is being amended to include an example showing how a nonresident partner of a multistate investment partnership calculates the amount of taxable income from the partnership that is included in Idaho taxable income.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, page 93**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 Wednesday, October 22, 2014.

DATED this 27th day of August, 2014.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1402
(Only those Sections being amended are shown.)

268. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUSPENDED LOSSES FROM PASS-THROUGH ENTITIES (RULE 268).
Section 63-3026A, Idaho Code.

01. In General. A nonresident individual's suspended losses from a pass-through entity are included in Idaho taxable income in the year included in federal taxable income only to the extent the losses were from an Idaho source in the year incurred. ( )

a. Suspended Loss. For purposes of this rule, a suspended loss is a loss required to be carried over to a succeeding taxable year due to Section 465(a), Section 704(d), or Section 1366(d) of the Internal Revenue Code. ( )

b. Idaho Source. A suspended loss is from an Idaho source in the year incurred to the extent provided by Section 63-3026A, Idaho Code, and related rules. For purposes of this rule, the Idaho source portion of a suspended business loss subject to apportionment is determined by multiplying the loss by the Idaho apportionment factor of the pass-through entity in the year the loss was incurred. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. ( )

c. Nonbusiness Losses. A suspended nonbusiness loss is from an Idaho source in the year incurred to the extent the loss is allocable to Idaho pursuant to Section 63-3027, Idaho Code and Rule 263.02 of these rules. ( )

d. Year Loss Incurred. For purposes of this rule, "year incurred" means the tax year the loss was first suspended. ( )

e. Example. A nonresident individual's federal taxable income includes one hundred thousand dollars ($100,000) of loss from a partnership. Sixty thousand dollars ($60,000) of that loss was incurred in the prior tax year and suspended due to the basis limitation of Section 704(d) of the Internal Revenue Code. Forty thousand dollars ($40,000) of that loss was incurred in the current tax year. The Idaho apportionment factor of the partnership is one hundred percent (100%) in the current year and fifty percent (50%) in the prior year. The individual's Idaho taxable income includes seventy thousand dollars ($70,000) of the partnership's loss, computed as follows: ($60,000 prior year suspended loss x fifty percent (50%) prior year Idaho apportionment factor plus (Forty thousand dollars ($40,000) current year loss x one hundred percent (100%) current year Idaho apportionment factor). ( )

02. Losses from Multiple Years. For purposes of this rule, losses from a pass-through entity are considered used in the order incurred. ( )

a. Example. A nonresident individual has suspended losses from a partnership of one hundred thousand dollars ($100,000). The suspended losses consist of forty thousand dollars ($40,000) of loss incurred in Year 1 and sixty thousand dollars ($60,000) of loss incurred in Year 2. The individual also has a loss from the partnership in the current year of fifty thousand dollars ($50,000). The partnership's Idaho apportionment factor is one hundred percent (100%) in the current year and fifty percent (50%) in each of the preceding years. Due to the loss limitation of Section 704(d) of the Internal Revenue Code, the individual's current year deduction is limited to one hundred thousand dollars ($100,000). The one hundred thousand dollar ($100,000) loss allowed in computing federal taxable income is considered to be forty thousand dollars ($40,000) of suspended loss from Year 1 and sixty thousand dollars ($60,000) of suspended loss from Year 2. The amount included in Idaho taxable income is fifty thousand dollars ($50,000), computed as follows: ($40,000 Year 1 loss x 50% Idaho apportionment factor) plus ($60,000 Year 2 loss x 50% Idaho apportionment factor). ( )

~~*268.*~~ **269. (RESERVED)**

(BREAK IN CONTINUITY OF SECTIONS)

275. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INVESTMENT INCOME FROM QUALIFIED INVESTMENT PARTNERSHIPS (RULE 275).
Section 63-3026A(3)(c), Idaho Code.

01. In General. (4-11-06)

a. For taxable years beginning on or after January 1, 2007, the Idaho taxable income of a nonresident individual does not include the distributive share of investment income of a qualified investment partnership. The distributive share of noninvestment income of a qualified investment partnership derived from or related to sources within Idaho is included in Idaho taxable income. See Rule 250 of these rules for information on when pass-through income from a partnership is deemed to have been received. (2-27-12)

b. The exemption from tax on investment income from a qualified investment partnership does not apply to gains or losses derived from the sale of a nonresident individual's interest in a qualified investment partnership. The source of these gains and losses is governed by Section 63-3026A(3)(a)(vii), Idaho Code, and Rule 266 of these rules. The source of investment income that is not from a qualified investment partnership is determined as provided in Rule 263 of these rules. (2-27-12)

02. Qualified Investment Partnership. An entity is a qualified investment partnership only if it meets both of the following criteria: (2-27-12)

a. The entity is classified as a partnership for federal income tax purposes, but is not a publicly traded partnership taxed as a corporation under Section 63-3006, Idaho Code. (4-2-08)

b. The gross income from investments of the entity is derived at least ninety percent (90%) from investments that when held by a nonresident individual directly, would not produce income subject to the Idaho income tax. See Rules 263 and 266 of these rules. (2-27-12)

03. Investment Income. For purposes of this exclusion, an item of partnership income is investment income only if it would not be Idaho taxable income of a nonresident individual if the individual held the investment directly. (2-27-12)

04. Examples. (2-27-12)

a. A is a nonresident individual member of ABC, a partnership operating solely within Idaho. The taxable income of ABC for the taxable year consists of ninety thousand dollars ($90,000) of dividend income and ten thousand dollars ($10,000) of capital gains from stock trading through a brokerage account. If A held the stock directly, Section 63-3026A(3)(a)(iii), Idaho Code, provides that the dividends and capital gains would not be included in Idaho taxable income. Since at least ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership and none of A's distributive share of the income is included in Idaho taxable income even though ABC is an Idaho partnership. (2-27-12)

b. Assume the same facts as in Paragraph 275.04.a. of this rule, except that the ten thousand dollars ($10,000) of capital gains is from the sale of Idaho real property. Since at least ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership. A's distributive share of ABC's dividend income is excluded from A's Idaho taxable income, but A's distributive share of ABC's gain from the sale of Idaho real property is included in Idaho taxable income because Section 63-3026A(3), Idaho Code, provides that such income would be taxable to A if A had owned the property directly. (2-27-12)

c. A is a nonresident individual member of ABC, a partnership operating solely within Idaho. The

taxable income of ABC for the taxable year consists of eighty thousand dollars ($80,000) of dividend income and twenty thousand dollars ($20,000) of capital gains from the sale of Idaho real property. ABC is not a qualified investment partnership because less than ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual. A's distributive share of ABC's dividend income and capital gain income is included in Idaho taxable income as provided in Rule 263 of these rules.

(2-27-12)

d. A is a nonresident individual partner in ABC, a partnership with a fifty percent (50%) Idaho apportionment factor. The gross income of ABC consists of ninety thousand dollars ($90,000) of dividend income, five thousand dollars ($5,000) of capital gain from the sale of non-Idaho real property used in the trade or business, and five thousand dollars ($5,000) of gross business income. Since at least ninety percent (90%) of ABC's gross income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership. A's distributive share of ABC's dividend income is excluded from A's Idaho taxable income, but fifty percent (50%) of A's distributive share of ABC's gain from the sale of non-Idaho real property (which is business income under the facts of this example) and fifty percent (50%) of A's distributive share of ABC's other business income is included in Idaho taxable income, based on the Idaho apportionment factor of the partnership as provided in Section 63-3026A(3)(a)(i) and Rule 263 of these rules. ( )

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1403

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 and 63-3039, 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 15, 2014.

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 075 is being amended to add the tax brackets for calendar year 2014 and remove the information for calendar year 2009 so only five years of historical data is retained in the rule.

Rule 190 is being amended consistent with 2014 House Bill 595a to increase the maximum amount deductible for the Idaho Medical Savings Account to $10,000 single/$20,000 married filing joint.

Rule 263 is being amended to conform to updated the amount of guaranteed payments that is sourced as compensation for services per Section 63-3026A(3)(a)(i)(2), Idaho Code.

Rule 771 is being amended to add tax year 2014 and the applicable grocery credit amounts to the table.

Rule 872 is being amended to change language from split-monthly to semimonthly.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature or complied with statutory changes.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 Wednesday, October 22, 2014.

DATED this 27th day of August, 2014.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0101-1403
(Only those Sections being amended are shown.)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).
Section 63-3024, Idaho Code.

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. The maximum tax rate as listed for the applicable taxable year in Subsection 075.03 of this rule applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-7-11)

02. Tax Computation. (5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (4-7-11)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars ($30,000), the tax is computed as if they had taxable income of fifteen thousand dollars ($15,000). The tax amount is multiplied by two (2). (4-7-11)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

~~**a.** *For taxable years beginning in 2009:*~~

~~IF IDAHO TAXABLE INCOME IS~~		~~IDAHO TAX~~		
~~At least~~	~~But less than~~	~~Is~~		~~Plus~~
~~$1~~	~~$1,321~~	~~$0~~	~~+~~	~~1.6% of taxable income~~
~~$1,321~~	~~$2,642~~	~~$21.13~~	~~+~~	~~3.6% of the amount over $1,321~~
~~$2,642~~	~~$3,963~~	~~$68.69~~	~~+~~	~~4.1% of the amount over $2,642~~
~~$3,963~~	~~$5,284~~	~~$122.84~~	~~+~~	~~5.1% of the amount over $3,963~~
~~$5,284~~	~~$6,604~~	~~$190.21~~	~~+~~	~~6.1% of the amount over $5,284~~
~~$6,604~~	~~$9,907~~	~~$270.78~~	~~+~~	~~7.1% of the amount over $6,604~~
~~$9,907~~	~~$26,418~~	~~$505.24~~	~~+~~	~~7.4% of the amount over $9,907~~
~~$26,418 or more~~		~~$1,727.05~~	~~+~~	~~7.8% of the amount over $26,418~~
~~Tax and bracket amounts were calculated using consumer price index amounts published on April 28, 2009.~~				

~~(4-7-11)~~

~~**b**~~**a.** For taxable years beginning in 2010:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	**But less than**	**Is**		**Plus**
$1	$1,316	$0	+	1.6% of taxable income
$1,316	$2,632	$21.06	+	3.6% of the amount over $1,316
$2,632	$3,948	$68.44	+	4.1% of the amount over $2,632
$3,948	$5,264	$122.40	+	5.1% of the amount over $3,948
$5,264	$6,580	$189.52	+	6.1% of the amount over $5,264
$6,580	$9,870	$269.80	+	7.1% of the amount over $6,580
$9,870	$26,320	$503.39	+	7.4% of the amount over $9,870
$26,320 or more		$1,720.69	+	7.8% of the amount over $26,320
Tax and bracket amounts were calculated using consumer price index amounts published on May 4, 2010.				

(4-7-11)

~~e~~b. For taxable years beginning in 2011:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	**But less than**	**Is**		**Plus**
$1	$1,338	$0	+	1.6% of taxable income
$1,338	$2,676	$21.41	+	3.6% of the amount over $1,338
$2,676	$4,014	$69.58	+	4.1% of the amount over $2,676
$4,014	$5,352	$124.44	+	5.1% of the amount over $4,014
$5,352	$6,690	$192.68	+	6.1% of the amount over $5,352
$6,690	$10,035	$274.30	+	7.1% of the amount over $6,690
$10,035	$26,760	$511.80	+	7.4% of the amount over $10,035
$26,760 or more		$1,749.45	+	7.8% of the amount over $26,760
Tax and bracket amounts were calculated using consumer price index amounts published on May 24, 2011.				

(2-27-12)

~~d~~c. For taxable years beginning in 2012:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	**But less than**	**Is**		**Plus**
$1	$1,380	$0	+	1.6% of taxable income
$1,380	$2,760	$22.08	+	3.6% of the amount over $1,380
$2,760	$4,140	$71.76	+	4.1% of the amount over $2,760

$4,140	$5,520	$128.34	+	5.1% of the amount over $4,140
$5,520	$6,900	$198.72	+	6.1% of the amount over $5,520
$6,900	$10,350	$282.90	+	7.1% of the amount over $6,900
$10,350 or more		$527.85	+	7.4% of the amount over $10,350
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2012.				

(4-4-13)

~~e~~d. For taxable years beginning in 2013:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	**But less than**	**Is**		**Plus**
$1	$1,409	$0	+	1.6% of taxable income
$1,409	$2,818	$22.54	+	3.6% of the amount over $1,409
$2,818	$4,227	$73.26	+	4.1% of the amount over $2,818
$4,227	$5,636	$131.03	+	5.1% of the amount over $4,227
$5,636	$7,045	$202.89	+	6.1% of the amount over $5,636
$7,045	$10,568	$288.84	+	7.1% of the amount over $7,045
$10,568 or more		$538.94	+	7.4% of the amount over $10,568
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2013.				

(3-20-14)

e. For taxable years beginning in 2014:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	**But less than**	**Is**		**Plus**
$1	$1,429	$0	+	1.6% of taxable income
$1,429	$2,858	$22.86	+	3.6% of the amount over $1,429
$2,858	$4,287	$74.30	+	4.1% of the amount over $2,858
$4,287	$5,716	$132.89	+	5.1% of the amount over $4,287
$5,716	$7,145	$205.77	+	6.1% of the amount over $5,716
$7,145	$10,718	$292.94	+	7.1% of the amount over $7,145
$10,718 or more		$546.59	+	7.4% of the amount over $10,718
Tax and bracket amounts were calculated using consumer price index amounts published on April 13, 2014.				

(____)

(BREAK IN CONTINUITY OF SECTIONS)

190. IDAHO MEDICAL SAVINGS ACCOUNTS (RULE 190).
Section 63-3022K, Idaho Code.

01. Designation as a Medical Savings Account. An account must be designated by a depository as a medical savings account to qualify as an Idaho medical savings account. To be designated as a medical savings account, the words medical savings account or MSA must be clearly listed on the statement provided to the account holder and be included in one (1) of the following: (5-3-03)

a. The name of the account; (5-3-03)

b. The title of the account; (5-3-03)

c. The description of the account; or (5-3-03)

d. The designation of the account. (5-3-03)

02. Withdrawal to Reimburse the Account Holder. (4-5-00)

a. A withdrawal from an Idaho medical savings account to reimburse the account holder for expenses he paid is not a withdrawal to pay eligible medical expenses to the extent the account balance at the time the expense was paid was less than the withdrawal. (4-5-00)

b. Example. A taxpayer's Idaho medical savings account had a balance of three hundred dollars ($300) on March 1. On that day, he paid a medical expense costing four hundred dollars ($400) using funds from his regular checking account. On March 10 the taxpayer deposited two hundred dollars ($200) into his medical savings account. On March 11 he withdrew four hundred dollars ($400) from his medical savings account to reimburse himself for the medical expense payment. Only three hundred dollars ($300) of the withdrawal qualifies as a payment of eligible medical expenses. The taxpayer may deduct two hundred dollars ($200) for the contribution to the account. However, he must include one hundred dollars ($100) in Idaho taxable income in addition to paying a penalty of ten dollars ($10). (7-1-98)

03. Pretax Contributions. Health benefits paid with pretax contributions, such as those paid pursuant to a salary reduction agreement, are considered paid by the employer and do not qualify as an expense paid by the employee. Health benefits paid with after-tax dollars are considered paid by the employee and qualify as an expense paid by the employee. (3-20-97)

04. Contributions That Exceed the Amount Deductible. An account holder is limited in the amount he can contribute to his Idaho medical savings account each year to the amount deductible for that year. For taxable years beginning on or after January 1, 1995, but before January 1, 2014, ~~T~~the maximum amount deductible is two thousand dollars ($2,000), four thousand dollars ($4,000) for a joint account. For taxable years beginning on or after January 1, 2014, the maximum amount deductible is ten thousand dollars ($10,000), twenty thousand dollars ($20,000) for a joint account. Contributions to an Idaho medical savings account that exceed the limitation for that year and that are not withdrawn as a deposit in error within thirty (30) days from the date of deposit, ~~*shall*~~ will be subject to tax and the distribution penalty if withdrawn for purposes other than the payment of eligible medical expenses. ~~*(4-5-00)*~~( )

05. Death of a Spouse. If an Idaho medical savings account is established for married individuals as a joint account, no contributions ~~*shall*~~ will be made for an account holder who is deceased. In the year of death, one-half (1/2) of the contributions made up to the date of death ~~*shall*~~ will be attributed to each account holder. If the amounts are less than the maximum contribution ~~*of two thousand dollars ($2,000)*~~ amount, the surviving account holder may make contributions so that his total contributions for the year total ~~*two thousand dollars ($2,000)*~~ the maximum contribution amount. For example, a married couple contributes three thousand dollars ($3,000) to their medical savings account in January of 2013. In April of that year, the husband dies. The contributions made to the date of death will be attributed to each spouse with the result that each spouse is considered to have contributed one thousand five hundred dollars ($1,500). Because the wife has not met the maximum deduction of two thousand dollars ($2,000) for taxable year 2013, she can contribute another five hundred dollars ($500) in that year.

~~(5-3-03)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

263. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (RULE 263).
Section 63-3026A(3), Idaho Code.

01. In General. The taxable amount of a shareholder's pro rata share or a partner's distributive share of business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. (3-20-97)

02. Nonbusiness Income. Pass-through items of identifiable nonbusiness income, gains, or losses of an S corporation or partnership constitute Idaho source income to the shareholder or partner if allocable to Idaho pursuant to the principles set forth in Section 63-3027, Idaho Code. (3-20-97)

03. Pass-Through Items. Whether a pass-through item of income or loss is business or nonbusiness income is determined at the pass-through entity level. Pass-through items of business income or loss may include: (3-20-97)

a. Ordinary income or loss from trade or business activities; (3-20-97)

b. Net income or loss from rental real estate activities; (3-20-97)

c. Net income or loss from other rental activities; (3-20-97)

d. Interest income; (3-20-97)

e. Dividends; (3-20-97)

f. Royalties; (3-20-97)

g. Capital gain or loss; (3-20-97)

h. Other portfolio income or loss; (3-20-97)

i. Gain or loss recognized pursuant to Section 1231, Internal Revenue Code. (3-20-97)

04. Guaranteed Payments Treated As Compensation. (3-20-14)

a. Guaranteed payments to an individual partner up to the amount shown in paragraph 264.04.b. in any calendar year is sourced as compensation for services. If a nonresident partner performs services on behalf of the partnership within and without Idaho, the amount included in Idaho compensation is determined as provided in Rule 270 of these rules. (3-20-14)

b. The 2013 amount is two hundred fifty thousand dollars ($250,000) and will be adjusted annually. The 2014 amount is two hundred fifty thousand dollars ($250,000). ~~(3-20-14)~~( )

05. Distributions. (2-27-12)

a. Partnerships. The amount of distributions received by a partner that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 731, Internal Revenue Code, by the Idaho apportionment factor of the partnership. (2-27-12)

b. S Corporations. The amount of distributions received by a shareholder that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 1368, Internal Revenue Code, by the Idaho apportionment factor of the S corporation. (2-27-12)

c. The Idaho apportionment factor for purposes of Paragraphs 263.05.a. and 263.05.b. of this rule is determined pursuant to Section 63-3027, Idaho Code, and related rules. (2-27-12)

(BREAK IN CONTINUITY OF SECTIONS)

771. GROCERY CREDIT: TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771). Section 63-3024A, Idaho Code.

01. Residents. (5-8-09)

a. A resident individual may claim a credit for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. The maximum credit allowed per qualifying exemption is as follows:

TAX YEAR	IDAHO TAXABLE INCOME $1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN $1,000
2014	$100	$90
2013	$100	$80
2012	$90	$70
2011	$80	$60
2010	$70	$50
2009	$60	$40
2008	$50	$30

~~(3-20-14)~~( )

b. A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars ($20). An additional twenty dollar ($20) credit may be claimed for a spouse who is age sixty-five (65) or older. The additional twenty dollar ($20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

02. Part-Year Residents. A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (5-8-09)

03. Circumstances Causing Ineligibility. A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: (5-8-09)

a. Received assistance under the federal food stamp program; or (5-8-09)

b. Was incarcerated. (5-8-09)

04. Nonresidents. A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)

05. Illegal Residents. An individual residing illegally in the United States is not entitled to the credit. (5-8-09)

06. Members of the Uniformed Services. A member of the uniformed services who is: (4-7-11)

a. Domiciled in Idaho is entitled to this credit; (5-8-09)

b. Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)

c. See Rule 032 of these rules for the definition of member of the uniformed services. (4-7-11)

07. Spouse or Dependents of Members of the Uniformed Services. Beginning on January 1, 2009, a spouse of a nonresident member of the uniformed services stationed in Idaho who has the same domicile as the military service member's home of record and who is residing in Idaho solely to be with the servicemember is a nonresident and is not entitled to the grocery credit. A spouse who is domiciled in Idaho is entitled to the credit. The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (4-7-11)

08. Claiming the Credit. (5-8-09)

a. An individual who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (4-7-11)

b. An individual who is not required to file an Idaho individual income tax return must file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. (4-7-11)

c. No credit may be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. (4-7-11)

09. Donating the Credit. Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The election must be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

872. REPORTING AND PAYING STATE INCOME TAX WITHHOLDING (RULE 872).
Sections 63-3035 and 63-3036, Idaho Code.

01. Payment of State Income Tax Withheld. (4-6-05)

a. In General. An employer must remit monthly any state income tax withheld. These monthly payments are due on or before the 20th day of the following month. However, employers who owe seven hundred fifty dollars ($750) or less per calendar quarter may, at the discretion of the Tax Commission, be allowed to remit the tax withheld on or before the last day of the month following the end of the quarter. Employers who owe less than seven hundred fifty dollars ($750) annually may be allowed to remit the tax withheld annually on or before January 31. When a filing cycle is changed, the change will take effect on January 1 of the following year. (3-20-14)

b. ~~*Split M*~~Semimonthly Filers. ~~*(4-6-05)*~~( )

i. An employer who withholds state income taxes that meet or exceed the monthly or annual threshold amounts provided in Section 63-3035, Idaho Code, and listed in Subparagraph 872.01.b.ii., of this rule, will remit the tax withheld based on ~~*split*~~ semimonthly withholding periods. The first ~~*split*~~ semimonthly withholding

period begins on the first day of the month and ends on the 15th day of the same month with payment made no~~t~~ later than the 20th day of the same month. The second period begins on the 16th day of the month and ends on the last day of the same month with payment made no later than the fifth day of the following month. ~~(3-20-14)~~( )

ii. Threshold amounts:

Withholding Periods Beginning	Monthly Threshold Amounts	Annual Threshold Amounts
Prior to January 1, 2004	$5,000	$60,000
On or After January 1, 2004, but Before July 1, 2005	$6,000	$72,000
On or After July 1, 2005	$20,000	$240,000

(4-6-05)

c. Farmer-Employers. Generally an employer who is a farmer will remit state income tax withheld on or before the last day of January. However, an employer who is a farmer will remit the state income tax withheld on or before the last day of the month following the end of the quarter if he is a covered employer required to file with the Department of Commerce and Labor. (3-20-14)

02. Filing of Annual Reconciliation Returns. (4-6-05)

a. In General. An employer must file an annual reconciliation return for any calendar year in which the employer had an active Idaho withholding account or withheld Idaho income taxes. Such return will: (3-20-14)

i. Report payroll paid during the preceding calendar year; and (4-6-05)

ii. Reconcile the state income tax withheld during the preceding calendar year with the tax remitted for the preceding calendar year. (4-6-05)

b. Due Date of Reconciliation Returns. The annual reconciliation return must be filed with the Forms W-2 on or before such date as required for filing of the W-2. See Rule 874 of these rules. The Tax Commission may require a shorter filing period and due date. (3-20-14)

c. Zero Tax Returns. For reporting periods in which the employer had no payroll or withheld no tax, the annual reconciliation return must be completed and filed by the due date. (3-20-14)

03. Extension of Time to Pay or File Returns. The Tax Commission may allow a one (1) month extension of time to make a monthly or quarterly payment or to file the annual reconciliation return. (4-6-05)

a. The employer must file a written request by the due date of the payment or annual reconciliation return that identifies the reason for the extension and includes the required minimum payment. The minimum payment must be at least ninety percent (90%) of the tax withheld for the period or one hundred percent (100%) of the tax withheld for the same period of the prior year. (3-20-14)

b. The employer must file the annual reconciliation return within one (1) month of the due date. The tax paid with the extension request must be shown on the payment line of the return. Interest from the due date applies to any additional tax due. (3-20-14)

04. Valid Returns. All withholding returns and other documents required to be filed pursuant to Sections 63-3035 and 63-3036, Idaho Code, and this rule will be filed using the proper forms as prescribed by the Tax Commission. The forms will include the taxpayer's name, signature, withholding account number, and federal employer identification number. Returns that fail to meet these requirements are invalid and may be returned to the taxpayer to be refiled. Failure to file a valid return by the due date may cause interest and penalties to be imposed. (3-20-14)

IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1401

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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 027. Computer Equipment, Software, and Data Services - In response to House Bill 598 passed during the 2014 legislative session, the rule is being amended to clarify that software accessed remotely (i.e. cloud-based software) is not tangible personal property. In addition, software delivered electronically or by the load and leave method will no longer be tangible personal property. Finally, the rule clarifies that digital books, games, music, and movies are tangible personal property regardless of how they are transferred to the user.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the May 7, 2014 Idaho Administrative Bulletin, **Vol. 14-5, pages 70 and 71**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact McLean Russell, Tax Policy Specialist at (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 October 22, 2014.

DATED this 29th day of August, 2014.

McLean Russell
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd, Plaza IV
PO Box 36
Boise, ID 83722-0410
Phone: (208) 334-7531
Fax: (208) 334-7844

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1401
(Only those Sections being amended are shown.)

027. COMPUTER EQUIPMENT, SOFTWARE, AND DATA SERVICES (RULE 027).
Section 63-3616, Idaho Code

01. ***Hardware and Computers Defined*** **Definitions**. For purposes of this rule, the following terms will have the following meanings: *(3-6-00)*(____)

a. *Hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies.* Canned Software. Canned software is prewritten software which is offered for sale, lease, or use to customers on an off-the-shelf basis with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software when sold to others. Canned software includes program modules which are prewritten and later used as part of a larger computer program. *(3-6-00)*(____)

b. Computer*s are*. A computer is a programmable machine*s* or device*s* having information processing capabilities and includes word, data, and math processing equipment, testing equipment, programmable microprocessors, and any other integrated circuit embedded in manufactured machinery or equipment.*(3-6-00)*(____)

02. Computer Software, Storage Media and Transfer Media Defined. *(3-6-00)*

a. *Computer Software. Computer software, interchangeable with the terms program or software program, is a sequence of instructions or collections of data which, when incorporated into a machine readable data processing storage or communication medium or device, is capable of causing a computer to indicate, perform, or achieve a particular function, task, or result. Computer software includes upgrades, fixes and error corrections as well as any documentation or related information held on storage media or transferred by whatever means from any location.* *(3-6-00)*

c. Computer Hardware. Computer hardware is the physical computer assembly and all peripherals, whether attached physically or remotely by any type of network, and includes all equipment, parts and supplies. (____)

d. Computer Program. A computer program, or simply a program, is a sequence of instructions written for the purpose of performing a specific operation in a computer. (____)

e. Computer Software. Computer software, or simply software, is defined as any of the following: (____)

i. A computer program; (____)

ii. Any part of a computer program; (____)

iii. Any sequence of instructions that operates automatic data processing equipment; or (____)

iv. Information stored in an electronic medium. (____)

f. Custom Software. Custom software is software designed and written by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. (____)

g. Digital Product. See definition for "Information Stored in an Electronic Medium" in Subsection

027.01.h. ( )

h. Information Stored in an Electronic Medium. Any electronic data file other than a computer program which can be contained on and accessed from storage media. The term includes audio and video files and any documents stored in an electronic format. For purposes of this rule, the term is interchangeable with "digital product." ( )

i. Load and Leave Method. A method of software delivery in which the vendor or an agent of the vendor loads software onto the user's storage media at the user's location but does not transfer storage media containing the software to the user. ( )

j. Remotely Accessed Computer Software. Computer software that a user accesses over the internet, over private or public networks, or through wireless media, and the user only has the right to use or access the software by means of a license, lease, subscription, service, or other agreement. ( )

***b*k.** Storage *and Transfer* Media. Storage media include*s*, but are not limited to, hard disks, *compact disks, floppy disks, diskettes, diskpacks,* optical media discs, diskettes, magnetic tape data storage, *cards,* solid state drives, and other semiconductor memory chips used for nonvolatile storage of information readable by a computer. *Transfer media include, but are not limited to, the Internet, electronic bulletin boards, local and remote networks, and file transfer protocols.* *(3-6-00)*( )

0*3*2. Computer Hardware. The sale or lease of computer hardware is a sale at retail. Sales tax is imposed based on the total purchase price, lease, or rental charges. See Rule 024 of these rules. *(3-6-00)*( )

0*4*3. Canned Software. *The transfer of title, possession, or use for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software is prewritten computer software which is offered for sale, lease, or use to customers on an off-the-shelf basis or is electronically transferred by whatever means, with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Evidence of canned software includes the selling, licensing, or leasing of the identical software more than once. Software may qualify as custom software for the original purchaser, licensee, or lessee, but become canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program.* When canned software is sold and delivered on storage media to the user and the storage media remains in the possession of the user, it is tangible personal property and the sale is taxable. If the storage media is sold along with other computer hardware, any canned software loaded on the storage media is tangible personal property the sale of which is taxable. If canned software is sold and delivered electronically or by the load and leave method, it is not tangible personal property and the sale is not taxable. If canned software is sold using a physical package but the package does not contain the canned software on storage media, it is not tangible personal property and the sale is not taxable. For example, if a printed key code is sold in a box that allows the user to download canned software and activate the canned software using the key code, the sale is not taxable. *(3-6-00)*( )

a. *Canned software may be transferred to a customer electronically or in storage media. Tax applies to the sale or lease of the canned software, including the charges for the storage media or the charge to effect an electronic transfer.* If canned software is loaded on a user's computer but has minimal or no functionality without connecting to the provider's servers over the internet, the sale of that canned software may still be taxable based upon the delivery method of the canned software as outlined in Subsection 027.03 of this rule. *(3-6-00)*( )

b. *Tax applies when operational control of canned software is transferred to the buyer, whether title to the storage media on which the software resides passes to the customer or the software resides on storage media furnished by the customer. A fee for the permanent or temporary transfer of possession of software by any means is a sale or lease of tangible personal property and is taxable.* Special rules apply to digital music, digital books, digital videos, and digital games. See Subsections 027.06 through 027.08 of this rule. *(3-6-00)*( )

c. When a sale of canned software is taxable, *T*tax applies to the entire amount charged to the customer for canned software. If the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees are includable in the purchase price subject to tax. *(3-6-00)*( )

04. **Remotely Accessed Computer Software**. Remotely accessed computer software is not tangible personal property and charges to use or access such software are not subject to tax. ( )

05. **Maintenance Contracts**. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive periodic program enhancements and error correction, often referred to as upgrades, either on storage media or through remote telecommunications. The maintenance contract may also provide that the purchaser will be entitled to telephone or on-site support services. (3-6-00)

a. If the maintenance contract is required as a condition of the sale, lease, or rental of canned software, the gross sales price is subject to tax if the software to which the contract applies is subject to tax. Tax applies whether or not the charge for the maintenance contract is separately stated from the charge for software. In determining whether an agreement is optional or mandatory, the terms of the contract shall be controlling. ~~(3-30-07)~~( )

b. If the maintenance contract is optional to the purchaser of canned software: (3-30-07)

i. Then only the portion of the contract fee representing upgrades ~~*or enhancements*~~ is subject to sales tax if the fee for any maintenance agreement support services is separately stated and the upgrades are delivered on storage media; ~~(3-30-07)~~( )

ii. If the fee for any maintenance agreement support services is not separately stated from the fee for upgrades ~~*or enhancements*~~ and the upgrades are delivered on storage media, then fifty percent (50%) of the entire charge for the maintenance contract is subject to sales tax; ~~(3-30-07)~~( )

iii. If the maintenance contract only provides ~~*canned computer software*~~ upgrades ~~*or enhancements*~~ delivered on storage media, and no maintenance agreement support services, then the entire sales price of the contract is taxable; ~~(3-30-07)~~( )

iv. If the maintenance contract only provides support services, and the customer is not entitled to or does not receive any canned computer software upgrades or enhancements, then the sale of the contract is not taxable. (3-30-07)

c. If an optional software maintenance contract provides for software updates to be delivered electronically but also allows a customer to receive software updates on storage media, no portion of the contract is taxable unless the customer actually receives software updates on storage media. ( )

06. **Digital Products**. Digital music, digital books, and digital videos are tangible personal property regardless of the delivery or access method. Sales, leases, and rentals of these digital products are taxable. Whether the user has the right to stream or download these digital products, the sale, lease, or rental of these digital products is taxable. ( )

a. Other than digital music, digital books, or digital videos, information stored in an electronic medium is tangible personal property only if it is transferred to the user on storage media that is retained by the user. ( )

b. Special rules apply to digital games. See Subsection 027.08 of this rule. ( )

07. **Digital Subscriptions**. Digital subscriptions consist of an agreement with a seller that grants a user the right to obtain or access digital products in a fixed quantity or for a fixed period of time. Digital subscriptions granting access to a database of digital music, digital books, or digital videos are taxable regardless of the method of access or delivery. ( )

a. Subscription charges to a digital newspaper, magazine, or other periodical are not taxable. ( )

b. Subscription charges to an online research database that includes products other than digital music, digital books, or digital videos, are not taxable. The charges are not taxable even if the user may download content

from the database onto the user's storage media. ( )

08. **Digital Games**. Digital games are tangible personal property regardless of access or delivery method and, therefore, the sale of a digital game is taxable. If a digital game requires the internet for some or all of its functionality, the sale of that digital game is still taxable. If a user pays a periodic charge to play a digital game that requires a constant connection over the internet to a remote server, the periodic charge is taxable. If a user pays a periodic charge for a gaming service that enables certain functionality such as multiplayer capability in one or more digital games, the periodic charge is taxable. If a user purchases virtual currency that enables additional content or progress in a digital game, the purchase of the virtual currency is taxable. ( )

0~~6~~9. **Reports Compiled by a Computer**. The sale of statistical reports, graphs, diagrams, microfilm, microfiche, photorecordings, or any other information produced or compiled by a computer and sold or reproduced for sale in substantially the same form as it is produced is a sale of tangible personal property and is taxable regardless of the means of transfer. If a report is compiled from information furnished by the same person to whom the finished report is sold, the report will be subject to tax unless the person selling the report performs some sort of service regarding the data or restates the data in substantially different form than that from which it was originally presented. (3-6-00)

a. Example: An accountant uses a computer to prepare financial statements from a client's automated accounting records. No tax will apply since what is sought is the accountant's expertise and knowledge of generally accepted accounting principles. (7-1-93)

b. Example: A company sells mailing lists which are ~~*stored on a computer disk*~~ transferred to the user on storage media that remains in the possession of the user. The seller compiles all the mailing lists from a single data base. Since the same data base is used for all such mailing lists it is not custom software. Therefore, the sale is subject to tax. ~~*(7-1-93)*~~( )

c. Example: An auto parts retailer hires a data processing firm to optically scan and record its parts book on a computer disk. No analysis or other service is performed regarding the data. Essentially, this is the same as making a copy of the parts books and the sale is, therefore, subject to tax. (7-1-93)

d. When additional copies of records, reports, manuals, tabulations, etc., are provided, tax applies to the charges made for the additional copies. Additional copies are all copies in excess of those produced simultaneously with the production of the original and on the same printer, where the copies are prepared by running the same program, by using multiple printers, by looping the program, by using different programs to produce the same output, or by other means. (7-1-93)

e. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. (7-1-93)

10. **Online or Remote Data Storage**. Charges to store data on storage media owned and controlled by another party is a nontaxable service. ( )

~~07~~11. **Training Services**. Separately stated charges for training services are not subject to the tax, unless they are incidental services agreed to be rendered as a part of the sale of tangible personal property as provided by Rule 011 of these rules. (3-6-00)

a. When separate charges are made for training materials, such as books, manuals, or canned software, sales tax applies. (7-1-93)

b. When training materials are provided at no cost to the purchaser in conjunction with the sale of tangible personal property, the training materials are considered to be included in the sales price of the tangible personal property. (7-1-93)

c. When no tangible personal property, computer hardware or canned software, is sold and training materials are provided at no charge to the customer, the provider of the training is the consumer of the training materials and must pay sales tax or accrue and remit use tax. (3-6-00)

~~08~~12. **Custom Software**. The transfer of title, possession, or use for a consideration of custom software is not subject to sales tax. Custom software is specified, designed, and created by a vendor at the specific request of a client to meet a particular need. Custom software includes software which is created when a user purchases the services of a person to create software which is specialized to meet the user's particular needs. The term includes those services that are represented by separately stated and identified charges for modification to existing canned software which are made to the special order of the customer, even though the sales, lease, or license of the existing program remains taxable. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program. (7-1-93)

a. Tax does not apply to the sale, license, or lease of custom software regardless of the form or means by which the program is transferred. The tax does not apply to the transfer of custom software or custom programming services performed in connection with the sale or lease of computer equipment if such charges are separately stated from the charges for the equipment. (3-6-00)

b. If the custom programming charges are not separately stated from the sale or lease of equipment, they will be considered taxable as part of the sale. (7-1-93)

c. Custom software includes a program prepared to the special order of a customer who will use the program to produce and sell or lease copies of the program. The sale of the program by the customer for whom the custom software was prepared will be a sale of canned software. (7-1-93)

~~09~~13. **Purchases for Resale**. Sales tax does not apply when computer hardware or software is purchased for resale. A properly executed resale certificate must be on file. See Rule 128 of these rules. (3-6-00)

IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1402

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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 022. Drop Shipments - Though nothing has changed in how drop shipment transactions are taxed, the proposed changes should make it clearer to manufacturers, retailers, and customers what their responsibilities are related to sales or use tax.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the June 4, 2014 Idaho Administrative Bulletin, **Vol. 14-6, pages 72 and 73**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact McLean Russell, Tax Policy Specialist at (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 October 22, 2014.

DATED this 29th day of August, 2014.

McLean Russell
Tax Policy Specialist
Idaho State Tax Commission
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Boise, ID 83722-0410
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1402
(Only those Sections being amended are shown.)

022. DROP SHIPMENTS (RULE 022).
Sections 63-3615A, 63-3619, 63-3620, 63-3621, & 63-3622, Idaho Code

01. In General. Drop shipments refer to shipments made by a seller to someone other than its purchaser. For example, a Manufacturer produces Product X. The Retailer is a distributor of Product X. The Customer, which does business only in Idaho, is the ultimate purchaser and consumer of Product X. The Customer places a purchase order with the Retailer. The Retailer, having no inventory in stock, places a purchase order with the Manufacturer. The Retailer directs the Manufacturer to ship the product directly to the Customer in Idaho. The Manufacturer, however, bills the Retailer for the product and receives payment from the Retailer. The Retailer bills and receives payment from the Customer. The nature and use of Product X is not within any of the specified exemptions contained in the Idaho Sales Tax Act. The Manufacturer ~~*holds*~~ may or may not be required to have an Idaho seller's permit. If the Manufacturer sells directly to the Customer without the presence of a retailer, the Manufacturer is acting as a retailer and the transaction is not a drop shipment. ~~*(7-1-99)*~~(____)

02. ~~*Privity of*~~ Parties to the Contract. The Idaho sales tax is imposed upon sales transactions. Since there is no~~*t privity of contract*~~ sales transaction between the Manufacturer and the Customer, the Manufacturer will not be required to collect and remit sales tax ~~*on the purchase by*~~ from the Customer. ~~*(7-1-99)*~~(____)

03. Sales Tax Responsibilities of the Permitted Manufacturer. If ~~*T*~~the Manufacturer ~~*can have*~~ is required to have a valid Idaho seller's permit, it has sales tax responsibilities as to the sales transaction between itself and the Retailer. ~~*(7-1-99)*~~(____)

a. If the Retailer ~~*holds*~~ has an Idaho seller's permit, it will be necessary for the Retailer to provide the Manufacturer with a resale certificate evidencing its intentions to resell Product X. If the Retailer does not provide the resale certificate, then the Manufacturer must charge Idaho sales tax on the sale of tangible personal property sold to the Retailer and delivered in Idaho. If the Retailer provides a resale certificate, the Retailer must then charge the Customer Idaho sales tax and remit the tax to the Idaho State Tax Commission together with a proper return. ~~*(7-1-99)*~~(____)

b. If the Retailer ~~*does not hold*~~ is not required to have an Idaho seller's permit, a resale certificate from the Retailer to the Manufacturer is unnecessary. If the Retailer has no nexus with the state of Idaho, it can accrue no sales tax liability and the sale between the Manufacturer and the Retailer is not subject to the jurisdiction of the Idaho State Tax Commission. The Manufacturer must obtain evidence of this fact in the form of a letter from the Retailer stating that they have no nexus in Idaho or by any other clear and convincing evidence. The Customer's use or consumption of Product X within Idaho will cause it to accrue a use tax liability. ~~*It*~~ The Customer will be required to file a use tax return and report and remit the use tax on the purchase of Product X. ~~*(7-1-99)*~~(____)

04. Sales Tax Responsibilities of the Unpermitted Manufacturer. If the Manufacturer does not have and is not required to have a valid Idaho seller's permit, it has no sales tax responsibilities as to the sales transaction between itself and the Retailer. (____)

a. If the Retailer has an Idaho seller's permit, the Retailer must then charge the Customer Idaho sales tax and remit the tax to the state tax commission together with a proper return. (____)

b. If the Retailer is not required to have an Idaho seller's permit, the Retailer is under no responsibility to collect Idaho sales tax from the Customer. The Customer's use or consumption of Product X within Idaho will cause it to accrue a use tax liability. It will be required to file a use tax return and report and remit the use tax on the purchase of Product X. (____)

c. The matrix below outlines the sales tax responsibilities of the Manufacturer:

	Retailer (Permitted)	**Retailer (No Permit Required)**	**Customer**
Manufacturer (Permitted)	Obtain ST-101 or Collect Tax	Obtain Letter of No Nexus or Collect Tax	Do Not Collect Tax from Customer / Use Tax Owed by Customer
Manufacturer (No Permit Required)	Do Not Collect Tax	Do Not Collect Tax	Do Not Collect Tax from Customer / Use Tax Owed by Customer

( )

05. Sales Tax Responsibilities of the Retailer. If the Retailer is required to have a seller's permit, it is responsible for collecting sales tax from the Customer. If the Retailer is not required to have a seller's permit, it is not responsible for collecting sales tax form the Customer. The Customer is responsible to pay use tax to the State of Idaho if purchased from an unpermitted retailer. ( )

a. The matrix below outlines the sales tax responsibilities of the Retailer:

	Manufacturer (Permitted)	**Manufacturer (No Permit Required)**	**Customer**
Retailer (Permitted)	Provide Valid Resale Certificate	None	Collect Tax from Customer
Retailer (No Permit Required)	Give Letter of No Nexus	None	Do Not Collect Tax from Customer / Use Tax Owed by Customer

( )

0~~4~~6. Resale Certificate. If either the Manufacturer or the Retailer is engaged in interstate commerce, the resale certificate which the Retailer provides to the Manufacturer may be in the form prescribed for uniform exemption certificates by the Multistate Tax Commission if the rules set forth in Rule 128 of these rules are met. (3-15-02)

IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1403

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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 012. Contractors Improving Real Property - Subsection 013 is being amended to clarify what is covered by the out-of-state contract exemption and what is not. The statutory basis for the exemption is in Section 63-3622B, Idaho Code.

Rule 024. Rentals or Leases of Tangible Personal Property - Subsections 012.a and 012.b are being amended to achieve the original intent of only one lease type applying to a particular lease contract.

Rule 102. Logging - Subsection 07 is being amended to clarify that materials and equipment used on a tree farm for a purpose other than harvesting can qualify under the production exemption (if the criteria of that exemption are met) but not the logging exemption.

Rule 128. Certificates for Resale and Other Exemption Claims - The rule is being amended to require exempt organizations to use the ST-104-HM for claiming an exemption on purchases of lodging accommodations. The forms provide details and explanations enabling the retailer to easily determine whether the sales should be taxed and the Tax Commission will have the information needed to verify the exemption claim.

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

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

The positive fiscal impact of the change to Rule 102 is an additional $50,000 to the state general fund on an annual basis.

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 2, 2014 Idaho Administrative Bulletin, **Vol. 14-7, pages 126 and 127**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact McLean Russell, Tax Policy Specialist at (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 October 22, 2014.

DATED this 29th day of August, 2014.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1403
(Only those Sections being amended are shown.)

012. CONTRACTORS IMPROVING REAL PROPERTY (RULE 012).
Sections 63-3609(a), 63-3621, 63-3615(b), 63-3622B, Idaho Code

01. In General. This rule applies to contractors who construct, alter, repair, or improve real property. Contractors are defined as consumers of materials they use, whether or not they resell the material. All sales of tangible personal property to contractors are taxable. (7-1-93)

a. Contractors include bricklayers, plumbers, heating specialists, painters, sheet metal workers, carpet layers, electricians, land levelers, well drillers, landscapers, and all others who do contract work on real property. Unless these persons are employees of a contractor, they are acting as contractors and are consumers just as other contractors. (7-1-93)

b. Persons doing residential repairs, such as plumbers and electricians, as well as those who both sell and install carpet, also are contractors improving real property. Such contractors are defined as the consumers of the materials they install and are required to pay sales or use tax on their cost for the materials. They do not charge sales tax to their customers unless they make a sale of materials only, with no installation. (7-1-93)

c. The terms “contractor” and “subcontractor” are not applicable to persons who merely sell tangible personal property in the form of building materials, supplies, or equipment to construction contractors for delivery at the job site without any requirement that they install such tangible personal property. (3-4-10)

02. Contract. A contract to improve real property may be in any of the following forms. (7-1-93)

a. Lump Sum Contract. A lump sum contract is an agreement to furnish materials and services for a lump sum. (7-1-93)

b. Cost-plus Contract. A cost-plus contract is an agreement to furnish materials and services at the contractor’s cost plus a fixed sum or percentage of the cost. (7-1-93)

c. Guaranteed Price Contract. A guaranteed price contract is an agreement to furnish materials and services with a guaranteed price which may not be exceeded. (7-1-93)

d. Time and Material Contract. A time and material contract is an agreement to sell a specific list of materials and supplies at retail or an agreed price and to complete the work for an additional agreed price or hourly rate for services rendered. (7-1-93)

e. The contractor or repairman who affixes or installs the personal property into real property is the consumer of tangible personal property regardless of the type of contract entered into, whether it is a lump sum, time and material, or a cost-plus contract. (3-4-10)

03. **Use**. As used in this rule, the term use includes exercising any right or power over tangible personal property in performing a contract to improve real property, regardless of who owns the material or if the material is leased. (7-1-93)

04. **Real Property**. See Rules 010 and 067 of these rules. (3-15-02)

05. **Use Tax Reporting Number**. Contractors need a use tax number if they make purchases on which sales tax has not been charged. In this case, they are required to report and pay the Idaho use tax to the state. If a contractor pays sales tax to his vendors on ALL purchases, he does not have to obtain a use tax number. (7-1-93)

06. **Purchases by Contractors**. Contractors are consumers of equipment they use in their business such as trucks, tractors, road graders, scaffolding, pipe cutters, trowels, wrenches, tools in general, oxygen, acetylene, oil, and similar items. They must pay the sales or use tax on their purchase of equipment, tools, and supplies. They must also pay tax on their purchase of building materials and fixtures. Fixtures include items such as lighting fixtures, plumbing fixtures, furnaces, boilers, heating units, air-conditioning units, refrigeration units, elevators, hoists, conveying units, awnings, blinds, vaults, cabinets, counters, and lockers. (7-1-93)

07. **Fuels**. A contractor must pay tax on fuels used in off-road equipment unless on-road fuels excise taxes have been paid. (7-1-93)

08. **Custom-Made Goods**. Sales tax applies to the entire price charged for custom-made goods sold by the maker. If a contractor orders fabricated steel from a steel company, he must pay sales tax on the entire price of the fabricated item, including the cost of the labor involved. On the other hand, if the contractor buys the steel and fabricates it himself for the job, he pays a tax only on the materials he buys. (7-1-93)

09. **Value**. The contractor owes use tax on the value of the job materials at the time he exercises right or power over them. Value, as used in Section 63-3621, Idaho Code, means: (7-1-93)

a. When a contractor fabricates and installs tangible personal property into Idaho real property, the value is the cost of materials and parts he uses. If a contractor, with a contract to furnish and install goods, fabricates the goods and hires a subcontractor to do the installation, the amount subject to tax is the cost of material to the contractor who fabricated the goods. (7-1-93)

b. When a contractor who is also a retailer fabricates tangible personal property, puts it in his resale inventory, and later withdraws it for a job, tax applies to the fully fabricated value. This is true regardless of whether the fabricator installs the property himself or through an agent or subcontractor. (7-1-93)

10. **Materials Provided by Project Owner**. (7-1-93)

a. If a project owner who is not exempt from tax buys materials for a job and hires a contractor to install them, he must pay sales or use tax when he buys the material. If the owner does not pay tax on the materials, the contractor may be held liable for the tax. (7-1-93)

b. If material needed for a contract is purchased or supplied by an owner who is exempt from sales and use taxes, then the use by the contractor is subject to use tax. This is true even if the property is owned by an exempt entity such as the federal government or a state government agency. For example, if a contractor has a public works contract to build a structure using materials owned and supplied by the government, whether federal, state, or local, he is the consumer of the materials and is subject to a use tax on their value. This tax falls directly upon the contractor and not the owner of the property. (7-1-93)

c. A contractor who buys tangible goods cannot avoid tax just because the goods will be built in to a structure which will belong to, or be used by an exempt entity. Contractors and subcontractors may not avoid paying sales or use tax due to a contract which allows invoices to be made out in the name of the exempt entity, such as the U.S. Government, and designate the contractor or subcontractor as an agent of the exempt entity. In this case, the contractor or subcontractor is the user or consumer of the material and its use, while it is in his possession and subject to his labor, is taxable. (7-1-93)

11. **Subcontractor**. In general, a subcontractor is treated the same as a general contractor. Whether his contract is with the owner or the general contractor, the subcontractor pays tax on materials he buys to improve real property. Like any contractor, the subcontractor could be employed to work on or with material purchased by the general contractor or the owner, with one or the other paying tax on the material purchased. These services rendered by the subcontractor are not taxable. His relationship with the owner or general contractor is no different than the relationship between the contractor and owner. However, the provisions of Subsection 011.10 of this rule apply equally to a subcontractor. (6-23-94)

12. **Land Leveling**. (4-7-11)

a. Persons who contract to level land are improving real property and are contractors under this rule. Accordingly, they are subject to tax on equipment, material, and supplies purchased for land leveling. (7-1-93)

b. Notwithstanding the provisions of Rule 013 of these rules, contractors who crush rock are performing a nontaxable service if the rock is obtained on a construction site, and the crushed rock is used on the same site, for such purposes as backfill, land leveling, site preparation. or site cleanup. The use of such rock, backfill, or other related materials is not subject to tax; however, such a contractor is not primarily devoted to mining and his use of rock crushing equipment, or other equipment and supplies, does not qualify for exemption under Section 63-3622D, Idaho Code. (4-7-11)

c. The sale or use of crushed rock that is removed from a construction site and used elsewhere is taxable. See Rule 013 of these rules. (4-7-11)

13. **Exempt Purchases by Contractors**. A contractor can buy materials tax exempt, provided that he will install them into real property in a state that does not have a sales tax, such as Oregon, Montana, or Alaska, or in a state where the materials would not be subject to a use tax or other similar excise tax in that state. For example, ~~*T*~~this exemption ~~*also*~~ applies to a contractor improving real property on certain projects in Washington ~~*if*~~ where he will not owe a ~~*sales or*~~ use tax ~~*for his activity there*~~ on materials incorporated into realty, even though a sales or use tax may be owed by a third party. ~~*Prior to July 1, 1993, this exemption was extended only to Idaho resident contractors.*~~ This exemption only applies to materials incorporated into real estate in a nontaxing state. Tools, supplies, equipment, or any other tangible personal property purchased in Idaho that are not incorporated into realty are taxable when purchased in Idaho. In order to grant this exemption the retailer must have a properly completed exemption certificate on file. See Rule 128 of these rules. Idaho tax applies to materials purchased or withdrawn from inventory for use in a contract to improve real property in states ~~*with a sales*~~ where use tax applies to materials incorporated into realty, such as Nevada~~*, Utah,*~~ or Wyoming. ~~*(3-15-02)*~~( )

14. **Cross-References**. (7-1-93)

a. Road and paving contractors, see Rule 013 of these rules. (3-15-02)

b. Contractor/retailers, see Rule 014 of these rules. (3-15-02)

c. Well drillers/pump installers, see Rule 015 of these rules. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

024. RENTALS OR LEASES OF TANGIBLE PERSONAL PROPERTY (RULE 024).

01. **In General**. The lease or rental of tangible personal property, including licensed motor vehicles, is a sale. (7-1-93)

02. **Bare Equipment Rental**. A bare equipment rental, that is, a rental of equipment without operator, is a taxable sale. The owner of the equipment is a retailer and must get a seller's permit and collect and remit sales taxes. The equipment owner must collect sales tax on each rental payment and remit the tax to the State Tax Commission just like any other retailer. The tax applies whether the equipment is rented by the hour, day, week,

month, or on a mileage, or any other basis. The equipment owner who primarily rents bare equipment may buy the equipment without paying tax to the vendor by giving him a resale certificate. See Rule 128 of these rules. If the owner uses the equipment for his own benefit or in his own business operations, he must pay use tax based on a fair market rental value for the period during which he used his own equipment. (4-4-13)

03. Fully Operated Equipment Rentals. (7-1-93)

a. A fully operated equipment rental, equipment with operator, is a service rather than a retail sale of tangible personal property. No sales tax is due on a fully operated equipment rental. (7-1-93)

b. A fully operated equipment rental is an agreement in which the owner or supplier of the equipment or property supplies the equipment or property along with an operator, and the property supplied is of no value to the customer without the operator. (4-4-13)

c. The owner or supplier of the equipment or property used in a fully operated equipment rental is the consumer of the equipment or property, and is subject to sales or use tax when he buys or uses the equipment in Idaho. Special rules apply to transient equipment used for short periods in Idaho. See Rule 073 of these rules. (7-1-99)

d. If the equipment or property has value to the customer without an operator, then the lease or rental of the equipment or property is a distinct transaction. It is subject to sales or use tax and its price must be stated separately from the price of the service provided by the operator. (4-4-13)

e. Example: A crane rental company provides a mobile crane to a contractor, along with an operator. The contractor may not use the crane without the operator, so the leasing company is not required to charge sales tax on the lease of the crane. (4-4-13)

f. Example: Pick-Up Industries provides a three (3) cubic yard trash container to a customer. Pick-Up also provides trash hauling service to empty the container. Since the container is used to store trash between collections, its transfer to a customer is a lease subject to sales tax. (7-1-93)

04. Mixed Use of Rental Equipment. (7-1-93)

a. If the equipment owner primarily rents bare equipment but sometimes supplies equipment with an operator, the equipment owner is the consumer of the equipment while it is used by the operator to perform a service contract. Accordingly, the equipment owner must pay use tax on the fair market rental value of the equipment for that period of time unless he paid tax when he bought the equipment. (4-4-13)

b. If the equipment owner primarily rents fully operated equipment but sometimes rents bare equipment, he must charge and remit Idaho sales tax on the rental of the bare equipment. The tax applies even though the equipment owner's purchase of the property was also subject to sales or use tax. In this case, the owner purchased the equipment for a purpose other than the resale or re-rental of that property in the regular course of business. (7-1-93)

05. Operator Required to Be Paid by Customer. In some cases, an equipment owner supplies equipment along with an operator but a ~~*union*~~ contract or a state or federal law requires the customer to pay the operator. If all other indications of an employee-employer relationship, such as the right to hire and fire, immediate direction and control, etc., remain with the equipment owner, the owner is viewed as supplying a service and no sales tax applies to the service fee. However, the fact that the transaction is a fully operated equipment rental must be clearly stated on the face of the invoice or other billing document. The State Tax Commission may, whenever it deems appropriate, examine the facts on a case-by-case basis to determine if a true employer-employee relationship exists between the equipment owner and the operator. ~~*(7-1-99)*~~( )

06. Maintenance of Rental Equipment. If the owner who primarily rents bare equipment is responsible for the maintenance of the equipment, he may buy the necessary repair parts and equipment tax exempt by providing his vendor with a resale certificate. The owner who rents fully operated equipment may not buy the equipment or repair parts tax exempt. (4-4-13)

07. Rentals to Exempt Entities. The rental or lease of equipment invoiced directly to an entity exempt from sales tax, such as the state of Idaho or one (1) of its political subdivisions, is not subject to sales tax. However, if the rental or lease is to an individual or organization performing a contract for, or working for an exempt entity, the rental is taxable. (7-1-93)

08. Exempt Equipment Rentals. Equipment which would have been exempt from tax if purchased is also tax exempt if leased or rented. To claim this exemption, the renter must furnish the owner with a properly completed and signed exemption certificate. See Rule 128 of these rules. (3-15-02)

09. Rental Payments Applied to Future Sales. Rentals to be applied toward a future sale or purchase are taxable. (7-1-93)

10. Personal Property Tax. A lessor may require reimbursement from the lessee for the personal property tax the lessor must pay on leased equipment. A charge for personal property tax will be exempt from sales tax if the lease is for a term of one year or longer; if the property tax is billed as a separate line item; and if the charge is no more than the property tax actually paid by the lessor. (5-8-09)

11. Out-of-State Rental/Lease. Rental or lease payments on equipment used outside Idaho are not subject to Idaho sales tax. Rental or lease payments on equipment used in Idaho are taxable. If the equipment is delivered in Idaho, even though it will be used outside the state, then the rental or lease payment for the first month, or other period, is subject to Idaho tax. (7-1-93)

12. Lease-Purchase and Lease with Option to Purchase. (7-1-93)

a. Lease-purchase agreements include transfers which are called leases by the parties but are really installment, conditional, or similar sales. Where ownership passes to the transferee at the end of the stated terms of the lease contract with no additional consideration from the transferee, or where the additional consideration does not represent the fair market value of the property, the transaction is a sale and tax on the entire sales price is collected on the date the property is delivered. (7-1-93)

b. Lease with option to purchase agreements include transfers in which the personal property owner, lessor, transfers possession, dominion, control or use of the property to another for consideration over a stated term and the owner, lessor, keeps the property at the end of the term unless the lessee exercises an option to buy the property at fair market value. The owner/lessor must collect sales tax from the lessee at the time ~~*the rental*~~ each lease payment is charged. If the lessee exercises the option to buy, the lessor/owner must collect sales tax from the lessee/buyer on the full remaining purchase price~~*, the residual,*~~ when the option is exercised. ~~*(7-1-93)*~~( )

13. Cross-References. (7-1-93)

a. See Rule 025 of these rules on real property rental. (7-1-99)

b. See Rule 037 of these rules on aircraft and flying services. (7-1-99)

c. See Rule 038 of these rules on flying clubs. (7-1-99)

d. See Rule 044 of these rules on trade-in for rental or lease property. (7-1-99)

e. See Rule 049 of these rules on warranties and service agreements. (7-1-99)

f. See Rule 073 of these rules on transient equipment. (7-1-99)

g. See Rule 106 of these rules on motor vehicles. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

102. LOGGING (RULE 102).
Sections 63-3605A & 63-3622JJ, Idaho Code

01. In General. The Sales Tax Act provides an exemption from sales and use taxes for certain tangible personal property used in logging activities. The provisions of this rule are based on the usual methods of doing business in this industry. Specific factual differences in the way a specific taxpayer may conduct his business can result in determinations different from those stated in this rule. Since some equipment may be used for more than one (1) purpose, determinations of taxability will be made based upon the primary use of the equipment. (7-1-93)

02. Real Property. The logging exemption applies only to tangible personal property. It does not apply to real property or to tangible personal property purchased for the purpose of becoming an improvement or fixture to real property. See Rules 010 and 067 of these rules for a definition of real property. (4-6-05)

03. Property Used in Logging Operations. The logging exemption applies to tangible personal property primarily used in a logging activity without regard to the primary business activity of the person performing the logging. For example, a contractor building a road for the Forest Service may claim the logging exemption when purchasing equipment and supplies primarily used to remove the timber from the right-of-way if the timber is resold, even though logging is not the contractor's primary activity. (7-1-93)

04. Logging Process Begins and Ends. The logging process begins when forest trees are first handled by the logger at the site where such an operation occurs. The logging process ends when the product is placed on transportation vehicles at the loading site, ready for shipment. (7-1-93)

05. Logging Exemption. Generally, the logging exemption includes equipment and supplies used or consumed in the logging process and which are necessary or essential to the performance of the operation. To qualify, the logging use must be the primary use of the equipment and supplies. Also, the equipment and supplies must be directly used in the logging process. Examples include: (7-1-93)

a. Chain saws with a unit price of more than one hundred dollars ($100) and tree harvesters. (7-1-93)

b. Skidders, tower-skidders, skidding cables, or chokers. (7-1-93)

c. Log loaders and log jammers which are not licensed motor equipment. (7-1-93)

d. Repair parts, lubricants, hydraulic oil, and coolants which become a component part of logging equipment. (7-1-93)

e. Fuel, such as diesel, gasoline, and propane consumed by equipment while performing exempt logging activities. (7-1-93)

06. Directly Used. Directly used, as applied to logging, means the performance of any of the following functions when such functions occur between the point at which the logging operation begins and the point at which the operation ends, as defined in Subsection 102.04 of this rule: (7-1-93)

a. The performance of a function in the logging process that effects a physical change in the property being logged so as to render the property more marketable. (7-1-93)

b. The performance of a function which occurs simultaneously with and which is an integral part of and necessary to a function which effects a physical change in the property being logged rendering it more marketable. (7-1-93)

c. The performance of a function which is an integral and necessary step in a continuous series of functions which effect a physical change in the property being logged rendering it more marketable. (7-1-93)

d. The performance of a quality control function which is an integral and necessary step in maintaining specific product standards. (4-11-06)

07. Not Included in Logging Exemption. Generally, the logging exemption does not include the following activities and equipment: (7-1-93)

a. Road construction equipment and supplies such as tractors, road graders, rollers, water trucks, whether licensed or unlicensed, explosives, gravel, fill material, dust suppression products, culverts, and bridge material. (7-1-93)

b. Slash disposal or brush piling and clearing equipment and supplies, such as brush clearing machines, brush rakes, and tractors~~*, except when part of the operation of a tree farm*~~. ~~*(7-1-93)*~~( )

c. Reforestation equipment and supplies~~*, except when part of the operation of a tree farm*~~. ~~*(7-1-93)*~~( )

d. Safety equipment and supplies, including hard hats and earplugs. (7-1-93)

e. Transportation equipment and supplies including vehicles to transport logs from the loading site to the mill, whether the vehicles are licensed or unlicensed, and cable and tie-downs used to fasten logs to the vehicle. (7-1-93)

f. Machinery, equipment, materials, repair parts, and supplies used in a manner that is incidental to logging such as: office equipment and supplies; selling and distribution equipment and supplies; janitorial equipment and supplies; maintenance equipment and supplies which do not become component parts of logging equipment, such as welders, welding gas, and shop equipment; and paint, plastic coatings, and all other similar products used to protect and maintain equipment, whether applied to logging equipment or other equipment. (7-1-93)

g. Hand tools with a unit price of one hundred dollars ($100) or less, regardless of how necessary the tools may be to the logging operation or how directly they may be used. (7-1-93)

h. Recreation-related vehicles, as defined in Section 63-3622HH, Idaho Code, regardless of use, such as All Terrain Vehicles (ATV), snowmobiles, and off-highway motorbikes. (4-6-05)

i. Aircraft or motor vehicles licensed or required to be licensed by the laws of this state, regardless of the use to which such motor vehicles or aircraft are put. A motor vehicle not required to be licensed is exempt under the logging exemption only if it meets the tests established elsewhere in this rule. (7-1-93)

08. Election to Pay Sales Tax. The owner of a log loader, log jammer, or similar fixed load motor equipment used in logging, not normally licensed for use on public roads, may elect to license and pay sales tax on the motor equipment rather than placing it on the personal property tax rolls, if the motor equipment may be legally operated on a public road as a commercial vehicle. (4-6-05)

a. Motor equipment licensed at the time of purchase. Sales tax applies to the total purchase price of the motor equipment. (7-1-93)

b. Motor equipment licensed after the date of purchase. Use tax applies to the fair market value of motor equipment on which no sales or use tax has been paid and which was not licensed at the time of purchase, if acquired within the last seven (7) years. See Section 63-3633, Idaho Code. Fair market value may be determined from the personal property tax records of the county assessor. (7-1-93)

09. Timber Production. Activities and equipment excluded from the logging exemption in Section 63-3622JJ, Idaho Code, such as slash disposal, brush piling, or clearing, and reforestation equipment and supplies may qualify under the production exemption in Section 63-3622D, Idaho Code. See also Rule 079 of these rules. ( )

(BREAK IN CONTINUITY OF SECTIONS)

128. CERTIFICATES FOR RESALE AND OTHER EXEMPTION CLAIMS (RULE 128).

01. In General. This rule applies to proper documentation for exempt purchases of tangible personal property for resale and all other exemption claims for taxable transactions enumerated in Section 63-3612, Idaho Code. All forms approved by this rule may be reproduced. (3-6-00)

02. Burden of Proof. All sales made within Idaho are presumed to be subject to sales tax unless the seller obtains from the purchaser a properly executed resale or exemption certificate. If the seller does not have an exemption certificate on file it will have the burden of proving that a sale is not subject to tax. The seller may overcome the presumption by establishing the facts giving rise to the exemption. If the seller obtains a valid certificate from the purchaser, the seller need not collect sales or use taxes unless the sale of the tangible personal property or the transaction in question is taxable to the purchaser as a matter of law in the particular instance claimed on the certificate. (3-4-10)

03. Qualified Buyers for Purposes Other Than Resale. Producers, certain contractors and exempt buyers may claim an exemption from paying sales tax on the purchase of goods and other taxable transactions by qualifying under one (1) or more of the provisions of Sections 63-3622A through 63-3622UU, Idaho Code, completing, and providing the required form to the seller. (3-4-10)

04. Qualified Buyers for Purposes of Resale. The resale exemption may be claimed by the following purchasers when buying goods for resale: (3-6-00)

a. A retailer or wholesaler doing business in Idaho who holds a current and valid Idaho seller's permit number. (4-4-13)

b. A wholesaler who makes no retail sales and who is not required to hold an Idaho seller's permit number. (3-6-00)

c. An out-of-state retailer who makes not more than two (2) sales in Idaho in any twelve (12) month period and is not required to hold an Idaho seller's permit number. (3-6-00)

05. Description and Proper Execution of Approved Forms. In order to be valid, all forms must be legible and include a date, the purchaser's name, signature, title, and address. If the purchaser has a federally issued Employer Identification Number (EIN), the purchaser must also include that EIN on the form. If the purchaser does not have an EIN, the form must contain the purchaser's driver's license number and the state of issue. The purchaser must comply with any additional requirements provided in these rules. (4-4-13)

a. To claim a resale exemption, Form ST-101, Sales Tax Resale and Exemption Certificate, must be completed, except that multi-state taxpayers may use the Uniform Sales and Use Tax Certificate - Multi-jurisdiction. The resale certificates approved by this rule may only be taken from a purchaser described in Subsection 128.04. The reason for, and the nature of, the claimed exemption must be included on the form as well as the primary nature of business and the type of products sold, leased or rented by the purchaser. An Idaho registered retailer must include its seller's permit number. A purchaser need not identify every type of product it sells but must indicate the general character of the property it sells, rents or leases. (4-4-13)

i. Example. A grocery store that in addition to groceries sells miscellaneous items such as cosmetics, magazines, and school supplies. The store would provide its resale number and describe the primary nature of its business as selling groceries. It could buy cosmetics, magazines, and school supplies for resale and it does not need to list those items on the resale certificate. It only needs to indicate the general character of the property it sells as groceries. (3-4-10)

ii. Example. A lawn and garden store occasionally sells barbecue grills as promotional items. Even though it describes lawn and garden items as the types of products it sells, it can buy the grills for resale. (4-4-13)

iii. Example. A grocery store describes the primary nature of its business as selling groceries. It then buys an automobile for resale. The grocery store should provide the automobile seller a resale certificate for this

transaction and identify its primary nature of its business as grocery and indicate it is specifically buying the automobile for resale. (3-4-10)

b. Retailers of food products who have been granted records reduction authority by the State Tax Commission may accept Sales Tax Exemption Claim Form-Grocer, Form ST-111, from a purchaser if the retailer has a properly executed certificate (Form ST-101, ST-103, or ST-104) on file from the purchaser. Form ST-111 must include the seller's permit number (if applicable), the signature of the individual claiming the exemption, and, the total purchase price and general nature of the nontaxable products sold. (3-6-00)

c. Sales Tax Exemption Claim for Cash Purchases by Governmental Agencies, Form ST-104G, ~~*may*~~ must be completed ~~*only*~~ by federal, Idaho State, and local government agencies making cash purchases and must be furnished to the vendor at the time of sale. Each transaction requires a newly executed form signed by the agency's purchasing agent and the employee/purchaser. Blank forms will be furnished to government agencies by the State Tax Commission upon request. The form cannot be used for lodging and meals bought by a traveling government employee nor for any other reasons enumerated on the form. ~~*(3-6-00)*~~(____)

d. Sales Tax Exemption on Lodging Accommodations Claimed by Government Employees and Employees of Other Qualified Exempt Organizations Using a Qualifying Credit Card Payment, Form ST-104-HM, ~~*applies*~~ must be used when a credit card company will directly bill to and be paid by a federal, Idaho State, ~~*or*~~ local government agency, or other qualifying employer. It does not apply to credit card payments that are paid by the employee who is later reimbursed by the government agency or other qualifying employer. Each lodging transaction requires a newly executed form signed by the employee/purchaser. ~~*(3-6-00)*~~(____)

e. The Diplomatic Tax Exemption Program of the United States Government grants immunity from state taxes to diplomats from certain foreign countries. A federal tax exemption card issued by the U.S. Department of State bears a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. Additional information is provided in Rule 098 of these rules. (3-6-00)

f. Sales Tax Exemption Certificate - Vehicle, Form ST-104-MV, must be completed by a purchaser claiming an exemption from tax under Section 63-3622R, Idaho Code, when purchasing a qualifying motor vehicle or trailer. (3-6-00)

g. Motor Vehicle Transfer Affidavit, Form ST-133, must be completed when claiming an exemption from tax when selling a motor vehicle to a relative under the exemption provided by Section 63-3622K, Idaho Code, when selling a motor vehicle, boat or RV to a member of an American Indian Tribe within the boundaries of an American Indian reservation, or when making a gift of a motor vehicle, boat or RV. (4-4-13)

h. Truck Camper, Transport Trailer, Office Trailer and Untitled Boat Certificate, Form ST-108, is required by any person titling, registering, or licensing certain vehicles on which sales tax was not paid. Of those vehicles mentioned on the form, only the sale of a transport trailer or an office trailer may qualify for an occasional sale exemption, as described in Rule 099 of these rules, and the exemption requires the proper execution of ST-108 to make the claim. (3-15-02)

i. Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit, Form ST-133CATS, is required under the provisions of Section 63-3622K, Idaho Code, when claiming an exemption from tax on the sale of certain vehicles which are included in the bulk sale of a business' assets when the new owner will continue to operate the business in a like manner; for qualifying transfers of certain capital assets through sale, lease or rental; and, for the transfer of vehicles to and from a business or between qualifying businesses when there is no change other than owners' equity. (3-6-00)

j. Information on the resale certificate. The resale certificate shall bear the name and address of the purchaser, the name and address of the seller, shall be signed and dated by the purchaser or his agent, shall indicate the number of the permit issued to the purchaser, or that the purchaser is an out-of-state retailer, and shall indicate the general character of the tangible personal property sold by the purchaser in the regular course of business. By executing the resale certificate, the buyer is certifying that the specific property being purchased is being purchased for resale. (3-4-10)

06. Seller's Responsibility -- Purchases for Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom the seller has obtained a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, if the customer intends to resell the items in the regular course of business. The seller has no duty or obligation to collect sales or use taxes in regard to any sales transaction so documented unless the sale fits into the narrow classification of sales that can be considered to be taxable as a matter of law in the particular instance claimed on the resale certificate. If the particular item being purchased for resale does not commonly match the description of the general character of the tangible personal property as identified on the resale certificate, then it is presumed that the sale is taxable as a matter of law; however, if the seller questions the purchaser and the purchaser provides a new certificate specifically identifying the property in question as being purchased for resale, then the seller can accept the certificate and is relieved of any further responsibility. (3-4-10)

a. Example: A restaurant operator completes an ST-101 for his supplier. He indicates the general character of the products he sells as food and beverages. The restaurant operator purchases sugar and flour from the supplier. The supplier is not liable for the collection of the sales tax as the character of the goods is that which the restaurant operator will resell in the regular course of business. The resale claim made by the restaurant operator is available as a matter of law. (3-6-00)

b. Example: The same restaurant operator later purchases dish towels and dish washing soap. The supplier must collect the tax. The general character of the goods are not those sold by a restaurant in the normal course of business. The exemption claimed by the restaurant is not available as a matter of law. However, if the restaurant operator identifies cleaning supplies as one of the types of items it resells, either on the original certificate or on a new certificate, then the supplier need not collect the tax. (3-4-10)

c. Example: An appliance store buys appliances and some furniture for resale from a supplier. The appliance store has a resale certificate on file with the supplier. The supplier also sells warehouse equipment as part of its business. The appliance store buys a forklift from the supplier. The supplier should charge tax. However, if the furniture store provides a new certificate indicating it will sell the forklift, the supplier has no duty or obligation to collect the tax. Without the new certificate, an objectively reasonable person would not assume a furniture store sells forklifts. Additionally, the furniture store is only buying one (1) forklift and this fact indicates to the supplier that it is not buying the forklift for resale. (3-4-10)

07. Seller's Responsibility -- Purchases Claimed Exempt from Sales Tax for Reasons Other Than Resale. A seller is not liable for the collection of sales tax on items sold to a customer from whom a properly executed Sales Tax Resale and Exemption Certificate, Form ST-101, or other required exemption certificate has been received if the nature of the exemption claimed is available to the purchaser as a matter of law or the nature of the goods purchased qualify for the particular exemption claimed on the certificate. ~~(3-4-10)~~( )

a. A retailer must collect tax on the sale of any goods that are specifically excluded from an exemption as a matter of law. For example, a purchaser claiming the production exemption provided by Section 63-3622D, Idaho Code, may not claim an exemption on the sale of items that are specifically excluded from the exemption as a matter of law, such as: (3-6-00)

i. Hand tools with a unit price not in excess of one hundred dollars ($100); (3-6-00)

ii. Maintenance and janitorial equipment and supplies; (3-6-00)

iii. Office equipment and supplies; (3-6-00)

iv. Selling and distribution equipment and supplies; (3-6-00)

v. Property used in transportation activities; (3-6-00)

vi. Equipment or other property used to make repairs; (3-6-00)

vii. Tangible personal property which becomes a component of any real property or any improvement or fixture thereto; (3-6-00)

viii. Licensed motor vehicles; (3-6-00)

ix. Aircraft; and (3-6-00)

x. Recreational vehicles. (3-6-00)

b. Example: A farmer completes an ST-101 claiming a production exemption on the purchase of a fifteen dollar ($15) hammer and a case of motor oil. The retailer must collect the sales tax on the sale of the hammer, but is not liable for the collection of the sales tax on the sale of the motor oil. The retailer cannot rely on the exemption certificate when selling the hammer because, as a matter of law, the sale of hand tools with a unit price of one hundred dollars ($100) or less is excluded from the production exemption. But the retailer can rely on the exemption certificate when selling goods, such as the motor oil, which the farmer could put to either a nontaxable use (e.g., oil for a tractor), or a taxable use (e.g., oil for a licensed pickup truck). (4-11-06)

c. Additionally, when a retailer sells merchandise which qualifies for the production exemption in Section 63-3622D, Idaho Code, and which may be used for either a taxable or a nontaxable purpose, such as the sale of a battery which is taxable when used in a car and not taxable when used in a farm tractor, the retailer is relieved of the liability for and responsibility of collecting the sales tax if the purchaser provides a description on the exemption certificate of the intended nontaxable use of the item. (3-6-00)

d. A retailer cannot rely on an exemption certificate obtained from a purchaser when the law does not provide an exemption from the tax for the purchaser, such as a nonprofit organization not specifically exempted by the sales tax law or a governmental agency of another state. (3-6-00)

e. Nor can a retailer rely on an exemption certificate when the limited language of the law pertaining to the exemption claimed excludes all but certain goods from the exemption. For example, certain contractors can execute an ST-101 to purchase construction materials for specific jobs in non-taxing states claiming an exemption from tax under Section 63-3622B, Idaho Code, and Rule 012 of these rules. The retailer must collect tax on any goods that are not to be incorporated into the real property, such as parts for construction equipment and tools. (3-6-00)

f. In lieu of Form ST-101, retailers, when selling property that the purchaser claims is entitled to the production exemption, may stamp or imprint on the face of their sales invoices, or purchasers may stamp or imprint on the face of their purchase orders, a certificate containing the following language: (3-4-10)

I certify that the property which I have here purchased will be used by me directly and primarily in the process of producing tangible personal property by mining, manufacturing, processing, fabricating, or farming, or as a repair part for equipment used primarily as described above.

This tax exemption statement qualifies if this statement is signed by the purchaser and the name, address, and nature of business of the purchaser is shown on the invoice.

Any person who signs this certification with the intention of evading payment of tax is guilty of a misdemeanor.

_____
NATURE OF BUSINESS

_____
BUYER'S SIGNATURE

The signature on this certificate must be in addition to any other signature required on the invoice. If no Form ST-101 is on file with the vendor, then each exempt sale must be documented as described in this Subsection. (3-4-10)

g. Information on the exemption certificate. An exemption certificate shall show the purchaser's name and address, business name and address, and be signed and dated by the purchaser. The purchaser shall also provide on the certificate the specific exemption being claimed and, if the production exemption is being claimed, a list of the

products the purchaser produces. If the purchaser is claiming the contractor exemption, the purchaser must identify the invoice, purchase order, or job number to which the claim applies, the city and state where the job is located, and the name of the project owner. If the purchaser is claiming an exemption as an American Indian, then the purchaser must provide a valid Tribal I.D. number. By signing the exemption certificate, the purchaser is certifying that the purchase qualifies for an exemption from tax. (4-4-13)

08. Purchaser's Responsibility. A purchaser has the responsibility to properly complete a certificate and ensure that tax is charged on all taxable purchases. If the purchaser properly provides a certificate and normally makes exempt purchases, he nevertheless must ensure that tax is paid when a taxable purchase is made. If the seller does not charge the tax on a taxable purchase the purchaser must either notify the seller to correct the billing and then pay the sales tax to the seller, or accrue and remit use tax on the transaction. If the purchaser intentionally or repeatedly makes purchases, claiming they are exempt, when in fact they are not exempt, and the purchaser fails to remit use tax, a penalty can be imposed in addition to the use tax. The penalty amount that may be asserted against the purchaser is five percent (5%) of the sales price or two hundred dollars ($200), whichever is greater. The penalty will be asserted by the Commission as a Notice of Deficiency but the purchaser may have the penalty abated when he can establish that there were reasonable grounds for believing that the purchase was properly exempt from tax. In addition, if the purchaser gives a resale or exemption certificate with the intention of evading payment of the tax, the purchaser may be charged with a criminal misdemeanor and could be punished by a fine not exceeding one thousand dollars ($1,000) or imprisonment for not more than one (1) year, or by both a fine and imprisonment. (3-4-10)

a. Example: A garden supply store sells, among other things, soil and wood chips in large quantities. It buys a loader to use in its business to load items into customers' trucks. When buying the loader, the garden supply store gives a resale certificate to the seller indicating it intends to resell the loader. However, upon purchase the loader is capitalized on the books of the garden supply store. The Commission could impose a penalty equal to five percent (5%) of the purchase price of the loader against the garden supply store. This penalty is in addition to the use tax that is due. The individual who executed the certificate, or authorized the execution, on behalf of the garden supply store, if done with intent to evade payment of the use tax, could be criminally charged with a misdemeanor. (3-4-10)

b. Example: A restaurant buys food for resale from a supplier. It can properly give a resale certificate to the supplier. Since it buys food on a continuing basis the supplier keeps a certificate on file. If the restaurant buys cleaning supplies for its own consumption, the supplier should charge sales tax. If it fails to charge tax, the restaurant should notify the supplier to correct the billing and collect the sales tax. If the restaurant fails to pay sales or use tax on more than one purchase, then, under Section 63-3624, Idaho Code, the Commission can assert a use tax and a penalty equal to five percent (5%) of the purchase price or two hundred dollars ($200), whichever is greater, against the restaurant. (3-4-10)

09. Timely Acceptance of Certificates. A seller may accept a certificate from a purchaser prior to the time of sale, at the time of sale, or at any reasonable time after the sale to establish the exemption claim, with the exception of Forms ST-104-HM and ST-104G which must be provided at the time of sale. However, if no approved certificate is obtained from the purchaser in the manner provided or permitted by this rule, the sale is presumed to be taxable. (3-6-00)

a. Certificates obtained by a seller at a time subsequent to, but not within a reasonable time after, the time of sale will be considered by the State Tax Commission in conjunction with all other evidence available to determine whether or not the seller has established that a sales tax transaction is exempt from tax. (3-4-10)

b. Example: A retailer sells goods to a customer without charging the sales tax but does not obtain an ST-101 from the customer. Instead, the customer writes his seller's permit number on the invoice when he signs for the goods. The retailer is later audited by the State Tax Commission and fails in an attempt to obtain a certificate from his customer. The retailer argues that the seller's permit number written on the invoice is evidence that the customer purchased the goods for resale. However the number by itself does not establish that the customer bought the goods for resale. The retailer is liable for the tax on the sale. (3-4-10)

c. Example: A retailer sells a truck load of hay to a customer, does not charge sales tax on the transaction, and fails to obtain an ST-101. The retailer is later audited by the State Tax Commission and is unable to obtain an ST-101 from the customer. The retailer argues that hay is a farm supply and this alone should establish that the sale is exempt. However, the customer may be in a business which does not qualify for the farming production

exemption, such as racing or showing horses. Or, the customer may be using the hay for a nonbusiness purpose, such as raising animals for his own consumption. The retailer is liable for the tax on the sale. (3-4-10)

d. When a Notice of Deficiency Determination has been issued to a seller by the State Tax Commission and the seller petitions for redetermination as provided by Rule 121 of these rules, he may submit certificates obtained from his customers as evidence of exemption claims, but only if the certificates are presented to the State Tax Commission within ninety (90) days of the date of the Notice of Deficiency Determination. (3-6-00)

IDAPA 35 - STATE TAX COMMISSION

35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1404

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 and 63-2427, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings 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 15, 2014.

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:

Rule 010. DEFINITIONS - The definition for ‘contractor improving real property’ in subsection 04 is being amended to update obsolete terms by using the term ‘speculative builder’ in place of ‘speculation contractor’ and ‘spec contractor.’

Rule 105. TIME AND IMPOSITION OF TAX, RETURNS, PAYMENTS AND PARTIAL PAYMENTS - The rule is being updated to clarify that a single payment may be made to cover liabilities from multiple tax types.

Rule 107. VEHICLES AND VESSELS - This rule is being updated to reflect legislative changes related to the use tax exemption for new residents and military personnel and ensure that the rule in general aligns more closely with the statutory exemption.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. Negotiated Rulemaking was not feasible because of the simple nature of the proposed rule changes.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact McLean Russell, Tax Policy Specialist at (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 October 22, 2014.

DATED this 29th day of August 2014.

McLean Russell
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd, Plaza IV
PO Box 36
Boise, ID 83722-0410
Phone: (208) 334-7531
Fax: (208) 334-7844

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1404
(Only those Sections being amended are shown.)

010. DEFINITIONS (RULE 010).

01. Admissions. The term admissions includes the right or privilege to enter into a place including seats and tables reserved or otherwise and other similar accommodations and charges made therefor. (7-1-93)

02. Aircraft. The term aircraft means any contrivance now known or hereafter invented, used, or designed, for navigation of or flight in the air. (7-1-93)

03. Cash Discount. The term cash discount means a discount offered by a retailer to a purchaser as an inducement for prompt payment. (7-1-93)

04. Contractor Improving Real Property. A contractor is any person acting as a general contractor, subcontractor, contractee, subcontractee, or ~~*speculation contractor,*~~ speculative ~~*contractor*~~ builder, who uses material and equipment to perform any written or verbal contract to improve, alter, or repair real property. ~~*(7-1-93)*~~( )

05. Fleet. The term fleet shall mean one (1) or more vehicles registered under the International Registration Plan or a similar proportional registration system. (4-2-08)

06. Hand Tool. A hand tool is an instrument used or worked by hand. (7-1-93)

07. Logging. The term logging includes the harvesting of forest trees for resale by cutting, skidding, loading, thinning, or decking, regardless of whether the forest trees are owned by the person doing the harvesting. The term logging does not include harvesting timber for firewood. (7-1-93)

08. Manufactured Home/Mobile Home. The term manufactured home, previously known as a mobile home, means a structure, constructed according to HUD/FHA mobile home construction and safety standards, transportable in one (1) or more sections, which, in the traveling mode, is eight (8) body feet or more in width or is forty (40) body feet or more in length, or when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning and electrical systems contained therein, except that such term shall include any structure which meets all the requirements of this section except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of Housing and Urban Development and complies with the standards established under 42 U.S.C. 5401, et seq. (7-1-93)

09. Manufacturer's Discount Coupon. The term manufacturer's discount coupon means a price reduction coupon presented by a consumer to a retailer upon purchase of a manufacturer's product, the face value of which may only be reimbursed by the manufacturer to the retailer. (7-1-93)

10. Manufacturer's Rebates. The term manufacturer's rebate means a cash payment made by a manufacturer to a consumer who has purchased or is purchasing the manufacturer's product from the retailer. (7-1-93)

11. Mining. The term "mining" means the extraction from the earth of minerals including coal, phosphate, sodium, molybdenum, asbestos, gold, silver, lead, zinc, copper, antimony, building stone, pumice, scoria, clay, diatomaceous earth, sand, gravel, quartz, limestone, and marble, and includes the further processing of such mineral. The term "mining" does not include the extraction from the earth of geothermal resources nor does it include the extraction of soil. (6-23-94)

12. Modular Building. The term modular building, previously known as a prefabricated building, means any building or building component, other than a manufactured home as defined, above, which is constructed

according to standards contained in the International Building Code, which is of closed construction and is either entirely or substantially prefabricated or assembled at a place other than the building site, and is designed to be affixed to real property. (4-2-08)

13. **Office Trailer**. An office trailer is a structure which is built on a permanent chassis, is transportable in one (1) or more sections, and is designed for use as an office. (7-1-93)

14. **Orthopedic Appliances**. The term orthopedic appliance shall include those braces and other external supports prescribed by a practitioner for the purpose of correction or relief of defects, diseases, or injuries to bones or joints. (7-1-93)

15. **Prescription or Work Order**. The terms prescription or work order shall mean an order issued to, or on behalf of, a specific individual by a practitioner licensed by the state under Title 54, Idaho Code, to prescribe such items. (7-1-93)

16. **Real Property**. The term real property means land and improvements or fixtures to the land. (7-1-93)

17. **Tax Rate**. The terms "tax rate" or "rate" means the current tax rate as defined in Sections 63-3619 and 63-3621, Idaho Code. References to the tax rate in these rules may not reflect the current rate in effect. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

105. TIME AND IMPOSITION OF TAX, RETURNS, PAYMENTS AND PARTIAL PAYMENTS (RULE 105).

01. **Time and Imposition of Tax**. (7-1-93)

a. Sales Tax. Sales tax is imposed, computed and collected at the time of sale, without regard to the provisions of any contract relating to the time or method of payment. In the case of installment sales, sales on account, or other credit sales, the seller shall report as a taxable sale the entire sales price for the month in which the sale is made. No part of the sales tax may be deferred until the time the retailer actually collects payment from the buyer. A sale occurs when title to property passes through delivery to the customer or absolute and unconditional appropriation to a contract. Lease or rental payments are taxable during the month or other period for which the property is leased or rented. (7-1-93)

b. Use Tax. Use tax is determined at the time of the use, storage or other consumption of tangible personal property in Idaho. The tax is reported and payable in accordance with the provisions of this rule. Persons making purchases subject to use tax should apply for a use tax permit number from the Tax Commission. Application forms may be obtained by contacting any Tax Commission office. (7-1-93)

c. Taxable Sales Create State Revenue. The sales or use tax collected by a retailer from a customer at the time of purchase becomes state money at that time. The collected amounts may not be put to any use other than that allowed by Chapter 36, Title 63, Idaho Code, and these rules. (7-1-93)

02. **Returns**. (7-1-93)

a. Monthly Filing Generally Required. All retailers and persons subject to use tax are required to remit the tax to the state on a monthly basis unless a different reporting period is prescribed by the Commission. The remittance will include all sales and use tax due from the first through the last day of the preceding calendar month. (7-1-93)

b. Request to File Quarterly or Semiannually. Retailers or persons who owe seven hundred-fifty dollars ($750) or less per quarter and have established a satisfactory record of timely filing and payment of the tax may request permission to file quarterly or semiannually instead of monthly. (5-8-09)

c. Request to File Annually. Retailers or persons who have seasonal activities, such as Christmas tree sales or repeating fair booths, may request permission to file annually. Approval of the request is at the discretion of the Commission and is limited to taxpayers who have established a satisfactory record of timely filing and payment of the tax. (7-1-93)

d. Variable Filing. If the Tax Commission finds it necessary or convenient for the administration of the Sales Tax Act, it may assign an account to a taxpayer with a variable filing requirement. In such a case the taxpayer would not be required to file returns at regular intervals. The Tax Commission may also create one-time filing only accounts for taxpayers who are making a single payment of sales or use tax. (4-6-05)

e. Change in Filing Frequency. If the Tax Commission finds it necessary or convenient for the efficient administration of the Sales Tax Act, it may require taxpayers reporting taxable sales of less than twelve thousand dollars ($12,000) per year to file annually. (5-8-09)

f. Final Report. Whenever a taxpayer who is required to file returns under the Sales Tax Act or these rules stops doing business, he must mark cancel on the last return he files. This return ends the taxable year for sales or use tax purposes and constitutes the taxpayer's final report of sales or use tax activities or liabilities. The taxpayer must enclose his seller's permit with his request for cancellation or send a written statement that the permit has been destroyed. If the taxpayer continues business activity after filing a final report he may be subject to liabilities or penalties for failing to comply with the Idaho Sales Tax Act and these rules. (7-1-93)

03. Valid Return. A tax return or other document required to be filed in accordance with Section 63-3623, Idaho Code, and these rules must meet the conditions prescribed below. Those which fail to meet these requirements are invalid. They may be rejected and returned to the taxpayer to be redone in accordance with these requirements and refiled. A taxpayer who does not file a valid return is considered to have filed no return. A taxpayer's failure to properly file in a timely manner may result in penalties imposed by Section 63-3634, Idaho Code, and related rules. (7-1-93)

a. The sales and use tax return form must be completed and, if required, copies of all pertinent supporting documentation must be attached. The results of required supporting documentation must be carried forward to applicable lines on the sales or use tax return form. (7-1-93)

b. All sales and use tax returns or other documents filed by the taxpayer must include his sales or use tax permit number and federal taxpayer identification number in the spaces provided. (7-1-93)

c. A sales or use tax return that does not provide sufficient information to compute a tax liability does not constitute a valid return. (7-1-93)

d. Perfect accuracy is not required of a valid return, although each of the following conditions is required: it must be on the proper form, as prescribed by the Commission; the tax liability must be calculated and have sufficient supporting information, if required, to demonstrate how the result was reached; and it must show an honest and genuine effort to satisfy the requirements of the law. (7-1-93)

04. Perpetual Extensions of Time to File Revoked. Any previously granted permanent or perpetual extension of time to file any sales or use tax returns is hereby revoked. Any person who has used such an extension in the past may avoid a penalty for late filing by filing a timely extension of time return estimating the tax liability, as provided by Subsection 105.05 of this rule. (7-1-93)

05. Use of Estimates Extension of Time Returns. (7-1-93)

a. The Commission may, for good cause, grant authority for a taxpayer to file for an extension of time by filing an estimated return. When filing the Extension of Time estimated return, the taxpayer must attach a written request which sets forth the reason for estimating. The Commission will review each request to determine if there is good cause for filing an Extension of Time estimated return. If the Commission determines that the request should be denied, the taxpayer will be notified in writing and a penalty, as provided by Section 63-3046, Idaho Code, will apply to any delinquent tax due when the original return is filed. (7-1-93)

b. If the return for any period is filed on an estimated basis, the estimated return must be filed timely and the estimate must be reconciled to actual figures by filing an original return within one (1) month of the due date. Any additional tax due as a result of reconciliation must be remitted when the original return is filed and must include interest on any unpaid balance due from the due date of the return. (4-6-05)

c. The estimated tax remitted must be at least ninety percent (90%) of the total sales and use tax due for the period or one hundred percent (100%) of the total sales and use tax due for the same month of the prior year. If the estimated tax paid is less than these requirements, a five percent (5%) penalty may be applied to the remaining tax due, as provided by Section 63-3046(a), Idaho Code. (7-1-93)

d. Taxpayers wishing to file an Extension of Time estimated return must obtain the required forms from the Commission. (7-1-93)

06. Forms Required. ~~*(7-1-93)*~~

~~***a.*** *Separate Payments.*~~ The original return will be completed with the amount of total sales, nontaxable sales, taxable sales, items subject to use tax, and tax due inserted in the blanks. Payment must accompany the return. ~~*If the retailer owes payments for withholding or other taxes due to the state and payable to the Commission, separate checks should be made out for each tax payment and the reports and checks should be sent separately to the Commission.*~~ A complete sales and use tax return will be filed by each retailer or person subject to use tax. This return will be on a form prepared and mailed to the taxpayer by the Commission. If the original is lost or destroyed, a substitute form will be supplied upon request. ~~*(7-1-93)*~~(____)

~~***b***~~**a.** Retailers Must Report Own Use and Nontaxed Transactions. All retailers must report any sales or purchases on which no sales or use tax was collected or paid. Goods sold or produced and consumed by the retailer, items withdrawn from stock for personal use or employee use, stock removed and used for gift or promotional purposes, or any combination of such uses are subject to tax. (7-1-93)

~~***c***~~**b.** Reporting Adjustments. Any adjustments for additional tax due or credits claimed should be made on the next return due after the adjustments are discovered. These adjustments are to be shown on the line designated for adjustments on the return form and must be accompanied by an explanation and any documents that support the claimed adjustment. (7-1-93)

07. Payment of Tax. (7-1-93)

a. Payment to Accompany Return. The return filed in accordance with this rule must be accompanied by a remittance of the total amount due as shown on the return. Checks or other negotiable instruments should be made payable to the Idaho State Tax Commission. (7-1-93)

b. Payment of One Hundred Thousand Dollars ($100,000) or Greater. All taxes due to the state must be paid by electronic funds transfer whenever the amount due is one hundred thousand dollars ($100,000) or greater, in accordance with rules promulgated by the Idaho State Board of Examiners, which is incorporated by reference to these rules. (7-1-93)

c. Remittance of Collections Required--Bracket Exception. Retailers are required to remit all taxes collected from purchasers, except any difference that may result from use of the bracket system described in Rule 068 of these rules. Any taxes erroneously collected in excess of those properly due should be refunded to the purchaser by the retailer. If the retailer either cannot or does not make the refund during the period for which the return is due, then the retailer must report the erroneously collected taxes on the return and pay them to the Commission. If the erroneously collected taxes are subsequently refunded to the purchaser from whom they were collected, the retailer may claim a credit or refund of sales taxes in accordance with Rule 117 of these rules. Under no circumstances may a retailer retain any amount collected as sales or use tax which is greater than the retained amount authorized under the bracket system by Rule 068 of these rules. (3-20-04)

08. Filing Dates--General Rule. The filing date for all sales or use tax returns is the twentieth day of the calendar month immediately following the last day of the reporting period, unless otherwise allowed by these

rules. This is the filing due date for all regular monthly, quarterly, semiannual, and annual accounts. If the twentieth is a Saturday, Sunday, or legal holiday, the return shall be due on the next following day which is not a Saturday, Sunday or legal holiday. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

107. VEHICLES AND VESSELS -- GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS (RULE 107).

01. In General. This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to Rule 106 of these rules for general information on purchases, sales, rentals, and leases of motor vehicles. (3-6-00)

02. Gifts of Motor Vehicles. When the following facts clearly establish that a motor vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: (7-1-93)

a. No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)

b. The recipient assumes no indebtedness. (7-1-93)

c. The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)

d. The donor and recipient complete and sign a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, and submit it to the county assessor or the Idaho Transportation Department along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit: (2-18-02)

i. A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor or his representative and attached to the affidavit; or (2-18-02)

ii. The title may be marked as a gift and signed by the donor. (3-4-10)

03. Nonresidents. (3-30-07)

a. A nonresident does not owe use tax on the use of a motor vehicle which is purchased outside of Idaho and titled or registered under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection (107.03.a.), a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more motor vehicles is not a nonresident. The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho. (4-2-08)

b. For the purposes of this rule, a corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not required to be registered to do business with the Idaho Secretary of State, does not have significant contacts with this state and does not have consistent operations in this state. (3-29-12)

c. A nonresident college student does not owe use tax on any use of a motor vehicle while enrolled as a full-time student in a college or university located in Idaho. The motor vehicle must be registered under the laws of the student's state of residence. The motor vehicle must be owned by the student or a family member of the student. The college or university must be accredited by the Idaho State Board of Education. (3-29-12)

04. **New Residents**. A new resident of Idaho ~~*or military personnel temporarily assigned to Idaho and their spouses*~~ does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired while residing in another state and used primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled or registered in a state that does not impose a general sales and use tax will be required to complete and sign ~~*a Three Month Exemption Claim*~~ Form ST-102, Use Tax Exemption Certificate - New Resident or Nonresident Military, and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer or registration certificate. ~~*(3-29-12)*~~( )

a. If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)

b. ~~*Exclusion from the tax applies only to vehicles and aircraft owned by an individual.*~~ A ~~*privately*~~ personally owned vehicle, vessel, or aircraft is one that is owned by, and titled or registered to, an ~~*private*~~ individual or individuals. ~~*(3-4-10)*~~( )

05. **Military Personnel**. ( )

a. Active duty military personnel and their spouses do not owe use tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and acquired prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter. If a vehicle owner obtained a registration or title from another state or nation of residence prior to receipt of orders to transfer to Idaho or three (3) months prior to moving to Idaho, whichever time period is shorter, this is proof that the vehicle was primarily for use outside Idaho. ( )

b. Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property purchased while temporarily assigned in this state. A military person whose home of record is Idaho is considered to be a resident of this state. ~~*(3-29-12)*~~( )

06. **Tax Paid to Another State**. When a general retail sales tax has been properly imposed by another state or political subdivision of a state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. The credit for state and local taxes paid in another state will be applied first to the state sales tax due and the remainder, if any, will be applied to any local taxes due. (3-30-07)

a. If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)

b. Example: A resident of another state buys a vehicle in that state for ten thousand dollars ($10,000) two (2) months before moving to Idaho. He presents his title from the other state to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars ($300) when the vehicle was purchased. Credit for this amount is allowed against the ~~*five*~~ six hundred dollars ($~~5~~600) tax due Idaho. The assessor will collect ~~*two*~~ three hundred dollars ($~~2~~300) tax. ~~*(4-2-08)*~~( )

c. Example: A resident of another state purchased a vehicle two (2) months before moving to Idaho. The applicant paid four percent (4%) state sales tax, one and six tenths percent (1.6%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total general sales tax paid was seven and two tenths percent (7.2%). Since the Idaho tax rate is lower, no tax is due Idaho because the amount of tax paid to the other state exceeds the amount owed Idaho. (4-2-08)

d. Example: A resident of Alaska purchases a vehicle immediately prior to moving to Idaho. The purchaser paid a three percent (3%) city sales tax in Alaska. When the purchaser moves to Idaho, credit will be given for the local tax paid against the Idaho state use tax due. (3-30-07)

e. A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

f. Example: A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

g. Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

07. Sales to Family Members. The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

a. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

b. This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)

c. Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars ($10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollar ($10,000) purchase price of the vehicle. (4-11-06)

08. Sales to American Indians. An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)

09. Bulk Sale Transfers. A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit Form ST-133CATS to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)

10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho. (5-3-03)

a. Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), off-highway motorcycles, and snowmobiles for use out of this state, even though delivery is made within this state are exempt from tax when: (5-3-03)

i. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (5-3-03)

ii. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. (5-3-03)

b. To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)

c. This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, or inflatable boats regardless of length when sold without a motor. (5-3-03)

d. For purposes of Subsection 107.10 of this rule, an ATV means any recreational vehicle with three (3) or more tires, weighing under nine hundred (900) pounds, fifty (50) inches or less in width, having a wheel base of sixty-one (61) inches or less, has handlebar steering, and a seat designed to be straddled by the operator. (3-4-10)

e. For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)

i. Sold together with a motor; or (5-3-03)

ii. Eleven (11) feet in length or more, not including canoes, kayaks, or inflatable boats unless such canoe, kayak, or inflatable boat is sold together with attached motor. (5-3-03)

f. For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of either "trailer" or "utility trailer" found in Sections 49-121 and 49-122 Idaho Code, which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term "trailer" includes the specific types of trailers defined in Sections 49-121(6)(a) through 49-121(6)(h), Idaho Code. (4-2-08)

g. To qualify for this exemption the purchaser must be a nonresident of Idaho. An Idaho resident may form an LLC or other legal entity under the laws of another state. If such an LLC or other entity is formed primarily for the purpose of owning one (1) or more motor vehicles it is not a nonresident. The purchase or use of a motor vehicle in Idaho by such an entity is taxable. (3-30-07)

11. Motor Vehicles and Trailers Used in Interstate Commerce. The sale of motor vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. The owner must complete and sign the Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104MV, and provide it to the seller, the Idaho Transportation Department or the county assessor when applying for title transfer. See Rule 101 of these rules. (5-3-03)

12. Related Party Transfers and Sales. Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1403

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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:

Property Tax Rule 126 is being amended to show the changes to the method of gaining the number of courses required for appraisal certification by providing an opportunity to challenge one of the two required courses by passing a test.

Property Tax Rule 128 is being amended to show changes to the method of gaining the number of courses required for cadastral certification by providing an opportunity to challenge one of the two required courses by passing a test.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, page 103**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7742 or **alan.dornfest@tax.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 14th day of August, 2014.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7742
alan.dornfest@tax.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1403
(Only those Sections being amended are shown.)

126. PROPERTY TAX APPRAISER CERTIFICATION PROGRAM (RULE 126).
Section 63-105A, Idaho Code. (5-8-09)

01. Application for Certification. The State Tax Commission (Commission) shall prescribe and make available the application for state certification form to each county assessor. (5-8-09)

a. After the applicant has completed the requirements of Subsection 126.02 of this rule, the applicant's supervisor shall submit the completed application form to the education director. The application shall list the following: (5-8-09)

i. The name and address of the applicant, (5-8-09)

ii. The applicant's employer, and (5-8-09)

iii. The courses completed. (5-8-09)

b. The application must be signed and dated by the applicant and by the applicant's supervisor certifying the completion of the minimum experience requirement. (5-8-09)

c. The education director shall make available information regarding the certification process and the application form to students attending the courses referenced in Subsection 126.02 of this rule. (5-8-09)

02. Certification Requirements. An applicant for certification must pass at least two (2) appraisal courses: Commission Course No. 1 or the International Association of Assessing Officers' (IAAO) Course 101; and IAAO Course No. 102 or IAAO Course 201 or IAAO Course 300 or equivalent courses, and must have a minimum of twelve (12) months experience appraising for tax assessment purposes in Idaho or equivalent property tax appraisal experience approved by the examination committee. These requirements must be completed in the five (5) year period immediately preceding application except when the applicant proves equivalent education and experience. (3-29-10)

a. Upon request to the education director, an applicant may ~~*receive credit for Commission Course No. 1 by passing an examination developed for this purpose*~~ take one (1) required course and challenge the second required course by passing a test. The education director shall set the time and place for the ~~*examination*~~ test. ~~*(5-8-09)*~~( )

b. Equivalent courses may be approved by the education director and the examination committee. (5-8-09)

c. With the exceptions of the county assessor, the members of the county board of equalization, and the State Tax Commissioners, all persons making decisions regarding final values for assessment purposes shall be certified property tax appraisers. (5-8-09)

03. Maintaining Property Tax Appraisal Certification. (5-8-09)

a. To maintain certification each appraiser must complete thirty-two (32) hours of continuing education within two (2) years of the certification date. Thereafter, by January 1 of each year, each appraiser shall have completed thirty two (32) hours of continuing education during the previous two (2) years. (5-8-09)

b. When any certified property tax appraiser fails to meet the continuing education requirements, the examination committee shall place this person on ~~*a*~~ six (6) month probation. When any certified property tax appraiser fails to meet the continuing education requirements within this probationary period, the person shall forfeit

certification or may, on a one (1) time only basis, submit a written petition to the examination committee for a six (6) month extension of probation. This person must submit this petition at least thirty (30) days prior to the expiration date of the first probationary period. ~~(5-8-09)~~( )

c. For recertification, an applicant must apply to the examination committee within five (5) years of the date certification was canceled. An applicant for recertification must satisfactorily complete a written examination approved by the committee. The committee shall decide the time and place of the examination. If more than five (5) years have lapsed since certification was canceled, the committee shall not grant recertification. After the five (5) year period, an applicant must apply for certification under the same conditions as required for initial certification and a new certification number will be issued. ~~(5-8-09)~~( )

04. Cross Reference. See Section 63-201. (1)(a), Idaho Code for the requirement that only assessors or certified property tax appraisers place value on any assessment roll. See Rule 125 of these rules for the description of the examination committee. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

128. CADASTRAL CERTIFICATION PROGRAM (RULE 128).
Section 63-105A, Idaho Code. (5-8-09)

01. Application for Certification. The State Tax Commission (Commission) shall prescribe and make available the application for state certification form to each county assessor. (5-8-09)

a. After any applicant has completed the requirements provided in Subsection 128.02 of this rule, the applicant's supervisor shall submit the completed application form to the education director. The application shall list the following: (5-8-09)

i. The name and address of the applicant, (5-8-09)

ii. The applicant's employer, and (5-8-09)

iii. The courses completed. (5-8-09)

b. The application must be signed and dated by the applicant and by the applicant's supervisor certifying the completion of the minimum experience requirement. (5-8-09)

c. The education director shall make available information regarding the certification process and the application form to students attending the courses mentioned in Subsection 128.02. (5-8-09)

02. Certification Requirements. An applicant for certification must have passed the Commission's Basic Mapping Course and the International Association of Assessing Officers' (IAAO) Course 600 or IAAO Course 601 or both IAAO Courses 650 and 651, or equivalent courses, and must have a minimum of twelve (12) months experience working as a cadastral specialist in Idaho or equivalent cadastral experience approved by the examination committee. These requirements must be completed in the five (5) year period immediately preceding application except when the applicant proves equivalent education and experience. (5-8-09)

a. Upon request to the ~~*Commission's*~~ education director, an applicant may ~~*receive credit for the Commission's Basic Mapping Course by passing an examination developed for this purpose*~~ take one (1) required course and challenge the second required course by passing a test. The education director shall set the time and place for the ~~*examination*~~ test. ~~(5-8-09)~~( )

b. Equivalent courses may be ~~*established by the Commission*~~ approved by the education director and ~~*approved*~~ by the examination committee. ~~(5-8-09)~~( )

03. Maintaining Cadastral Specialist Certification. (5-8-09)

a. To maintain certification, each cadastral specialist must complete thirty-two (32) hours of continuing education within two (2) years of the certification date. Thereafter, by January 1 of each year, each cadastral specialist shall have completed thirty-two (32) hours of continuing education during the previous two (2) years. (5-8-09)

b. When any certified cadastral specialist fails to meet the continuing education requirements, the education committee shall place this person on ~~a~~ six (6) month probation. When any certified cadastral specialist fails to meet the continuing education requirements within this probationary period, the person shall forfeit certification or may, on a one (1) time only basis, submit a written petition to the examination committee for a six (6) month extension of probation. This person must submit this petition at least thirty (30) days prior to the expiration date of the first probationary period. ~~(5-8-09)~~( )

c. For recertification, an applicant must apply to the examination committee within five (5) years of the date certification was canceled. An applicant, for recertification, must satisfactorily complete a written examination approved by the committee. The committee shall decide the time and place of the examination. If more than five (5) years have lapsed since certification was canceled, the committee shall not grant recertification. After the five (5) year period, an applicant must apply for certification under the same conditions as required for initial certification and a new certification number will be issued. ~~(5-8-09)~~( )

04. **Cross Reference**. See Rule 125 of these rules for the description of the examination committee. (5-8-09)

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1406

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2014.

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:

Property Tax Rule 204 is a new rule that will be developed regarding operating property required to be assessed by the State Tax Commission that shall include gathering lines as defined in Section 61-114, Idaho Code, regardless of whether such lines are owned or operated in conjunction with a public utility, and shall also include property owned by the same taxpayer and associated with the extraction of any oil or gas to be carried by such gathering lines.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7742 or **alan.dornfest@tax.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 14th day of August, 2014.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7742
alan.dornfest@tax.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0103-1406
(Only those Sections being amended are shown.)

204. OPERATING PROPERTY -- DEFINITIONS (RULE 204).
Sections 61-114, 63-201 and 63-405, Idaho Code.

Operating property required to be assessed by the State Tax Commission shall include gathering lines as defined in Section 61-114, Idaho Code, regardless of whether such lines are owned or operated in conjunction with a public utility, and shall also include property owned by the same taxpayer and associated with the extraction or production of any oil or gas to be carried by such gathering lines. ( )

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-1401

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 and 63-3039, 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 15, 2014.

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 310 is being amended to add the interest rate for calendar year 2015 and the Revenue Ruling where the federal rate for the calculation can be found.

Rule 501 is being amended to reflect current division changes in the agency.

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

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

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

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cynthia Adrian at (208) 334-7670.

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 Wednesday, October 22, 2014.

DATED this 27th day of August, 2014.

Cynthia Adrian
Tax Policy Specialist
Idaho State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7670

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0201-1401
(Only those Sections being amended are shown.)

310. INTEREST RATES (RULE 310).
Sections 63-3045 and 63-3073, Idaho Code. (3-20-04)

01. In General. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code. (4-6-05)

02. Idaho Interest Rates and Applicable Revenue Rulings.

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29
Calendar Year 2011	4% simple interest	Revenue Ruling 2010-20
Calendar Year 2012	4% simple interest	Revenue Ruling 2011-20
Calendar Year 2013	3% simple interest	Revenue Ruling 2012-24

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
Calendar Year 2014	4% simple interest	Revenue Ruling 2013-18
Calendar Year 2015	4% simple interest	Revenue Ruling 2014-22

~~(3-20-14)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

501. PROCEDURES ON SETTLEMENTS OVER FIFTY THOUSAND DOLLARS (RULE 501).
Section 63-3048, Idaho Code. (3-29-10)

01. Signatures for Settlement. For settlement agreements where the amount in issue equals or exceeds fifty thousand dollars ($50,000), the signature of two (2) commissioners is required on the settlement agreement to make it binding and complete. One of the commissioners signing must be delegated the responsibility for oversight of the tax type subject to the settlement. (3-29-10)

02. Amount in Issue. The amount in issue is defined as the Notice of Deficiency amount, plus or minus any adjustments previously communicated in writing to the taxpayer, minus the proposed settlement amount. (3-29-10)

a. Example 1. The audit staff issues a Notice of Deficiency to the taxpayer for one hundred fifty thousand dollars ($150,000). The taxpayer then submits documentation for additional examination by the Commission or its staff. As a result of the examination, the amount claimed due is reduced to one hundred twenty thousand dollars ($120,000), and the taxpayer is notified in writing. The taxpayer then submits an offer to settle for eighty thousand dollars ($80,000). The amount in issue is forty thousand dollars ($40,000). (3-29-10)

b. Example 2. Same facts as in Paragraph 501.02.a., except the taxpayer makes the offer to settle before the Commission communicates the reduction in the amount claimed due based on the additional documentation. In this case, the amount in issue is seventy thousand dollars ($70,000) (NOD amount of $150,000 - settlement offer of $80,000 = $70,000), because the Commission has not communicated the allowance of the deduction to the taxpayer, and the taxpayer is not aware of the adjustment at the time he made the offer. (3-29-10)

c. Example 3. The taxpayer files a refund claim of one hundred thousand dollars ($100,000). The audit staff reviews the claim and determines the taxpayer is entitled to a refund of twenty thousand dollars ($20,000). The taxpayer protests the denial of the remaining eighty thousand dollars ($80,000). The taxpayer makes an offer to settle by proposing a refund of seventy-five thousand dollars ($75,000). The amount in issue is fifty-five thousand dollars ($55,000), which is the difference between the refund allowed and the proposed settlement amount. The calculation is as follows:

Audit staff NOD amount	($20,000)
Less settlement offer	- ($75,000)
Amount in issue	($55,000)

(3-29-10)

d. Example 4. The taxpayer files a refund claim of one hundred thousand dollars ($100,000). The audit staff reviews the claim and determines the taxpayer is not entitled to a refund and instead owes fifty thousand dollars ($50,000). The audit staff issues a Notice of Deficiency for fifty thousand dollars ($50,000) and a denial of the refund claim. The taxpayer submits additional documentation for examination by the Commission or its staff. After review, the amount claimed due is reduced to thirty thousand dollars ($30,000), and this is communicated to the taxpayer in writing. The taxpayer then offers to settle by proposing a refund of forty thousand dollars ($40,000). The

amount in issue is seventy thousand dollars ($70,000). The calculation is as follows:

Audit staff NOD amount	$50,000
Less adjustment submitted to taxpayer	- ($20,000)
Amount claimed due	$30,000
Less settlement offer	- ($40,000)
Amount in issue	$70,000)

(3-29-10)

e. For purposes of the amount in issue, interest will be updated to the date of the offer. (3-29-10)

03. Final Review. When considering a proposed settlement, and the amount in issue equals or exceeds fifty thousand dollars ($50,000), the Commission will hold a final review before deciding to finalize the settlement. The meeting on the final review will be attended by at least two (2) commissioners, ~~a~~ the tax policy ~~specialist~~ manager or designee, a deputy attorney general, and a representative from the division in which the Notice of Deficiency originated. The representative ~~shall~~ will be either the division administrator or the bureau chief. One of the commissioners must be the commissioner delegated oversight responsibility for the tax at issue, and the other commissioner signing the settlement agreement must attend the final review. The purpose of the final review is to evaluate the merits of the proposed settlement. ~~(3-29-10)~~(____)

04. Written Summary. The deputy attorney general or tax policy ~~specialist~~ designee at the final review ~~shall~~ will prepare a written summary of the proposed settlement. The summary ~~shall~~ will include recommendations of the audit staff as well as recommendations of the preparer. The summary ~~shall~~ will be provided to those attending the review. This summary does not preclude the Commission from seeking a separate analysis from other agents of the Commission. A copy of the summary, along with a copy of the related settlement agreement, ~~shall~~ will be maintained in separate files of the Commission. Such files may not be disclosed or inspected under the public records law. ~~(3-29-10)~~(____)

05. Final Review When the Offer to Settle is Based on Inability to Pay. If the taxpayer's offer is based on inability to pay, a representative of the ~~Field Services Bureau~~ Collection Division will be provided a copy of the Written Summary and given an opportunity to participate in the final review. The representative attending the final review on behalf of the ~~Field Service Bureau~~ Collection Division will be the division administrator or the ~~bureau chief~~ designee. ~~(3-29-10)~~(____)

06. Annual Summary. The Commission ~~shall~~ will submit an annual report to the governor and legislature by March 1 of each year summarizing all settlement agreements entered into during the previous calendar year in which the amount in issue equals or exceeds fifty thousand dollars ($50,000). The annual summary ~~shall~~ will be based on the written summary for all applicable cases. The annual summary ~~shall~~ will not contain any confidential taxpayer information but ~~shall~~ will include a brief general description of each settlement. The annual summary ~~shall~~ will be a public record subject to disclosure and inspection. ~~(3-29-10)~~(____)

07. Applicable Settlements. This rule applies to those matters when a protest has been timely filed pursuant to Section 63-3045, Idaho Code, and before the tax has been assessed, and to cases in which a decision of the Tax Commission has been appealed to the Board of Tax Appeals or to a court. However, this rule ~~shall~~ will not apply to settlements where the amount in issue is less than fifty thousand dollars ($50,000). ~~(3-29-10)~~(____)

IDAPA 37 - IDAHO DEPARTMENT OF WATER RESOURCES

37.03.11 - RULES FOR CONJUNCTIVE MANAGEMENT OF SURFACE AND GROUND WATER RESOURCES

DOCKET NO. 37-0311-1101

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Chapter 52, Title 67, Idaho Code, the Idaho Administrative Procedure Act, and Section 42-603, Idaho Code, which provides that the Director of IDWR is authorized to adopt rules and regulations for the distribution of water from the streams, rivers, lakes, ground water and other natural water sources as shall be necessary to carry out the laws in accordance with the priorities of the rights of the users thereof. The Conjunctive Management Rules are also promulgated pursuant to Section 42-1805(8), Idaho Code, which provides the Director with authority to promulgate the rules implementing or effectuating the powers and duties of the Department.

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

Friday, October 24, 2014, at 1:30 p.m. (MDT)

Idaho Department of Water Resources
322 East Front Street, Boise, ID 83702
6th Floor Conference Rooms B and C

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. Interested parties who wish to attend the public hearing by phone may contact the Department for the teleconference number and pass code.

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

The rules for Conjunctive Management of Surface and Ground Water Resources (IDAPA 37.03.11) address conjunctive administration of connected ground and surface water supplies. Rule 50 (IDAPA 37.03.11.050) identifies the area on the Eastern Snake Plain Aquifer (ESPA) having a common ground water supply as identified in a 1992 professional paper of the United States Geological Survey (USGS).

Clear Springs Foods filed a petition on November 2, 2010, for the Department to promulgate revisions to Rule 50. The Department determined that Rule 50 did not reflect current technical information and commenced negotiated rulemaking proceedings in January of 2011. Multiple public meetings were held. However, due to ongoing work related to the ESPA model and issues related to delivery calls pending before the Department, the Director stayed the rulemaking proceedings in August of 2011. The Director restarted the negotiated rulemaking process in May of 2014. Four additional public meetings were held and comments received and considered.

Having considered all of the public oral and written comments received, the Department has decided to repeal Rule 50. The Director has concluded that the rule is no longer necessary and that the administrative hearings and deliberations associated with individual delivery calls is the proper venue to address which ground water rights should be subject to administration under a delivery call.

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

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

This rulemaking has no fiscal impact to dedicated funds for the Department or 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 May 7, 2014 Idaho Administrative Bulletin, **Vol. 14-5, page 77**.

INCORPORATION BY REFERENCE: No materials are being incorporated by referenced into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact: Richard M. Rigby at (208) 287-4839. Materials pertaining to the negotiated rulemaking, including any available preliminary rule drafts, can be found on the Department's web site at the following web address: **www.idwr.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 31, 2014.

DATED this 15th Day of September, 2014.

Richard M. Rigby, Senior Advisor
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720
Phone: (208) 287-4839
Fax: (208) 287-6700
richard.rigby@idwr.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 37-0311-1101
(Only those Sections being amended are shown.)

044. -- ~~04~~99~~9~~9. (RESERVED)

~~***050. AREAS DETERMINED TO HAVE A COMMON GROUND WATER SUPPLY (RULE 50).***~~

~~***01. Eastern Snake Plain Aquifer.*** *The area of coverage of this rule is the aquifer underlying the Eastern Snake River Plain as the aquifer is defined in the report, Hydrology and Digital Simulation of the Regional Aquifer System, Eastern Snake River Plain, Idaho, USGS Professional Paper 1408-F, 1992 excluding areas south of the Snake River and west of the line separating Sections 34 and 35, Township 10 South, Range 20 East, Boise Meridian.* *(10-7-94)*~~

~~***a.*** *The Eastern Snake Plain Aquifer supplies water to and receives water from the Snake River.* *(10-7-94)*~~

~~***b.*** *The Eastern Snake Plain Aquifer is found to be an area having a common ground water supply.* *(10-7-94)*~~

~~***c.*** *The reasonably anticipated average rate of future natural recharge of the Eastern Snake Plain Aquifer will be estimated in any order issued pursuant to Rule 30.* *(10-7-94)*~~

~~***d.*** *The Eastern Snake Plain Aquifer area of common ground water supply will be created as a new water district or incorporated into an existing or expanded water district as provided in Section 42-604, Idaho Code, when the rights to the diversion and use of water from the aquifer have been adjudicated, or will be designated a ground water management area.* *(10-7-94)*~~

~~***051. -- 999. (RESERVED)***~~

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.05.01 - RULES OF THE DIVISION OF PURCHASING

DOCKET NO. 38-0501-1401

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 67-5717(11) and 67-5732, 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 15, 2014.

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 rules revisions clarify the processes of state agency purchasing and new rules address processes for high dollar service contracts and for contract administration and management.

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

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

The proposed rules have two predominant areas of fiscal impact:

1. Training Requirement - Proposed required training will require an expansion of the training program at the Division of Purchasing with a total budget impact estimated at less than $245,800 annually. The current fee structure applied to executive contracts is sufficient to fund the expenditure increase.

2. High Dollar Contract Award and Management - Proposed rules requiring an oversight board, management by a professionally certified project manager and third party validation for service contracts in excess of $5,000,000 will have a fiscal impact at the agency level. The fiscal impact to individual agencies will vary widely depending on the oversight procedures currently in place and the number of contracts that fall into the high value definition.

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 4, 2014 Idaho Administrative Bulletin, **Vol. 14-6, page 97**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Bill Burns at (208) 332-1610 or Sarah Hilderbrand at (208) 332-1612.

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 October 22, 2014.

DATED this 29th Day of August, 2014.

Bill Burns, Administrator
Division of Purchasing
650 W. State St., Rm. B-15
P. O. Box 83720
Boise, ID 83720-0003
Tel: (208) 332-1610
Fax: (208) 327-7320

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 38-0501-1401
(Only those Sections being amended are shown.)

005. OFFICE -- OFFICE HOURS -- MAILING AND STREET ADDRESS.
The division of purchasing is located at 650 W. State Street, Lower Level, Room B-15, Boise, Idaho. The division's mailing address is P.O. Box 83720, Boise, Idaho 83720-0075. Office hours are 8 a.m. to 5 p.m., Monday through Friday, except state holidays. ~~(3-15-02)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

011. DEFINITIONS.
Unless defined otherwise in these rules, the definitions set forth in Section 67-5716, Idaho Code, shall apply to this chapter. ( )

01. ~~***Acquisition****. The process of procuring or purchasing property by the state of Idaho.* *(3-15-02)*~~

~~***02.***~~ **Administrator**. The administrator ~~*for*~~ of the division of purchasing. ~~*The administrator is the chief buyer.* *(3-15-02)*~~( )

~~***03.*** ***Agency****. All offices, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant-governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction.* *(3-15-02)*~~

0~~4~~2. **Alternate**. Property or services that are not at least a functional equal in features, performance or use of the brand, model or specification designated as the standard. (3-15-02)

~~***05.*** ***Bid****. A written offer that is binding on the bidder to perform a contract to purchase or supply property or services in response to an invitation to bid.* *(3-15-02)*~~

~~***06.*** ***Bidder****. A vendor who has submitted a bid or quotation on specific property.* *(3-15-02)*~~

0~~7~~3. **Brand Name or Equal Specification**. This means a specification that uses a brand name to describe the standard of quality, performance or other characteristics being solicited and that invites the submission of equivalent products. (3-15-02)

0~~8~~4. **Brand Name Specification**. This means a specification calling for one (1) or more products by manufacturers' names or catalogue numbers. (3-15-02)

0~~9~~5. **Buyer**. An employee of the division of purchasing designated as a buyer, contract administrator, purchasing agent, contracting officer, or similar designation by the administrator, including, where appropriate, the administrator and other management personnel. The term also includes authorized employee(s) of a purchasing

~~activity~~ authority. ~~(3-15-02)~~( )

~~**10. Component**. An item of property normally assembled or incorporated with other items into a unified productive whole at the site of use, which items belong to functional classes that may be interchangeable units of similar function but differing operational or productive capabilities. (3-15-02)~~

~~**11**~~**06. Concession Services**. The granting by the purchasing ~~activity~~ authority of a right, franchise, authority, property interest or option to a contractor, regardless of whether an expenditure of state or other funds occurs. ~~(3-15-02)~~( )

~~**12**~~**07. Consultant Services**. This means work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice in formulating or implementing programs or services or improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting and planning. The consultant's services, opinions or recommendations will be performed according to the consultant's methods without being subject to the control of the agency except as to the result of the work. (3-15-02)

~~**13**~~**08. Contract**. Contract means any state written agreement, including a solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries. A contract ~~shall also~~ includes ~~any amendments mutually agreed upon~~ purchase orders issued by ~~both parties~~ the state. ~~(3-15-02)~~( )

~~**14. Contractor**. A bidder or offeror who has been awarded an acquisition contract. (3-15-02)~~

~~**15**~~**09. Director**. The chief officer of the department of administration. (3-15-02)

1~~6~~0. Division. The division of purchasing of the department of administration as established by Section 67-5714, Idaho Code. ~~Whenever a purchase is made by the division on behalf of another agency, the division shall be deemed to be acting as the agent for such agency. (3-15-02)~~( )

1~~7~~1. Document. When used in these rules, may include electronic documents. (3-15-02)

~~**18. Equal**. Property that meets or exceeds the quality, performance and use of the brand, model or specifications in the invitation to bid, request for proposals or request for quotation. (3-15-02)~~

~~**19. Equipment**. Items of personal property that have a normal useful life expectancy or measurable service life of two (2) or more years. (3-15-02)~~

12~~0~~. Formal Sealed Procedure. Procedure by which the buyer solicits competitive sealed bids or competitive sealed proposals by means of an invitation to bid or request for proposals. (3-15-02)

~~**21. Goods**. Items of personal property including concession services, not qualifying as equipment, parts or supplies. (3-15-02)~~

13. High Dollar Service Contract. A contract with a total estimated cost during the initial term and renewals or extensions of five million dollars ($5,000,000) or more. ( )

14. Informal Solicitation. Procedure by which the buyer solicits informal quotes by means of a request for quote. ( )

~~**22. Information Technology Property**. Includes, but is not limited to, all present forms of computer hardware, computer software or services used or required for automated data processing, computer related office automation or telecommunications. (3-15-02)~~

~~**23**~~**15. Invitation to Bid**. Means all documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. (3-15-02)

~~***24.*** ***Lowest Responsible Bidder****. The responsible bidder whose bid conforms in all material respects to the invitation to bid or request for proposals and reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price.*** ***(3-15-02)***~~

~~***25***~~**16.** **Offeror**. A vendor who has submitted a ~~*proposal in*~~ response to a request for quote, invitation to bid, or request for proposals for property to be acquired by the state. ~~*(3-15-02)*~~(____)

~~***26***~~**17.** **Open Contract**. A contract awarded by the state of Idaho through the division of purchasing to one (1) or more vendors who have agreed to allow all agencies to ~~*procure or*~~ purchase specified property under the terms and conditions set forth in the contract. ~~*(4-7-11)*~~(____)

~~***27.*** ***Person****. Any business, individual, union, committee, club or other organization or group of individuals, not including a state or public agency.*** ***(3-15-02)***

~~***28.*** ***Procurement****. The process of obtaining property for state use by lease, rent or any manner other than by purchase or gift.*** ***(3-15-02)***

~~***29***~~**18.** **Professional Services**. Work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, ~~*engineering,*~~ actuarial, architecture, veterinarian, information technology, and research. The knowledge is founded upon prolonged and specialized intellectual training that enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skills. ~~*(3-15-02)*~~(____)

~~***30.*** ***Property****. Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such property. Includes concession services and rights to access or use state property or facilities for business purposes.*** ***(3-15-02)***~~

~~***3***~~**19.** **Proposal**. A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which proposal is considered an offer to perform a contract in full response to the request for proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award. (3-15-02)

~~***3***~~**20.** **Public Agency**. Has the meaning set forth in Section 67-2327, Idaho Code. (3-15-02)

~~***33***~~**21.** **Purchase**. The act of acquiring or procuring property for state use or the result of an acquisition action. (3-15-02)

~~***34***~~**22.** **Purchase Order**. ~~*See also definition of Contract, typically used to acquire property. It is a n*~~Notification to the contractor to provide the stated property~~*, required material, equipment, supplies or services*~~ under the terms and conditions set forth in the purchase order. It may include the form of the state's acceptance of an ~~*bidder's*~~ offeror's quote, proposal, or bid. See also definition of contract ~~*(3-15-02)*~~(____)

~~***35***~~**23.** **Purchasing** ~~***Activity***~~ **Authority**. The division or an agency ~~*delegated that*~~ exercising authority based on a delegation of authority by the administrator ~~*for*~~ or as provided under these rules to an individual within the division or the agency to engage in the conduct of purchasing. ~~*(3-15-02)*~~(____)

~~***36***~~**24.** **Quot~~*ation*~~e**. An offer to supply property in response to a request for quot~~*ation*~~e and generally used for ~~*small or emergency purchases*~~ informal solicitation procedures. ~~*(3-15-02)*~~(____)

~~***37***~~**25.** **Request for Proposals**. Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals as a component of the formal sealed procedure and is generally utilized in the acquisition of services or other complex purchases. ~~*(3-15-02)*~~(____)

***38*26. Request for Quot*ation*e**. The document, form or method generally used for purchases solicited in accordance with *small purchase or emergency purchase* informal solicitation procedures. *(3-15-02)*( )

***39*27. Requisition**. A standard state or agency specific form that serves as a purchasing request and that requests that the purchasing *activity* authority acquire the *stated requirements* property. *(3-15-02)*( )

***40*28. Sealed**. Includes invitations to bid*s* and requests for proposals electronically sealed and submitted in accordance with requirements or standards set by the division and bids manually sealed and submitted. *(3-15-02)*( )

***41*29. Sealed Procedure Limit**. That dollar amount, as established by these rules, above which the formal sealed *bid* procedure will be used. *Said* The amount may be lowered by the administrator to maintain full disclosure or competitive purchasing or otherwise achieve overall state efficiency and economy. *(3-15-02)*( )

*42. **Services**. Personal, general, professional or consultant services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding or competition is not prohibited or made impractical by statute, rules and regulations or generally accepted ethical practices.* *(3-15-02)*

***4*30. Small Purchase**. An acquisition that costs less than the sealed procedure limit. (3-15-02)

***44*31. Solicitation**. Means an invitation to bid, a request for proposals, request for quote, or other document issued by the purchasing *activity* authority for the purpose of soliciting bids, proposals, quotes, or offers to perform a contract. *(3-15-02)*( )

***45*32. Specifications**. The explicit *requirements furnished with an invitation to bid, request for proposals or request for quotations upon which a purchase order or contract is* property to be *based. Unless specifically provided in a solicitation,* acquired by the state. *s*Specifications *do not* include *solicitation conditions or contractual terms including, without limitation, items such as vendor qualification requirements, bid closing times, delivery time or payment terms* the scope of work and the performance and physical characteristics of property. *(3-15-02)*( )

***46*33. State**. This means the state of Idaho including each agency unless the context implies other states of the United States. (3-15-02)

*47. **Supplies**. Items of personal property having an expendable quality or during their normal use are consumed and that require or suggest acquisition in bulk.* *(3-15-02)*

***48*34. Telecommunications**. Means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images. (3-15-02)

*49. **Vendor**. A person or entity capable of supplying property to the state.* *(3-15-02)*

***50*35. Written**. When used in these rules, may include an electronic writing. (3-15-02)

012. -- 020. (RESERVED)

021. *DELEGATION* CONDUCT OF *AUTHORITY OF ADMINISTRATOR* PURCHASING.
The conduct of purchasing encompasses all phases of the process of purchasing property for the state of Idaho under the provisions of Title 67, Chapter 57, Idaho Code, including pre-solicitation planning, solicitation, award, and contract administration. ( )

01. Authority of the Administrator. The administrator is the chief buyer of the division. Whenever a purchase is made by the division on behalf of another agency, the division shall be deemed to be acting as the agent for such agency. The division shall administer the conduct of purchasing and the acquisition of all property for agencies except those for which *the agencies have* an agency has separate statutory purchasing authority. ( )

02. Delegation of Authority of the Administrator. The administrator may delegate in writing such authority as deemed appropriate to any employees of the division or of a purchasing ~~*activity*~~ authority. Such delegations shall remain in effect unless modified or until revoked in writing. All delegations must be given in writing prior to the acquisition of the property. All ~~*delegated*~~ acquisitions under delegated authority must be made according to these purchasing rules, the policies developed by the division, and the conditions established by the administrator in the delegation. Delegations shall be subject to periodic reporting as directed by the administrator. ~~*(3-15-02)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

032. ACQUISITION OF CONCESSION SERVICES.
If there is no expenditure of state funds, the acquisition of concession services, including but not limited to, exclusive-rights contracts, franchises, vending services, options, pouring contracts, services contracts, advertising contracts, broadcast rights to sporting events or other similar types of ~~*goods*~~ property, may be conducted by each purchasing ~~*activity*~~ authority as it determines to be in its best interest; provided, however, concessions within the definition of a food service facility set forth in Section 67-6902, Idaho Code, shall comply with the provisions of Title 67, Chapter 69, Idaho Code. ~~*While there is no statutory requirement for competitive bidding for concession services or the applicability of purchasing statutes to the award of contracts for concession services when no expenditure of state funds is involved, t*~~The purchasing ~~*activity*~~ authority is encouraged to utilize a competitive process if determined to be in its best interest. ~~*(3-15-02)*~~( )

033. PURCHASE OF TELECOMMUNICATIONS OR INFORMATION TECHNOLOGY PROPERTY.
Unless otherwise exempted by statute or these rules, all agency requests exceeding the sealed procedure limit for telecommunications or information technology property must be reviewed and approved by the office of the chief information officer within the department of administration before submission to the division. It is the requesting agency's responsibility to attach any approvals to any requisitions submitted to the division. Acquisitions of these types of property are subject to ~~*state acquisition requirements, so*~~ these rules and agencies should plan ~~*long enough*~~ in advance to allow for ~~*this*~~ review by the office of the chief information officer. ~~*The department's review and any subsequent*~~ All acquisitions of telecommunications and information technology property will conform to the guidelines and policies established or adopted by the ~~*Information Technology Resource Management Council or other*~~ governing or policy board or council ~~*that may be*~~ created by statute or directive for the purpose of information technology oversight or review. ~~*(3-15-02)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

035. -- 0~~*40*~~39. (RESERVED)

04~~*1*~~0. PROCEDURE FOLLOWED IN ~~*THE*~~ SOLICITATIONS ~~*OF BIDS AND PROPOSALS*~~.

01. Procurements Subject to Formal Sealed Procedure - Sealed Procedure Limit. Except as otherwise provided in these rules, the acquisition of property ~~*exceeding*~~ at a cost of one hundred thousand dollars ($100,000) or more (the sealed procedure limit) shall be by ~~*the*~~ a formal sealed procedure. For the purpose of the sealed procedure limit, costs are determined based on either the total costs of a one-time purchase of property or the total cost of a term contract for property, including all available renewal or extension periods. ( )

02. Agency Procurement Contact. Agencies shall assign an individual contact for each solicitation where a requisition amount exceeds the sealed procedure limit, whether the solicitation is conducted by the division or administered by the agency. The procurement contact shall be the individual selected by the agency to monitor the procurement's compliance with these rules, coordinate the development of a solicitation and to serve as the agency's primary contact with the division concerning this procurement. All procurement contacts shall complete a training program approved by the administrator. ( )

03. Vendor Qualification. All vendors submitting responses to solicitations issued by the state must be

qualified. All vendors are qualified unless disqualified as defined by Section 67-5730, Idaho Code. ~~(4-7-11)~~( )

04. Use of E-procurement System. Unless exempted by the administrator or these rules, all solicitations shall be issued through the division's e-procurement system. ( )

05. Vendor Communication. Vendors shall not communicate with the purchasing authority or the requisitioning agency concerning any solicitation during the period from solicitation issuance through contract award unless the communication is allowed by these rules or the terms of the solicitation. Vendors engaging in communication prohibited by this rule and submitting a response to the solicitation will be non-responsive. ( )

041. SPECIAL PROCEDURES FOR HIGH DOLLAR SERVICE CONTRACTS.
Unless exempted in writing by the administrator, the following additional procedures apply to high dollar service contracts. Contracts meeting the dollar threshold with a scope including mixed services and goods shall be a high dollar service contract when the scope is primarily for services. The determination of whether the scope is primarily for services shall be made by the administrator in his sole discretion. The administrator will establish a policy identifying guidelines for the award of exemptions and consult with affected agencies in the development and modification of such policy. Exemptions for contracts may require the implementation of one (1) or more of the requirements of this section or Section 125 of these rules. The policy will allow for revocation of exemptions and provide a process for reconsideration of any revocation and escalation to the director. The decision of the director concerning the revocation of an exemption shall be final and shall not be subject to appeal pursuant to Section 67-5733, Idaho Code, or a contested case as that term is defined under the provisions of Title 67, Chapter 52, Idaho Code. ( )

01. Third Party Validation. The agency requisitioning property that will result in a high dollar service contract shall engage an independent third party subject matter expert to validate that the project planning process is conducted in accordance with best practices. The engagement of a third party subject matter expert shall comply with these rules. ( )

02. Oversight Board. The agency requisitioning property that will result in a high dollar service contract shall establish an oversight board for the solicitation process. The oversight board's duties shall include review of the third party validation received pursuant to Subsection 041.01 of this section. The oversight board shall issue a report to the administrator concerning the conclusions of the third party validation and recommendations concerning modifications to the solicitation. The oversight board shall include no less than two (2) experts in the subject matter of the contract without a potential conflict of interest. For the purposes of this subsection, experts in the subject matter of the contract with a potential conflict of interest include individuals: ( )

a. With a direct reporting relationship to any other individual providing supervision or management of the contract resulting from the solicitation, other than the senior official of the agency; or ( )

b. Who are interested in or likely to become interested in the contract resulting from the solicitation. An interest in the contract includes the award of a contract to the individual, to a company controlled by or employing the individual, or to a company controlled by or employing the spouse, parent, spouse's parent or a child of the individual. ( )

03. Reporting. Solicitations that will result in a high dollar service contract shall provide for contractor reporting. The schedule and content of contractor reporting shall be reviewed in the third party validation process and by the oversight board established under these rules. ( )

04. Negotiations. Solicitations that will result in a high dollar service contract shall provide for proposal discussions with individual offerors pursuant to Section 083 of these rules and negotiations pursuant to Section 084 of these rules. ( )

05. Approval of Solicitation Release. Solicitations that will result in a high dollar service contract shall be approved for release by a procurement professional who: ( )

a. Possesses, at a minimum, certification as a certified professional public buyer (CPPB) by the Universal Public Procurement Certification Council (UPPCC) or an equivalent certification by a public procurement

purchasing certification institution approved by the administrator; and ( )

b. Has completed a training program approved by the administrator. ( )

06. **Administration Agreement**. Prior to the award of a high dollar service contract, the requisitioning agency and the division shall enter into an agreement setting forth the roles and responsibilities of each party, the reports to be provided by each party, and the schedule for such reports. This section applies to all high dollar service contracts regardless of the purchasing authority managing the procurement. ( )

042. EXCEPTIONS TO FORMAL SEALED PROCEDURE.
Purchases meeting the following criteria need not be purchased by the formal sealed procedure: (3-15-02)

01. Emergency Purchases. Emergency purchases as authorized by Section 67-5720, Idaho Code, and Section 043 of these rules. ~~(3-15-02)~~( )

02. Small Purchases. Small purchases, unless the administrator specifically requires a formal sealed procedure, made in accordance with Section 044 of these rules. ~~(3-15-02)~~( )

03. Sole Source Purchases. Sole source purchases made through direct solicitation with documented source selection, in accordance with Section 67-5720, Idaho Code, and Section 045 of these rules. ~~(3-15-02)~~( )

04. Reverse Auctions. Purchases through reverse public auctions as authorized by Section 67-5720, Idaho Code. (3-15-02)

05. Federal Government Acquisitions. Acquisitions from the United States of America or any agency thereof. (3-15-02)

06. Rehabilitation Agency Acquisitions. Acquisitions of property that is provided by non-profit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged and that is offered for sale at fair market price as determined by the administrator in accordance with these rules. (3-15-02)

07. Correctional Industries. Purchases of ~~*road or street signs, metal motor license plates, wearing apparel, furniture, articles or containers for state use not for resale on the open market or any other*~~ property marketed directly by Correctional Industries in accordance with Section 20-245, Idaho Code. ~~(3-15-02)~~( )

08. Purchases from General Services Administration Federal Supply Contractors. Acquisitions of property may be made from General Services Administration federal supply contractors without the use of competitive bid upon written approval of the administrator. The administrator shall determine whether such property meets the ~~*purchasing activity's*~~ requisitioning agency's requirements and whether the price of acquisition is advantageous to the state. The administrator shall commemorate the determination in a written statement that shall be incorporated in the applicable file. If the administrator determines that the acquisition of property from General Services Administration contractors is not advantageous to the state, the acquisition shall be in accordance with competitive bidding procedures and requirements. ~~(3-15-02)~~( )

09. Existing Open Contracts. ~~*Supplies, services or other*~~ Except as provided in these rules, property available under these contracts shall be purchased under such contracts in accordance with the provisions or requirements for use thereof. ~~(4-7-11)~~( )

10. Exempt Purchases. By written policy the administrator may exempt from the formal sealed procedure or the requirement for competitive acquisition that property for which bidding is impractical, disadvantageous or unreasonable under the circumstances. (3-15-02)

a. Examples include, but are not limited to: (3-15-02)

i. Special market conditions; (3-15-02)

ii. Property requiring special contracting procedures due to uniqueness; (3-15-02)

iii. Legal advertising, publication or placement of advertisements by state agency personnel directly with media sources; ~~*or*~~ ~~*(3-15-02)*~~( )

iv. ~~*Services*~~ Property for which competitive solicitation procedures are impractical~~.~~; or~~*(3-15-02)*~~( )

v. Used property. ( )

b. Such policy shall describe the property exempted, the duration of the exemption, and any other requirements or circumstances appropriate to the situation. (3-15-02)

11. Interagency Agreements and Agreements for the Joint Exercise of Powers. Acquisitions of property under an interagency agreement pursuant to Section 67-2332, Idaho Code, or an agreement for the joint exercise of powers pursuant to Section 67-2328, Idaho Code. ( )

043. EMERGENCY PURCHASES.

01. Definition of Emergency Conditions. An emergency condition is a situation that creates a threat to public health, welfare or safety such as may arise by reason of floods, epidemics, riots, equipment failures or other similar circumstances. The existence of such condition must create an immediate and serious need for property that cannot be met through normal acquisition methods. The buyer or the agency official responsible for purchasing shall make a written determination stating the basis for an emergency purchase and for the selection, if applicable, of the particular supplier. Such determination shall be sent promptly to the administrator for review and written approval that the purchase be undertaken as an emergency purchase. (3-15-02)

02. Conditions. Emergency purchases shall be limited to only that property necessary to meet the emergency. The director or administrator may delegate authority in writing to an agency or purchasing ~~*activity*~~ authority to make emergency purchases of up to an amount set forth in the delegation of authority. ~~*(3-15-02)*~~( )

044. SMALL PURCHASES.

~~***01. General**. Small purchases are those purchases or procurements expected to cost one hundred thousand dollars ($100,000) or less. Costs are determined based on the following:* *(4-7-11)*~~

~~***a.** One-time purchases of property; or* *(3-15-02)*~~

~~***b.** Total cost of a contract for services, including renewal or extension periods.* *(3-15-02)*~~

~~***02. Splitting of Requirements**. Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies.* *(3-15-02)*~~

~~***03. Procedure**. Unless impractical or impossible and documented in the file, these small purchase procedures require the acquisition to be publicly posted. Except as otherwise provided in this rule, no less than three (3) vendors having a significant Idaho presence as defined by Section 67-2349, Idaho Code, shall be solicited to submit quotations. Award shall be made to the responsible and responsive bidder offering the lowest acceptable quotation. The purchasing file will be fully documented for unacceptable quotations. Should it be impractical or impossible to solicit three (3) vendors, the file shall be fully documented and every effort should still be made to obtain the most favorable terms, conditions and price possible.* *(3-15-02)*~~

~~***04. Form of Request for Quotation**. Unless otherwise prohibited by the buyer, the request for quotation and the quotation may be written, oral, electronic, telephonic or facsimile.* *(3-15-02)*~~

~~***05. Quoting Time**. The quoting time shall be determined by the buyer and should provide sufficient time for the vendor to prepare and return a quotation. The amount of time shall take into consideration such factors as complexity, urgency, availability of property and the number and location of vendors.* *(3-15-02)*~~

~~***06. Open Contracts**. Property available under single agency or open contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator. (4-7-11)*~~

~~***07. Professional, Consultant, and Information Technology Services**. Professional, consultant, and information technology services acquired under this rule, where the services are reasonably expected to cost one hundred thousand dollars ($100,000) or less through a fixed price/not to exceed price contract for a non-renewable term not to exceed one (1) year, may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state, and if the service is not available under an open contract. (4-7-11)*~~

~~***08. Purchases in Amounts Less Than Ten Thousand Dollars**. If the property to be acquired is expected to cost less than ten thousand dollars ($10,000), it may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state, and if the property is not available under an open contract. (4-7-11)*~~

01. Small Purchase Categories. ( )

a. Exempt. Property expected to cost less than ten thousand dollars ($10,000). ( )

b. Informal. Purchase of any property expected to cost at least ten thousand dollars ($10,000) and less than the sealed procedure limit. ( )

c. Professional and Consultant Services. The acquisition of professional or consultant services expected to cost less than the sealed purchase limit, for projects limited to one (1) year in duration. ( )

02. Procedure. Agencies acquiring property under this rule are encouraged to work with legal counsel to develop solicitation and contract terms that serve the best interests of the state. The terms of procurements under this rule are subject to the provisions of Section 112 of these rules. ( )

a. Professional and consultant small purchases and exempt small purchases may be acquired as each agency sees fit, in accordance with good business practice and agency-established policy, in the best interest of the state; subject to the limitations in Subsection 044.03 of this rule. ( )

b. Informal small purchases shall be made using informal solicitation procedures, subject to the limitations in Subsection 044.03 of this rule. Unless exempted by the administrator, informal solicitations shall be issued through the division's e-procurement system. The purchasing authority will establish the quoting time based on factors such as complexity, urgency, and the number and location of vendors, in an effort to allow vendors sufficient time to prepare and return a quote. Agencies procuring property under this rule shall maintain a purchasing file containing the following: ( )

i. The solicitation document posted and quotes received. If the acquisition was not publicly posted, the agency shall include a statement in the purchasing file describing the basis for determining posting was impractical or impossible. ( )

ii. If not posted on the division's e-procurement system, the agency shall document the quotes received from at least three (3) vendors having a significant Idaho economic presence as defined by Section 67-2349, Idaho Code. If there are fewer than three (3) vendors of the property having a significant Idaho economic presence, the agency shall document its attempt to obtain quotes from vendors with a significant Idaho economic presence. ( )

03. Limitations. The following limitations apply to all small purchases: ( )

a. Property available under single agency or open contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator. ( )

b. Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies. ( )

c. Small purchases not issued for a fixed price shall include a not to exceed price of no more than the applicable sealed procedure limit. ( )

045. SOLE SOURCE PURCHASES.

01. Only a Single Supplier. Sole source purchase shall be used only if ~~*a requirement*~~ required property is reasonably available from a single supplier. A requirement for a particular proprietary property item does not justify a sole source purchase if there is more than one (1) potential ~~*bidder or*~~ offeror ~~*for*~~ that can provide the required property ~~*item*~~. ~~*(3-15-02)*~~( )

02. Examples of Sole Source. Examples of circumstances that could necessitate a sole source purchase are: (3-15-02)

a. Where the compatibility of equipment, components, accessories, computer software, replacement parts or service is the paramount consideration. (3-15-02)

b. Where a ~~*sole*~~ single supplier's item is needed for trial use or testing. ~~*(3-15-02)*~~( )

c. Purchase of mass produced movie or video films or written publications distributed or sold primarily by the publisher. (3-15-02)

d. Purchase of property for which it is determined there is no functional equivalent. (3-15-02)

03. Administrator Makes Determination. The determination as to whether an acquisition shall be made as a sole source ~~*shall*~~ will be made by the administrator. Each request shall be submitted in writing by the ~~*using*~~ requesting agency. The administrator may specify the application of such determination and its duration, and may apply additional conditions to an approval. In cases of reasonable doubt, competition should be solicited. Any request by an ~~*using*~~ agency that an acquisition be restricted to ~~*one (1) potential contractor*~~ a single supplier shall include a justification for the property, as well as an explanation as to why no other ~~*contractor*~~ vendor is acceptable. ~~*(3-15-02)*~~( )

04. Negotiation in Sole Source Purchase. ~~*The buyer*~~ After receipt of authorization from the administrator for a sole source purchase, the agency shall conduct negotiations, as appropriate, as to price, delivery and terms in accordance with the authorization and in the best interests of the state. ~~*(3-15-02)*~~( )

046. DETERMINATION OF FAIR MARKET PRICE FOR REHABILITATION AGENCY ACQUISITIONS.
Upon receipt of a rehabilitation agency proposal accompanied by detailed cost data, the administrator will conduct a survey of the market ~~*place by requesting current prices from at least three (3) vendors currently marketing*~~ appropriate for the property being sought. The fair market price of a rehabilitation ~~*vendor*~~ agency shall not be greater than one hundred twenty-five percent (125%) of the lowest price received during the survey. The administrator will notify by letter the rehabilitation agency concerned advising it as to whether it is offering property at fair market price. ~~*The division or purchasing activity, if the acquisition is less than the sealed procedure limit or the contract is one (1) year or less in duration, may then contract with the rehabilitation agency at the proposed price.*~~ ~~*(3-15-02)*~~( )

047. -- 050. (RESERVED)

051. CONTENT OF ~~*THE INVITATION TO BID OR REQUEST FOR PROPOSALS*~~ SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.
The following shall be included in an invitation to bid or a request for proposals: (3-15-02)

01. Submission Information. Information regarding the applicable opening date, time and location. (3-15-02)

02. Specifications. Specifications developed in accordance with Section 111 of these rules ~~*including, if*~~

~~*applicable, scope of work*~~. ~~*(3-15-02)*~~( )

03. Contract Terms. Terms and conditions applicable to the contract, subject to the provisions of Section 112 of these rules. ~~*(3-15-02)*~~( )

04. Evaluation Criteria. Any evaluation criteria to be used in determining property acceptability. (3-15-02)

05. Trade-In Property. If trade-in property is to be included, a description of the property and location where it may be inspected. (3-15-02)

06. Incorporation by Reference. A brief description of any documents incorporated by reference that specifies where such documents can be obtained. (3-15-02)

07. Pre-~~*Proposal*~~ Solicitation Conference. The date, time and location of the pre-~~*proposal*~~ solicitation conference must be included in the ~~*Request for Proposals*~~ solicitation. ~~*(4-7-11)*~~( )

052. CHANGES TO ~~*INVITATION TO BID OR REQUEST FOR PROPOSALS*~~ SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.

A~~*n invitation to bid or request for proposals*~~ solicitation issued under a formal sealed procedure may be changed by the buyer through issuance of an ~~*addendum*~~ amendment, provided the change is issued in writing prior to the ~~*bid opening*~~ solicitation closing date and is made available to all vendors receiving the original solicitation. Any material information given or provided to a prospective vendor with regard to a~~*n invitation to bid or request for proposals*~~ solicitation shall be made available in writing by the buyer to all vendors receiving the original solicitation. Oral interpretations of specifications or contract terms and conditions shall not be binding on the ~~*division*~~ state unless confirmed in writing by the buyer and acknowledged by the ~~*division*~~ purchasing authority prior to the date of the ~~*opening*~~ closing. Changes to the ~~*invitation to bid or request for proposals*~~ solicitation shall be identified as such and shall require that the vendor acknowledge receipt of all addenda issued. The right is reserved to waive any informality. ~~*(3-15-02)*~~( )

~~***053. PRICE ESCALATION.***~~
~~*Contractors shall not be entitled to price escalation except where specifically provided for in writing in the contract or purchase order.*~~ ~~*(3-15-02)*~~

05~~*4*~~3. -- 060. (RESERVED)

061. FORM OF SUBMISSION FOR SOLICITATIONS ISSUED UNDER A FORMAL SEALED PROCEDURE.

01. Manual Submissions. Unless otherwise provided in these rules, to receive consideration, in addition to any specific requirements set forth in the invitation to bid or request for proposals, bids or proposals submitted manually must be made on the form provided, which form must be properly completed and signed in ink or contain an electronic signature as defined in Section 28-50-102, Idaho Code. ~~*Photocopy or facsimile signatures will be rejected.*~~ All changes or erasures on manual submissions shall be initialed in ink. Unsigned or improperly submitted bids or proposals will be rejected. ~~*Telegraphed, telephonic or facsimile submissions will not be accepted except for emergency and small purchases.*~~ The purchasing ~~*activity does not*~~ authority assumes no responsibility for failure of ~~*any*~~ the United States Postal Service, any private or public delivery service, or any computer or other equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation. ~~*(3-15-02)*~~( )

02. Electronic Submissions. To receive consideration, in addition to any specific requirements set forth in the invitation to bid or request for proposals, bids or proposals submitted electronically must be submitted in accordance with and meet all applicable requirements of these rules and contain an electronic signature as defined in Section 28-50-102, Idaho Code. The purchasing ~~*activity does not*~~ authority assumes ~~*any*~~ no responsibility for failure of any electronic submission process, including any computer or other ~~*electronic*~~ equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation. ~~*(3-15-02)*~~( )

062. -- 069. (RESERVED)

070. PRE-~~*PROPOSAL*~~ SOLICITATION CONFERENCE.
All ~~*R*~~request for ~~*P*~~proposals~~*' solicitations*~~ will have a pre-~~*proposal*~~ solicitation conference for vendors and will be conducted by the procurement team and project personnel. The conference will consist of a general overview of the procurement process as well as the scope of work and requirements of the ~~*subject Request for Proposal*~~ solicitation. The procurement team will allow attendees to submit written questions and may provide an opportunity for a verbal question and answer period, provided, however, that only questions submitted and answered in written form and posted to the state's e-~~*P*~~procurement system as an amendment to the ~~*Request for Proposal*~~ solicitation, will have any force or effect. ~~*(4-7-11)*~~( )

071. PRE-OPENING WITHDRAWAL OR MODIFICATION.
Manual submissions may be withdrawn or modified only as follows: Bids or proposals may be withdrawn or modified prior to the closing by written communication signed in ink by the submitting vendor. Bids or proposals may be withdrawn prior to closing in person upon presentation of satisfactory evidence establishing the individual's authority to act on behalf of the submitting vendor. Bids or proposals may be withdrawn or modified by ~~*telegraphic*~~ electronic communication provided the ~~*telegraph*~~ communication is received prior to the closing. The withdrawal or modification, if done via ~~*telegraph*~~ electronic communication, must be confirmed in a writing signed in ink or containing an electronic signature as defined in Section 28-50-102, Idaho Code. ~~*The written confirmation must be mailed and postmarked no later than the closing date. If the written confirmation of the withdrawal or modification is not received within two (2) working days from the closing date, no consideration will be given to the telegraphic modification.*~~ Any withdrawing or modifying communication, including ~~*a telegram*~~ an electronic communication, must clearly identify the solicitation. A modifying ~~*letter or telegram*~~ communication should be worded so as not to reveal the amount of the original bid or proposal. ~~*No other form of withdrawal or modification (e.g., telephone or facsimile) will be accepted.*~~ ~~*(3-15-02)*~~( )

072. LATE BIDS/PROPOSALS, LATE WITHDRAWALS AND LATE MODIFICATIONS.
Any bid or proposal, withdrawal, or modification received after the time and date set for ~~*opening*~~ closing at the place designated ~~*for opening*~~ in the solicitation is late. No late bid or proposal, late modification or late withdrawal will be considered. All late bids and proposals, other than clearly marked "no bids", will be returned to the ~~*bidder*~~ offeror. Time of receipt will be determined by the official time stamp or receipt mechanism located at the ~~*purchasing activity*~~ designated place for receipt of responses. The purchasing ~~*activity does not*~~ authority assumes ~~*any*~~ no responsibility for failure of the United Postal Service, any private or public delivery service~~*s*~~, or ~~*means or for the failure of*~~ any computer or other ~~*electronic*~~ equipment to deliver all or a portion of the bid or proposal at the time or to the location required by the solicitation. ~~*(3-15-02)*~~( )

073. RECEIPT, OPENING, AND RECORDING OF BIDS AND PROPOSALS.
Upon receipt, all bids, proposals and modifications properly marked and identified will be time stamped, but not opened. They shall be stored in a secure place until ~~*bid*~~ the time specified for opening ~~*time*~~. Time stamping and storage may be through electronic means. Bids shall be opened publicly at the date and time specified in the invitation to bid. Proposals shall be opened publicly, identifying only the names of the offerors unless otherwise stated in the request for proposals. Bid and proposal openings may be electronic virtual openings. ~~*(3-15-02)*~~( )

074. MISTAKES.
The following procedures are established relative to claims of a mistake. (3-15-02)

01. Mistakes in ~~*Bids*~~ Responses. If a mistake is attributable to an error in judgment, the submission may not be corrected. Correction or withdrawal by reason of an inadvertent, nonjudgmental mistake is permissible, but at the discretion of the administrator and to the extent it is not contrary to the interest of the ~~*division*~~ state or the fair treatment of other submitting vendors. ~~*(3-15-02)*~~( )

02. Mistakes Discovered Before Opening. Mistakes ~~*detected*~~ discovered by a vendor prior to ~~*opening*~~ closing may be corrected by the submitting vendor by submitting a timely modification or withdrawing the original submission and submitting a corrected submission to the purchasing ~~*activity*~~ authority before the ~~*opening*~~ closing. Vendors who discover a mistake after closing but prior to opening may withdraw the submission by written notification to the purchasing authority and signed by an individual authorized to bind the vendor if such notification is received by the purchasing authority prior to opening. ~~*(3-15-02)*~~( )

03. Mistakes Discovered After Opening But Before Award. This subsection sets forth procedures to be applied in three (3) situations described below in which mistakes are discovered after opening but before award. (3-15-02)

a. Minor Informalities. Minor informalities are matters of form rather than substance evident from the bid or proposal document, or insignificant mistakes that can be waived or corrected without prejudice to other submitting vendors, that is, the effect of the mistake on price, quantity, quality, delivery or contractual conditions is not significant. The buyer may waive such informalities. Examples include the failure of a submitting vendor to: (3-15-02)

i. Return the required number of signed submissions. (3-15-02)

ii. Acknowledge the receipt of an ~~*addendum*~~ amendment, but only if: ~~*(3-15-02)*~~( )

(1) It is clear from the submission that the submitting vendor received the ~~*addendum*~~ amendment and intended to be bound by its terms; or ~~*(3-15-02)*~~( )

(2) The ~~*addendum*~~ amendment involved had a negligible effect on price, quantity, quality or delivery. ~~*(3-15-02)*~~( )

b. Mistakes Where Intended Submission is Evident. If the mistake and the intended submission are clearly evident on the face of the document, the submission shall be corrected to the intended submission and may not be withdrawn. Examples of mistakes that may be clearly evident on the face of the document are typographical errors, errors in extending unit prices (unit prices will always govern in event of conflict with extension), transposition errors and arithmetical errors. (3-15-02)

c. Mistakes Where Intended Submission is not Evident. A vendor may be permitted to withdraw a low bid if: (3-15-02)

i. A mistake is clearly evident on the face of the submission document but the intended submission is not similarly evident; or (3-15-02)

ii. The vendor submits timely proof of evidentiary value that clearly and convincingly demonstrates that a mistake was made. (3-15-02)

04. Mistakes Discovered After Award. Mistakes shall not be corrected after award of the contract. (3-15-02)

05. Written Approval or Denial Required. In the event of a mistake discovered after the opening date, the administrator shall approve or deny, in writing, a request to correct or withdraw a submission. (3-15-02)

075. -- 080. (RESERVED)

081. EVALUATION AND AWARD.
Any contract award shall comply with these provisions. (3-15-02)

01. General. The contract is to be awarded to the lowest responsible and responsive ~~*bidder or*~~ offeror. The solicitation shall set forth the requirements and criteria that will be used to make the lowest responsive and responsible determination. ~~*No submission shall be evaluated for any requirements or criteria that are not disclosed in the solicitation.*~~ ~~*(3-15-02)*~~( )

02. Standards of Responsibility. Nothing herein shall prevent the buyer from establishing additional responsibility standards for a particular purchase~~*, provided that these additional standards are set forth in the solicitation*~~. Factors to be considered in determining whether a vendor is responsible include whether the vendor has: ~~*(3-15-02)*~~( )

a. Available the appropriate financial, material, equipment, facility and personnel resources and expertise, or the ability to obtain them, necessary to indicate capability to meet all contractual requirements; (3-15-02)

b. A satisfactory record of integrity; (3-15-02)

c. Qualified legally to contract with the purchasing ~~*activity*~~ authority and qualified to do business in the state of Idaho; ~~*(3-15-02)*~~( )

d. Unreasonably failed to supply any necessary information in connection with the inquiry concerning responsibility; (3-15-02)

e. Requisite ~~*E*~~experience; or ~~*(3-15-02)*~~( )

f. A satisfactory prior performance record, if ~~*any*~~ applicable. ~~*(3-15-02)*~~( )

03. Information Pertaining to Responsibility. A submitting vendor shall supply information requested by the buyer concerning its responsibility. If such submitting vendor fails to supply the requested information, the buyer shall base the determination of responsibility upon any available information or may find the submitting vendor nonresponsible if such failure is unreasonable. (3-15-02)

04. Written Determination of Nonresponsibility Required. If a submitting vendor that otherwise would have been awarded a contract is found nonresponsible, a written determination of nonresponsibility setting forth the basis of the finding shall be prepared by the buyer. (3-15-02)

05. Extension of Time for Acceptance. After opening, the buyer may request submitting vendors to extend the time during which their bids or proposals may be accepted~~*, provided that, with regard to bids, no other change is permitted*~~. The reasons for requesting such extension shall be documented. ~~*(3-15-02)*~~( )

06. Partial Award. A buyer shall have the discretion to award on an all or nothing basis or to accept any portion of a ~~*bid*~~ response to a solicitation, excluding other~~*s*~~ portions of a response and other offerors, unless the ~~*bidder*~~ offeror stipulates all or nothing in its ~~*bid*~~ response to a solicitation. ~~*(3-15-02)*~~( )

07. Only One Submission Received. If only one (1) responsive submission is received in response to a solicitation, an award may be made to the single submitting vendor. In addition, the buyer may pursue negotiations in accordance with applicable conditions and restrictions of these rules. Otherwise, the solicitation may be rejected and: (3-15-02)

a. New bids or offers may be solicited; or (3-15-02)

b. The proposed acquisition may be canceled. (3-15-02)

082. TIE ~~*BIDS*~~ RESPONSES.
~~*The following provisions shall apply to tie bids as defined herein.*~~ ~~*(3-15-02)*~~

01. Tie ~~*Bids*~~ Responses -- Definition. Tie ~~*bids*~~ responses are low responsive bids, quotes, or proposals from responsible ~~*bidders*~~ offerors that are identical in price or score. A responsible offeror is determined based upon the standards of responsibility set forth in Section 081 of these rules. The ranking of offers on price or score shall be weighed as set forth in the solicitation. ~~*(3-15-02)*~~( )

02. Award. Award shall not be made by drawing lots, except as set forth below, or by dividing business among identical ~~*bidders*~~ offerors. In the discretion of the buyer, award shall be made in any permissible manner that will ~~*discourage*~~ resolve tie ~~*bids*~~ responses. Procedures that may be used to discourage tie ~~*bids*~~ responses include: ~~*(3-15-02)*~~( )

a. If price is considered excessive or for another reason, such ~~*bids*~~ responses are unsatisfactory, reject all ~~*bids*~~ responses, rebid and seek a more favorable contract in the open market or enter into negotiations pursuant to

Paragraph 084.01.d. of these rules; ~~(3-15-02)~~(____)

b. Award to an Idaho resident or an Idaho domiciled ~~*bidder*~~ offeror or for ~~*an*~~ Idaho produced ~~*product*~~ property where other tie ~~*bid*~~ response(s) are from out of state or to ~~*a bidder*~~ an offeror submitting ~~*a*~~ domestic ~~*product*~~ property where other tie ~~*bid is*~~ response(s) are for foreign (external to Idaho) manufactured or supplied property; ~~(3-15-02)~~(____)

c. Where identical low ~~*bids*~~ responses include the cost of delivery, award the contract to the ~~*bidder*~~ offeror farthest from the point of delivery; ~~(3-15-02)~~(____)

d. Award the contract to the ~~*bidder*~~ offeror who received the previous award and continue to award succeeding contracts to the same ~~*bidder*~~ offeror so long as all low ~~*bids*~~ responses are identical; ~~(3-15-02)~~(____)

e. Award to the ~~*bidder*~~ offeror with the earliest delivery date. ~~(3-15-02)~~(____)

03. Drawing Lots. If no permissible method will be effective in ~~*discouraging*~~ resolving tie ~~*bids*~~ responses and a written determination is made so stating, award may be made by drawing lots or tossing a coin in the presence of witnesses if there are only two (2) tie ~~*bids*~~ responses. ~~(3-15-02)~~(____)

083. PROPOSAL DISCUSSION WITH INDIVIDUAL OFFERORS.

01. Classifying Proposals. For the purpose of conducting proposal discussions under this rule, proposals shall be initially classified as: (3-15-02)

a. Acceptable; (3-15-02)

b. Potentially acceptable, that is reasonably susceptible of being made acceptable; or (3-15-02)

c. Unacceptable. (3-15-02)

02. "Offerors" Defined. For the purposes of this rule, the term "offerors" includes only those ~~*persons*~~ vendors submitting proposals that are acceptable or potentially acceptable. The term shall not include ~~*persons*~~ vendors that submitted unacceptable proposals. ~~(3-15-02)~~(____)

03. Purposes of Discussions. Discussions are held to facilitate and encourage an adequate number of potential offerors to offer their best proposals, by amending their original offers, if needed. (3-15-02)

04. Conduct of Discussions. The solicitation document must provide for the possibility of discussions. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussions and revisions of proposals. The buyer should establish procedures and schedules for conducting discussions. If during discussions there is a need for clarification or change of the request for proposals, it shall be amended to incorporate such clarification or change. Auction techniques (revealing one offeror's price to another) and disclosure of any information derived from competing proposals are prohibited. Any oral clarification or change of a proposal shall be reduced to writing by the offeror. (3-15-02)

05. Best and Final Offer. The buyer shall establish a common time and date for submission of best and final offers. Best and final offers shall be submitted only once unless the buyer makes a written determination before each subsequent round of best and final offers demonstrating another round is in the ~~*purchasing agency*~~ state's interest, and additional discussions will be conducted or the ~~*agency's*~~ requirements will be changed. Otherwise, no discussion of, or changes in, the best and final offers shall be allowed prior to award. Offerors shall also be informed that if they do not submit a notice of withdrawal or another best and final offer, their immediate previous offer will be construed as their best and final offer. ~~(3-15-02)~~(____)

084. NEGOTIATIONS.
In accordance with Section 67-5717(12), Idaho Code, the administrator may negotiate acquisitions as follows: (3-15-02)

~~***01. Price Agreements**. The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed appropriate. Price agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price agreements may be appropriate when: (3-15-02)*~~

~~***a.** The dollar value of items or transactions is relatively small; (3-15-02)*~~

~~***b.** The property may not be conducive to standard competitive bidding procedures, such as automobile, truck or other equipment parts having individual low unit costs; (3-15-02)*~~

~~***c.** There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or (3-15-02)*~~

~~***d.** Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms. (3-15-02)*~~

0~~2~~1. ~~After a Competitive Solicitation~~ Use of Negotiations. Negotiations may be used under this rule when the administrator determines in writing that negotiations may be in the best interest of the state, ~~and that~~ including but not limited to the following circumstances: ~~(3-15-02)~~( )

a. A competitive solicitation has been unsuccessful because, without limiting other possible reasons, all offers are unreasonable, noncompetitive or all offers exceed available funds and the available time and circumstances do not permit the delay required for resolicitation; (3-15-02)

b. There has been inadequate competition; ~~or~~ ~~(3-15-02)~~( )

c. During the evaluation process it is determined that more than one (1) vendor has submitted an acceptable proposal or bid and negotiations could secure advantageous terms or a reduced cost for the state~~.~~; or ~~(3-15-02)~~( )

d. During the evaluation process it is determined that all responsive offers exceed available funds and negotiations could modify the requirements of the solicitation to reduce the cost to available funds and avoid the expenditure of resources for a resolicitation. ( )

0~~3~~2. Examples. Examples of situations in which negotiations~~, as permitted by Subsection 084.02.c. of this rule,~~ may be appropriate include but are not limited to: ~~(3-15-02)~~( )

a. Ensuring that the offering vendor has a clear understanding of the scope of work required and the requirements that must be met; (3-15-02)

b. Ensuring that the offering vendor will make available the required personnel and facilities to satisfactorily perform the contract; or (3-15-02)

c. Agreeing to any clarifications regarding ~~scope of work~~ specifications or ~~other~~ contract terms. ~~(3-15-02)~~( )

0~~4~~3. Conditions of Use. Negotiations, as permitted by ~~Subsection~~ Paragraph 084.0~~2~~1.c. of this rule, are subject to the following: ~~(3-15-02)~~( )

a. The solicitation must specifically allow for the possibility of negotiation and describe, with as much specificity as possible, how negotiations may be conducted; (3-15-02)

b. Submissions shall be evaluated and ranked based on the evaluation criteria in the solicitation; (3-15-02)

c. Only those vendors whose proposals or bids are determined to be acceptable, in accordance with criteria for negotiations set forth in the solicitation, shall be candidates for negotiations; (3-15-02)

d. Negotiations shall be conducted first with the vendor that is the apparent low responsive and responsible bidder; (3-15-02)

e. If one (1) or more responsive offers does not exceed available funds, ~~N~~negotiations shall be against the requirements of and criteria contained in the solicitation and shall not materially alter those criteria~~,~~ or the specifications ~~*or scope of work*~~; ~~*(3-15-02)*~~( )

f. Auction techniques (revealing one vendor's price to another) and disclosure of information derived from competing proposals is prohibited; (3-15-02)

g. Any clarifications or changes resulting from negotiations shall be documented in writing;(3-15-02)

h. If the parties to negotiations are unable to agree, the administrator shall formally terminate negotiations and may undertake negotiations with the next ranked vendor; and (3-15-02)

i. If negotiations as provided for in this rule fail to result in a contract, as determined by the administrator, the solicitation may be cancelled and the administrator may negotiate in the best interest of the state with any qualified vendor. (3-15-02)

0~~5~~4. **Timing of Use**. If conducted, negotiations are the last step in the procurement process. Use of oral interviews or best and final procedures, as provided for in a solicitation, must precede negotiations as provided for in this rule. (3-15-02)

085. PRICE AGREEMENTS.
The administrator may authorize and negotiate price agreements with vendors when such agreements are deemed in the best interest of the state. Price agreements shall provide for termination for any reason upon not more than thirty (30) days' written notice. Price agreements may be in the best interest of the state when: ( )

01. Dollar Value. The dollar value of individual procurements of property is less than the maximum dollar value of an exempt small purchase under Section 044 of these rules and multiple individual procurements are anticipated within a state of Idaho fiscal year; ( )

02. Property. The property may not be conducive to standard competitive bidding procedures; ( )

03. Multiple Agreements. There exists a need to establish multiple agreements with vendors supplying property that is similar in nature or function but is represented by different manufacturers or needed in multiple locations; or ( )

04. Non-exclusive Agreements. Non-exclusive agreements for periods not exceeding two (2) years are deemed necessary to establish consistent general business terms, including without limitation, price, use of catalogs, delivery or credit terms. ( )

08~~5~~6. -- 090. (RESERVED)

091. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS.
Prior to the issuance of a ~~*purchase order or*~~ contract, the administrator shall have the right to accept or reject all or any part of a bid or proposal or any and all bids or proposals when: ~~*(3-15-02)*~~( )

01. **Best Interest**. It is in the best interests of the state of Idaho; (3-15-02)

02. **Does Not Meet Specifications**. The submission does not meet the minimum specifications; (3-15-02)

03. **Not Lowest Responsible Bid**. The submission is not the lowest responsible submission; (3-15-02)

04. **Bidder Is Not Responsible**. A finding is made based upon available evidence that a submitting

vendor is not responsible or otherwise capable of currently meeting specifications or assurance of ability to fulfill contract performance; or (3-15-02)

05. Deviations. The item offered deviates to a major degree from the specifications, as determined by the administrator (minor deviations, as determined by the administrator, may be accepted as substantially meeting the requirements of the state of Idaho). Deviations will be considered major when such deviations appear to frustrate the competitive process or provides a submitting vendor an unfair advantage. (3-15-02)

092. CANCELLATION OF SOLICITATION.
Prior to the issuance of a ~~*purchase order or*~~ contract, the purchasing ~~*activity*~~ authority reserves the right to reject all bids, proposals, or quot~~*ation*~~es or to cancel a solicitation ~~*or request for quotation*~~. In the event of the cancellation of an invitation to bid or request for proposals, all submitting vendors will be notified. Examples of reasons for cancellation are: ~~*(3-15-02)*~~( )

01. Inadequate or Ambiguous Specifications. (3-15-02)

02. Specifications Have Been Revised. (3-15-02)

03. Cancellation Is in the Best Interest of the State. ~~*(3-15-02)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

~~***102. TIME PURCHASE CONTRACTS.***~~

~~***01. Time Purchase for Personal Property**. A time purchase or installment contract, that may include interest charges over a period of time, may be entered into provided: (3-15-02)***

~~***a.** Such contract is in the best interest of the agency. Installment payments should be used judiciously in order to achieve economy and not to avoid budgetary restraints. (3-15-02)***

~~***b.** Using agencies shall be responsible for ensuring that all statutory or other applicable requirements are met and that all budgetary or other required approvals are obtained. (3-15-02)***

~~***c.** Documentation of any required approval shall be submitted to the division with any required requisition. (3-15-02)***

~~***d.** Provision for installment payments must be included in the solicitation. (3-15-02)***

~~***02. Lack of Fund Contract Language Required**. An installment or time purchase contract shall include appropriate language stating that the agency is not obligated to make payments beyond the term of any particular appropriation of state or federal funds that may exist from time to time and that the contract may be terminated upon such without any penalty or future liability. (3-15-02)***

10~~*3*~~2. -- 110. (RESERVED)

111. SPECIFICATIONS -- POLICIES AND DEVELOPMENT.

01. Purpose. Unless exempted by these rules or by the administrator, all solicitations ~~*and requests for quotations*~~ require specifications. Specifications set forth the characteristics of the property to be acquired. Specifications serve as the basis for obtaining property adequate and suitable for the using agency's needs in a cost effective manner, taking into account the costs of ownership and operation as well as initial acquisition costs. Specifications shall be drafted clearly to describe the agency's needs and to enable the vendors to determine and understand the agency's requirements. Specifications shall, as much as practical, be nonrestrictive to provide an equal basis for participation by an optimum number of vendors and to encourage competition. This information may be in the form of a description of the physical, functional or performance characteristics, a reference brand name or both. It

may include a description of any required inspection, testing or preparation or delivery. Specifications may be incorporated by reference or contained in an attachment. ~~(3-15-02)~~( )

02. Use of Functional or Performance Descriptions. Specifications shall, to the extent practicable, emphasize functional or performance criteria while limiting design or other detailed physical descriptions to those necessary to meet the needs of the agency. To facilitate the use of such criteria, using agencies shall endeavor to include as a part of purchase requisitions their principal functional or performance needs. (3-15-02)

03. Preference for Commercially Available Products. Requirements shall be satisfied by standard commercial products whenever practicable. (3-15-02)

04. Brand Name or Equal Specification. (3-15-02)

a. A brand name or equal specifications may be used when the buyer determines that such a specification is in the agency's best interest. (3-15-02)

b. A brand name or equal specification shall seek to designate as many different brands as are practicable as "or equal" and shall state that products substantially equivalent to those designated will be considered for award. (3-15-02)

c. Unless the buyer authorized to finally approve specifications determines that the essential characteristics of the brand names included in the specifications are commonly known in the industry or trade, brand name or equal specifications shall include a description of the particular design and functional or performance characteristics required. (3-15-02)

d. Where a brand name or equal specification is used, the document shall contain explanatory language that the use of a brand name is for the purpose of designating the standard of quality, performance, and characteristics desired and is not intended to restrict competition. (3-15-02)

05. Brand Name Specification. (3-15-02)

a. Since use of a brand name specification is restrictive, such a specification may only be used when the administrator or designee makes a written determination. Such determination may be in any form, such as a purchase evaluation or a statement of single manufacturer justification. The written statement must state specific reasons for use of the brand name specification. (3-15-02)

b. The administrator shall seek to identify sources from which the designated brand name item or items can be obtained and shall solicit such sources to achieve whatever degree of competition is practicable. If only one (1) source can supply the requirement, the acquisition shall be made under Section 67-5720, ~~*of the*~~ Idaho Code. ~~(3-15-02)~~( )

06. Specification of Alternates May Be Included. A specification may provide alternate descriptions of property where two (2) or more design, functional or performance criteria will satisfactorily meet the agency's requirements. (3-15-02)

112. CONTRACT TERMS - POLICIES AND LIMITATIONS.

01. Prohibited Terms. Purchasing authorities do not have the authority to bind the state of Idaho or an agency to the following terms. If a contract contains such a term, the term shall be void pursuant to Section 67-5725, Idaho Code. ( )

a. Terms waiving the sovereign immunity of the state of Idaho. ( )

b. Terms subjecting the state of Idaho or its agencies to the jurisdiction of the courts of other states. ( )

c. Terms limiting the time in which the state of Idaho or its agencies may bring a legal claim under the

contract to a period shorter than that provided in Idaho law. ( )

d. Terms imposing a payment obligation, including a rate of interest for late payments, less favorable than the obligations set forth in Section 67-2302, Idaho Code. ( )

02. Terms Requiring Special Consideration. ( )

a. Unless specifically authorized by the Idaho legislature, terms requiring an agency or the state of Idaho indemnify a vendor shall be subject to the provisions of Section 59-1015, Idaho Code, and require an appropriation by the Idaho legislature. Indemnification terms not specifically authorized by the Idaho legislature or subject to appropriation shall be void pursuant to Section 67-5725, Idaho Code, and Section 59-1016, Idaho Code. ( )

b. Purchasing authorities shall consult with legal counsel prior to accepting terms submitting the contract to arbitration or waiving the state of Idaho's right to a jury trial. ( )

113. -- 124. (RESERVED)

125. CONTRACT ADMINISTRATION.

01. General. Agencies shall assign an individual contract manager for each service contract that meets or exceeds the sealed procedure limit established by Subsection 040.01 of these rules. A contract manager shall be the individual selected by the agency to administer the contract on behalf of the agency, including monitoring compliance with the contract terms and serving as the primary agency contact with the division for the procurement. All contract managers shall complete a training program approved by the administrator. ( )

02. Contract Renewals and Extensions. Unless approved by the administrator or specified in the contract, a contract renewal or extension may not be executed more than six (6) months prior to the expiration of the contract. ( )

03. High Dollar Service Contracts. ( )

a. Project Management. Contract performance for high dollar service contracts shall be managed by a project manager engaged by the requisitioning agency. Project managers shall, at a minimum, be certified as a project management professional (PMP) through the Project Management Institute, other project management certification institution accepted by the administrator, or have demonstrated prior performance in the execution of projects similar in scope and complexity accepted by the administrator. If the project manager is not an agency employee, the engagement of a project manager shall comply with these rules. ( )

b. Project Oversight Board. The requisitioning agency shall establish an oversight board for management of the contract. The oversight board's duties shall include monitoring the project manager, review of the reports of third party project monitors, and review of reporting provided to the division. The oversight board shall include no less than two (2) experts in the subject matter of the contract without a potential conflict of interest. For the purposes of this subsection, experts in the subject matter of the contract with a potential conflict of interest include individuals: ( )

i. With a direct reporting relationship to any other individual providing supervision or management of the contract, other than the senior official of the agency; or ( )

ii. Who are interested in the contract. An interest in the contract includes ownership in or employment by the company performing the contract of the individual or a spouse, parent, spouse's parent or a child of the individual. ( )

c. Training. The project manager for a high dollar service contract shall complete a training program approved by the administrator. ( )

d. Reporting. The project manager for a high dollar service contract shall ensure the division's buyer

designated to administer the contract receives the reports, best practice checklists, and other information on the schedule set forth in the project administration agreement executed pursuant to Section 041 of these rules. ( )

e. Third Party Project Monitoring. High dollar service contracts shall be monitored by an independent third party subject matter expert overseen by the project oversight board. The engagement of a third party subject matter expert shall comply with these rules. ( )

1~~1~~26. -- 999. (RESERVED)

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.06.01 - RULES OF THE DEPARTMENT OF ADMINISTRATION GOVERNING BILLING PROCEDURES OF THE OFFICE OF THE CHIEF INFORMATION OFFICER

DOCKET NO. 38-0601-1401 (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 67-5701 and 67-5747, Idaho Code, and HB 647 from the 2014 legislative session.

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 22, 2014.

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 documents calculation methods for allocating technology overhead costs and for technology service charges billed from the Department of Administration, Office of the Chief Information Officer to State government organizations.

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

The specific descriptions of the fees or charges imposed are incorporated in the body of the rule. The formulas for the fees are outlined in the rule. Costs allocated are controlled by legislative appropriation. This rule documents historical practice for technology service fees and technology related overhead cost allocation.

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 require a new or increased appropriation.

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 4, 2014 Idaho Administrative Bulletin, **Vol. 14-6, page 98**.

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 materials to be incorporated by reference to this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Erin Seaman, (208) 332-1876 or Greg Zickau, (208) 332-1875. 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 October 22, 2014.

DATED this 29th Day of August 2014.

Teresa Luna, Director
Department of Administration
650 W. State Street, Room 100
P.O. Box 83720
Boise, Idaho 83720-0042
Phone: (208) 332-1827 / Fax: (208) 334-2307

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 38-0601-1401

IDAPA 38
TITLE 06
CHAPTER 01

38.06.01 - RULES OF THE DEPARTMENT OF ADMINISTRATION GOVERNING BILLING PROCEDURES OF THE OFFICE OF THE CHIEF INFORMATION OFFICER

000. LEGAL AUTHORITY.
This chapter is adopted under the legal authority of Sections 67-5701 and 67-5747, Idaho Code, and 2014 Idaho Session Law 227 that requires the Department of Administration to promulgate the billing methodology in agency rule. ( )

001. TITLE AND SCOPE.

01. Title. This chapter is cited as IDAPA 38.06.01, "Rules of the Department of Administration Governing Billing Procedures of the Office of the Chief Information Officer". ( )

02. Scope. This rule documents calculation methods for allocating technology overhead costs and for technology service charges billed from the Department of Administration to State government organizations. ( )

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 these rules. Any such documents are available for public inspection and copying at the Department of Administration's central office. ( )

003. ADMINISTRATIVE APPEALS.
The application of the methodology does not result in an order pursuant to Section 67-5201(12), Idaho Code. Accordingly, there are no administrative appeals provided under this chapter. Disputes regarding the application of the billing methodology to Idaho agencies shall be resolved by the Division of Financial Management. ( )

004. INCORPORATION BY REFERENCE.
There are no documents incorporated by reference in this chapter. ( )

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- TELEPHONE NUMBER -- FAX NUMBER -- INTERNET WEBSITE ADDRESS.

01. Office. The central office of the Idaho State Department of Administration, Office of the Chief Information Officer, is located at 650 W. State St., Boise, ID 83720. ( )

02. 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. ( )

03. Mailing Address. The mailing address for the central office is Idaho State Department of Administration, Office of the Chief Information Officer, PO Box 83720-0042. ( )

04. Telephone Number. The telephone number of the central office is (208) 332-1824. ( )

05. Fax Number. The fax number of the central office is (208) 334-2307. ( )

06. Internet Website Address. The Idaho State Department of Administration, Office of the Chief Information Officer's internet website is **http://cio.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 9, Chapter 3, Idaho Code. ( )

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Aggregated Costs. A component of network services which are shared by multiple Idaho agencies. ( )

02. Billing Methodologies. The procedures or processes outlined in this chapter which result in a cost allocation or fee assessed to an Idaho agency. ( )

03. Communications Systems. All present and future forms of hardware, software or services used or required for transmitting voice, data, video, or images over a distance. ( )

04. Communications Services. Telecommunication provided through communications systems.( )

05. Consolidated Services. Information technology services operated or provided by the Department which are shared by multiple agencies. ( )

06. Cybersecurity Services. Resources, equipment, or systems necessary to protect official information technology and communications systems. ( )

07. Department. The Idaho Department of Administration. ( )

08. Direct Costs. A component of network services which are attributable to a single Idaho agency. ( )

09. Direct Services. A component of communication services which are attributable to a single Idaho agency. ( )

10. Fiscal Year. The Idaho government operating period for tracking finances which runs across calendar years from July 1st through June 30th. ( )

11. Idaho Agency. Any agency of the state government created under the laws of the state of Idaho, including all officers, departments, divisions, bureaus, boards, commissions and institutions of the state. ( )

12. Idaho Technology Authority. The body created by Section 67-5745B, Idaho Code, and any agency or body that succeeds to the powers granted to the Idaho Technology Authority. ( )

13. Information Technology. All present and future forms of computer hardware, computer software, and services used or required for automated data processing, computer-related office automation, or communications systems. ( )

14. Internet Service. Infrastructure, security and network services which connect an Idaho agency or information technology system to the World Wide Web. ( )

15. Network Services. Services that interconnect or link information technology systems. ( )

16. Number of Positions. The equivalent quantity of personnel assigned or working within an Idaho agency as determined by the Division of Human Resources or other official sources. ( )

17. **Shared Services**. A component of information technology services which are shared by multiple organizations. ( )

18. **Supported Devices**. Information technology equipment used by or supporting an Idaho agency which are operated or maintained by the Department. Examples of supported devices include laptops, personal computers, servers, printers, and mobile phones. ( )

19. **Telephone Services**. A specific subset of communications systems that are primarily used or required for transmitting voice signals over dedicated network services. ( )

20. **Usage Allocation**. An alternative method for allocating cybersecurity or internet service costs which are based on measurable usage by an Idaho agency. ( )

21. **Workload Factors**. Measurable or definable attributes that consume or require resources in providing information technology support to Idaho agencies. ( )

011. -- 049. (RESERVED)

050. RESTRICTIONS.

01. **Expenditure Recovery**. No billing under this rule will be used to recover expenditures from the general fund by the Department. ( )

02. **Other Interagency Agreements**. Billing methodologies under this rule do not preclude arrangement for other services through interagency agreement. ( )

03. **Cash Reserves**. Average cash reserves of the Department over a twelve-month period will not exceed two (2) months operating reserve for the funds which receive revenue under this rule. ( )

051. -- 099. (RESERVED)

100. IDAHO AGENCY INFORMATION TECHNOLOGY (IT) SUPPORT.
Idaho agencies receiving information technology support from the Department are billed based on the appropriation for costs set by the legislature. Cash for the appropriation is allocated to supported Idaho agencies on a proportional basis determined by two (2) workload factors, each applied to half of the total appropriation. The proportional costs from each workload factor are summed to derive a total allocation for a given Idaho agency. These two (2) workload factors are: ( )

01. **Number of Positions**. The first factor is the number of positions equivalent to full-time positions. For example, an agency with ten percent (10%) of the total full-time equivalent positions of all supported Idaho agencies would be allocated ten percent (10%) of half the appropriation based on this workload factor. ( )

02. **Number of Supported Devices**. The second factor is the number of supported devices (e.g. laptops, personal computers, servers, printers, mobile phones, etc.) For example, an agency with fifteen percent (15%) of the total supported device count for all supported agencies would be allocated fifteen percent (15%) of half the appropriation based on this workload factor. ( )

101. -- 199. (RESERVED)

200. NETWORK SERVICES.
Idaho Agencies are billed for usage of network services contracted by or through the Department based on the cost of contracted services plus a fee to fund the appropriation set by the legislature. There are two (2) types of services billed under this rule: direct costs and aggregate costs. Direct costs are attributable to an individual Idaho agency. Aggregate costs are for services shared by more than one (1) Idaho agency. ( )

01. **Direct Costs**. Direct costs are allocated based on the total cost of the network service, including the percent of the total cost represented by the network service provided to the Idaho agency. For example, an Idaho agency purchasing five percent (5%) of network services would be allocated five percent (5% of the appropriation set

by the legislature. ( )

02. Aggregated Costs. Charges for aggregated network services are shared across using Idaho agencies based on the per unit quantities purchased by the using Idaho agency. The per unit cost is based on the total cost for the aggregated service divided by the total quantity of units purchased and includes the percent of the total cost represented by the aggregated service provided to the Idaho agency to fund the appropriation set by the legislature. ( )

201. -- 299. (RESERVED)

300. TELEPHONE SERVICES.
Idaho agencies using telephone services contracted or provided by the Department, are billed based on the total cost of telephone services, including a fee to fund the appropriation set by the legislature. There are two (2) types of telephone service billed under this rule: shared services and direct services. A prorated portion of the appropriation will be recovered through allocations on shared services. The balance of the prorated appropriation will be recovered through allocations on direct services. ( )

01. Prorating Appropriation. The division of the appropriation will be determined by the percent of distribution between shared services and direct services. For example, if seventy-five percent (75%) of all telephone services are shared services, then seventy-five percent (75%) of the appropriation will be funded through allocations on shared services. ( )

02. Shared Services. Costs are allocated based on the total cost of the telephone service and include the percent of the total cost represented by the telephone service provided to the Idaho agency. For example, costs to an Idaho agency purchasing fifteen percent (15%) of telephone services would include an allocation of fifteen percent (15%) of the prorated appropriation. ( )

03. Direct Services. Costs are allocated based on the total cost of the telephone service and include the percent of the total cost represented by the telephone service provided to the Idaho agency. For example, costs to an Idaho agency purchasing five percent (5%) of telephone services would include an allocation of five percent (5%) of the prorated appropriation. ( )

301. -- 399. (RESERVED)

400. CYBERSECURITY SERVICES.
Idaho agencies are billed for cybersecurity services contracted by or provided by the Department based on the appropriation for cybersecurity services set by the legislature. The Department is authorized two (2) alternative methods for determining allocations for cybersecurity services. Only one (1) alternative method may be used in a fiscal year. Changing from one alternative to the other requires approval of the Idaho Technology Authority. The two (2) alternatives are: ( )

01. Number of Positions. The first alternative is to allocate costs based on the number of positions. For example, an Idaho agency with five percent (5%) of the total number of positions of all Idaho agencies would be allocated five percent (5%) of the appropriation for cybersecurity services. ( )

02. Usage Allocation. The second alternative is to allocate costs based on the percent of total internet bandwidth utilization consumed by an Idaho agency. For example, an Idaho agency whose ninety-fifth (95th) percentile average utilization was ten percent (10%) of the aggregate ninety-fifth (95th) percentile average utilization would be allocated ten percent (10%) of the cybersecurity services appropriation. ( )

401. -- 499. (RESERVED)

500. IDAHO TECHNOLOGY AUTHORITY.
Idaho agencies are billed based on the appropriation for the Idaho Technology Authority set by the legislature. Cash for the appropriation is allocated on a proportional basis determined by two (2) factors, each applied to half of the total appropriation. The proportional costs from each factor are summed to derive a total allocation for a given Idaho agency. These two (2) factors are: ( )

01. Number of Positions. The first factor is the number of positions. For example, an Idaho agency with five percent (5%) of the total number of positions of all Idaho agencies would be allocated five percent (5%) of half the appropriation based on this factor. ( )

02. Technology Expenditures. The second factor is the three-year (3) average expenditures on information technology and communications systems, as determined by data recorded by the State Controller. For example, an agency whose three-year average (3) expenditures were fifteen percent (15%) of the total three-year (3) average expenditures for all Idaho agencies would be allocated fifteen percent (15%) of half the appropriation based on this factor. ( )

501. -- 599. (RESERVED)

600. INTERNET SERVICE.
Idaho agencies are billed for internet service contracted by or provided by the Department based on the cost of internet service. The Department is authorized two (2) alternative methods for determining allocations for internet service. Only one (1) alternative method may be used in a fiscal year. Changing from one alternative to the other requires approval of the Idaho Technology Authority. The two (2) alternatives are: ( )

01. Number of Positions. The first alternative is to allocate costs based on the number of positions. For example, an agency with five percent (5%) of the total number of positions of all Idaho agencies would be allocated five percent (5%) of the appropriation for internet service. ( )

02. Usage Allocation. The second alternative is to allocate costs based on the percent of total internet bandwidth utilization consumed by an Idaho agency. For example, an Idaho agency whose ninety-fifth (95th) percentile average utilization was ten percent (10%) of the aggregate ninety-fifth (95th) percentile average utilization would be allocated ten percent (10%) of the cost for internet service. ( )

601. -- 699. (RESERVED)

700. CONSOLIDATED SERVICES.
Idaho agencies using consolidated services are billed for the cost of the consolidated services on a per user basis, where the total costs of a consolidated service are divided by the total number of users and billed to a given Idaho agency based on the number of users in the Idaho agency. ( )

701. -- 999. (RESERVED)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.03 - RULES GOVERNING VEHICLE DEALER'S PRINCIPAL PLACE OF BUSINESS

DOCKET NO. 39-0203-1401

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 21, 2014.

AUTHORITY: In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 49-201(1), Idaho Code.

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

This rule adds specific information regarding the Idaho Consumer Asset Recovery Fund (ICAR) passed in House Bill 167, in the 2013 legislative session, to identify how the ICAR fee will be set and by whom. It further specifies when a fee change will go into effect. Changes provide that all dealers, unless otherwise exempt will pay into the fund. The sections for liability insurance and surety bond requirements have just been moved to another heading under the rule to be more logical and specify that a surety bond is needed for the first 3 years unless otherwise provided by code, as also contained in House Bill 167.

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

This rule provides further administrative directive for House Bill 167 from the 2013 Legislative Session.

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:

There are no fees being imposed or increased by this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Amy Smith, Motor Vehicle Manager, (208) 334-8660.

DATED this 22nd Day of August 2014.

Lori Garza, Program Specialist
Office of Governmental Affairs
Idaho Transportation Department
3311 W State Street, PO Box 7129
Boise ID 83707-1129
Phone: (208) 334-8810
Fax: (208) 332-4107
Lori.garza@itd.idaho.gov

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 39-0203-1401
(Only those Sections being amended are shown.)

010. DEFINITIONS.

01. Vehicle Dealer File System. Books, records and files, necessary to conduct the business of a vehicle dealership. In accordance with the Vehicle Dealer Act, records shall be securely kept by the dealership in such

order that they can be readily inspected by a Department Investigator. Such records and files may be kept electronically, as long as such records can be verified by the dealership as true and correct copies of the original records. Physical records or files retained by the dealership may be stored at an off-site location. The dealership must notify the department 30 days in advance of the address of the off-site location prior to moving such records. Records or files stored off-site must be made available to the department within 3 business days upon request. The files and records shall contain but are not limited to: (3-29-12)

a. Physical or electronic sales invoices for current and two (2) preceding years; (3-29-12)

b. Physical or electronic copies of purchase orders for vehicles purchased for current and two (2) preceding years; (3-29-12)

c. Physical or electronic copies of title application forms accessible in numerical order; (3-29-12)

d. Written or electronic records of vehicles bearing new or used dealers' number plates and their use by a manufacturer, vehicle dealer, or full-time licensed salespersons searchable by date, time or plate number; (3-29-12)

e. Written or electronic records for loaner plates searchable by date, time or plate number; (3-29-12)

~~***f.*** *A valid bond in the amount required by Section 49-1608, Idaho Code;* *(12-26-90)*~~

~~***g***~~**f.** Copies or electronic records of Wholesale Dealer Forms records showing, all transactions, as applicable searchable by date or name of consignee; (3-29-12)

~~***h***~~**g.** Physical or electronic odometer disclosure records for non-exempt vehicles; and (3-29-12)

~~***i***~~**h.** Physical or electronic records of consignment agreements, as specified in Section 49-1636, Idaho Code. (3-29-12)

~~***j.*** *A valid liability insurance policy as required by Section 49-1608A, Idaho Code.* *(3-29-12)*~~

~~***k***~~**i.** All electronic records must be created in a secure manner to prevent such records from being altered. Electronic copies of records must be legible, complete, and an accurate reproduction of the original business record. (3-29-12)

~~***l***~~**j.** All electronic copies of records shall be supplemented with a back-up copy of the electronic records, either retained on-site or an off-site location, which permits the business record to be retrieved within three (3) business days. (3-29-12)

~~***m***~~**k.** Any device, server, network device, or any internal or external storage medium which stores the electronic records must have security access controls and physical security measures to protect the records from unauthorized access, viewing, or alteration. (3-29-12)

~~***n***~~**l.** Any dealer storing electronic or physical records that contain personal information shall ensure that disposal of any records shall be completed in a secure manner, by shredding, erasing, or otherwise modifying the personal information to make it unreadable or undecipherable through any means. (3-29-12)

02. Vehicle Dealer Sign Requirements. An exterior sign permanently affixed to the land or building, with clearly visible letters, visible to major avenue of traffic meeting local building or zoning codes with the trade name of the dealership clearly visible is required. Wholesale dealer signs may be painted on the window of the office next to the entrance door of sufficient size to be easily read by prospective customers. A suggested retail sign size is twenty-four (24) square feet, with a minimum of four (4) inch letters. (3-29-12)

03. Telephone. A business phone which has a published business number, and listing in a local telephone directory in the name of the dealership. Business phones shall be answered during declared business hours, in the name of the licensed dealer. The telephone may be answered in person, by an answering machine, or at a remote location in person. (3-29-12)

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

01. Physical or Electronic Records System Inspection. A vehicle dealer shall make available all books, records and files maintained at the dealership location for immediate inspection for cause or complaint, or within three (3) business days if records are stored at an approved off-site location for random compliance review by a peace officer or authorized agent of the Department. (3-29-12)

02. Title Fee Disclosure. A dealer may reflect the payment of a state-required title fee as specified by Section 49-202(2)(b), Idaho Code, however: (7-2-92)

a. The fee must be clearly identified as a "TITLE FEE"; (7-2-92)

b. The fee must be shown as the exact amount required by law; (7-2-92)

c. Any documentation fees charged must be clearly listed separately from other fees and identified to the customer as dealer document preparation fees that are subject to sales tax as part of the purchase price of the vehicle. (7-2-92)

03. Surety Bond. A valid bond in the amount required by Section 49-1608D, Idaho Code, for three (3) years after initially licensed, unless otherwise provided by code; (8-21-14)T

04. Idaho Consumer Asset Recovery (ICAR) Fund. (8-21-14)T

a. All licensed dealers shall pay the annual fee as set by the Idaho Consumer Asset Recovery (ICAR) Board as required by Section 49-1608C, Idaho Code, unless otherwise provided by code. (8-21-14)T

b. The ICAR fund fee shall be set by the ICAR Board annually to be effective the following January 1. Such fee shall be posted on the Department web site and all applicable forms for dealer licensing. (8-21-14)T

05. Liability Insurance. A valid liability insurance policy as required by Section 49-1608A, Idaho Code. (8-21-14)T

0~~3~~6. Vehicle Dealer License Suspension. Any dealer not meeting the requirements of the Vehicle Dealer Act shall be subject to suspension of an existing dealer license or refusal by the Department to issue a new dealer license. (7-2-92)

a. The Department's agent shall give written notice of deficiencies to the dealer or applicant. (12-26-90)

b. At its discretion the Department may give the licensed dealership a reasonable amount of time to comply. (12-26-90)

c. Upon compliance, the license shall be reinstated or issued. (12-26-90)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.03 - RULES GOVERNING VEHICLE DEALER'S PRINCIPAL PLACE OF BUSINESS

DOCKET NO. 39-0203-1402

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 40-201 (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 October 15, 2014.

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 would add specificity to further define Section 49-117 (15), Idaho Code, regarding principal place of business requirements, to define the term "reasonable times" for the purpose of customers being able to contact a dealer. The proposed change adds a section for "declared business hours" and requires retail dealers to be open 20 hours a week, of which part must be Monday to Friday 8:00 am to 5:00 pm, and 4 hours a week for wholesale dealers, part of which must be Monday to Friday 8:00 am to 5:00 pm.

This rule also adds specific information regarding the Idaho Consumer Asset Recovery Fund (ICAR), which passed in House Bill 167 in the 2013 legislative session, to identify how the ICAR fee will be set and by whom. It further specifies when a fee change will go into effect. Changes provide that all dealers, unless otherwise exempt will pay into the fund. The sections for liability insurance and surety bond requirements have just been moved to another heading under the rule to be more logical and specify that a surety bond is needed for the first 3 years unless otherwise provided by code, as also contained in House Bill 167.

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

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

This rulemaking imposes no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Dealer Advisory Board, which represents dealers in the state, agrees with the proposed amendments and additional comments from dealers are unlikely to be received.

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 materials incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Amy Smith, Motor Vehicle Manager, 208-334-8860.

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 October 22, 2014.

DATED this 22nd Day of August, 2014.

Lori Garza, Program Specialist
Office of Governmental Affairs
Idaho Transportation Department
3311 W State Street, PO Box 7129
Boise ID 83707-1129
Phone: (208) 334-8810
Fax: (208) 332-4107
Lori.garza@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0203-1402
(Only those Sections being amended are shown.)

010. DEFINITIONS.

01. Vehicle Dealer File System. Books, records and files, necessary to conduct the business of a vehicle dealership. In accordance with the Vehicle Dealer Act, records shall be securely kept by the dealership in such order that they can be readily inspected by a Department Investigator. Such records and files may be kept electronically, as long as such records can be verified by the dealership as true and correct copies of the original records. Physical records or files retained by the dealership may be stored at an off-site location. The dealership must notify the department 30 days in advance of the address of the off-site location prior to moving such records. Records or files stored off-site must be made available to the department within 3 business days upon request. The files and records shall contain but are not limited to: (3-29-12)

a. Physical or electronic sales invoices for current and two (2) preceding years; (3-29-12)

b. Physical or electronic copies of purchase orders for vehicles purchased for current and two (2) preceding years; (3-29-12)

c. Physical or electronic copies of title application forms accessible in numerical order; (3-29-12)

d. Written or electronic records of vehicles bearing new or used dealers' number plates and their use by a manufacturer, vehicle dealer, or full-time licensed salespersons searchable by date, time or plate number; (3-29-12)

e. Written or electronic records for loaner plates searchable by date, time or plate number; (3-29-12)

~~***f.*** *A valid bond in the amount required by Section 49-1608, Idaho Code;* *(12-26-90)*~~

~~***g***~~**f.** Copies or electronic records of Wholesale Dealer Forms records showing, all transactions, as applicable searchable by date or name of consignee; (3-29-12)

~~***h***~~**g.** Physical or electronic odometer disclosure records for non-exempt vehicles; and (3-29-12)

~~***i***~~**h.** Physical or electronic records of consignment agreements, as specified in Section 49-1636, Idaho Code. (3-29-12)

~~***j.*** *A valid liability insurance policy as required by Section 49-1608A, Idaho Code.* *(3-29-12)*~~

~~***k***~~**i.** All electronic records must be created in a secure manner to prevent such records from being altered. Electronic copies of records must be legible, complete, and an accurate reproduction of the original business record. (3-29-12)

~~i~~j. All electronic copies of records shall be supplemented with a back-up copy of the electronic records, either retained on-site or an off-site location, which permits the business record to be retrieved within three (3) business days. (3-29-12)

~~m~~k. Any device, server, network device, or any internal or external storage medium which stores the electronic records must have security access controls and physical security measures to protect the records from unauthorized access, viewing, or alteration. (3-29-12)

~~n~~l. Any dealer storing electronic or physical records that contain personal information shall ensure that disposal of any records shall be completed in a secure manner, by shredding, erasing, or otherwise modifying the personal information to make it unreadable or undecipherable through any means. (3-29-12)

02. Vehicle Dealer Sign Requirements. An exterior sign permanently affixed to the land or building, with clearly visible letters, visible to major avenue of traffic meeting local building or zoning codes with the trade name of the dealership clearly visible is required. Wholesale dealer signs may be painted on the window of the office next to the entrance door of sufficient size to be easily read by prospective customers. A suggested retail sign size is twenty-four (24) square feet, with a minimum of four (4) inch letters. (3-29-12)

03. Telephone. A business phone which has a published business number, and listing in a local telephone directory in the name of the dealership. Business phones shall be answered during declared business hours, in the name of the licensed dealer. The telephone may be answered in person, by an answering machine, or at a remote location in person. (3-29-12)

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.

01. Physical or Electronic Records System Inspection. A vehicle dealer shall make available all books, records and files maintained at the dealership location for immediate inspection for cause or complaint, or within three (3) business days if records are stored at an approved off-site location for random compliance review by a peace officer or authorized agent of the Department. (3-29-12)

02. Title Fee Disclosure. A dealer may reflect the payment of a state-required title fee as specified by Section 49-202(2)(b), Idaho Code, however: (7-2-92)

a. The fee must be clearly identified as a "TITLE FEE"; (7-2-92)

b. The fee must be shown as the exact amount required by law; (7-2-92)

c. Any documentation fees charged must be clearly listed separately from other fees and identified to the customer as dealer document preparation fees that are subject to sales tax as part of the purchase price of the vehicle. (7-2-92)

03. Surety Bond. A valid bond in the amount required by Section 49-1608D, Idaho Code, for three (3) years after initially licensed, unless otherwise provided by code; ( )

04. Idaho Consumer Asset Recovery (ICAR) Fund. ( )

a. All licensed dealers shall pay the annual fee as set by the Idaho Consumer Asset Recovery (ICAR) Board as required by Section 49-1608C, Idaho Code, unless otherwise provided by code. ( )

b. The ICAR fund fee shall be set by the ICAR Board annually to be effective the following January 1. Such fee shall be posted on the Department web site and all applicable forms for dealer licensing. ( )

05. Liability Insurance. A valid liability insurance policy as required by Section 49-1608A, Idaho Code. ( )

06. Declared Business Hours. ( )

a. All licensed dealers shall declare in writing to the Department the regular business hours that their dealerships are open and when they are available to be contacted by the Department or their customers. These regular business hours shall be no less than twenty (20) hours per week, part of which must be during Monday through Friday 8:00 am to 5:00 pm. ( )

b. Wholesale dealers are required to declare in writing to the Department at least four (4) business hours per week that they are open, part of which must be during Monday through Friday 8:00 am to 5:00 pm, when customers or the department can contact the dealer. ( )

0~~3~~7. Vehicle Dealer License Suspension. Any dealer not meeting the requirements of the Vehicle Dealer Act shall be subject to suspension of an existing dealer license or refusal by the Department to issue a new dealer license. (7-2-92)

a. The Department's agent shall give written notice of deficiencies to the dealer or applicant. (12-26-90)

b. At its discretion the Department may give the licensed dealership a reasonable amount of time to comply. (12-26-90)

c. Upon compliance, the license shall be reinstated or issued. (12-26-90)

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.10 - RULES GOVERNING WHEN AN OVERLEGAL PERMIT IS REQUIRED

DOCKET NO. 39-0310-1401

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2014.

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 49-1001, 49-1002, or 49-1010, Idaho Code, adopted under Sections 40-312, and 49-1004, 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 15, 2014.

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

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

This rule allows industry to haul a motorized vehicle on a trailer behind the self-propelled vocational vehicle for the sole purpose of using the hauled motorized vehicle for the return trip after the delivery of the self-propelled vocational vehicle. The rule currently only allows towing of the motorized vehicle on its own axles.

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

This rule allows industry to haul a motorized vehicle on a trailer behind the self-propelled vocational vehicle for the sole purpose of using the hauled motorized vehicle for the return trip after the delivery of the self-propelled vocational vehicle. This will allow for another option to safely transport the motorized vehicle.

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

There are no fees being imposed or increased by this rulemaking.

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

This rulemaking imposes no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because change to this rules were necessary to allow industry to haul a motorized vehicle on a trailer behind a self-propelled vocational vehicle for the sole purpose of using the hauled motorized vehicle for the return trip after the delivery of the self-propelled vocational vehicle.

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 materials incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Regina Phipps, Vehicle Size and Weight Specialist, (208) 334-8418.

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 22, 2014.

DATED this 22nd Day of August, 2014.

Lori Garza, Program Specialist
Office of Governmental Affairs
Idaho Transportation Department
3311 W State Street, PO Box 7129
Boise ID 83707-1129
Phone: (208) 334-8810
Fax: (208) 332-4107
Lori.garza@itd.idaho.gov

THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT OF DOCKET NO. 39-0310-1401
(Only those Sections being amended are shown.)

400. OVERLEGAL PERMITS FOR SELF PROPELLED VEHICLES.
Permitted overweight/oversize self propelled vocational vehicles (such as cranes, loaders, motor graders, drills) may haul or tow a~~ny~~ motorized vehicle provided that the motorized vehicle or combination of vehicles being towed (trailer and motorized vehicle) does not exceed eight thousand (8,000) pounds ~~*or less when such*~~ and the motorized vehicle is used solely for return trip after delivery of the permitted vehicle. ~~*(4-2-08)*~~(9-1-14)T

IDAPA 39 - IDAHO TRANSPORATION DEPARTMENT

39.03.50 - RULES GOVERNING SAFETY REST AREAS

DOCKET NO. 39-0350-1401

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 40-312, 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 15, 2014.

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 implements the provisions of Senate Bill 1441 and amends the current rest area rule. The 2014 Legislature rejected last year's proposed rule changes to 39.03.50, as well as final rule 200.05, which banned the discharge of firearms/fireworks. This proposed rule more clearly defines "soliciting" and "fireworks," as requested by the legislature. Passage of this rule would reinstate the ban on fireworks at rest areas. This rule also increases occupancy of time limits for rest areas to comply with federal law.

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

There are no fees being imposed or increased by this rulemaking.

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

There is no fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule must be amended so the rule changes do not lend themselves to negotiation.

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 materials incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cathy Ford, Program Administrator, (208)334-8416.

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 October 22, 2014.

DATED this 22nd Day of August, 2014.

Lori Garza, Program Specialist
Office of Governmental Affairs
Idaho Transportation Department
3311 W State Street, PO Box 7129
Boise ID 83707-1129
Phone: (208) 334-8810
Fax: (208) 332-4107
Lori.garza@itd.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0350-1401
(Only those Sections being amended are shown.)

200. PUBLIC BEHAVIOR AND TREATMENT OF PUBLIC PROPERTY.
The following acts are prohibited: (12-26-90)

01. Behavior. Indulging in boisterous, abusive, threatening, or indecent conduct or creating unnecessary noise which interferes with the reasonable use of the area by other visitors. (12-26-90)

02. Treatment of Natural Features or Plants. Destroying, defacing, cutting, sampling, or removing any natural feature or plant. (12-26-90)

03. Treatment of Public Property. Damaging by defacing, plugging, breaking, or removing any facility, fixture, sign or marker provided for use of the public. (12-26-90)

04. Soliciting. Selling or offering for sale any merchandise or service other than emergency services for disabled vehicles, such as towing, vehicle repairs, fire response, ambulance or medical response/transport, or vending machines permitted under the provisions of federal law or federal rule and Section 67-5411, Idaho Code. ~~(12-26-90)~~( )

05. Noise Producing Devices. Operating or using any audio devices, including radio, television and musical instrument, and other noise producing devices, such as electrical generator plants and equipment driven by motors or engines, in such a manner and at such times so as to disturb other persons. (12-26-90)

06. Fireworks/Incendiary Devices. Discharging fireworks or any other incendiary device. Fireworks are considered any combustible or explosive substance but do not include any automotive safety flares or any other emergency or safety device. ( )

201. -- 299. (RESERVED)

300. OCCUPANCY OF DEVELOPED REST AREAS.
The following acts are prohibited: (12-26-90)

01. Camping/Occupancy of Site. Camping or occupying a rest area for any purpose other than rest and relaxation from the fatigue of travel. (3-6-14)

02. Assembling. Assembling or attracting groups of people except for public service functions by civic, fraternal or religious organizations as approved by the Department. (12-26-90)

03. Time Limits. ~~*Remaining in a rest area for a period of time longer than that established by the Idaho Transportation Department.*~~ Occupancy of the rest areas on interstate highways is limited to ~~*eight*~~ ten (~~8~~10) consecutive hours. Occupancy of rest areas on other routes of the State Highway System is limited to sixteen (16) consecutive hours. ~~(12-26-90)~~( )

04. Fires. Building fires outside the confines of a stove, grill or fireplace. (3-6-14)

05. Failure to Clean. Failing to clean the space occupied before departing. (3-6-14)

06. Animals. (12-26-90)

a. Bringing a dog, cat or other animal into a rest area unless it is a certified service animal or crated, caged, leashed or otherwise under physical restrictive control at all times. (3-6-14)

b. Permitting a dog, cat or other animal to exercise and/or defecate in areas outside of specifically designated pet areas. (3-6-14)

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-1401

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2015 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 54-2105, 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 August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, pages 146 through 148**.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Jodie Ellis, Executive Director, (208) 332-8588.

DATED this 29th Day of August, 2014.

Jodie Ellis
Executive Director
Board of Veterinary Medicine
2270 Old Penitentiary Road
P. O. Box 7249
Boise, ID 83712
Phone: (208) 332-8588
Fax: (208) 334-2170

IDAPA 49 - CERTIFIED SHORTHAND REPORTERS BOARD

49.01.01 - RULES OF PROCEDURE OF THE IDAHO CERTIFIED SHORTHAND REPORTERS BOARD

DOCKET NO. 49-0101-1401

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 54-3107 and 54-3108, 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 15, 2014.

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 rules are being amended to clarify the nature and scope of the examination, segments of the examination, and temporary permit. These amendments are necessary to establish clear standards for the examination, its content and further clarify qualifications for a temporary permit.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the amendments are needed to clarify the scope of the examination, segments of the examination, and temporary permits. This change will benefit the applicants in preparing for the examination. These changes were discussed during noticed, open meetings of the Board.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at 208 334-3233.

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 October 22, 2014.

DATED this 28th Day of August, 2014.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State St.
P O Box 83720
Boise, ID 83720-0063
208 334-3233 fax 208 334-3945

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 49-0101-1401
(Only those Sections being amended are shown.)

300. EXAMINATIONS.

01. Examination Process. (4-6-05)

a. Late applicants shall not be admitted to the examination room. (1-1-97)

b. Picture identification shall be shown by all applicants before taking an examination. (4-6-05)

c. Examinees are forbidden to receive any unauthorized assistance during the examination. Communication between examinees or possession of unauthorized material or devices during the examination is strictly prohibited. (1-1-97)

d. Only scheduled examinees, Board members, and authorized personnel shall be admitted to the examination room. (4-9-09)

02. Scope of Examination. (7-1-93)

a. The complete examining procedure for certification as a certified shorthand reporter consists of two (2) sections. The first section is the written examination covering subjects as are ordinarily given in a school of court reporting and which are common to all fields of practice. The second section is the skills portion which shall consist of the following ~~*"takes"*~~ segments and speeds. ~~*(1-1-97)*~~(____)

i. Question and Answer -- Five (5) minutes at ~~*T*~~two hundred twenty-five (225) words per minute. ~~*(1-1-97)*~~(____)

ii. Jury Charge -- Five (5) minutes at ~~*T*~~two hundred (200) words per minute. ~~*(1-1-97)*~~(____)

iii. Literary -- Five (5) minutes at ~~*O*~~one hundred eighty (180) words per minute. ~~*(1-1-97)*~~(____)

iv. Density of Exam -- The syllabic content of the dictated exam shall be one point four (1.4). (7-1-93)

~~***b.*** *Examination prepared and graded by the National Court Reporters Association (NCRA) may be used by the Board.* *(1-1-97)*~~

~~***e***~~**b.** The examination is the same for all applicants. ~~*(7-1-93)*~~(____)

~~***d***~~**c.** The examining committee which shall consist of the three C.S.R. Board members, shall inform applicants of the approximate time allowed for typing the skills portion of the examination. (1-1-97)

~~***e***~~**d.** ~~*These "takes"*~~The written examination and the three (3) skills segments can be passed individually for the Idaho examination. ~~*(4-6-05)*~~(____)

03. Grading. (7-1-93)

a. Each applicant must attain a grade of seventy-five percent (75%) or above to pass the written examination and ninety-five percent (95%) or above in each ~~*"take"*~~ segment to pass the skills portion.~~*(1-1-97)*~~(____)

b. Every applicant receiving a grade of less than seventy-five percent (75%) in the written examination shall be deemed to have failed such examination and shall have the application denied without prejudice. (1-1-97)

c. Every applicant receiving a grade of less than ninety-five percent (95%) in each ~~*"take"*~~ of the skills segments of the examination shall be deemed to have failed such examination and shall have the application denied without prejudice. ~~*(1-1-97)*~~( )

d. An applicant failing either the written section, or the skills portion, and having filed a new application for examination, shall be required to take and pass within a two-year period only the section for which a failing grade was received. (1-1-97)

04. Inspection of Examination. (7-1-93)

a. An applicant who fails to obtain a passing grade in the skills portion may inspect his/her examination papers at such times and locations as may be designated by the Board. Inspection of such examination papers shall be permitted within a thirty (30) day period after receipt of notice by the applicant of his/her failure to pass the examination. (1-1-97)

b. At the time of inspection no one other than the examinee or his/her attorney and a representative of the Board shall have access to such examination papers. (1-1-97)

05. Inspection Review. (7-1-93)

a. Within thirty (30) days after the date notice of the results of the examination has been mailed to him/her, an applicant who was unsuccessful in the examination may petition the Board for a review of his/her examination papers. (1-1-97)

b. The petition for review shall be made in writing stating the reason for such review and citing the item or items against which the request is directed. (7-1-93)

c. The Board shall, upon receiving such petition for review, conduct a hearing at the next scheduled Board meeting. (1-1-97)

06. Retention of Examinations. The Board shall retain for at least six (6) months, all examination papers and notes submitted by applicants. (1-1-97)

301. -- 399. (RESERVED)

400. TEMPORARY PERMIT.

01. Eligibility. (7-1-93)

a. Any one (1) or more of the following shall be considered as minimum evidence that the applicant is qualified to hold a temporary ~~*certificate*~~ permit: ~~*(7-1-93)*~~( )

i. Hold a Certificate of Merit Reporter (RMR) issued by the National Court Reporters Association (NCRA); (3-14-11)

ii. Hold a Certificate of Registered Professional Reporter (RPR) issued by the National Court Reporters Association (NCRA); (3-14-11)

iii. Hold a Certified Shorthand Reporter certificate, or its equivalent in good standing from another state; ~~*(7-1-93)*~~( )

iv. Hold a diploma or certificate of completion of all requirements to graduate from a National Court Reporter Association (NCRA) approved school; (7-1-93)

v. Has otherwise demonstrated his/her proficiency by a certificate from an agency from another state. (1-1-97)

b. The applicant shall in addition: (7-1-93)

i. Have graduated from an accredited high school, or have had an equivalent education. (7-1-93)

ii. Be of good moral character, and have filed a complete application with the Board, accompanied by the required fees, as set forth in these rules. (4-9-09)

02. ~~*Certificate*~~**Permit**. All temporary permits shall be issued for a period of one (1) year and may be renewable for a single additional year if, before the permit expires, the permit holder: ~~*(3-14-11)*~~( )

a. Submits a written renewal request to the Board; (3-14-11)

b. Establishes that they have passed at least one (1) skills ~~*portion*~~ segment of the Idaho Certified Shorthand Reporter Examination, the Registered Professional Reporter Examination (RPR), or the Registered Merit Reporter Examination (RMR) ~~*examination*~~; and ~~*(3-14-11)*~~( )

c. Pays the required fees as set forth in this Chapter. (3-14-11)

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE

50.01.01 - RULES OF THE COMMISSION OF PARDONS AND PAROLE

DOCKET NO. 50-0101-1401

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 20-223, Idaho Code.

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

Friday, October 24, 2014 - 2:00 p.m.

Commission of Pardons and Parole
3056 Elder Street
Boise, Idaho 83705

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:

Revise and update the rule to clarify and update outdated language; change term “inmate” to “offender; expedite hearings; remove early discharge language; replace the initial hearing being scheduled within 6 months prior to parole eligibility date when a fixed term has been specified; remove existing language regarding general conditions of parole and replace with consolidated language; grant authority to the executive director to add special conditions; remove outdated language on detainer to replace with new language to allow the holding institution to hold the offender until the felony charges or federal holds have been adjudicated - the offender will not be able to bond out on the parole violation hearings; remove and clarify language regarding Interstate Compact procedures; add additional language to the section on victims for public safety; include victims not included in the instant offense and those removed from the instant offense as a result of a plea bargain; and to include additional language to the Intermediate Sanctions on Violations that limit the time of jail time served on the first and each subsequent offense.

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

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

There will be no impact to the general fund as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because interested persons and stakeholders are very unlikely to reach consensus on the changes being proposed due to the nature of the rules and the circumstances of those affected by them.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mary Schoeler.

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 October 24, 2014.

DATED this 29th Day of August, 2014.

Mary Schoeler, Legal Assistant
Commission of Pardons and Parole
3056 Elder Street
Boise, Idaho 83705
Tel. (208) 334-2520 / Fax (208) 334-3501

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 50-0101-1401
(Only those Sections being amended are shown.)

000. LEGAL AUTHORITY.
This chapter is adopted in accordance with Section 20-223(a), Idaho Code, which provides that the Commission shall have the power to establish rules, policies, or procedures in compliance with Title 67, Chapter 52, Idaho Code. ~~(5-3-03)~~(____)

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 50.01.01, "Rules of the Commission of Pardons and Parole." (5-3-03)

02. Scope. The rules govern parole, pardons, and commutations for the state of Idaho; and other matters within the authority of the Commission. ~~(5-3-03)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Abscond. ~~*Depart secretly or to avoid supervision*~~ An offender who has fled supervision, whose whereabouts are unknown, and for whom a warrant for a violation of supervision has been issued or requested. (____)

02. Case Worker/Manager. For purposes of reference, the case worker/manager is an Idaho ~~*d*~~Department of ~~*c*~~Correction employee who is involved with assisting ~~*inmates*~~ offenders/parolees regarding their problems, needs, and adjustments. Such case worker/manager may have the title of psycho-social rehabilitation specialist, counselor, social worker, psych-tech, or clinician~~, or other~~. ~~(5-3-03)~~(____)

03. Commission. The Idaho Commission of Pardons and Parole. (____)

0~~3~~4. Commission Warrant. Warrant of arrest for alleged parole violation issued by the executive director or a commissioner. This warrant is a non-bondable warrant. (3-23-98)

0~~4~~5. Commutation. Clemency powers granted to the commission, ~~*and*~~ or the governor, or both, which allow for a sentence to be modified. ~~(3-23-98)~~(____)

0~~5~~6. Concurrent Sentence. Sentence served at the same time as another. (3-23-98)

0~~6~~7. Conditions of Parole. Conditions under which an ~~*prisoner*~~ offender is released to parole supervision. ~~(3-23-98)~~(____)

0~~7~~8. Confidential. Privileged from disclosure. (3-23-98)

0~~8~~9. **Consecutive Sentence**. Sentence served upon completion of another sentence or before beginning another sentence. (3-23-98)

~~09~~10. **Decision**. A determination arrived at after consideration, a conclusion. (3-23-98)

1~~0~~1. **Detainer**. ~~*Implementation of constitutional duty and interstate compact to hold in custody for another jurisdiction.*~~ A document authorizing the detention of an offender in custody for a new felony crime or parole violation. Offender may be housed in a county jail or a correctional institution in state or out of state.~~(3-23-98)~~(____)

12. **Determinate Sentence**. Fixed portion of the sentence. During this time period an offender is not eligible for release on parole. (____)

1~~1~~3. **DOR**. Disciplinary Offense Report. A report describing rule violations, behavioral issues, or both, committed by an offender while incarcerated. ~~(3-23-98)~~(____)

1~~2~~4. **Early Parole Discharge**. Release from further custody of parole supervision prior to the maximum expiration date and after statutory minimum of one (1) year of their sentence has been completed. ~~(3-23-98)~~(____)

1~~3~~5. **Escape**. Flight from confinement. (3-23-98)

16. **Evidence Based Program**. A treatment program evaluated using an experimental methodological design, with outcomes reviewed by a variety of scientific professionals, and deemed effective in the delivery method and the desired participant population outcomes. (____)

17. **Executive Session**. Any meeting or part of a meeting of the commission which is closed to the public for deliberation on certain matters, as set forth in Section 20-213A, Idaho Code. (____)

1~~4~~8. **Fixed Term**. Portion of sentence during which the convicted person is not eligible for parole. (3-23-98)

1~~5~~9. **Full Term Release Date**. The date an ~~*prisoner*~~ offender completes the term of sentence without good time credits. ~~(3-23-98)~~(____)

~~16~~20. **Good Time Release Date**. The date a an ~~*prisoner*~~ offender completes the term of sentence, minus statutory good time credits when applicable. Good time credit applies to offenses committed prior to July 1, 1986, and for which an offender is confined to a correctional institution for a definite term other than life. ~~(3-23-98)~~(____)

~~17~~21. **Hearing**. ~~*A proceeding in which evidence, including file material, letters, and/or testimony, is considered for use in decision-making*~~ The opportunity to be interviewed by the commission, a commissioner, or other designated commission staff. ~~(3-23-98)~~(____)

22. **Hearing Officer**. An impartial person employed by the commission and selected by the executive director to conduct an interview and take testimony from an offender regarding offender's history, criminal record, social history, present condition of offender, and offense. (____)

~~18~~23. **Hearing Session**. A series of hearings conducted by the commission. (3-23-98)

24. **Indeterminate Sentence**. Portion of sentence following the determinate sentence, during which time an offender is eligible for release on parole. (____)

~~19~~25. **Institutional Parole**. Parole granted ~~*to*~~ on one (1) or more consecutive sentences ~~*or terms*~~ where the ~~*inmate*~~ offender/parolee remains incarcerated on other consecutive sentences. If released to parole on the remaining consecutive sentences, the parole becomes ~~*a*~~ regular parole. ~~(3-23-98)~~(____)

2~~0~~6. **Jacket, File, or Case Review**. Review of central file, commission file, and/or additional information submitted, without testimony or interview of ~~*inmate*~~ offender or parolee. ~~(3-23-98)~~(____)

2~~1~~7. **NCIC**. National Crime Information Center. (3-23-98)

2~~2~~8. **Non Restricted Sentence**. Sentence not restricted by statute. (3-23-98)

29. **Non Technical Violation**. Violation of parole by absconding or a new felony or violent misdemeanor or infraction. ( )

30. **Offender**. A person under the legal care, custody, supervision, or authority of the board or correction, including a person within or without Idaho pursuant to agreement with another state or contractor. ( )

~~2~~31. **On-Site Parole Violation Hearing**. Parole violation hearing to determine guilt or innocence which ~~may~~ must be held reasonably near the site of the alleged violation(s). ~~(3-23-98)~~( )

~~24~~32. **Open Parole Date**. Tentative parole granted without setting an actual tentative ~~parole~~ release date and subject to release by commission authorization; offender's parole eligibility date has passed when a tentative parole date is granted. ~~a~~A tentative parole date will become an open parole date if the tentative parole date passes without the ~~subject~~ offender being released to an acceptable plan on the specific date. ~~(3-23-98)~~( )

~~25~~33. **Pardon**. Clemency powers granted to the commission ~~and~~ or the governor that allows release from consequences of conviction of a crime and restores a persons' civil rights. ~~(3-23-98)~~( )

~~26~~34. **Parole**. Conditional release from a penal institution under a contractual agreement between the Commission of Pardons and Parole and ~~a convicted felon~~ offender. Parole is not a right, but is a matter of grace. ~~(3-23-98)~~( )

35. **Parolee**. Offender being supervised on parole. ( )

~~27~~36. **Permanently Incapacitated**. As defined in Section 20-223, Idaho Code, permanently incapacitated ~~shall~~ means a person who, by reason of an existing physical condition which is not terminal, is permanently and irreversibly physically incapacitated. ~~(3-23-98)~~( )

~~28~~37. **Rescission**. Cancellation of a previous decision. ~~(3-23-98)~~( )

~~29~~38. **Reprieve**. Temporary suspension of the execution of sentence; delay a punishment. (3-23-98)

3~~0~~9. **Restricted Sentence**. Sentence restricted by Idaho Statutes, by carrying a mandatory minimum to be served prior to parole eligibility. ~~(3-23-98)~~( )

~~31~~40. **Return of Service**. ~~Documents required to be served on an alleged parole violator at the time he is served with specific charges of parole violation. Describes hearings and rights the subject is entitled to~~ The document that establishes what legal documents were served on whom, by whom, and when. ~~(3-23-98)~~( )

~~32~~41. **Revocation/Violation File**. File containing the documents pertinent to a particular violation/revocation proceeding. ~~(3-23-98)~~( )

42. **Risk Assessment**. Validated tool developed to determine risk of recidivating based on offender criminogenic needs. ( )

~~33~~43. **Session**. See "Hearing Session." (3-23-98)

~~3~~44. **Statutory Release Date**. Maximum full-term expiration date, minus any good time credits accumulated during incarceration. The maximum full-term date may change upon forfeiture of time on parole due to a violation of that parole. ~~(3-23-98)~~( )

~~35~~45. **Substantive Conditions of Parole**. Conditions of parole which relate to the rehabilitation of a parolee, including but not limited to, performance of community service, use of alcohol, use of a motor vehicle,

limitations on financial matters, use of drugs, associations with other felons, employment requirements, residence requirements, traveling outside of their district, etc. ~~(3-23-98)~~( )

~~36~~46. **Technical Violation**. Violation of parole by not conforming to ~~rules~~ conditions of parole, but not to include absconding ~~and~~ or a new criminal conviction or infraction. ~~(3-23-98)~~( )

~~37~~47. **Terminally Ill**. As defined by Section 20-223, Idaho Code, terminally ill shall mean a person who has an incurable condition caused by illness or disease and who is irreversibly terminally ill. (3-23-98)

~~38~~48. **Victim**. As ~~described~~ by Section 19-5304, Idaho Code, "~~shall~~ will mean a person or entity, ~~named in the complaint, information or indictment,~~ who suffers economic loss or injury as the result of the defendant's criminal conduct and ~~shall~~ will also include the immediate family of a minor and the immediate family of the actual victim in homicide cases." ~~(3-23-98)~~( )

~~39~~49. **Witness**. Anyone who observes a hearing, appears as attorney for the subject of a hearing, or others who provide written or verbal testimony. (3-23-98)

011. -- 099. (RESERVED)

100. GENERAL PROVISIONS.
The rules contained herein govern practice and procedure of the Idaho Commission of Pardons and Parole, hereafter referred to as the commission. The commission reserves the right to deviate from established rules whenever special circumstances warrant, and to act, at its discretion, in circumstances not specifically outlined but within confines established by the constitution and ~~statutes~~ Idaho Code. ~~(3-23-98)~~( )

101. HEARINGS.
All hearings of the Commission shall be conducted in accordance with the open meeting law as provided in Chapter 23, Title 67 Idaho Code and as modified by Section 20-213A, Idaho Code. The commission will conduct each hearing assigned and scheduled before them. Each commissioner will have an opportunity to ask questions or provide comments, or both. The executive director or commission staff may provide information during the hearing or ask questions. ~~(3-23-98)~~( )

~~a~~01. **Deliberations**. Deliberations concerning the granting, revoking, reinstating or refusing of paroles, or related decisions, to include commutations and pardons, ~~may~~ will be made in executive session. ~~(3-30-01)~~

~~b.~~ Votes of individual members will not be made public. ~~(3-23-98)~~

~~i.~~ A written record of the vote by each commission member ~~shall~~ will be kept confidential and privileged from disclosure, provided the record ~~shall~~ will be made available upon request to the governor and the chairman of the senate judiciary and rules committee and the chairman of the house of representatives judiciary and rules and administration committee, for all lawful purposes as outlined by Section 20-213A. ~~(3-23-98)~~( )

~~ii~~a. Distribution of the record by a commissioner or an employee of the commission to any person not specifically listed in this section ~~shall~~ will be a misdemeanor offense. ~~(3-23-98)~~

~~c.~~ Any person can obtain the results of any action taken by the commission without reference to the manner in which any individual ~~member~~ commissioner voted, and such information ~~shall~~ will be public information. ~~(3-23-98)~~( )

102. HEARING SESSIONS.
~~The Commission may schedule regular monthly hearings but will meet at least quarterly.~~ ~~(3-23-98)~~

~~a~~01. **Number of Hearings Scheduled**. The executive director will schedule hearing sessions according to the number of hearings scheduled for the specific month. ~~(3-23-98)~~( )

~~b~~02. **Designation of Presiding Officer**. The executive director may designate one (1) of the members of the commission as the presiding officer to conduct individual hearings or a hearing session, or a business meeting.

~~(3-23-98)~~( )

103. BUSINESS MEETINGS.
The commission schedules a business meeting at least quarterly or at the call of the executive director and notice of such meetings ~~will~~ must comply with the open meeting law requirements. Such meeting~~s~~ may be cancelled at the vote of a majority of the commission or by the executive director if the scheduled business cannot be conducted.
~~(5-3-03)~~( )

104. RECORD OF HEARINGS AND MEETINGS.

~~a~~01. Minutes of Hearings and Case Reviews. Summary minutes of individual hearings and case reviews will be maintained in the commission office and will be approved and signed by the executive director, or a commissioner, or designee of the executive director. ~~(3-30-01)~~( )

~~b~~02. Minutes Reviewed and Approved. Summary minutes of business meetings are reviewed by commissioners who are present at the next subsequent business meeting. The summary minutes as approved by the commissioners will be signed by the executive director or designee. Summary minutes of business meetings ~~will be~~ are maintained in the commission office and published on the commission's website when the summary minutes are approved. ~~(3-23-98)~~( )

~~i. The summary minutes of the business meetings will be reviewed by the commissioners who are present at a subsequent business meeting. (3-23-98)~~

~~ii. The summary minutes as approved by the commissioners will be signed by the executive director or designee. (3-30-01)~~

105. PREVIOUS DECISIONS.
The commission reserves the right to review or reconsider any previous decision for any reason and to take whatever action is agreed upon. The executive director may bring forward any case determined to need review before the next hearing session. Information may be sent by electronic mail if considered an emergency. ~~(3-23-98)~~( )

106. INDIVIDUAL POLLING OF THE COMMISSION.
The executive director may conduct an individual poll of the commission to obtain a majority vote regarding a case or business matter in which a decision must be made prior to the next session or meeting. (3-23-98)

107. APA APPLICABILITY.
The commission shall have the power to establish rules under Chapter 52, Title 67, Idaho Code (Administrative Procedures Act). No other provision or requirement of the Administrative Procedures Act shall apply to the commission. (3-23-98)

108. RIGHTS, POWERS, AND AUTHORITY OF THE COMMISSION.

~~a~~01. Commutation, Pardon, and Remission. The commission succeeds to and has all rights, powers and authority of the Board of Pardons as granted and provided by the provision of the constitution of the state of Idaho, in reference to commutation, pardon, and remission of fines. ~~(3-23-98)~~( )

~~b~~02. Decision to Release to Parole. The commission has the power to decide whether or not any ~~prisoner who is~~ offender eligible for parole may be released to parole. (3-23-98)

~~c~~03. Advisory Commission to Board of Correction. The commission may act as the advisory commission to the board of correction. The commission has any and all authority necessary to fulfill the duties and responsibilities and other duties imposed upon it by law under Section 20-201, Idaho Code and other applicable provisions of Idaho law. ~~(3-30-01)~~( )

10~~1~~9. -- 149. (RESERVED)

150. COMMISSION AND STAFF.

01. Commission Members. (3-23-98)

a. The commission is composed of five (5) members appointed by the governor for three (3) year terms; vacancies for unexpired terms will be for the remainder of the term and appointees may be reappointed. ~~*(3-30-01)*~~( )

i. No more than three (3) members ~~*shall*~~ will be from one (1) political party. ~~*(3-23-98)*~~( )

~~*ii. Appointments are for three (3) year terms; vacancies for unexpired terms will be for the remainder of the term; and appointees may be reappointed.* (3-30-01)~~

ii~~*i*~~. Appointments are subject to the advice and consent of the senate. (3-23-98)

b. The commissioners are compensated as provided by Sections 20-210, 59-509(I), and 67-2008, Idaho Code ~~*and Section 20-210, Idaho Code*~~. ~~*(3-23-98)*~~( )

02. Commission Staff. (3-23-98)

a. The executive director is the official representative for the commission and is responsible for the managing and administration of ~~*the*~~ commission business and ~~*shall*~~ will have other duties and responsibilities as assigned by the governor. ~~*(3-30-01)*~~( )

i. The commission has delegated to the executive director the authority to approve recommended conditions of parole following the hearing process, issue commission warrants, issue parole release documents, and all other official documents pertaining, but not limited to~~,~~ paroles, commutations, pardons, and remissions of fines. (3-23-98)

ii. The executive director shall assume all authority and duties as may be delegated by the commission and the governor. (3-30-01)

b. The commission, the executive director, and all staff will maintain professional integrity in all matters of commission business. (3-23-98)

151. -- 199. (RESERVED)

200. HEARING PROCESS.

01. Information for Scheduled Commission Hearings. (3-30-01)

a. A schedule of commission hearings will be prepared prior to a hearing session and may be updated as necessary at any time. ~~*(3-30-01)*~~

~~*i.*~~ The hearing schedule will be available ~~*one (1) week*~~ five (5) buisness days prior to a hearing session. ~~*(3-23-98)*~~

~~*ii.*~~ The hearing schedule ~~*will reflect the date, location and starting time of each hearing session*~~ may be revised due to offender movement between institutions or other circumstances and may not be published earlier. A person may obtain the offender's hearing date by contacting the commission office. ~~*(3-23-98)*~~( )

~~*iii. The schedule is subject to change at any time due to circumstances beyond the control of the Commission.* (3-23-98)~~

b. ~~*A list of inmates*~~ The hearing schedule will reflect the date, location and starting time of each hearing session and a list of offenders scheduled for hearings ~~*may be prepared for district judges, county prosecutors, sheriffs, legislators, and others as requested*~~ and will be published on the commission website. ~~*(3-30-01)*~~( )

02. Location of Hearings. The executive director will determine the location of hearings, based upon available information when the schedule is set. ~~*(3-23-98)*~~

~~*a.*~~ Due to circumstances beyond the commission's control, it may be necessary to change the location and date of a hearing or hearing session. ~~*(3-30-01)*~~( )

~~*b*~~**a.** It may be necessary to continue a hearing to a later date to allow for the ~~*inmate's*~~ offender's personal appearance or for other unforeseen reasons. ~~*(3-30-01)*~~( )

03. ~~***Hearing/***~~**Interview Method**. ~~*A hearing*~~ For parole hearing, commutation hearings, and pardon hearings, an interview may be conducted by ~~*a personal interview*~~ face-to face, by telephone, or by other electronic means. ~~*(3-23-98)*~~

~~*a.*~~ The interview ~~*of an inmate being considered for parole*~~ may be conducted by a hearing officer or other designee of the executive director. If an interview is not required, the offender may simply appear before the commission for a hearing. ~~*(3-30-01)*~~( )

i. An in-depth investigational report explaining the offender's social history, criminal history, present condition, and offense will be prepared for the commission. ~~*(3-30-01)*~~( )

ii. The commission will determine if they will conduct another hearing or make a decision based upon the report. (3-30-01)

04. Psychological Reports, Mental Health Evaluations, Sex Offender Risk Assessment (SORA), or Other.

~~*(3-23-98)*~~( )

a. A psychological report, or SORA, or both, will be ~~*reviewed by*~~ prepared for the commission for all ~~*inmates*~~ offenders serving a commitment for a sex offense, or whose history and conduct indicate an offender may be a sexually dangerous person as described in Section 20-223, Idaho Code. ~~*(3-23-98)*~~( )

b. The commission, the executive director, or a hearing officer can order any psychological report, evaluation, or assessment for an ~~*inmate*~~ offender serving a commitment for any crime. ~~*(3-23-98)*~~( )

c. All psychological or SORA reports will be maintained in a confidential manner. ~~*(3-23-98)*~~( )

05. Interview/Hearing. The offender who is the subject of an interview/hearing may be required to be present at a scheduled interview/hearing. ~~*(3-23-98)*~~( )

a. Parole Consideration Hearing. If the ~~*inmate*~~ offender declines to be present at a parole consideration hearing, the ~~*inmate*~~ offender is ~~*encouraged*~~ required to complete and submit ~~*a statement*~~ the Inmate Refusal to Participate in Parole Interview/Hearing Process form and state the reason for not participating to the commission~~*stating that he declines attending the hearing;*~~. ~~*a*~~A decision may be made by the commission based upon available information. ~~*(3-23-98)*~~( )

b. Parole Revocation/Violation. The parolee~~*/inmate*~~ is required to be present at the revocation/violation hearing, with the exception of an absentia revocation hearing as explained in Subsection 400.0~~*4*~~6.h. ~~*(3-23-98)*~~( )

c. Commutation. The ~~*subject*~~ offender is ~~*encouraged*~~ required to be present at the scheduled commutation hearing, unless the commission determines otherwise. ~~*(3-23-98)*~~( )

d. Pardon and Remission of Fine. The ~~*subject*~~ offender of the hearing is encouraged to be present at the hearing; the commission may make such appearance mandatory or may make a final decision based upon the information which is available. (3-23-98)

e. Medical Parole. The offender is encouraged to be present at the hearing; the commission may make

such an appearance mandatory or may make a final decision based on information available. ( )

06. Witnesses and Documents. The commission allows for the offender/parolee participation of attorneys, families of the subject, victims, and others who have a direct relationship to the specific hearing or ~~subject~~ offender/parolee of the hearing. ~~(3-23-98)~~( )

a. Persons who want to participate in a hearing ~~shall~~ must notify the commission staff five (5) days in advance of the scheduled hearing~~, but c~~Children under the age of sixteen (16) ~~may~~ will not be allowed to attend the hearings without prior approval of the executive director. ~~(3-23-98)~~( )

b. All written documents and letters to be considered ~~at a particular hearing~~ must be submitted seven (7) days in advance of the scheduled hearing ~~in order~~ to ensure ~~that it~~ they will be considered; other documents may be allowed by unanimous consent ~~of~~ from the commissioners present. ~~(3-23-98)~~( )

c. An attorney or others as determined by the executive director or commission may be seated with the ~~subject of~~ offender/parolee at the hearing. (3-23-98)

d. Verbal testimony by witnesses, victims, and attorneys may be limited by the number of persons allowed to give testimony and by a certain time limit. The commission will allow the attorney representing the offender/parolee a designated time frame to provide information to the commission. Victims will be allowed to testify. Victim testimony is normally taken following comments of offender's attorney and family or friends of the offender/parolee. All persons who testify will direct their comments to the commission. Persons will keep their comments to the relevance of parole. ~~(3-23-98)~~( )

e. Contacts from the public to an individual commissioner outside of the hearing process, are to be forwarded to the executive director in order that all commissioners will receive the information. (3-23-98)

07. Conflict of Interest. A commissioner who has personal knowledge of a case will make such knowledge available to the sitting commissioners prior to the scheduled hearing, and the sitting members of the commission will ~~make the decision if~~ decide whether that commissioner should be disqualified from participating in deliberation and voting. ~~(3-23-98)~~( )

08. Decisions. (3-23-98)

a. Any decision of the commission requires a majority vote of three (3) or more commissioners~~, which is a majority decision~~. ~~(3-23-98)~~( )

b. ~~As a rule, d~~Decisions will be given orally following the ~~interview~~ hearing and deliberation of a case by the commission~~,~~. ~~and w~~Written notice of the decision may be submitted at a later date. The decision may be sent to the offender in writing with specific information/conditions. ~~(3-30-01)~~( )

c. Following the decision being given orally, further testimony is allowed only at the discretion of the commission, or the executive director, or hearing officer. ( )

~~i~~**d.** In the case of a review by the commission without a commission hearing, the decision will be published within a reasonable time. ~~(3-30-01)~~

~~ii.~~ Individual written decisions may not be submitted, but will be available on the commission's website in a published list of a session's action taken. ~~(3-30-01)~~( )

~~c. Following the decision being given orally, further testimony is allowed only at the discretion of the commission, executive director, or hearing officer.~~ ~~(3-23-98)~~

d. Any decision made by the commission may be reconsidered at any time. (3-23-98)

09. Rules of Conduct at Hearings. (3-23-98)

a. All persons attending any hearing will conduct themselves in a manner which does not disrupt the proceedings or they may be removed from the hearing room and/or facility. (3-23-98)

b. All persons attending a hearing or hearing session, must abide by security policies of the department of correction, the facility where the hearing is being held,, and pertinent statutes~~,~~; ~~*to include but not be limited to: no smoking; no unauthorized food or drink in the hearing room; no purses or other belongings; follow department of correction dress code;*~~ number of witnesses allowed in the hearing room will be in line with life and safety codes; and all persons may be screened through metal detectors or similar technology and will be subject to search. ~~*(3-23-98)*~~( )

c. ~~*Tape*~~ Audio recording or video~~ *taping*~~ recording of any hearing or any hearing session may be allowed at the discretion of the commission or the executive director; such recordings will proceed only at the direction of the commission or the executive director as to the placement, ~~*and*~~ manner and type of equipment. ~~*(3-23-98)*~~( )

d. The media is invited to attend any hearing or session of the commission. (3-23-98)

i. Interviews with ~~*inmates*~~ offenders or witnesses will not be allowed during the hearing process and the commission and staff will not be responsible for arranging any interviews. ~~*(3-23-98)*~~( )

ii. During the hearing process, interviews with victims are not allowed without the express consent of the victim. (3-23-98)

iii. Arrangements for interviewing the commission or staff should be made in advance. ~~*(3-23-98)*~~( )

10. Official Record of Hearing/Review. The official record of a hearing or case review will be the summary minutes of that hearing or review, once signed, and the original record will be maintained in the commission office. (3-30-01)

201. -- 249. (RESERVED)

250. PAROLE.

01. Parole Determination. ~~*Parole determination is at the complete discretion of the Commission.*~~ The commission will use clear, evidence-based parole guidelines in making parole determinations, while still maintaining discretion of individual cases. ~~*(3-23-98)*~~( )

a. The commission may release an ~~*inmate*~~ offender to parole on or after the date of parole eligibility, or not at all. During a minimum term of confinement, an offender will not be eligible for parole, discharge, credit, or reduction of sentence for good conduct, except for meritorious conduct reduction service, or as provided in Section 20-101D, Idaho Code. ~~*(3-23-98)*~~( )

b. Parole consideration is ~~*evaluated*~~ determined by the individual merits of each case.~~*(3-23-98)*~~( )

c. The commission ~~*allows for parole consideration criteria, but no prediction regarding the granting of parole can be based upon any hearing standard or criteria*~~ uses evidence based parole consideration factors which are embedded in the clear parole guidelines; these guidelines will include the use of a validated risk and needs assessment. The commission still retains the discretion to deny parole of individual cases based on countervailing, discrete, individual case factors. Factors considered include, but are not limited to: ~~*(3-23-98)*~~( )

i. Seriousness and aggravation and/or mitigation involved in the crime. (3-23-98)

ii. Prior criminal history of the ~~*inmate*~~ offender. ~~*(3-23-98)*~~( )

iii. Failure or success of past probation and parole. (3-23-98)

iv. Institutional history to include conformance to established rules, involvement in programs and jobs custody level at time of the hearing, and overall behavior. (3-23-98)

v. Evidence of the development of a positive social attitude and the willingness to fulfill the obligations of a good citizen. (3-23-98)

vi. Information or reports regarding physical or psychological condition. (3-23-98)

vii. The strength and stability of the proposed parole plan, including adequate home placement and employment or maintenance and care. (3-23-98)

viii. Outcome of a validated risk and needs assessment. (____)

02. Primary Review. A review for the purpose of setting the initial parole hearing will be conducted on all ~~*inmates*~~ offenders, except those serving a court-retained jurisdiction and those ~~*inmates*~~ offenders sentenced to death; the commission is not responsible for the setting of a hearing until an official sentence calculation ~~*sheet*~~ document has been received. ~~*(3-23-98)*~~(____)

a. The executive director or a designee will conduct the review following receipt of the sentence calculation from the department of correction, records office. ~~*(3-23-98)*~~

~~***b.***~~ The month and year of the initial parole hearing will be established based upon the sentence calculation. ~~*(3-23-98)*~~(____)

i. In cases of ~~*offenses committed prior to February 1, 1987 or offenses committed after February 1, 1987 with no specified fixed minimum term, the following guideline outlined in "Table 1" will be utilized in scheduling the initial hearings*~~ specified minimum terms, the initial hearing will be set approximately six (6) months prior to the offender's parole eligibility date based on the sentence calculation.

~~**TABLE 1**~~		
~~**Length Of Sentence**~~		~~**Minimum Time To Be Served Before Initial Hearing**~~
~~*Three (3) years or less*~~	~~-~~	~~*Nine (9) months*~~
~~*More than three (3) years to less than five (5) years*~~	~~-~~	~~*Twelve (12) months*~~
~~*Five (5) years to less than seven (7) years*~~	~~-~~	~~*Fifteen (15) months*~~
~~*Seven (7) years to less than ten (10) years*~~	~~-~~	~~*Twenty (20) months*~~
~~*Ten (10) years to less than sixteen (16) years*~~	~~-~~	~~*Twenty-four (24) months*~~
~~*Sixteen (16) years to less than twenty-six (26) years*~~	~~-~~	~~*Thirty-six (36) months*~~
~~*Twenty-six (26) years up to life sentence*~~	~~-~~	~~*Forty-eight (48) months*~~
~~*Life sentence*~~	~~-~~	~~*Sixty (60) months*~~

~~*(3-23-98)*~~(____)

ii. In cases of offenses committed on or after February 1, 1987, and a minimum fixed term has been specified, the initial hearing may be scheduled six (6) months prior to the parole eligibility date, during the month of parole eligibility, or as noted in Subsection 250.02.b.vi. ~~*(3-30-01)*~~(____)

iii. Consecutive Sentences. All fixed terms will be served before the indeterminate terms commence. (3-23-98)

iv. ~~*When more than one (1) sentence is being served c*~~Concurrent~~*ly,*~~ Sentences. ~~*t*~~The initial hearing will

not be scheduled until all fixed terms have been served. ~~*(3-23-98)*~~(____)

v. If an ~~*inmate*~~ offender escapes prior to the primary review or the initial hearing, the review or hearing will be conducted within a reasonable time of notification of the ~~*inmate's*~~ offender's return to custody, taking into consideration any additional commitments and the time to conduct an interview and report. ~~*(3-23-98)*~~(____)

vi. If an ~~*inmate*~~ offender is committed to the department of correction and such ~~*inmate*~~ offender is eligible for parole immediately~~*or within a short period of time*~~, or within the first six (6) months of their incarceration, the initial parole hearing will be scheduled six (6) months from the month the commission was notified of the commitment. ~~*(4-5-00)*~~(____)

c. The commission is not responsible for the accuracy of the sentence calculation as determined by the department of correction, records office.~~*The commission utilizes the documents as being accurate.*~~ ~~*(3-30-01)*~~(____)

03. General Conditions of Parole. The commission establishes rules and conditions for every ~~*inmate*~~ offender released to parole~~*, and those conditions are*~~. Conditions of parole include: ~~*(3-23-98)*~~(____)

a. The parolee is required to enter into and comply with an agreement of supervision with the board of correction. (____)

~~*a*~~**b.** Parolee will go directly to the destination approved by the commission and, upon arrival, report as instructed to the parole officer or person whose name and address appear on the arrival notice; any deviation in travel plans will require prior permission from the commission staff. (3-23-98)

~~*b*~~**c.** The parolee ~~*shall.*~~ will: ~~*(3-23-98)*~~(____)

i. Work diligently in a lawful occupation or a program approved by the commission or supervising officer and not change employment or designated program without written permission from the commission or supervising officer. (3-23-98)

ii. Support dependents to the best of ~~*his*~~ parolee's ability. (____)

iii. Live within lawful income without incurring unnecessary indebtedness. (3-23-98)

c. The parolee ~~*shall*~~ must submit a complete and truthful report to the assigned parole officer~~*, or other person designated by the Commission, on forms available, before the fifth day of each month, or as otherwise instructed*~~. ~~*(3-23-98)*~~(____)

d. If at any time it becomes necessary to communicate with the assigned parole officer or other official designee ~~*and he*~~ who is unavailable, communication will be directed to the district section supervisor. ~~*(3-23-98)*~~(____)

e. The parolee will: (3-23-98)

i. Obey all municipal, county, state, and federal laws. (3-23-98)

ii. Conduct himself or herself in a manner that is not, nor intended to be, harmful to himself or herself or others. ~~*(3-23-98)*~~(____)

iii. Follow written or oral instructions of the parole officer or commission. (3-23-98)

iv. Not purchase, own, sell, or have in ~~*his*~~ the parolee's control, to include storing in residence, vehicle, etc., any type of firearm for whatever purpose. ~~*(3-23-98)*~~(____)

v. Not have any dangerous weapons used or intended to be used for other than normal purposes, such as knives for household use. (3-23-98)

f. The parolee ~~*shall*~~ will: ~~*(3-23-98)*~~( )

i. Abstain from excessive use of alcoholic beverages. (3-23-98)

ii. Abstain completely from the possession, procurement, use, or sale of narcotics or controlled substances, except as prescribed by a licensed medical practitioner. (3-23-98)

iii. Freely cooperate and voluntarily submit to medical and chemical tests and examinations for the purpose of determining if parolee is using or under the influence of alcohol, ~~*or*~~ narcotics, or other substances, which may be at the parolee's expense. ~~*(3-23-98)*~~( )

iv. Participate in treatment programs as specified by the commission or ordered by the parole officer. (3-23-98)

g. The parolee will submit to a search of person ~~*and/*~~or property, or both, to include residence and vehicle, at any time and place by any agent of field services or the commission, and the parolee ~~*does*~~ waives ~~*his*~~ the constitutional right to be free from such searches. ~~*(3-23-98)*~~( )

h. The parolee is fully advised that written permission is required to: (3-23-98)

i. Willfully change employment; (3-23-98)

ii. Willfully change residence; and (3-23-98)

iii. Leave the assigned district. (3-23-98)

i. The parolee will make himself available for supervision and will not actively avoid supervision. (3-23-98)

04. Special Conditions of Parole. (3-23-98)

a. In addition to general ~~*rules*~~ conditions of parole, the commission may add special conditions appropriate to the individual case. (3-23-98)

b. The commission delegates the authority to the executive director to add special conditions, before an ~~*inmate*~~ offender has been released to parole or while on parole, once the ~~*subject*~~ offender has signed a statement agreeing to the special conditions. The commission will establish the special conditions of parole using the offender's most current risk and needs assessment to guide the imposition of necessary conditions. ~~*(3-23-98)*~~( )

05. Institutional Parole. (3-23-98)

a. An ~~*inmate*~~ offender committed to the department of correction, who has a consecutive sentence and one (1) or more commitments do not have a fixed minimum term to serve prior to parole eligibility, may be considered for institutional parole while remaining incarcerated. ~~*(3-23-98)*~~( )

b. Institutional parole may be considered at the discretion of the commission. (3-23-98)

c. While serving institutional parole, the parolee/~~*inmate*~~offender is subject to all the rules of the housing facility and conditions ordered by the commission, to include, but not be limited to, submitting monthly reports as directed. ~~*(3-23-98)*~~( )

d. If rules of the institution or orders of the commission are violated, the executive director or a commissioner will determine when a report of conduct/violation should be submitted. ~~*(3-23-98)*~~

~~*i.*~~ In the case of a report of violation, established rules of the violation/revocation process will apply. ~~*(3-23-98)*~~( )

~~*ii. The executive director will determine the site of all hearings.* (3-23-98)~~

~~*iii. If institutional parole is revoked, the time spent on institutional parole may be forfeited in whole or in part, and may not be deemed a part of the sentence for which the offender was committed; however, time served on the consecutive sentence will be credited once that sentence commences to be served.* (3-30-01)~~

e. Conversion. Upon release from custody on any subsequent parole or upon completion of the consecutive sentence, and if any time remains on the institutional parole sentence, there will be an automatic conversion from institutional parole to regular parole, subject to all regular and special conditions of parole. ~~(3-23-98)~~( )

~~***06. Unsupervised Parole****. The Commission may elect to grant an unsupervised parole in extraordinary cases; when the parolee has met the minimum discharge requirements but still owes restitution or other court assessments; or if the parolee is medically unable to fulfill the parole obligations.* (3-20-04)~~

~~***a.*** *In extraordinary cases, the Commission may elect to grant an unsupervised parole.* (3-20-04)~~

~~*i. The parolee will be subject to all regular conditions of parole and any ordered special conditions, with the exception of the regular supervision of a parole officer.* (3-20-04)~~

~~*ii Monthly reports may be required at the discretion of community corrections.* (3-20-04)~~

~~*iii. Communication from the parolee is to be directed to the district office where last supervised, or as otherwise directed after initial contact.* (3-20-04)~~

~~*iv. At any time, the parolee may be placed under the regular supervision of a parole officer.* (3-20-04)~~

~~***b.*** *The Commission may elect to place a parolee, who still owes restitution or other court assessments, on unsupervised parole once the minimum discharge requirements have been met.* (3-20-04)~~

~~*i. The parolee must have served at least one (1) year on parole.* (3-20-04)~~

~~*ii. Monthly payments will be monitored. Such monitoring will usually be accomplished by community corrections.* (3-20-04)~~

~~*iii. At any time, the parolee may be placed under the regular supervision of a parole officer.* (3-20-04)~~

~~***c.*** *If a parolee is medically unable to fulfill the obligations of parole, the Commission may suspend any or all parole obligations.* (3-20-04)~~

0~~7~~6. **Medical Parole**. The commission may parole an ~~*inmate*~~ offender for medical reasons during the determinate portion of a sentence. ~~(3-23-98)~~( )

a. ~~*An inmate may be considered for medical parole during the determinate portion of a sentence only*~~ Consideration will occur when the ~~*prisoner*~~ offender is permanently incapacitated or terminally ill and when the commission reasonably believes the ~~*prisoner*~~ offender no longer poses a threat to the safety of society. ~~(3-23-98)~~( )

b. An ~~*inmate*~~ offender or designated department of correction personnel may petition the commission to consider medical parole. ~~(3-23-98)~~( )

~~***c.*** *For any consideration or hearing to consider medical parole, the Commission will require specific medical information reference the condition, the treatment or care plan if released, and any other information as deemed necessary.* (3-23-98)~~

~~***d***~~**c.** The commission may conduct an actual hearing or review of the case, or may designate

commission staff to provide additional information and will require specific medical information in reference to the condition, the treatment or care plan if released, and any other information deemed necessary. ~~(3-23-98)~~( )

~~e~~**d.** An annual report will be submitted to the house and senate judiciary committees of the legislature and will contain ~~the inmates'~~ aggregate health information and the names, medical condition, current status, and crime ~~for which the inmates were incarcerated~~ of all persons granted medical parole. ~~(3-23-98)~~( )

~~**08. Intensive Supervision**. The Commission may order a program of intensive supervision which has been designed by and may be amended by the department of correction.~~ ~~(3-23-98)~~

0~~9~~8. Discharge from Parole. (3-23-98)

a. When the maximum sentence has expired, a final discharge will be issued by the commission, unless a commission warrant was issued before the full term ~~or the good time~~ release date. ~~(3-23-98)~~( )

b. The commission may ~~make~~ issue a final order of discharge prior to completion of the maximum sentence when the commission believes such a discharge is compatible with the parolee's welfare and that of society, and subject to the following requirements. When notification of a discharge is received, the victims will be notified of the request and allowed to respond. The commission may, without a hearing, consider the request. ~~(3-23-98)~~( )

i. The commission will not consider an early discharge from parole in any case until the parolee has served at least one (1) year on parole as outlined in Section 20-233, Idaho Code. ~~(3-23-98)~~( )

ii. The commission will not consider an early discharge for a parolee who has a sex crime or violent crime until one-third (1/3) of the remaining time from the parole release date to the maximum expiration date has been served on parole; or until five (5) years have been served on parole on a life sentence for any crime. (3-23-98)

iii. A parole officer or other designated agent ~~may~~ can petition the commission to consider an early discharge upon reaching the timelines established in Subsection 250.09.b.i. ~~(3-23-98)~~( )

iv. Any decision by the commission to grant an early discharge will not be effective until the official discharge document has been signed by the executive director or a commissioner. (3-23-98)

~~v~~**c.** If a decision has been made by the commission to grant an early discharge, and adverse information is received that was not previously available, the document will not be signed and the discharge will not be effective. ~~(3-23-98)~~

~~vi.~~ The executive director may issue a commission warrant based upon the new information and the discharge grant will automatically be voided without further action by the commission. Such adverse information will be submitted to the commission at the next available hearing session for reconsideration. ~~(3-23-98)~~

~~vii.~~ If the executive director does not issue a warrant, the information will be referred to the commission for reconsideration. ~~(3-23-98)~~( )

~~e~~**d.** If the parolee is incapacitated, the commission may consider ~~and/~~or grant, or both, an early discharge after one (1) year for any crime. ~~(3-30-01)~~( )

10. Detainers. (3-23-98)

a. The commission may grant a parole to any county, state, or federal detainer which has been lodged against an ~~inmate~~ offender. ~~(3-23-98)~~( )

i. While in the custody of the detaining jurisdiction, the parolee is serving parole and is subject to all rules of the housing facility and ~~must~~ may be required to submit monthly reports to commission staff or ~~others as designated~~ the supervising authority. ~~(3-23-98)~~( )

ii. If the parolee is released from custody by the detaining jurisdiction, the parolee must contact the

commission office immediately and must report to the nearest probation and parole office within five (5) days of release or as otherwise instructed by the commission staff. ~~*(3-23-98)*~~

~~*iii.*~~ ~~*If the parolee is released from custody by the detaining jurisdiction, t*~~The parolee must abide by all regular rules of parole and any special conditions ordered by the commission. ~~*(3-23-98)*~~( )

b. The commission may grant a parole to a federal immigration detainer in order that the ~~*inmate*~~ offender may be deported to the country of citizenship. ~~*(3-23-98)*~~( )

i. If the parolee is granted a release on bond or ~~*it is determined by the federal authorities that the parolee can*~~ is allowed to remain in the United States, the parolee must contact the commission office immediately and must contact the nearest probation and parole office within five (5) days of release or as otherwise instructed by the commission staff. ~~*(3-23-98)*~~( )

ii. If the parolee is deported from the United States to the country of citizenship, the parolee is not to return to the United States~~*; any such return to the United States during the parole period and after deportation,*~~ and doing so is considered a violation of the parole contract. ~~*(3-23-98)*~~( )

iii. The commission considers this type of parole grant an unsupervised parole, but the parolee is not obligated to submit monthly reports nor maintain contact with the commission as long as he remains outside of the United States. ~~*(3-23-98)*~~( )

11. Special Progress Reports. A special progress report may be submitted by ~~*field supervision personnel*~~ the supervising authority to request modification of a special condition of parole~~,~~ or advise of problems that have developed~~*, or to request interstate transfer of a case*~~. ~~*(3-23-98)*~~( )

12. Interstate Compact. The commission may grant parole and transfer supervision of an offender to another state under the Interstate Compact for Adult Offender Supervision outlined in Section 20-301, Idaho Code. ( )

a. An offender must be eligible for transfer of supervision to another state under the Interstate Compact and the receiving state must accept the transfer before the offender is released on parole. ( )

i. Any person under state parole who applies for a transfer of supervision to another state shall be required to post an application fee not to exceed one hundred dollars ($100) payable to Idaho Department of Correction, in addition to the commission's bond pursuant to Section 20-225A, Idaho Code . ( )

b. Any offender granted parole under the Interstate Compact may be required to post a bond prior to release or prior to such acceptance under the Interstate Compact. The amount of the bond set by the commission is five hundred dollars ($500.) ( )

i. A bond may be posted by the offender, the offender's family, or other interested party. The bond must be posted at the commission office. A cashier check or money order shall be the only acceptable means of posting bond. ( )

ii. Failure to successfully complete parole may be grounds for forfeiture of the bond. ( )

iv. Upon successful completion of parole, the amount of the bond may be returned to payee, less an amount for administrative costs as determined by the commission rule. ( )

v. A request must be made for return of the bond within one (1) year of discharge of the offense for which the offender was serving parole. ( )

251. -- 299. (RESERVED)

300. VICTIMS.

01. Program for Victims. The commission has established a program for victims of criminal offenses for which an ~~*inmate has been committed to the institution*~~ offender is currently incarcerated and is not serving a court-~~*retained*~~ ordered jurisdiction~~ *term*~~. Victims of non-adjudicated cases may be given courtesy treatment. This includes victims who may not be in the instant offense and those removed from the instant offense as a result of the plea bargain process. The victims may be located in the hearing officer report or from another victim coordinator or the prosecutor. The Victim Witness Coordinator will verify the victims with the prosecutor when not included with the instant offense. ~~*(5-3-03)*~~( )

a. The commission will establish a record for victims of ~~*inmates*~~ offenders who may be considered for parole, early discharge, commutation, or pardon. ~~*(3-23-98)*~~

~~*i.*~~ To establish a victim record, the commission must receive official written notice from the clerk of the sentencing court or the county prosecutor's office; the commission will ~~*not be responsible*~~ use all tools at its disposal and will exercise all due diligence to notify victims of their rights if this official notice has not been received. ~~*(3-23-98)*~~

~~*ii.*~~ If the commission has not received official notice of the victim, the commission or staff may be advised of the victim's identity directly by the victim, victim's family or other individual~~;~~. Commission staff will verify the name or names of the victim(s) with the county prosecutor and a record will be established. ~~*(3-23-98)*~~( )

b. The commission will notify legal victims of offenders of the instant offense of their right to be notified of parole, early discharge, and commutation~~*, and pardon*~~ hearings and the decision of these hearings; their right to submit written statements or information; and, their right to provide testimony. (3-23-98)

c. Notice of rights, hearings, decisions, early discharges, and parole releases will be sent to the victim of record to the last known address, and it is the responsibility of the victim to provide any change of address. ~~*(3-23-98)*~~( )

d. A victim may request ~~*that he*~~ not be notified or contacted. ~~*(3-30-01)*~~( )

e. Victims will receive notices of releases to parole and offenders who have absconded, but the commission is not responsible to advise of any other releases such as ~~*inmate*~~ offender transfers to other facilities, release by completion of the sentence, or escapes from custody as these are not under the authority of the commission. ~~*(3-23-98)*~~( )

02. Confidentiality of Victim's Address and Written Testimony. The victim's record maintained by the commission to include the address and written testimony or information will be maintained in a confidential manner and is not subject to disclosure to anyone for any reason. (3-23-98)

03. Testimony of Victim. (3-23-98)

a. The victim is invited to attend any and all hearings, except executive sessions, pertinent to the case and to provide testimony. ~~*(3-23-98)*~~( )

b. The executive director and the commission may ~~*choose*~~ consent to allow for the victim's testimony away from the actual hearing process. ~~*(3-23-98)*~~

~~*i.*~~ ~~*The victim may give information to*~~ Testimony may be given to the executive director or commissioner(s) at the commission office or other locations, or ~~*as determined and such information may be maintained in a confidential manner.*~~ ~~*(3-23-98)*~~

~~*ii.*~~ The victim may be allowed to testify before the commission during a hearing session, but at a time separate from the actual hearing with the ~~*inmate,*~~ offender. ~~*and s*~~Such testimony will be made a part of the record. ~~*(3-23-98)*~~( )

c. If the commission was not officially notified of the victim and does become aware of the victim's

desire to be heard following a hearing, any scheduled release to parole may be held in abeyance until a decision is made by the commission. (3-23-98)

i. The commission may review any written testimony by the victim and may elect to take no further action, or may schedule another hearing, or may void the release date and reconsider the parole grant. ~~(3-23-98)~~( )

ii. The executive director may schedule a hearing without the vote of the commission to allow for the victim's testimony. (3-23-98)

301. -- 349. (RESERVED)

350. PAROLE PLAN AND RELEASE PROCEDURES.

01. Parole Plan. The parole plan needs to provide ~~*for the positive re-entry of the inmate back*~~ a positive re-entry of the offender into the community. ~~(3-23-98)~~( )

a. The case ~~*worker*~~ manager will discuss the parole plan with the ~~*inmate*~~ offender~~*and may direct that the proposed parole plan be submitted on designated forms*~~. ~~(5-3-03)~~( )

b. The proposed parole plan must be available at the parole hearing interview and parole consideration hearing, ~~*either presented verbally or in writing if instructed by the case worker or hearing officer,*~~ and must ~~*address the following:*~~ ~~(5-3-03)~~

~~*i.*~~ ~~*A*~~ include a stable residence, ~~*must be developed which will provide for the most positive re-entry into the community if a release to parole is granted.*~~ ~~(3-23-98)~~

~~*ii.*~~ ~~*If the inmate is unable to work, information must be provided as to the*~~ employment, or a maintenance and care plan, ~~*which will be provided.*~~ ~~(3-23-98)~~

~~*iii.*~~ ~~*The particular needs of the offender must be addressed, such as*~~ and treatment for alcohol or drug problems, mental health problems, sex offender treatment, after care treatment, or any other treatment deemed necessary. This plan will be formulated using the validated risk and needs assessment that is used by the department of correction. The plan will be developed to manage and mitigate offender risk and will address the offender's needs. ~~(3-23-98)~~( )

c. Educational programs may be considered, but the offender must demonstrate how normal living, treatment, and transportation expenses, etc., will be paid for. ~~(3-30-01)~~( )

d. In cases where the commission does not approve the proposed parole plan and a tentative parole date is granted, the executive director can approve or deny a subsequent plan. (3-30-01)

e. All parole plans will be investigated by ~~*field services staff*~~ the supervising authority in the area in which the prospective parolee plans to reside, and necessary information will be submitted along with the investigation request. ~~*The Commission may waive such investigation in a special case.*~~ ~~(5-3-03)~~

~~*i.*~~ An Idaho ~~*parole*~~ plan ~~*may*~~ can take a minimum of six (6) weeks and an out of state plan up to three (3) months to submit ~~*the information*~~, investigate ~~*the plan*~~, and plan for release. ~~(3-23-98)~~( )

~~*ii.*~~ ~~*An out-of-state plan may take at least three (3) months to investigate and process the plan.*~~ ~~(3-23-98)~~

02. Interstate Compact Parole Plan. ~~*Any offender who is granted parole through the interstate compact may be required to post a bond prior to release from incarceration or prior to such acceptance under the compact.*~~ The commission may grant parole and transfer supervision of an offender to another state under the Interstate Compact for Adult Offender Supervision Act, as outlined in Subsection 250.12. ~~(3-30-01)~~( )

~~*a.* *The bond fee shall be used for the purpose of returning offenders who are charged with violating conditions of their parole.* *(3-30-01)*~~

~~*b.* *The amount of the bond is set by the Commission at five hundred dollars ($500).* *(3-30-01)*~~

~~*i.* *The bond shall be posted at the commission office by the offender, the offender's family, or other interested party. A cashier check or money order shall be the only acceptable means of posting bond.* *(3-30-01)*~~

~~*ii.* *The amount of the bond includes an indigent fee of sixty dollars ($60) to provide for offenders without financial means or support to post the bond.* *(3-30-01)*~~

~~*iii.* *The amount of the bond includes an administrative fee of thirty-five dollars ($35) to operate this program.* *(3-30-01)*~~

~~*c.* *Upon successful completion of parole, the amount of the bond will be returned, less the amount for administrative costs and the indigent fee.* *(3-30-01)*~~

~~*d.* *An application for bond fee exemption may be filed if an offender has no ability to post the bond.* *(3-30-01)*~~

~~*i.* *An application form may be obtained from the commission office.* *(3-30-01)*~~

~~*ii.* *The application shall be reviewed by the Commission and their decision will be final.* *(3-30-01)*~~

03. Tentative Parole Dates. All parole release dates granted by the commission are tentative. (3-23-98)

a. The parole plan must be approved and received at the commission office before the actual release date can be set to allow time for processing the release. ~~*An exception would be such case as the Commission waived the parole plan investigation.* *(5-3-03)*~~(____)

b. If the ~~*inmate*~~ offender should have disciplinary problems following the parole ~~*grant*~~ hearing, or the commission receives information that was not available at the time of the hearing, the commission may reconsider the decision, and the tentative parole date may be voided. ~~*(3-23-98)*~~(____)

~~*c.* *If the Commission receives information that was not available at the time of the parole grant hearing, the Commission may review the information or may schedule another hearing, and the tentative parole date may be voided.* *(3-23-98)*~~

04. Contract. Prior to any release to parole, the ~~*prospective parolee*~~ offender must sign a contract with the commission and must agree to all general and special conditions of parole. ~~*(3-23-98)*~~(____)

05. Reporting and Release Instructions. (3-23-98)

a. The parolee will be given reporting instructions ~~*who to report to, which*~~ that will include the address and the telephone number of the supervising office. (3-23-98)

b. It is the responsibility of the parolee to arrange for transportation upon release~~.~~ ~~*(3-23-98)*~~

~~*i.* *T*~~ and the parolee must go directly to the destination approved by the commission or executive director. ~~*(3-23-98)*~~

~~*ii.*~~ The parolee must request permission to deviate from direct travel to the approved location, and such request must be in writing to the commission office at least two (2) weeks in advance of the established release date. ~~*(3-23-98)*~~(____)

351. -- 399. (RESERVED)

400. PAROLE REVOCATION PROCESS.

01. Initiated. The parole revocation process is initiated by a written or verbal report describing the ~~*rules*~~ conditions of parole which are alleged to have been violated. The parolee is required to be present at the violation or revocation hearing, unless waived by the offender with the exception of an absentia revocation hearing as explained in Subsection 400.06.h. ~~*(3-23-98)*~~( )

~~***a.*** *Verbal information may be provided to the executive director.* *(3-23-98)*~~

~~***b.*** *A progress report may be submitted to the executive director.* *(3-23-98)*~~

~~***c.*** *A report of violation may be submitted to the executive director.* *(3-23-98)*~~

02. Warrants. A warrant may be issued for the offender's arrest. (3-23-98)

a. A supervising agency may issue an investigative warrant ~~*which may be*~~ referred to as an agent's warrant. The agent's warrant authorizes local law enforcement to transport the parolee to the appropriate jurisdiction to be housed pending an appearance before the commission. ~~*(3-23-98)*~~( )

b. A commission warrant may be ~~*issued*~~ signed by the executive director or by a member or members of the commission~~*er, and i*~~. Issuance of this warrant suspends the offender's parole until a determination has been made on the merits of the case. ~~*(3-23-98)*~~( )

~~*i. If the location of the parolee is known, the warrant may be served on the offender or placed as a detainer.* *(3-23-98)*~~

i~~*i*~~. If the location of the offender is unknown, the warrant will be entered into NCIC, ~~*or*~~ I-HOT, or other law enforcement data base and will designate which states the commission will extradite the offender from once arrested. At any time the executive director or designee may change the area of extradition. ~~*(3-23-98)*~~( )

ii~~*i*~~. If ~~*another state is holding the*~~ an offender is being held in custody on new charges ~~*in their state*~~, the warrant may be placed as a detainer only and written notice of this action will be submitted to the holding facility; if the detainer is officially served on the offender without notice of this action to the commission, the commission will not be held responsible for the time limits prescribed by law for service of charges. ~~*(3-23-98)*~~( )

i~~*v*~~ii. If the offender is arrested in a state other than Idaho and refuses extradition to Idaho, it may be necessary to request a governor's warrant; during the time period in which the subject refuses to waive extradition, time incarcerated will not be credited toward the sentence. (3-23-98)

03. Due Process. Every parolee arrested on a commission warrant for alleged violation(s) of parole is entitled to pertinent due process~~.~~ ~~*(3-23-98)*~~

~~***a.*** *The alleged parole violator is entitled to reasonable*~~ including notice of the date, time and location of any and all hearings involved in the revocation process,~~.~~ ~~*(3-23-98)*~~

~~***b.*** *The alleged parole violator has*~~ the right to appear at a hearing and address the allegations~~.~~, and to ~~*(3-23-98)*~~

~~***c.*** *The alleged parole violator may*~~ confront and cross-examine person(s) who have given adverse information on which the charges have been based. ~~*(3-23-98)*~~( )

04. Intermediate Sanctions on Technical Violations and Absconding Supervision. If the violation does not result from a conviction of a new felony or violent misdemeanor, then the parolee will be afforded the opportunity to serve an intermediate sanction rather than proceeding through the formal parole violation process. ( )

a. The commission will cause the parolee to be confined for a period of up to ninety (90) days effective immediately upon entering the decision on the initial violation. ( )

b. For a second parole violation, the commission will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon entering the decision. ( )

c. For a third or subsequent parole violation, a dispositional hearing will be convened during a regular session of the commission to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. ( )

d. If the member or members or hearing officer, having heard the matter, should conclude that the allegations of violation of parole by absconding supervision have been proven by a preponderance of the evidence, the commission will cause the parolee to be confined for a period of up to one hundred eighty (180) days effective immediately upon entering the decision. ( )

e. For a second or subsequent parole violation by absconding supervision, a dispositional hearing during a regular session of the commission will be convened to execute an order of parole revocation and determine the period of time the parole violator will be returned to state custody. ( )

f. During any period of confinement on an intermediate sanction, the commission may reduce the period of confinement by up to thirty (30) days if the commission finds that there has been no instance of misconduct during the period of time the parolee is confined. ( )

g. Upon successful completion of a term of intermediate sanctioning under this section, the parolee will be released to parole supervision. ( )

h. The commission will establish criteria to determine the necessary length of confinement up to the allowed periods of time. The criteria may include the parolee's supervision history, stability in the community, severity and type of violation(s), risk and needs assessment score, and the violations report by the parole officer. ( )

i. When the member or members or hearing officer, having heard the matter, conclude that the allegations of violation of the conditions of parole have not been proven by a preponderance of evidence, or those that have been proven by a preponderance of the evidence are not sufficient cause for the revocation of parole, then the parolee will be reinstated on parole on the same or modified conditions of parole. The commission will consider alternatives to revocation for offenders whose violations do not require reincarceration. ( )

0~~4~~5. **Witnesses**. The alleged parole violator or the accusing parole officer may present witnesses in support of the claims of the allegations or in defense of the charges. (3-23-98)

a. The commission has no subpoena power to compel any witness to attend a hearing. ~~*(3-23-98)*~~

~~***b.***~~ The alleged parole violator may make a timely written request to the commission office for certain adverse witnesses to be available for cross-examination, and such request must include the name, address, telephone number, and relationship to the case; the hearing officer will make reasonable efforts to request their participation. ~~*(3-23-98)*~~( )

~~***c***~~**b.** If it is determined by the hearing officer or the executive director that the identification of an informant or the personal appearance of a witness would subject such person to risk or harm, confrontation or cross-examination will not be allowed and the record will reflect such determination. (3-23-98)

~~***d.*** *The personal appearance of a witness may not be feasible; the hearing officer may determine if the witness should be interviewed by telephone and whether the information specifically addresses the allegations.* *(3-23-98)*~~

~~***e***~~**c.** It is the alleged parole violator's responsibility and the accusing parole officer's responsibility to notify their witnesses of the date, time, and location of any and all hearings or change of hearings. ~~*(3-23-98)*~~( )

0~~5~~6. **Attorney**. The alleged parole violator may utilize the services of an attorney at any hearing conducted during the revocation process. (3-23-98)

a. An attorney will be paid at the alleged parole violator's expense unless it is determined by a hearing officer for the commission, the executive director, or the commission that there is a colorable claim that the alleged violation(s) did not occur, that the alleged parole violator does not understand the proceedings, or is otherwise incapable of representing himself. (3-23-98)

b. It is the alleged parole violator's responsibility to notify his attorney of the date, time, and location of any and all hearings or change of hearings. The alleged parole violator's attorney may make a request of the commission office of any hearings ~~(3-23-98)~~

~~**c.** *It is the alleged parole violator's responsibility to*~~ provide the attorney with any and all reports and documents; in addition, the subject's attorney may also obtain copies by making a request to the commission office. ~~(3-23-98)~~( )

0~~6~~7. **Hearings**. The alleged parole violator will be advised of any and all hearing dates and locations within a reasonable time frame. ~~(3-23-98)~~

~~**a.**~~ The hearing officer or executive director will determine the location of all hearings. ~~(3-23-98)~~( )

~~**b**~~**a.** The subject may request continuance or waiver of any hearing which is subject to the final determination of the hearing officer, executive director, or the commission. (3-23-98)

~~**c**~~**b.** The type of charges addressed in the allegations will determine the kinds of hearings available to the alleged parole violator. (3-23-98)

i. Non-technical Violations. If the alleged parole violator is charged with a conviction for a violent misdemeanor, or new felony criminal conviction, or is charged with absconding from supervision, the subject is not entitled to a preliminary or on-site hearing, ~~*and*~~ but is entitled to a hearing to determine guilt or innocence within a reasonable time following service of the charges. ~~(3-23-98)~~( )

ii. Technical Violations. If the alleged parole violator is charged with a violation of the ~~*rules*~~ conditions of parole other than a violent misdemeanor, or new felony criminal conviction, or absconding from supervision, the subject is entitled to a preliminary hearing ~~*and*~~ conducted by the supervising authority within a reasonable amount of time. ~~*a*~~An on-site hearing~~*, and is entitled to a*~~ will be conducted by a hearing officer. The hearing is to determine guilt or innocence within thirty (30) days from the date the accused was served with the charges of the violation. ~~(3-23-98)~~( )

~~**d**~~**c.** Preliminary Hearing. A technical parole violator is entitled to a preliminary hearing to establish whether or not there is probable cause to believe the violations may have occurred, and such hearing will be conducted by staff of ~~*field and community services*~~ the supervising authority or as otherwise directed by the executive director. The alleged parole violator is entitled to a verbal or written decision within a reasonable time following the preliminary hearing. ~~(3-23-98)~~( )

~~**e**~~**d.** On-Site Hearing. A technical parole violator is entitled to an on-site hearing conducted by a hearing officer. ~~(3-23-98)~~

~~*i.*~~ The on-site hearing is conducted reasonably near the site of the alleged parole violation(s). The executive director or hearing officer will determine where the hearing will be conducted. ~~(5-3-03)~~

~~*ii.*~~ In situations where the violation(s) occurred outside the state of Idaho, the executive director or hearing officer will determine the location of the hearing. Based on Interstate Compact rules, an on-site hearing may not be possible if charged and arrested in a state other than Idaho. ~~(3-23-98)~~( )

***f*e.** Violation Hearing. In most cases, a hearing officer will conduct a fact-finding or violation hearing and will make a finding on each allegation as to the guilt or innocence and may dismiss some or all allegations. If a hearing officer is unavailable, the executive director will appoint someone to conduct the hearing. The offender is entitled to a verbal or written decision within twenty (20) days of the violation hearing. *(3-23-98)*( )

***g*f.** Revocation. Pursuant to a violation hearing or waiver of such hearing and a finding of guilt was made on one (1) or more of the violations, the commission will consider whether or not parole will be revoked. (5-3-03)

i. The commission has full discretion in granting reinstatement on parole or revocation of parole. A *commission* hearing with the offender may be conducted or the decision may be made along with deliberation on an Absentia Parole Revocation. (see Subsections 400.06.h.i. and 400.06.h.ii.) *(3-30-01)*

ii. The Commission will consider whether the parole will be reinstated or revoked*.* *(3-23-98)*

iii. *The Commission* and will *consider parole and* state the reasoning if parole is *not granted* revoked. *(3-23-98)*( )

***h*g.** Absentia Hearing. The commission can revoke parole without the subject's appearance if the subject has signed the proper commission form waiving the right to appear before the commission. The commission will determine if parole will be considered once the revocation decision has been made. (3-23-98)

i. If new criminal charges result in a new commitment and incarceration, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)

ii. If the subject has absconded supervision and is reincarcerated in another state without a new conviction, the subject can admit guilt and waive an appearance at a violation or revocation hearing. (3-23-98)

0*7*8. Miscellaneous Revocation Information. (3-23-98)

a. The executive director will determine who will conduct all hearings involved in the revocation process. (3-23-98)

b. The commission, through the executive director shall designate the county, state, or other facility where the alleged parole violator shall be held. The commission's order shall be sufficient authority by law to direct any county sheriff or the board of correction to hold an alleged parole violator in custody until such time as the commission directs his removal or transfer. (3-23-98)

c. The alleged parole violator can request a continuance of any hearing. *(3-23-98)*

i. The hearing officer, executive director, or the commission will determine if the continuance will be granted. *(3-23-98)*

ii. If the alleged parole violator requests a continuance of any hearing, *he, thereby, waives* said request will constitute a waiver of any and all time limits involved. *(3-23-98)*( )

0*8*9. Inability to Assist in Defense. (3-23-98)

a. Specific time limits pertinent to the case may be waived. (3-23-98)

b. At the hearing officer or executive director's discretion, an attorney may be appointed for the offender at commission expense. *(3-23-98)*( )

c. A psychological evaluation may be requested by the commission and mental health treatment may be deemed appropriate. *(3-23-98)*( )

d. A status update of the case will be made at regular intervals, and the executive director will

determine how the case will proceed. (3-23-98)

10~~9~~. Findings/Decisions. (3-23-98)

a. At any time following arrest on a commission warrant, the executive director or the commission will decide if the parolee will be released to continue parole. (5-3-03)

b. If it is determined at the preliminary hearing that there is no probable cause to support the charges, the parolee will be released to continue parole. (3-23-98)

c. After a violation hearing, the hearing officer will prepare a report of findings~~.~~ ~~(3-23-98)~~

~~*i.*~~ ~~*The report will be a*~~ summar~~y~~izing ~~*of*~~ the violation hearing, to include testimony, and will make specific findings for each allegation. ~~(3-23-98)~~(____)

i~~*i*~~. The hearing officer may make a finding of guilt but may recommend to the executive director that the offender be reinstated on parole without further proceedings. (3-23-98)

ii~~*i*~~. The offender is entitled to receive a copy of all reports of findings of hearings. (3-23-98)

~~*iv.*~~ ~~*The offender is entitled to a verbal or written decision within twenty (20) days of the hearing.*~~ ~~*(3-23-98)*~~

1~~0~~1. Forfeiture of Time on Parole. If parole is revoked, the time during which the offender was on parole from the parole release date to the arrest date on an ~~*investigative*~~ agent's warrant and/or commission warrant may be forfeited, in whole or in part, and may not be deemed a part of the sentence for which the offender was committed. ~~(4-5-00)~~(____)

a. The time the offender is incarcerated on an ~~*investigative*~~ agent's warrant and a commission warrant will be credited toward the sentence. ~~(3-23-98)~~(____)

b. If the offender was incarcerated at any time during the parole period and such incarceration was on an agent's warrant and/or commission warrant, this time will be credited toward the sentence; this includes a reinstatement case. (3-23-98)

c. The offender will not receive credit for incarceration time if the incarceration was for a new crime and the commission and parole officer did not initiate violation proceedings. (3-23-98)

d. The offender must provide the hearing officer or the executive director with dates of incarceration and the location of the incarceration. (3-23-98)

401. -- 449. (RESERVED)

450. COMMUTATION.
Commutation is a process whereby clemency may be considered and granted to modify a sentence imposed by the sentencing jurisdiction. (3-30-01)

01. Petition. A petition must be submitted to initiate the process. (3-30-01)

a. The only acceptable form is the one provided by the commission, and it must be signed by the petitioner. (3-23-98)

b. The petition must be completed correctly per instructions on the form or it may be returned. (3-23-98)

c. The petition must contain the reason a modification of sentence is requested and the precise modification which is requested, such as the following. (3-23-98)

i. Change a consecutive sentence to concurrent. (3-23-98)

ii. Reduce the maximum length of sentence. (3-23-98)

iii. Reduce the minimum fixed term of a sentence. (3-30-01)

iv. Change a fixed sentence to indeterminate. (3-23-98)

v. Change a sentence in any other manner not described. (3-23-98)

d. The commission may consider but one (1) application from any one (1) person in any twelve (12) month period. (3-23-98)

e. Petitions may be considered at any time by the commission, but are usually scheduled for consideration for the quarterly sessions of January, April, July, and October. (3-23-98)

f. Petitions must be received ~~*no later than the first day of*~~ the month ~~*of a*~~ prior to the next designated quarterly hearing session for which the offender is applying. ~~*(3-23-98)*~~( )

g. Review or deliberation on the petition by the commission will be conducted in executive session. (3-23-98)

h. Any petition may be continued for additional information or for further consideration. (3-23-98)

i. The petitioner will be sent written notice of the decision. (3-23-98)

j. The petition is limited to no more than four (4) pages; the petition may be returned before submission to the commission if the document exceeds this number. (3-23-98)

k. The petition must be readable or it may be returned. (5-3-03)

l. A parole violator is not eligible to file a petition until the violation has been heard and a decision made by the violation hearing officer. ( )

02. Hearing. The scheduling of a hearing is at the complete discretion of the commission; if a commutation hearing is scheduled, the commission will determine the date of the hearing. (3-23-98)

a. Notice of a commutation hearing will be published in a newspaper of general circulation at Boise, Idaho at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)

b. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was committed. (3-23-98)

c. All rules of procedure governing hearings will apply to a commutation hearing. (3-23-98)

d. The decision and supporting documents regarding a commutation will be filed with the secretary of state. (3-30-01)

i. All written material considered in the decision process of a commutation will be a matter of public record with the exception of the presentence investigation report, ~~*and*~~ victim information, or other documents determined by the executive director or commissioners as confidential. ~~*(3-30-01)*~~( )

ii. Dissenting votes of the commissioners voting will be a matter of public record. (3-23-98)

03. Approving and Granting. Only rarely will circumstances be extraordinary enough to approve a petition for a commutation hearing or to grant a commutation. (3-23-98)

a. The granting of a commutation hearing shall not be interpreted as intent to commute a sentence. (3-23-98)

b. Habilitative progress alone will not be regarded as sufficient to grant a commutation hearing or to commute a sentence. (3-23-98)

04. Authority to Grant. The commission has full and final authority to grant commutations except with respect to sentences for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, and manufacture or delivery of a controlled substance. (3-23-98)

a. In the cases of offenses listed in this section, the commission's decision shall constitute a recommendation only to the governor. (3-23-98)

b. Following such hearing, the commission will provide all information that was considered and a copy of the summary minutes to the governor. (3-23-98)

c. No commutation for the offenses listed in this section will be effective until presented to and approved by the governor, and any commutation recommendations not so approved within thirty (30) days of the ~~*commutation hearing*~~ commission's recommendation shall be deemed denied. ~~*(3-23-98)*~~( )

05. Death Sentence. (3-23-98)

a. An individual file of each ~~*inmate*~~ offender under sentence of death may be maintained in the commission office. ~~*(5-3-03)*~~( )

b. At any time, the commission may review a file, information, or interview an ~~*inmate*~~ offender without activating the commutation process. ~~*(3-23-98)*~~( )

c. Commutation consideration must be initiated by the petitioner or his legal counsel. (3-30-01)

i. The petition must contain the signature of the petitioner, unless the petitioner is unable to sign the petition. In this case, the executive director will determine if it is the desire of the person to submit a petition. ~~*(3-23-98)*~~( )

ii. Legal counsel must provide verification that he has been retained by the petitioner or his family to prepare and submit the petition. (3-30-01)

d. The commission may elect to receive and consider a petition for a death penalty modification at any time. (3-23-98)

451. -- 499. (RESERVED)

500. SELF-INITIATED PROGRESS REPORT.
An ~~*inmate*~~ offender may appeal the last parole decision of the commission. ~~*(3-23-98)*~~( )

01. Petition. An ~~*inmate*~~ offender making a request for reconsideration of parole denial must initiate the process by submitting an application. ~~*(3-23-98)*~~( )

a. The only acceptable form is the one provided by the commission, and it must be signed by the petitioner. (3-23-98)

i. The petition must be the original petition. ( )

ii. The Case Manager is to include with the petition, once signed by the offender and the Case Manger, the disciplinary history, classes history, and the assessments. ( )

b. The petition must be completed correctly per instructions on the form or it may be returned. (3-23-98)

c. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. (3-23-98)

d. A petition may be filed by any offender who is currently incarcerated. ( )

***d*e.** Following the initial submission, ~~T~~the commission may consider but one (1) application from any one (1) person in any twelve (12) month period. ~~(3-23-98)~~( )

i. A petition may be submitted six (6) months after a qualified hearing. A qualified hearing includes: ( )

(a) Regular parole hearings; ( )

(b) Parole revocation hearings; ( )

(c) Hearing officer reviews; and ( )

(d) SIPR hearings. ( )

ii. A petition may be submitted once every twelve (12) months if a hearing is not granted. ( )

***e*f.** Petitions may be considered at any time by the commission. (3-30-01)

***f*g.** Petitions must be received no later than the first day of the month prior to the next hearing session. ~~(3-30-01)~~( )

~~*g.* *The petition may be submitted no sooner than six (6) months following the last hearing.* (3-23-98)~~

h. Review or deliberation on the petition by the commission will be conducted in executive session. (3-23-98)

i. Any petition may be continued for additional information or for further consideration. (3-23-98)

j. The petitioner will be sent written notice of the decision. (3-23-98)

k. The petition is limited to no more than four (4) pages; the petition may be returned before submission to the commission if the document exceeds this number. (3-23-98)

l. The petition must be readable or it may be returned. (5-3-03)

02. **Hearing**. The scheduling of a hearing is at the complete discretion of the commission. (3-23-98)

a. If a special hearing is scheduled, the commission will determine the date of the hearing. (3-23-98)

b. If a special hearing is scheduled, the previous decision of the commission may be considered null and void. (3-23-98)

03. **Amended Decision**. The commission may elect to amend any decision without conducting another hearing. (3-23-98)

501. -- 549. **(RESERVED)**

550. PARDON.
A pardon may be considered for a person having been convicted of any misdemeanor or felony crime. (3-23-98)

01. General. An application for a pardon may not be considered until a period of time has elapsed since the applicant's discharge from custody as defined below. (3-23-98)

a. Applications for pardon for non-violent and non-sex crimes may be submitted for consideration no sooner than three (3) years after completion of the sentence. (3-23-98)

b. Applications for pardon for violent or sex crimes or other crimes against a person may be submitted five (5) years after completion of the sentence. (3-23-98)

02. Application. A pardon application can be obtained from the commission office or on the commission website. ~~(3-23-98)~~( )

a. The application must be completed and returned to the commission office. (3-23-98)

i. The completed application must include the reasons why the pardon is requested. (3-23-98)

ii. The applicant may attach letters of recommendation or other documents to support the request. (3-23-98)

iii. The applicant must include copies of all court judgment and conviction documents for each crime a pardon is requested for. ( )

iv. A pardon may be requested only once during a twelve-month (12) period unless otherwise stated by the commission. ( )

b. Following receipt of the completed application, a request for an investigation will be made of correctional field personnel in the area in which the applicant resides, and the report shall include, but shall not be limited to the following: (3-23-98)

i. A criminal record check of the applicant. (3-23-98)

ii. The applicant's employment history since completion of sentence. (3-23-98)

iii. The applicant's status as a good citizen. (3-23-98)

iv. An interview with the applicant should be conducted and a summary of the interview provided. (3-23-98)

v. Any additional information as deemed necessary or appropriate. (3-23-98)

c. If the applicant is residing in a jurisdiction which refuses to conduct an investigation of the case, the applicant may be required to come to Idaho for an interview with a parole officer or hearing officer, or the interview may be conducted by electronic means. A normal investigation will then be completed. ~~(5-3-03)~~( )

03. Report. Pursuant to the receipt of the completed report, a review ~~*will*~~ may be conducted at the next scheduled hearing session of the commission. Once the report is received, staff may determine if additional information is needed. ~~(3-23-98)~~( )

a. The commission will conduct such review in executive session. (3-23-98)

b. The commission will determine whether a hearing will be granted and the applicant will be advised of the decision. (3-23-98)

c. Any application may be continued for further consideration or additional information. (3-23-98)

04. Hearing. The scheduling of a hearing is at the complete discretion of the commission ~~*or the*~~

~~executive director;~~. ~~i~~If a pardon hearing is scheduled, the commission will determine the date of the hearing. ~~(3-23-98)~~( )

a. Notice of a pardon hearing shall be published in a newspaper of general circulation at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)

b. A copy of the publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (3-23-98)

c. Written notice of the hearing date, time, and location will be sent to the applicant at the address given on the application or as otherwise requested. (3-23-98)

i. The applicant's appearance at the hearing is not mandatory but is encouraged. (3-23-98)

ii. The commission may continue the hearing to a later date in order for the applicant to make a personal appearance and such continuance will not require additional publication of the hearing. (3-23-98)

d. All rules of procedure governing hearings will apply at a pardon hearing. (3-23-98)

e. The decision and supporting documents regarding the decision to grant or deny a pardon will be filed with the secretary of state. (3-23-98)

i. Dissenting votes of the commissioners voting are submitted to the office of the secretary of state and become a matter of public record. (3-23-98)

ii. All written material considered in the decision process with the exception of the presentence investigation report and victim information will be submitted to the office of the secretary of state and will be a matter of public record. (3-23-98)

f. The applicant will be given written notice of the decision and such notice will be sent to the last known address. (3-23-98)

05. Authority to Grant. The commission has full and final authority to grant pardons, except with respect to sentences for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, and manufacture or delivery of controlled substances. (3-23-98)

a. In the cases listed in this section, the commission's decision to grant a pardon shall constitute a recommendation only to the governor. (3-23-98)

b. Following such hearing, the commission will provide all information that was considered and a copy of the summary minutes to the governor. (3-23-98)

c. No pardon for the offenses listed in this section will be effective until presented to and approved by the governor, and any pardon recommendations not so approved within thirty (30) days of the pardon hearing shall be deemed denied. (3-23-98)

551. RESTORATION OF FIREARMS RIGHTS UNDER SECTION 18-310, IDAHO CODE.

01. General. An application for restoration of the civil right to ship, transport, possess, or receive a firearm may be considered upon final discharge under Section 18-310(3), Idaho Code. This is not a pardon for the conviction of a crime. ( )

02. Application. An application may not be made until five (5) years after the date of final discharge. ( )

a. An application may be obtained from the commission office or on the commission website. ( )

b. The application must be the original and returned to the commission office. ( )

i. The application must request the restoration of the right to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. ( )

ii. The application must be in writing and legible. ( )

iii. All court conviction and dismissal documents must accompany the application. ( )

iv. An application may be submitted once every twelve (12) months, or at the commission's discretion. ( )

v. The petition must state the reason for the request. ( )

vi. Review or deliberation on the petition will be conducted in executive session. ( )

03. Hearing. The scheduling of a hearing is at the complete discretion of the commission or the executive director. ( )

a. If a hearing is scheduled, the commission will determine the date of the hearing. ( )

b. Any petition may be continued for additional information. ( )

04. Authority to Grant. The commission has the full and final authority and discretion to grant restoration of civil rights to ship, transport, possess, or receive a firearm under Section 18-310, Idaho Code. ( )

05. Exceptions. See the exceptions listed in Section 18-310, Idaho Code. ( )

a. Persons convicted of the felonies enumerated in Sections 18-310(2)(s) and (t), Idaho Code, for any degree of murder or voluntary manslaughter, shall not be restored the right to ship, transport, possess, or receive a firearm regardless of the date of their conviction if the conviction was the result of an offense committed by the use of a firearm. ( )

b. The commission shall not restore the right to ship, transport, possess, or receive a firearm to any person convicted of murder in the first degree (Section 18-4003, Idaho Code), murder in the second degree (Section 18-4003, Idaho Code), or any felony enumerated in Sections 18-310(2)(a) through (jj), Idaho Code, upon which the sentence was enhanced for the use of a firearm during the commission of said felony. ( )

552. STAFF PROGRESS REPORT.
A staff member making a request for parole must initiate the process by submitting an application. ( )

01. Acceptable Form. The only acceptable form is the one provided by the commission, and it must be signed by the offender and staff member. ( )

a. The petition must be the original petition. ( )

b. The petition must be completed correctly per instructions on the form or it may be returned. ( )

c. The petition must state the reason reconsideration is requested and the circumstances that have changed since the last hearing. ( )

d. The application must include progress reports, C-notes, and other documents to support the request. ( )

02. Time of Consideration. Petitions may be considered at any time by the commission. ( )

a. Petitions must be received no later than the first day of the month. ( )

b. Review or deliberation on the petition by the commission will be conducted in executive session. ( )

c. The staff member and offender will be sent written notice of the decision. ( )

d. The petition is limited to no more than four (4) pages. The petition may be returned before submission to the commission if the document exceeds this number. ( )

e. The petition must be legible or it may be returned. ( )

03. Case Manager Guidelines. ( )

a. The staff member will identify an offender using the following criteria: ( )

i. The offender must not have any assaults on staff members in the last twenty-four (24) months. ( )

ii. The offender must not have been charged with any new crimes during his current incarceration. ( )

iii. The offender must have been medication compliant for the last six (6) months. ( )

iv. The offender must not have introduced any contraband in the last eighteen (18) months. ( )

v. The offender must have a written verified parole plan. ( )

b. Timeline for consideration of petition for parole. The following timeline is for determining the eligibility of the offender: ( )

i. The staff member identifies the offender twenty-four (24) to thirty-one (31) months prior to his full term release date. ( )

ii. The parole hearing officer is notified of the offender to be interviewed when offender is twenty (20) months from full term date. ( )

iii. When the offender has eighteen (18) months remaining on his sentence, the offender will be interviewed by a parole hearing officer. ( )

iv. The offender will be scheduled for a hearing before the commission when there are fifteen (15) months until his full term release date. ( )

v. The commission will grant a release date twelve (12) months prior to offender's full term date. ( )

04. Exceptions to the Staff Progress Report. An offender will not be seen by the commission if the offender has the following on his record: ( )

a. Class A DOR in the last six (6) months; ( )

b. Sexual DOR's in the last six (6) months including physical touching; ( )

c. Is in segregation status; ( )

d. Offender has refused to participate in the hearing/interview process; ( )

e. Offender has refused programming and has a tentative parole date; ( )

f. The offender has a parole eligibility date; ( )

g. The offender is a parole violator; or ( )

h. The offender has a violent crime, including injury to a person, has a sexual crime involving statutory rape or a property offense that was pled down, but which had a violent component. ( )

05. **Hearing**. The scheduling of a hearing is at the complete discretion of the commission. If a special hearing is scheduled, the commission will determine the date of the hearing. ( )

06. **Amended Decision**. The commission may elect to amend any decision without conducting another hearing. ( )

55~~1~~3. -- 599. (RESERVED)

600. REMISSION OF FINE OR PENALTY.

01. **Request**. An application for remission of fine or penalty must be made to the commission. (3-23-98)

a. The application must be in writing. (3-23-98)

b. The application must outline the reasons action is requested to remit such fine or penalty. (3-23-98)

c. The ~~*Commission will obtain*~~ applicant must submit a certified copy of the fine or penalty from the jurisdiction which assessed such penalty. ~~*(3-23-98)*~~( )

02. **Review**. The commission will review the request to remit a fine or penalty. (3-23-98)

a. The commission will usually review such application on a month designated as a quarterly session, but may make such review during any session. The review will be conducted by the full commission.~~*(3-23-98)*~~( )

b. The commission will conduct such review in executive session. (3-23-98)

c. Any application may be continued for further consideration or additional information. (3-23-98)

d. The commission will determine whether a hearing will be granted and the applicant will be advised of the decision in writing. (3-23-98)

03. **Hearing**. The scheduling of a hearing is at the complete discretion of the commission. (3-23-98)

a. If a hearing is scheduled, the commission will determine the date of the hearing. (3-23-98)

b. If a hearing is scheduled, notice of the hearing will be published in a newspaper of general circulation at Boise, Idaho, at least once a week for four (4) consecutive weeks immediately prior to the hearing. (3-23-98)

c. A copy of the notice of publication will be mailed to the prosecuting attorney of the county from which the petitioner was sentenced. (3-23-98)

d. All rules of procedure governing hearings will apply to such scheduled hearing. (3-23-98)

e. The decision and supporting documents regarding the remission will be filed with the ~~*secretary of state*~~ clerk of the court where said fine or penalty or forfeiture was assessed. This will constitute a satisfaction of the judgment. ~~*(3-23-98)*~~( )

i. All written material considered in the decision process will be a matter of public record. (3-23-98)

ii. Dissenting votes of the commissioners voting will be a matter of public record. (3-23-98)

f. Written notice of the hearing date, time, and location will be sent to the applicant at the last known address. (3-23-98)

i. The applicant's appearance at the hearing is not mandatory; however, appearance may be required and the applicant will be notified. (3-23-98)

ii. The commission may continue the hearing to a later date for any reason and such continuance will not require notice to be published again. (3-23-98)

04. Satisfaction of Judgment. If the commission determines that such fine or penalty is to be remitted, an official document of such action will be submitted to the clerk of the court where said fine or penalty was assessed, and this will constitute a satisfaction of the judgment. (3-23-98)

601. -- ~~9~~799. (RESERVED)

800. FOREIGN NATIONAL TREATY.

801. -- 999. (RESERVED)

IDAPA 54 - OFFICE OF THE STATE TREASURER

54.03.01 - IDAHO UNCLAIMED PROPERTY ADMINISTRATIVE RULES

DOCKET NO. 54-0301-1401

NOTICE OF RULEMAKING - RESCISSION OF TEMPORARY RULE AND VACATION OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Sections 67-5221 and 67-5226, Idaho Code, notice is hereby given that this agency has vacated the proposed rulemaking previously initiated under this docket and is rescinding the temporary rule previously adopted under this docket. The action is authorized pursuant to Section 14-539, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for the rescission of the temporary rule and the vacation of the proposed rulemaking:

The temporary and proposed rules were promulgated concurrently under this docket number in the August 6, 2014 Idaho Administrative Bulletin, **Vol. 14-8, pages 149 through 151**. This Notice of Rulemaking hereby rescinds the temporary rules, effective June 15, 2014, and vacates the proposed rulemaking.

The temporary and proposed rulemaking was done in order to define when an insurer has knowledge that an individual has died and when the period for determining if benefits are unclaimed begins to run.

Therefore, this Notice of Rulemaking rescinds the temporary rule, effective June 15, 2014, and vacates the proposed rulemaking to define when an insurer has knowledge that an individual has died and when the period for determining if benefits are unclaimed begins to run to be effective on June 15, 2014.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this vacation of proposed rulemaking and rescission of temporary rule, contact Audra Fink, Program Specialist, at (208) 332-2978.

DATED this 2nd day of September, 2014.

Ron Crane
Idaho State Treasurer
Office of the State Treasurer
700 W. Jefferson Street
Suite 126
P. O. Box 83720
Boise, ID 83720-0091
Phone: (208) 332-2950
Fax: (208) 332-2970

IDAPA 55 - DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION

55.01.04 - RULES GOVERNING IDAHO QUALITY PROGRAM STANDARDS INCENTIVE GRANTS AND AGRICULTURAL EDUCATION PROGRAM START-UP GRANTS

DOCKET NO. 55-0104-1401 (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 33-105, 33-105, 33-2203, and 33-1629, 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 15, 2014.

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

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

In 2014 the Legislature enacted Section 33-1629, Idaho Code, Agricultural and Natural Resource Education Programs establishing the Idaho Quality Program Standards Incentive Grants, and Agricultural Education Program Start-Up Grants and requiring the Board adopt quality program standards and promulgate rules to administer the two grant programs. The proposed rule sets out the eligibility requirements, application process, and selection process for the two grant programs.

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

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

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 4, 2014 Idaho Administrative Bulletin, **Vol. 14-6, page 102**.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Tracie Bent, Chief Planning and Policy Officer, at (208)332-1582 or **tracie.bent@osbe.idaho.gov**.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2014.

DATED this 29th Day of August, 2014

Tracie Bent
Chief Planning and Policy Officer
Office of the State Board of Education
650 W. State Street
P.O. Box 83720
Boise, ID 83720-0037
Tel: (208) 332-1582 / Fax: (208) 334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 55-0104-1401

IDAPA 55
TITLE 01
CHAPTER 04

55.01.04 - RULES GOVERNING IDAHO QUALITY PROGRAM STANDARDS INCENTIVE GRANTS AND AGRICULTURAL EDUCATION PROGRAM START-UP GRANTS

000. LEGAL AUTHORITY.
This chapter is adopted under authority of Section 33-1629, Idaho Code. ( )

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 55.01.04, "Rules Governing Idaho Quality Program Standards Incentive Grants and Agricultural Education Program Start-Up Grants." ( )

02. Scope. These rules shall govern the standards and procedures for application to the Idaho Quality Program Standards Incentive Grants and the Agricultural Education Program Start-up Grants as administered by the Idaho Division of Professional-Technical Education. ( )

002. WRITTEN INTERPRETATIONS.
In accordance with Section 67-5201(19)(b)(iv), Idaho Code, any written interpretations of the rule of this chapter will be made available at the Idaho Division of Professional-Technical Education. ( )

003. ADMINISTRATIVE APPEALS.
All appeals under these rules shall be conducted pursuant to the procedures outlined herein. ( )

004. INCORPORATION BY REFERENCE.
There are no documents that have been incorporated by reference into these rules. ( )

005. OFFICE INFORMATION.

01. Office Hours. The offices of the Division of Professional-Technical Education are open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. ( )

02. Street Address. The offices of the Division are located at 650 W. State Street, Boise, Idaho. ( )

03. Mailing Address. The mailing address of the Division is P.O. Box 83720, Boise, ID 83720-0095. ( )

04. Telephone Number. The telephone number of the Division is (208) 334-3216. ( )

05. Facsimile. The facsimile number of the Division is (208) 334-2365. ( )

06. Website. The website of the Division is http://pte.idaho.gov/. ( )

006. PUBLIC RECORDS ACT COMPLIANCE.
These rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ( )

007. -- 009. (RESERVED)

010. DEFINITIONS AND ABBREVIATIONS.

01. **Administrator**. The administrator for the Division of Professional-Technical Education. ( )

02. **Agricultural and Natural Resources Program**. A program approved by the Division of Professional-Technical Education that is a standards-based curriculum in agriculture, food and natural resources systems delivered through an integrated model that incorporates classroom and laboratory instruction, experiential learning and student leadership and personal development. ( )

03. **Board**. The State Board for Professional-Technical Education. ( )

04. **Division**. The Division of Professional-Technical Education. ( )

05. **FTE**. Full Time Equivalent employee. ( )

06. **School District or District**. A public school district or a charter school authorized by the Public Charter School Commission or school district. ( )

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

100. **INCENTIVE GRANT.**

01. **Eligibility Requirements**. Eligible applicants must meet quality program and instructor requirements as approved by the board. Applicants may re-apply each year regardless of whether they have received a previous grant award. ( )

a. An agricultural and natural resources program in any grade nine (9) through twelve (12) must first meet the minimum program-specific quality program standards as approved by the board. ( )

b. Programs will be rated on a scale consisting of “non-existent,” “below basic,” “basic,” “qualified,” “distinguished,” and “exemplary.” Eligibility requires that the program must meet each of the program quality indicators at the level of “basic” or higher. Programs must also have an overall average rating of no less than “distinguished” for all program-specific quality standards. This average will be calculated using the quality indicators within each standard. Programs that do not meet the minimum quality standards requirements in one (1) year may be found eligible in subsequent year. Programs will be assessed by the division. ( )

c. Instructors must teach in an agricultural and natural resources program that meets the quality program standards and must also meet the instructor-specific quality program standard as approved by the board. ( )

d. Instructors will be rated on a scale consisting of “non-existent,” “below basic,” “basic,” “qualified,” “distinguished,” and “exemplary.” Eligibility requires that the instructor must meet each of the program quality indicators at the level of “basic” or higher. Instructors must also have an average rating of no less than “distinguished” for all instructor-specific quality indicators. Instructors that do not meet the minimum quality standards requirements in one (1) year may be found eligible in subsequent year. All instructors of agricultural and natural resources programs in grades nine (9) through twelve (12) are eligible to apply for the grant. ( )

e. Payments to districts will be adjusted according to the percent of time an instructor teaches within an approved agricultural and natural resources program. ( )

f. Should the division request additional information from a school district regarding a grant application, districts must respond to the request within the time period indicated. Failure to respond will result in the cancellation of the application and/or the forfeiture of the grant. ( )

02. **Application Process**. The application process consists of a formal application and assessment. ( )

a. To be considered for the grant, a school district must first complete and submit a formal application

and supporting documentation on behalf of an instructor for an approved program according to the timeline established by the administrator. Applications may be submitted electronically to the division. In the event of a mailed application, applications must be postmarked no later than the timeline specified by the division. Instructors may not apply on their own behalf. ( )

b. Following the receipt of an application, the division will conduct an assessment of the program and instructor to ensure they both meet the minimum eligibility requirements, as outlined in the quality program standards. At the administrator's discretion, the division may partner with additional subject-matter experts to assist in the evaluation. Assessments will be conducted each school year the instructor and program participate in the grant program. Districts will only be eligible to apply for the grant during the academic year the program received an assessment. Prior assessments cannot be used for subsequent grant applications. ( )

03. Selection of Grant Recipients. Grants will be awarded annually based on the availability of grant funds and the number of qualified applicants. Grants will be awarded to applicants based on ranking in accordance with the following criteria: ( )

a. Applicants will be ranked according to their overall score. Scores will be calculated using the sum of: ( )

i. The average score of the program quality indicators; and ( )

ii. The average score of the instructor-specific program quality indicators. ( )

04. Incentive Grant Award. ( )

a. Announcement of the grant award will be made following administrator approval through the distribution of a funding authorization letter. Prior to the distribution of the letter, the division will verify that the grant recipient continues to teach at the same school, in the same agricultural and natural resources program, and at the same FTE level as indicated on the formal application. ( )

b. The total number of recipients will vary by year in accordance with the availability of funds and the qualifications of the applicant pool. Awards will be in the amount of ten thousand dollars ($10,000) until available funds are exhausted or all qualified recipients have been awarded the grant. Grants may be less than ten thousand dollars ($10,000) when certain conditions exist: ( )

i. Tied ranking. In the event of a tie, and in those instances where the number of qualified applicants exceeds the available funds, grants will be awarded evenly among those recipients with a tied score. ( )

ii. Less than full-time employment in an approved program. Grants will be awarded using FTE to calculate the percent of time an instructor spends teaching within an approved agricultural and natural resources program. In the event an instructor teaches in an approved program in less than a full-time capacity, grants will be pro-rated according to the percent of time the instructor spends teaching in the approved program. ( )

c. Grants are awarded on an annual basis and are not renewable or transferrable. ( )

d. The use of grant funds must be in accordance with division guidelines and must be clearly linked to the agricultural and natural resources program identified on the formal application. ( )

e. Grant funds may be used to improve the agricultural and natural resources program, including but not limited to: ( )

i. Offset travel and registration fees associated with educational workshops and/or professional training on behalf of the instructor; ( )

ii. Purchase or repair equipment; or ( )

iii. Purchase educational supplies/curricula. ( )

f. Grant funds may not be used to: ( )

i. Cover the costs of either salaries or benefits, including extended contracts; ( )

ii. Offset expenses associated with the FFA organization or other student organizations; or ( )

iii. Supplant other district funding sources, e.g. routine facility maintenance or improvements. ( )

101. -- 199. (RESERVED)

200. START-UP GRANT.

01. Eligibility Requirements. A school district may apply for a start-up grant for a newly-approved agricultural and natural resources program or to re-establish an agricultural and natural resources program in any grade nine (9) through twelve (12) when specific eligibility requirements are met. Districts are only eligible to apply for the grant in the fiscal year their program is approved or re-established. ( )

a. To start a new program, districts are required to first complete a request for new secondary program of study form for a new agricultural and natural resources program in one (1) of the specified grades. The new agricultural and natural resources program must then be approved by the division prior to application for the grant. Expansions of existing programs, including the addition of new career pathways or additional staff, do not qualify as a new program. ( )

b. To re-start a program, districts are required to first complete a Request for New Secondary Program of Study form to re-establish an agricultural and natural resources program in any grade nine (9) through twelve (12). The re-established agricultural and natural resources program must then be approved by the division prior to application for the grant. The re-established program must have been inactive for at least two (2) academic years to qualify for the grant. ( )

02. Application Process. A school district may submit an application for a new or re-established program. Completed applications, which must be authorized by the district superintendent, must be submitted to the division according to the timeline established by the administrator. In the event of a mailed application, the application must be postmarked no later than the timeline specified. ( )

a. Applications must include all required information outlined in the grant application, including specific documents detailing the district's proposed budget and long-term strategy for sustaining the program. ( )

b. Communication with state officials. Should the division request additional information from a district regarding a grant application, districts must respond to the request within the time period indicated. Failure to respond will result in the cancellation of the application and/or the forfeiture of the grant. ( )

03. Selection of Grant Recipients. Grants will be awarded annually by the division based on the availability of grant funds and the number of qualified programs. Grants will be awarded to districts based on ranking and priority that considers factors including but not limited to: the strength of the budget proposal, sustainability potential of the proposed program, and the history of prior grant awards. ( )

04. Start-up Grant Award. Announcement of the grant award will be made following administrator approval through the distribution of a funding authorization letter. The total number of recipients will not exceed four awards annually, and may vary by year in accordance with the availability of funds and the qualifications of the applicant pool. Awards will be in the amount of twenty-five thousand dollars ($25,000) until available funds are exhausted or all qualified recipients have been awarded the grant. ( )

a. Grants are awarded on a one-time basis and are not renewable or transferrable. If a district is awarded the grant for a new program, the program is ineligible for future awards should the program terminate and then be re-established. ( )

b. Use of grant funds must be in accordance with division guidelines and must be clearly linked to the agricultural and natural resources program identified on the formal application. If a district fails to spend the entire award amount, those funds may not be carried forward to the next fiscal year. ( )

c. Grant funds may be used to improve the agricultural and natural resources program, including but not limited to: ( )

i. Offset travel and registration fees associated with educational workshops and/or professional training on behalf of the instructor; ( )

ii. Purchase or repair equipment; ( )

iii. Purchase educational supplies/curricula; or ( )

iv. Start-up costs, up to one thousand dollars ($1,000,) associated with establishing a new chapter of FFA or other relevant student organization. ( )

d. Grant funds may not be used to: ( )

i. Cover the costs of salaries and/or benefits, including extended contracts; ( )

ii. Offset ongoing expenses associated with the FFA organization or other student organizations; or ( )

iii. Supplant other district funding sources, e.g. routine facility maintenance or improvements. ( )

201. -- 299. (RESERVED)

300. PAYMENTS.
Payment of grant funds will be made to the district using a reimbursement process. For grants awarded under Section 100, funds will be made to the district on behalf of the instructor. To receive reimbursement for eligible expenses, school districts must submit a reimbursement request no later than July 15 each year for the preceding school year, but may request reimbursement as costs are incurred. ( )

301. APPEALS.
Any grant applicant or recipient adversely affected by a decision made under provisions of these rules may appeal such adverse decision as follows. The grant applicant or recipient must appeal in writing no later than thirty (30) days following the announcement of the award, and the written statement must include the basis for the appeal. The appeal must be submitted to the administrator. The division shall acknowledge receipt of the appeal within seven (7) days. The administrator may or may not agree to review the action, or may appoint a subcommittee of three (3) persons to hear the appeal, including at least one (1) agricultural and natural resources professional. ( )

01. Review. If the appeal is transmitted to the subcommittee, the subcommittee will review the appeal and submit a written recommendation to the administrator within fifteen (15) days from the time the subcommittee receives the appeal document. The grant applicant or recipient initiating the appeal will be notified by the chairperson of the subcommittee of the time and place when the subcommittee will consider the appeal and will be allowed to appear before the subcommittee to discuss the appeal. ( )

02. Presentation. Following the subcommittee's decision, the administrator will present the subcommittee's recommendation to the board at the next regularly scheduled meeting of the board. The grant applicant or recipient initiating the appeal may, at the discretion of the board, be permitted to make a presentation to the board. ( )

03. Final Decision. The decision of the board is final, binding, and ends all administrative remedies, unless otherwise specifically provided by the board. The board will inform the incentive grant applicant or recipient in writing of the decision of the board. ( )

302. -- 999. (RESERVED)

Sections Affected Index

IDAPA 01 - BOARD OF ACCOUNTANCY

01.01.01 - Idaho Accountancy Rules

Docket No. ***01-0101-1401***

502. Exceptions, Extensions, And Exemptions (Rule 502). 21

Docket No. ***01-0101-1402***

606. Reporting To The Board (Rule 606). 23

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.05 - Rules Governing Diseases of Hops (Humulus lupulus)

Docket No. ***02-0605-1401 (Fee Rule)***

001. Title And Scope. 25
007. Findings. 25
012. Regulated Pests. 25
013. -- 049. (Reserved) 26
050. Regulated Articles. 26
051. -- 099. (Reserved) 26
100. Quarantine Area. 26
101. -- 149. (Reserved) 26
150. Restrictions On Import. 26
151. Movement Of Used Farming Equipment. 27
152. -- 199. (Reserved) 27
200. Special Permits. 27
201. -- 299. (Reserved) 27
300. Pest Detection. 27
301. -- 399. (Reserved) 28
500. Fees And Charges. 28
501. -- 999. (Reserved) 28

02.06.27 - Rules Governing Bacterial Ring Rot Caused By (Clavibacter michiganensis subsp. sepedonicus) of Potato

Docket No. ***02-0627-1401 (New Chapter)***

001. Title, Scope, And Investigations. 30
004. Incorporation By Reference. 30
010. Definitions. 30
101. Reporting Of BRR. 31
103. Trace Back Investigation, Sampling, And Testing. 32
150. Testing For BRR. 32
151. -- 399. (Reserved) 32
400. Hold Orders. 33

Docket No. ***02-0627-1402 (Fee Rule) (New Chapter)***

000. Legal Authority. 35
001. Title, Scope, And Investigations. 35
002. Written Interpretations. 35
003. Administrative Appeal. 35
004. Incorporation By Reference. 36
005. Address, Office Hours, Telephone, And Fax Numbers. 36
006. Public Records Act Compliance. 36
007. -- 009. (Reserved) 36
010. Definitions. 36
011. Abbreviations. 37
012. Applicability. 37

013. -- 019. (Reserved) 37
020. Regulated Pest - Bacterial Ring Rot. 37
021. -- 100. (Reserved) 37
101. Reporting Of BRR. 37
102. Hold Harmless. 38
103. Trace Back Investigation, Sampling, And Testing. 38
104. Restriction On The Use Of Infected Potatoes. 38
105. -- 149. (Reserved) 38
150. Testing For BRR. 38
151. -- 399. (Reserved) 38
400. Hold Orders. 38
401. -- 449. (Reserved) 39
450. Fees. 39
451. -- 499. (Reserved) 39
500. Violations. 39
501. -- 999. (Reserved) 39

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.03 - Rules of Electrical Licensing and Registration - General

Docket No. ***07-0103-1401***
004. -- 009. (Reserved) 41
010. Licensure History. 41

07.01.07 - Rules Governing Continuing Education Requirements

Docket No. ***07-0107-1401***
011. Continuing Education Requirements. 43
012. Course Approval Requirements. 43

07.01.11 - Rules Governing Civil Penalties

Docket No. ***07-0111-1401***
011. Civil Penalties. 48

07.02.04 - Rules Governing Plumbing Safety Inspections

Docket No. ***07-0204-1401***
012. Requirements In Addition To The Plumbing Code. 51

07.02.05 - Rules Governing Plumbing Safety Licensing

Docket No. ***07-0205-1401***
011. Apprentice Registration. 53
012. Journeyman. 53
013. Plumbing Contractor. 54

07.02.06 - Rules Concerning Idaho State Plumbing Code

Docket No. ***07-0206-1401***
011. Adoption And Incorporation By Reference Of The Idaho State Plumbing Code. 57

07.03.01 - Rules of Building Safety

Docket No. ***07-0301-1401***
004. Adoption And Incorporation By Reference. 70

Docket No. ***07-0301-1402***
004. Adoption And Incorporation By Reference. 79

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.01.11 - Registration of Post-Secondary Educational Institutions and Proprietary Schools

Docket No. ***08-0111-1401***
200. Registration Of Post-Secondary Educational Institutions. 87

08.02.01 - Rules Governing Administration

Docket No. ***08-0201-1402***
400. Special Education Funding For Districts With Approved Programs. 91

08.02.02 - Rules Governing Uniformity

Docket No. ***08-0202-1401***
007. Definitions. 93
015. Idaho Educator Credential. 95
016. Content, Pedagogy And Performance Assessment For Certification. 104
017. Idaho Interim Certificate. 107
018 -- 020. (Reserved) 108
021. Endorsements. 108
028. (Reserved) 108
034. -- 041. (Reserved) 112
042. Alternate Routes To Certification. 112
043. -- 059. (Reserved) 115
066. Fees. 115
120. Local District Evaluation Policy -- Teacher And Pupil Personnel Certificate Holders. 116

Docket No. ***08-0202-1402***
004. Incorporation By Reference. 121

Docket No. ***08-0202-1403***
027. Pupil Personnel Services Certificate. 123
028. Exceptional Child Certificate. 125
030. (Reserved) 126
047. Alternative Authorization - Pupil Personnel Services. 127
076. Code Of Ethics For Idaho Professional Educators (Sections 33-1208 And 33-1209, Idaho Code). 127

Docket No. ***08-0202-1404***
120. Local District Evaluation Policy -- Teacher And Pupil Personnel Certificate Holders. 133
121. Local District Evaluation Policy - School Principal. 136

Docket No. ***08-0202-1405***
004. Incorporation By Reference. 141

08.02.03 - Rules Governing Thoroughness

Docket No. ***08-0203-1401***
105. High School Graduation Requirements. 143

Docket No. ***08-0203-1402***
112. Accountability. 149

Docket No. ***08-0203-1403***
111. Assessment In The Public Schools. 153

Docket No. ***08-0203-1404***
104. Other Required Instruction. 158

Docket No. ***08-0203-1405***
105. High School Graduation Requirements. 161

Docket No. ***08-0203-1406***
115. Data Collection. 166

IDAPA 10 - BOARD OF PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS

10.01.03 - Rules for Corner Perpetuation and Filing

Docket No. ***10-0103-1401***

007. Record Of Original Corner And Subsequent History. 170
008. Description Of Corner Evidence Found. 170
009. Description and Sketch Of Monument And Accessories Found Or Established To Perpetuate The Location Of This Corner. 170

IDAPA 11 - IDAHO STATE POLICE

11.03.01 - Rules Governing Alcohol Testing

Docket No. ***11-0301-1401***

010. Definitions And Abbreviations. 172
011. (Reserved) 174
013. Requirements For Laboratory Alcohol Analysis. 174
014. Requirements For Performing Breath Alcohol Testing. 175

11.04.09 - Rules Governing Claiming Races

Docket No. ***11-0409-1401***

036. -- 049. (Reserved) 180
050. Prohibitions. 180

11.04.10 - Rules Governing Live Horse Races

Docket No. ***11-0410-1401***

113. Coupled Entries. 182

11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council

Docket No. ***11-1101-1403***

010. Definitions. 187
052. Education. 190
060. Physical - Medical. 191
061. Mental Examination. 193

11.11.04 - Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers

Docket No. ***11-1104-1401***

033. Education. 195
039. Physical -- Medical. 195
040. Mental Examination. 196
061. Minimum Standards For Employment For Adult Probation And Parole Officers. 196

11.13.01 - The Motor Carrier Rules

Docket No. ***11-1301-1401***

019. Carrier Safety Requirements (Rule 19). 199

Docket No. ***11-1301-1402***

019. Carrier Safety Requirements (Rule 19). 202

IDAPA 12 - DEPARTMENT OF FINANCE

12.01.10 - Rules Pursuant to the Idaho Residential Mortgage Practices Act

Docket No. ***12-0110-1401***

005. Incorporation By Reference (Rule 5). 205

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.02 - Rules Governing Hunter Education and Mentored Hunting

Docket No. ***13-0102-1401***
010. Definitions. 207
100. Hunter Education. 207
101. Mentored Hunting Program. 207

13.01.04 - Rules Governing Licensing

Docket No. ***13-0104-1402***
302. Disability Licenses. 210

Docket No. ***13-0104-1403***
901. Disabled Veterans Special Big Game Tag. 213

Docket No. ***13-0104-1404***
010. Definitions. 216
400. Landowner Appreciation Program. 217
404. Black Bear Landowner Appreciation Seasons. 219
405. -- 499. (Reserved) 219

13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho

Docket No. ***13-0108-1402***
260. Tags For Controlled Hunts. 221

Docket No. ***13-0108-1403***
260. Tags For Controlled Hunts. 228

Docket No. ***13-0108-1404***
605. Elk Zone Descriptions. 235

13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho

Docket No. ***13-0109-1401***
300. Upland Game Bird Methods Of Take. 238

IDAPA 15 - OFFICE OF THE GOVERNOR FOREST PRODUCTS COMMISSION

15.03.01 - Rules of Administrative Procedure of the Idaho Forest Products Commission

Docket No. ***15-0301-1401***
100. Nominations, Vacancies And Terms. 240
101. -- 199. (Reserved) 240
200. Assessments And Fees. 240

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.02 - Rules of the Idaho Emergency Medical Services (EMS) Physician Commission

Docket No. ***16-0202-1401***
004. Incorporation By Reference. 242
010. Definitions. 242

16.02.19 - Food Safety and Sanitation Standards for Food Establishments (The Idaho Food Code)

Docket No. ***16-0219-1401***
325. Game Animals. 246

16.03.01 - Eligibility for Health Care Assistance for Families and Children

Docket No. ***16-0301-1401***
010. Definitions (A Through L). 249
400. Parents And Caretaker Relatives Eligible For Medicaid Coverage. 251
545. Presumptive Eligibility For Children And Parents. 251

16.03.03 - Rules Governing Child Support Services

Docket No. ***16-0303-1401***

000. Legal Authority. 254
602. Form Of Income Withholding Order. 254
604. Good Cause Determination In License Suspension Proceedings. 254

16.03.04 - Rules Governing the Food Stamp Program in Idaho

Docket No. ***16-0304-1401***

698. Intentional Program Violation (IPV). 260

16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)

Docket No. ***16-0305-1401***

304. Prospective Eligibility. 262
722. Patient Liability. 262
723. Patient Liability For Person With No Community Spouse. 262
725. Patient Liability For Participant With Community Spouse. 263

16.05.07 - The Investigation and Enforcement of Fraud, Abuse, and Misconduct

Docket No. ***16-0507-1401***

261. Reinstatement After Exclusion From Medicaid Program. 268
262. -- 264. (Reserved) 269
300. Department Of Health And Human Services. 269

16.07.33 - Adult Mental Health Services

Docket No. ***16-0733-1401***

001. Title And Scope. 272
004. Incorporation By Reference. 272
010. Definitions - A Through F. 272
011. Definitions - G Through Z. 274
012. -- 099. (Reserved) 275
100. Accessing Adult Mental Health Services. 275
011. Eligibility Screening And Mental Health Assessment. 275
102. Eligibility Determination. 276
104. Crisis Intervention Services. 277
105. Notice Of Decision On Eligibility. 277
106. -- 119. (Reserved) 277
120. Client's Rights And Responsibilities. 277
121. -- 199. (Reserved) 278
200. Individualized Treatment Plan 278
201. -- 299. (Reserved) 280
300. Financial Responsibility For Mental Health Services. 280
301. Adult Mental Health Services. 280
302. -- 399. (Reserved) 280

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION

17.02.04 - Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Benefits

Docket No. ***17-0204-1401***

321. Rule Governing Reimbursement For Travel Expenses. 282

17.02.06 - Employers' Reports

Docket No. ***17-0206-1401***

021. Summaries Of Payment. 285

17.02.08 - Miscellaneous Provisions

Docket No. ***17-0208-1401***
033. Rule Governing Approval Of Attorney Fees In Workers' Compensation Cases. 289
034. -- 060. (Reserved) 291
061. Rule Governing Notice To Claimants Of Status Change Pursuant To Section 72-806, Idaho Code. 291

17.02.09 - Medical Fees

Docket No. ***17-0209-1401***
031. Acceptable Charges For Medical Services Provided By Physicians Under The Idaho Workers' Compensation Law. 294
032. Acceptable Charges For Medical Services Provided By Hospitals And Ambulatory Surgery Centers Under The Idaho Workers' Compensation Law. 296
035. Billing And Payment Requirements For Medical Services And Procedures Preliminary To Dispute Resolution. 297

17.05.01 - Rules Under the Crime Victims Compensation Act

Docket No. ***17-0501-1401***
011. Applications For Compensation. 301

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.02.01 - Rules of the Board of Barber Examiners

Docket No. ***24-0201-1401***
010. Definitions (Rule 10). 307
450. Barber Shop Requirements (Rule 450). 308
550. Inspection And Sanitary Rules. (Rule 550). 309

24.04.01 - Rules of the Idaho Board of Cosmetology

Docket No. ***24-0401-1401***
300. Licensure And Operation Of Primary And Contiguous Establishments (Rule 300). 312
301. Cosmetological Establishment Changes In - Ownership - Location - Licensure Requirements (Rule 301). 313

24.06.01 - Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants

Docket No. ***24-0601-1401 (Fee Rule)***
041. Fees. 316

24.09.01 - Rules of the Board of Examiners of Nursing Home Administrators

Docket No. ***24-0901-1401 (Fee Rule)***
600. Fees (Rule 600). 318

24.14.01 - Rules of the State Board of Social Work Examiners

Docket No. ***24-1401-1401 (Fee Rule)***
300. Fees (Rule 300). 320

24.15.01 - Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists

Docket No. ***24-1501-1401***
004. Incorporation By Reference (Rule 4). 322

24.26.01 - Rules of the Idaho Board of Midwifery

Docket No. ***24-2601-1402***
357. -- 359. (Reserved) 324
360. Newborn Transfer Of Care Or Consultation (Rule 360). 324
361. -- 449. (Reserved) 324

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - Rules of the Idaho State Board of Pharmacy

Docket No. ***27-0101-1401***
010. Definitions and Abbreviations (A -- I). 326
130. Drug Product: Substitution. 328

Docket No. ***27-0101-1402 (Fee Rule)***
011. Definitions And Abbreviations (J -- R). 331
021. Fee Schedule. 334
074. Outsourcing Facility Registration. 336
075. -- 079. (Reserved) 337
731. -- 739. (Reserved) 337
740. Outsourcing Facility. 337
741. -- 749. (Reserved) 337

Docket No. ***27-0101-1403***
144. Labeling Of Distributed Compounded Drug Product. 339
231. -- 238. (Reserved) 339
239. Compounding Drug Products. 339
240. Sterile Product Preparation. 341
241. Hazardous Drugs Preparation. 344
242. Office Use. 345
243. -- 259. (Reserved) 346

Docket No. ***27-0101-1404***
031. Pharmacist Licensure By Examination: Foreign Pharmacy Graduates. 348
041. Technician-In-Training Registration. 348
140. Standard Prescription Drug Labeling. 349
146. Repackaging. 350
147. -- 199. (Reserved) 350
206. Controlled Substances: Inventories. 351
304. -- 309. (Reserved) 351
330. Pharmacist: Administered Immunizations. 351
331. -- 339. (Reserved) 353
340. Nonresident Pharmacist Practice Standards. 353
341. -- 359. (Reserved) 354
604. Pharmacy Product Storage And Removal. 354
605. Pharmacy Security. 355
611. Pharmacy Authorized Entry. 356
612. -- 619. (Reserved) 356
631. Institutional Facility: Emergency Drug Access 356
710. Retail Telepharmacy With Remote Dispensing Sites. 357

Docket No. ***27-0101-1405***
270. Drug Distribution By A Dispenser. 362
809. -- 849. (Reserved) 363

IDAPA 28.04.01 - IDAHO DEPARTMENT OF COMMERCE

28.04.01 - Rules Governing the Idaho Reimbursement Incentive Act

Docket No. ***28-0401-1401 (New Chapter)***
001. Title And Scope. 364
100. Definitions And Abbreviations. 365
101. -- 129. (Reserved) 365
130. Program Intent. 365
150. Eligibility. 365

151. Job Creation Criteria. 366
152. Application Process. 366
153. -- 159. (Reserved) 368
160. Conflict Of Interest. 368
161. -- 169. (Reserved) 369
170. Agreements. 369
171. -- 179. (Reserved) 369
180. Tax Credit Authorization. 369
181. -- 189. (Reserved) 370
190. Annual Reporting By Business Entity. 370
191. Annual Reporting By Department. 370
192. -- 199. (Reserved) 371
200. Audit. 371
201. -- 209. (Reserved) 371
210. Continuation Of Tax Credit. 371
211. Termination Or Suspension Of Tax Credit. 371

Docket No. ***28-0401-1402 (New Chapter)***

000. Legal Authority. 373
001. Title And Scope. 373
002. Written Interpretations. 373
003. Administrative Appeals. 373
004. Incorporation By Reference. 373
005. Office -- Office Hours -- Mailing Address And Street Address. 373
006. Public Records Act Compliance. 373
007. -- 099. (Reserved) 373
100. Definitions And Abbreviations. 374
101. -- 129. (Reserved) 374
130. Program Intent. 374
150. Eligibility. 374
151. Job Creation Criteria. 374
152. Application Process. 375
153. -- 159. (Reserved) 377
160. Conflict Of Interest. 377
161. -- 169. (Reserved) 377
170. Agreements. 377
171. -- 179. (Reserved) 378
180. Tax Credit Authorization. 378
181. -- 189. (Reserved) 378
190. Annual Reporting By Applicant. 378
191. Annual Reporting By Department. 378
192. -- 199. (Reserved) 379
200. Audit. 379
201. -- 209. (Reserved) 379
210. Continuation Of Tax Credit. 379
211. Termination Or Suspension Of Tax Credit. 379
212. -- 219. (Reserved) 379
220. Suspension Of Idaho Reimbursement Incentive Act. 379
221. -- 999. (Reserved) 380

IDAPA 33 - REAL ESTATE COMMISSION

33.01.01 - Rules of the Idaho Real Estate Commission

Docket No. 33-0101-1401

117. Certification Of Mandatory Errors And Omissions Insurance. 382
121. Failure To Maintain Insurance. 382
304. (Reserved) 383

33.01.02 - Rules of Practice and Procedure of the Idaho Real Estate Commission Governing Contested Cases

Docket No. ***33-0102-1401***
005. Office -- Office Hours -- Mailing Address -- Street Address. 385
010. Definitions. 385
104. Service By Agency. 386
106. (Reserved) 387
152. Report Contents And Procedure. 387
209. Service On Representatives Of Parties And Other Persons. 387
303. Proof Of Service. 388

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - Income Tax Administrative Rules

Docket No. ***35-0101-1401***
560. Special Rules (Rule 560). 390
750. Broadband Equipment Investment Credit: In General (Rule 750). 390

Docket No. ***35-0101-1402***
268. Idaho Source Income Of Nonresident And Part-Year Resident Individuals -- Suspended Losses From Pass-Through Entities (Rule 268). 393
269. (Reserved) 393
275. Idaho Source Income Of Nonresident And Part-Year Resident Individuals -- Investment Income From Qualified Investment Partnerships (Rule 275). 394

Docket No. ***35-0101-1403***
075. Tax On Individuals, Estates, And Trusts (Rule 075). 397
190. Idaho Medical Savings Accounts (Rule 190). 400
263. Idaho Source Income Of Nonresident And Part-Year Resident Individuals -- Distributive Share Of S Corporation And Partnership Income (Rule 263). 401
771. Grocery Credit: Taxable Years Beginning After December 31, 2007 (Rule 771). 402
872. Reporting And Paying State Income Tax Withholding (Rule 872). 403

35.01.02 - Idaho Sales and Use Tax Administrative Rules

Docket No. ***35-0102-1401***
027. Computer Equipment, Software, And Data Services (Rule 027). 406

Docket No. ***35-0102-1402***
022. Drop Shipments (Rule 022). 412

Docket No. ***35-0102-1403***
012. Contractors Improving Real Property (Rule 012). 415
024. Rentals Or Leases Of Tangible Personal Property (Rule 024). 417
102. Logging (Rule 102). 420
128. Certificates For Resale And Other Exemption Claims (Rule 128). 422

Docket No. ***35-0102-1404***
010. Definitions (Rule 010). 429
105. Time And Imposition Of Tax, Returns, Payments And Partial Payments (Rule 105). 430
107. Vehicles And Vessels -- Gifts, Military Personnel, Nonresident, New Resident, Tax Paid To Another State, Sales To Family Members, Sales To American Indians, And Other Exemptions (Rule 107). 433

35.01.03 - Property Tax Administrative Rules

Docket No. ***35-0103-1403***

126. Property Tax Appraiser Certification Program (Rule 126). 438
128. Cadastral Certification Program (Rule 128). 439

Docket No. ***35-0103-1406***

204. Operating Property -- Definitions (Rule 204). 442

35.02.01 - Tax Commission Administration and Enforcement Rules

Docket No. ***35-0201-1401***

310. Interest Rates (Rule 310). 444
501. Procedures On Settlements Over Fifty Thousand Dollars (Rule 501). 445

IDAPA 37 - IDAHO DEPARTMENT OF WATER RESOURCES

37.03.11 - Rules for Conjunctive Management of Surface and Ground Water Resources

Docket No. ***37-0311-1101***

044. -- 999. (Reserved) 448

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.05.01 - Rules of the Division of Purchasing

Docket No. ***38-0501-1401***

005. Office -- Office Hours -- Mailing And Street Address. 450
011. Definitions. 450
012. -- 020. (Reserved) 453
021. Conduct Of Purchasing. 453
032. Acquisition Of Concession Services. 454
033. Purchase Of Telecommunications Or Information Technology Property. 454
035. -- 039. (Reserved) 454
040. Procedure Followed In Solicitations 454
041. Special Procedures For High Dollar Service Contracts. 455
042. Exceptions To Formal Sealed Procedure. 456
043. Emergency Purchases. 457
044. Small Purchases. 457
045. Sole Source Purchases. 459
046. Determination Of Fair Market Price For Rehabilitation Agency Acquisitions. 459
047. -- 050. (Reserved) 459
051. Content Of Solicitations issued under a formal sealed procedure. 459
052. Changes To Solicitations Issued Under A Formal Sealed Procedure. 460
053. -- 060. (Reserved) 460
061. Form Of Submission For Solicitations Issued Under A Formal Sealed Procedure. 460
062. -- 069. (Reserved) 461
070. Pre-Solicitation Conference. 461
071. Pre-opening Withdrawal Or Modification. 461
072. Late Bids/proposals, Late Withdrawals And Late Modifications. 461
073. Receipt, Opening, And Recording Of Bids And Proposals. 461
074. Mistakes. 461
075. -- 080. (Reserved) 462
081. Evaluation And Award. 462
082. Tie Responses. 463
083. Proposal Discussion With Individual Offerors. 464
084. Negotiations. 464
085. Price Agreements. 466
086. -- 090. (Reserved) 466

091. Acceptance Or Rejection Of Bids And Proposals. 466
092. Cancellation Of Solicitation. 467
102. -- 110. (Reserved) 467
111. Specifications -- Policies And Development. 467
112. Contract Terms - Policies And Limitations. 468
113. -- 124. (Reserved) 469
125. Contract Administration. 469
126. -- 999. (Reserved) 470

38.06.01 - Rules of the Department of Administration Governing Billing Procedures of the Office of the Chief Information Officer

Docket No. ***38-0601-1401 (New Chapter)***
000. Legal Authority. 472
001. Title And Scope. 472
002. Written Interpretations. 472
003. Administrative Appeals. 472
004. Incorporation By Reference. 472
005. Office -- Office Hours -- Mailing Address -- Telephone Number -- Fax Number -- Internet Website Address. 472
006. Public Records Act Compliance. 473
007. -- 009. (Reserved) 473
010. Definitions. 473
011. -- 049. (Reserved) 474
050. Restrictions. 474
051. -- 099. (Reserved) 474
100. Idaho Agency Information Technology (IT) Support. 474
101. -- 199. (Reserved) 474
200. Network Services. 474
201. -- 299. (Reserved) 475
300. Telephone Services. 475
301. -- 399. (Reserved) 475
400. Cybersecurity Services. 475
401. -- 499. (Reserved) 475
500. Idaho Technology Authority. 475
501. -- 599. (Reserved) 476
600. Internet Service. 476
601. -- 699. (Reserved) 476
700. Consolidated Services. 476
701. -- 999. (Reserved) 476

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.03 - Rules Governing Vehicle Dealer's Principal Place of Business

Docket No. ***39-0203-1401***
010. Definitions. 477
011. -- 099. (Reserved) 479
100. General Provisions. 479

Docket No. ***39-0203-1402***
010. Definitions. 481
011. -- 099. (Reserved) 482
100. General Provisions. 482

39.03.10 - Rules Governing When an Overlegal Permit is Required

Docket No. ***39-0310-1401***

400. Overlegal Permits For Self Propelled Vehicles. 485

39.03.50 - Rules Governing Safety Rest Areas

Docket No. ***39-0350-1401***

200. Public Behavior And Treatment Of Public Property. 487
201. -- 299. (Reserved) 487
300. Occupancy Of Developed Rest Areas. 487

IDAPA 49 - CERTIFIED SHORTHAND REPORTERS BOARD

49.01.01 - Rules of Procedure of the Idaho Certified Shorthand Reporters Board

Docket No. ***49-0101-1401***

300. Examinations. 490
301. -- 399. (Reserved) 491
400. Temporary Permit. 491

IDAPA 50 - COMMISSION OF PARDONS AND PAROLE

50.01.01 - Rules of the Commission of Pardons and Parole

Docket No. ***50-0101-1401***

000. Legal Authority. 494
001. Title And Scope. 494
010. Definitions. 494
011. -- 099. (Reserved) 497
100. General Provisions. 497
101. Hearings. 497
102. Hearing Sessions. 497
103. Business Meetings. 498
104. Record Of Hearings And Meetings. 498
105. Previous Decisions. 498
106. Individual Polling of the Commission. 498
107. APA Applicability. 498
108. Rights, Powers, And Authority Of The Commission. 498
109. -- 149. (Reserved) 498
150. Commission And Staff. 498
151. -- 199. (Reserved) 499
200. Hearing Process. 499
201. -- 249. (Reserved) 502
250. Parole. 502
251. -- 299. (Reserved) 508
300. Victims. 508
301. -- 349. (Reserved) 510
350. Parole Plan And Release Procedures. 510
351. -- 399. (Reserved) 511
400. Parole Revocation Process. 512
401. -- 449. (Reserved) 516
450. Commutation. 516
451. -- 499. (Reserved) 518
500. Self-Initiated Progress Report. 518
501. -- 549. (Reserved) 519
550. Pardon. 519
551. Restoration Of Firearms Rights Under Section 18-310, Idaho Code. 521

552. Staff Progress Report. 522
553. -- 599. (Reserved) 524
600. Remission Of Fine Or Penalty. 524
601. -- 799. (Reserved) 525
800. Foreign National Treaty. 525
801. -- 999. (Reserved) 525

IDAPA 55 - DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION

55.01.04 - Rules Governing Idaho Quality Program Standards Incentive Grants and Agricultural Education Program Start-Up Grants

Docket No. ***55-0104-1401 (New Chapter)***

000. Legal Authority. 528
001. Title And Scope. 528
002. Written Interpretations. 528
003. Administrative Appeals. 528
004. Incorporation By Reference. 528
005. Office Information. 528
006. Public Records Act Compliance. 528
007. -- 009. (Reserved) 528
010. Definitions And Abbreviations. 528
011. -- 099. (Reserved) 529
100. Incentive Grant. 529
101. -- 199. (Reserved) 531
200. Start-Up Grant. 531
201. -- 299. (Reserved) 532
300. Payments. 532
301. Appeals. 532
302. -- 999. (Reserved) 532

LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT
TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

The written comment submission deadline is October 22, 2014 unless otherwise noted.
Public hearing request deadline is October 15, 2014 unless otherwise noted.
(Temp & Prop) indicates the rule is both Temporary and Proposed.
(*PH) indicates that a public hearing has been scheduled.

IDAPA 01 - BOARD OF ACCOUNTANCY
PO Box 83720, Boise, ID 83720-0002

01.01.01 - Idaho Accountancy Rules
01-0101-1401, Provides for a new license renewal extension deadline date of April 30th each year.
01-0101-1402, Only firms performing any of the services set out in Rule 602 must register annually with the Board.

IDAPA 02 - DEPARTMENT OF AGRICULTURE
PO Box 790, Boise, ID 83701

02-0605-1401, Rules Governing Diseases of Hops (Humulus Lupulus). (Temp & Prop) Changes hop quarantine area to allow free movement of hops green matter among Idaho, Washington, and Oregon and requires a negative test and Clean Plant Health Network certification prior to shipment into Idaho if imported from outside the three-state area.

02-0627-1402, Rules Governing Bacterial Ring Rot of Potatoes. Requires testing for BRR to prevent the introduction and spread of BRR into Idaho and the United States and to ensure that certified seed potatoes and table stock exported from Idaho are free from the disease.

IDAPA 07 - DIVISION OF BUILDING SAFETY
PO Box 83720, Meridian, ID 83542

07-0103-1401, Electrical Licensing and Registration - General. Requires anyone who has previously been licensed in any jurisdiction as a journeyman or master electrician to disclose such licensure history to the Division upon application and prevents any such individual from obtaining an apprentice registration.

07-0107-1401, Continuing Education Requirements. Allows for an additional category of instruction in the area of electrical code-related training to qualify toward the continuing education credits that a journeyman and master electrician must obtain in each licensing period.

07-0111-1401, Rules Governing Civil Penalties. Establishes a civil penalty for applicants who fail to disclose the required information on any Division electrical license application, specifically to include their licensure history and any licenses previously held in any state or jurisdiction; clarifies that the required CEU hours must be completed in each 3-year licensing period.

07-0204-1401, Rules Governing Plumbing Safety Inspections. Incorporates by reference the 7th Edition of the Cross Connection Control Manual published in 2012 by the American Water Works Association replacing 1995 6th Edition.

07-0205-1401, Rules Governing Plumbing Safety Licensing. Clarifies schooling and work experience requirements for all in-state and out-of-state applicants to obtain a journeyman license or certificate of competency or plumbing contractor license.

07-0206-1401, Rules Concerning Idaho State Plumbing Code. Allows certain materials to be used for potable water distribution piping and building sewers and eliminates several provisions of the code which can unnecessarily cost contractors and property owners additional expense.

07.03.01 - Rules of Building Safety
07-0301-1401, Reinstates an exemption for building permits for fences under 7 feet in height; amends table for residential exterior wall fire resistance ratings and fire separation distances; amends a provision requiring residential mechanical ventilation for air exchange in a dwelling and creates an exception where the air infiltration is already greater than required.
07-0301-1402, (Temp & Prop) Allows owner-occupied lodging house occupancies (bed and breakfast) with 5 or fewer guestrooms to be constructed or remodeled in accordance with the residential code instead of the commercial building code, and allows them to be operated without the installation of fire sprinklers.

IDAPA 08 - STATE BOARD OF EDUCATION / DEPARTMENT OF EDUCATION
PO Box 83720, Boise, ID 83720-0037

08-0111-1401, Registration of Post-Secondary Educational Institutions and Proprietary Schools. Amends definition of what constitutes having an "Idaho presence"; allows Board to use financial instruments other than an institution's audited financial statements as part of the registration process.

****08-0201-1402, Rules Governing Administration***. (*PH) (Temp & Prop) Makes technical corrections to rule.

08.02.02 - Rules Governing Uniformity
****08-0202-1401***, (*PH) Amends the certification requirements to add a tiered certification system.
****08-0202-1402***, (*PH) Adopts the current revisions to the Idaho Standards for Initial Certification for Professional School Personnel and the Operating Procedures for Idaho Public Driver Education Programs manuals that are incorporated by reference.
****08-0202-1403***, (*PH) Removes an unapproved endorsement; adds Interim Speech Language Pathologist endorsement and clarifies that an emergency need not be declared to request alternative authorization for these interim certificates; clarifies types and nature of electronic or photographic images of students that a professional educator may not take or possess.
****08-0202-1404***, (*PH) For teacher evaluation purposes, allows for one classroom observation when a teacher is unavailable for two classroom observations; clarifies the individuals responsible for measuring teacher performance.

08.02.03 - Rules Governing Thoroughness
****08-0203-1401***, (*PH) Clarifies the substitution clause to require a student to show mastery of the content standards to receive one credit of physical education for graduation; a student may elect an exemption in grade 11 from the college entrance exam requirement if enrolled for the first time in grade 12 at an Idaho high school after the fall statewide administration of the college entrance exam; increases student proficiency standards.
****08-0203-1402***, (*PH) (Temp & Prop) Clarifies that a limited English proficient (LEP) student is one who does not score "proficient" on the approved test and meets one of the other listed criteria.
****08-0203-1403***, (*PH) (Temp & Prop) Use of accommodations/adaptations for LEP students must accurately reflect the Designated Supports and Accommodations guidelines; science End of Course Assessments have been added to the list of required assessments.
****08-0203-1404***, (*PH) (Temp & Prop) Replaces the inadvertently removed requirements for physical education and professional technical education as required instructional offerings of a high school; clarifies that learning plans are reviewed throughout a student's high school career.
****08-0203-1406***, (*PH) (Temp & Prop) Allows for the 5 new data elements to be collected from the districts which will provide information to accurately calculate payments for staffing and for the Advanced Opportunities option.

IDAPA 10 - IDAHO BOARD OF LICENSURE FOR PROFESSIONAL ENGINEERS AND PROFESSIONAL LAND SURVEYORS
1510 Watertower St., Meridian, ID 83642

****10-0103-1401, Rules for Corner Perpetuation and Filing***. (*PH) Requires surveyors to perpetuate historic corner

record information on the corner perpetuation and filing (CP&F) forms filed or recorded in the county courthouse in lieu of listing all corner record instrument numbers on the record of survey map.

IDAPA 11 - IDAHO STATE POLICE
700 S Stratford Dr., Meridian, ID 83642
ISP FORENSIC SERVICES

11-0301-1401, Rules Governing Alcohol Testing. (Temp & Prop) Adds the following to current standard operating procedures: breath alcohol instrument training requirements for operators and specialists; breath alcohol instrument performance verification and calibration requirements; breath alcohol testing requirements and procedures; alcohol laboratory approval and operational standards; minor in possession/minor in consumption testing methods; and passive testing procedures.

IDAHO RACING COMMISSION

11-0409-1401, Rules Governing Claiming Races. Clarifies that it is not necessary for a horse that has been claimed to re-establish eligibility for a starter allowance race by running in a claiming race; further prevents the use of "protective claims."

11-0410-1401, Rules Governing Live Horse Races. Allows thoroughbred horses that are owned by the same owner to be uncoupled for wagering purposes.

POST COUNCIL

11-1101-1403, Rules of the Idaho Peace Officer Standards and Training Council. Addresses home schooling and foreign education, and clarifies required proof of education documentation; removes certain medical standards from rule that are the responsibility of the employing agencies; requires applicants to be physically capable of passing all requirements while in the academy or face disenrollment; clarifies the different disciplines trained by POST.

11-1104-1401, Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers. Conforms the minimum employment standards to other POST disciplines for education and physical and medical requirements.

COMMERCIAL VEHICLE SAFTEY DIVISION

11.13.01 - The Motor Carrier Rules

11-1301-1401, Incorporates by reference federal regulations that allow interstate carriers, who have been declared an imminent hazard or who have failed to pay fines for previous violations, to be put out of service until the issues are resolved.

11-1301-1402, Incorporates by reference federal regulations that allow exemptions for interstate operations of "covered farm vehicles" and vehicle engaged in the transportation of agricultural commodities and farm supplies.

IDAPA 12 - DEPARTMENT OF FINANCE
PO Box 83720, Boise, ID 83720-0031

12-0110-1401, Rules Pursuant to the Idaho Residential Mortgage Practices Act. Incorporates by reference the most recent changes to Regulation X, Regulation Z, the Real Estate Settlement Procedures Act, and the Truth in Lending Act.

IDAPA 13 - IDAHO FISH AND GAME COMMISSION
PO Box 25, Boise, ID 83707

13-0102-1401, Rules Governing Hunter Education and Mentored Hunting. (Temp & Prop) Clarifies that a 10 year old can hunt big game.

13.01.04 - Rule Governing Licensing

13-0104-1402, (Temp & Prop) Change in eligibility rules for nonresident disabled American veterans would reduce fees for a hunting license and certain tags.

13-0104-1403, (Temp & Prop) Adds IRS status 501(c)(4) and 501(c)(19) non-profits to list of qualified organizations for the disabled veteran big game tag program.

13-0104-1404, (Temp & Prop) Implements new discretionary Commission authority to add bear tags to the Landowner Appreciation Program.

13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho
13-0108-1402, Allows Commission to designate specific unlimited controlled hunts for deer and elk as **"**first-choice only" hunts when applied for during the controlled hunt application process.
13-0108-1403, (Temp & Prop) Per statute, lowers the age of hunters who can apply for youth-only controlled hunts from 12 to 10 years of age.
13-0108-1404, (Temp & Prop) Reorganizes some of the elk zones, and the units contained within a zone, within the Smoky Mountains, Bennett Hills, Owyhee/South Hills, Teton, Palisades, Island Park, and Bannock elk zones.

13-0109-1401, Rules Governing the Taking of Game Birds in the State of Idaho. (Temp & Prop) Allows Commission flexibility to modify shooting hours on Wildlife Management Areas where pheasants are stocked.

IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO FOREST PRODUCTS COMMISSION
PO Box 855, Boise, ID 83701

15-0301-0104, Rules of Administrative Procedure of the Idaho Forest Products Commission. Addresses the nomination and vacancy of the at-large Commission member; amends the assessment basis of forest landowners.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036

16-0202-1401, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission. Revises the Standards Manual that is incorporated by reference to align rules with state law by redefining "Emergency Medical Services."

****16-0219-1401, Food Safety and Sanitation Standards for Food Establishments***. (*PH) (Temp & Prop) Allows individuals to donate harvested wild game meat to food banks and other organizations that help feed Idaho citizens and provides a way for these organization to be able to accept the donated wild game meat.

16-0301-1401, Eligibility for Health Care Assistance for Families and Children. Clarifies definitions and amends the rules with regard to parent and caretaker relatives.

****16-0303-1401, Rules Governing Child Support Services***. (*PH) Updates income withholding processes; clarifies good cause factors that can be considered during suspension of license proceedings and those that may not be appropriate when applying them to recreational licenses.

16-0304-1401, Rules Governing the Food Stamp Program in Idaho. Includes the term **"**trafficking**"** to include fraudulent activities not previously considered to be program violations.

16-0305-1401, Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD). Clarifies participant liability for pre-existing medical expenses based on guidance received from the Centers for Medicaid and Medicare (CMS); improves the administration of the AABD program for participants in long-term care settings, which include a change to the share of cost determination for participants who enter or leave a nursing home during the middle of the month.

16-0507-1401, The Investigation and Enforcement of Fraud, Abuse, and Misconduct. Addresses current practice concerning reinstatement of an individual or entity who has been excluded from the Medicaid program.

16-0733-1401, Adult Mental Health Services. Amends and add definitions; removes obsolete rules; clarifies current mental health services available through the Department.

IDAPA 17 - IDAHO INDUSTRIAL COMMISSION
PO Box 83720, Boise, ID 83720-0041

17-0204-1401, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Benefits. Allows an injured worker attending medical appointments resulting from an industrial injury or occupational disease to be reimbursed for travel expenses; removes the health care travel expense reimbursement form from rule and directs the injured worker to the Commission office or website to obtain the form.

17-0206-1401, Employer's Reports. Removes language that extends the deadline for filing a summary of payments

for adjusters who do not timely make indemnity payments; changes the time period from 60 to 120 days to file a summary of payments in case of default by an employer for reason of insolvency or bankruptcy.

17-0208-1401, Miscellaneous Provisions. Adds Commission's mailing address; removes from rule the form used to notify claimants of a status change and directs them to the Commission office or website to obtain the form.

17-0209-1401, Medical Fees. Updates the facility fee schedule; changes the CPT code range affecting psychiatric diagnostic evaluations; changes the reimbursement for certain hospital outpatient diagnostic lab services; the allowable period for prompt payment by a payer is changed to commence upon acceptance of liability if made after receipt of the provider's bill.

17-0501-1401, Rules Under the Crime Victims Compensation Act. Implements updates under the CVC Medical Fee Schedule and clarifies the calculations of the allowable payment of CPT Codes; provides a consistent method for calculating mileage reimbursement for the necessary treatment and services for eligible victims of the program.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
PO Box 83720, Boise, ID 83720-0063

24-0201-1401, Rules of the Board of Barber Examiners. Provides for the issuance of a contiguous barber shop license to the address of the primary shop allowing licensees to move their workspaces within the primary shop without reapplying for a new license; standardizes the inspection process.

24-0401-1401, Rules of the Idaho Board of Cosmetology. Provides for the issuance of a contiguous license to the address of the primary establishment which will allow licensees to move their workspaces within the primary establishment without reapplying for a new establishment license.

24-0601-1401, Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants. Decreases initial licensure fee, limited permit or temporary license fee, annual active license renewal, and inactive license renewal.

24-0901-1401, Rules of the Board of Examiners of Nursing Home Administrators. Increases fees for the original application, endorsement application, annual renewal, original license, and the Administrator-in-training registration.

24-1401-1401, Rules of the State Board of Social Work Examiners. Increases fee for initial application and endorsement, and annual renewals fees for Clinical Social Worker, Social Worker and Masters Social Worker, Inactive Clinical Social Worker, and Inactive Social Worker and Inactive Masters Social Worker.

24-1501-1401, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. Updates the incorporation by reference of the American Counseling Association Code of Ethics, amended effective 2014.

24-2601-1402, Rules of the Idaho Board of Midwifery. Clarifies when newborns must be transferred and when newborn consultation is required.

IDAPA 27 - IDAHO BOARD OF PHARMACY
PO Box 83720, Boise, ID 83720-0067

27.01.01 - Rules of Idaho State Board of Pharmacy

****27-0101-1401***, (*PH) Allows a biosimilar product to be substituted for a prescribed biological product, upon the determination by the FDA that the biosimilar product is interchangeable.

*27-0101-1402, (*PH) (Temp & Prop) Defines outsourcing facilities, creates new registration category, establishes a registration fee, and institutes practice standards for outsourcing facilities.

****27-0101-1403***, Creates a labeling rule for distributed compounded drug product; establishes general compounding standards, including controls that regulate equipment, practices, policies and procedures, compounding accuracy, and recordkeeping; limits pharmacy distribution of non-sterile compounded drug product; expands sterile product preparation and hazardous drug rules.

****27-0101-1404***, (*PH) Prohibits patients from using their dispensed drugs when being admitted to an institutional facility because the drugs are not unit dosed packaged; clarifies that a pharmacist foreign graduate is required to obtain 1,500 student pharmacist hours; clarifies that a technician-in-training may only renew two times; amends

standard drug labeling rule; creates a new limited pharmacy repackaging rule; clarifies when a controlled substance inventory is to be taken; allows pharmacist immunizers to utilize all forms of injectible epinephrine; clarifies that statutory requirements of nonresident registered pharmacists also pertain to nonresident licensed pharmacists; clarifies pharmacy security requirements; combines various pharmacy authorized entry rules into one rule; and updates remote dispensing site security and training requirements, also requiring a continuous quality improvement program.
27-0101-1405, Amends rule to be consistent with federal requirement regulating wholesale distribution.

IDAPA 28 - IDAHO DEPARTMENT OF COMMERCE
PO Box 83720, Boise, ID 83720-0093
28-0401-1402, Rules Governing the Idaho Reimbursement Incentive Act. Establishes the applications, templates, workflow processes, incentive agreements and other supporting documentation necessary to execute the Idaho Reimbursement Incentive Act.

IDAPA 33 - IDAHO REAL ESTATE COMMISSION
575 E. Parkcenter Blvd., Suite 180, Boise ID 83706
****33-0101-1401, Rules of the Idaho Real Estate Commission***. (*PH) Deletes obsolete rules and makes technical corrections.

****33-0102-1401, Rules of Practice and Procedure of the Idaho Real Estate Commission Governing Contested Cases***. (*PH) Clarifies agency office hours; deletes gender specific and obsolete terms; provides for electronic service of process.

IDAPA 35 - IDAHO STATE TAX COMMISSION
PO Box 36, Boise, ID 83722-0410
35.01.01 - Income Tax Administrative Rules
35-0101-1401, Amends rule to conform to Supreme Court interpretation of statute; clarifies the broadband equipment tax credit and its allowable 14 year carryover period.
35-0101-1402, Clarifies how a nonresident or part-year resident can deduct suspended losses; explains how a nonresident partner of a multistate investment partnership calculates the taxable income from the partnership that is included in Idaho taxable income.
35-0101-1403, Adds tax brackets for 2014 and removes 2009 information; increases the maximum amount deductible for the Idaho Medical Savings Account to $10,000 single/$20,000 married filing joint; updates amount of guaranteed payments that is sourced as compensation for services per Idaho Code §63-3026A(3)(a)(i)(2); adds tax year 2014 and the applicable grocery credit amounts to the table; changes language from split monthly to semi monthly.

35.01.02 - Idaho Sales and Use Tax Administrative Rules
35-0102-1401, Clarifies that software accessed remotely (ie. cloud-based), electronically delivered or by load and leave method is not tangible property; clarifies that digital books, games, music and movies are tangible property regardless of how obtained.
35-0102-1402, Clarifies manufacturer, retailer, and customer responsibilities related to sales and use tax liability on drop shipment transactions.
35-0102-1403, Clarifies what is and is not covered by out-of-state contact exemption; regarding renting or leasing tangible property, clarifies intent that only one lease type applies to a particular lease contract; clarifies that materials and equipment used on a tree farm for uses other than harvesting can qualify under the production exemption but not the logging exemption; requires exempt organizations to use the ST-104-HM for claiming an exemption on purchases of lodging accommodations.
35-0102-1404, Amends definition for 'contractor improving real property' by using the term 'speculative builder' in place of 'speculation contractor' and 'spec contractor'; clarifies that a single payment may be made to cover multiple tax types; updates the use tax exemption for new residents and military personnel.

35.01.03 - Property Tax Administrative Rules
35-0103-1403, Provides an opportunity to challenge one of the two required courses by passing a test for appraisal certification and for cadastral certification.
35-0103-1406, New rule regarding operating property required to be assessed by the State Tax Commission that includes gathering lines as defined in Idaho Code, regardless of whether such lines are owned or operated in

conjunction with a public utility, and also includes property owned by the same taxpayer and associated with the extraction of any oil or gas to be carried by such gathering lines.

35-0201-1401, Tax Commission Administration and Enforcement Rules. Adds interest rate for calendar year 2015 and the Revenue Ruling where the federal rate for the calculation can be found; details current division changes in the agency.

IDAPA 37 - DEPARTMENT OF WATER RESOURCES
PO Box 83720, Boise, ID 83720-0098

****37-0311-1101, Rules for Conjunctive Management of Surface and Ground Water Resources***. (*PH) Deletes obsolete rule regarding conjunctive administration of connected ground and surface water supplies in the Eastern Snake River Aquifer.

IDAPA 38 - DEPARTMENT OF ADMINSTRATION
PO Box 83720, Boise, ID 83720-0036

38-0501-1401, Rules of the Division of Purchasing. Clarifies state agency purchasing processes and addresses processes for high dollar service contracts and for contract administration and management.

38-0601-1401, Rules of the Department of Administration Governing Billing Procedures of the Office of the Chief Information Officer. Documents calculation methods for allocating technology overhead costs and technology service charges billed from the Department of Administration, Office of the Chief Information Officer to State government organizations.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise ID 83707-1129

39-0203-1402, Rules Governing Vehicle Dealer's Principal Place of Business. Further defines principal place of business requirements; requires retail dealers to be open 20 hours a week and wholesale dealers 4 hours a week, part of which must be between 8am and 5pm Monday to Friday; adds information regarding the Idaho Consumer Asset Recovery Fund (ICAR); addresses dealer liability insurance and surety bond requirements.

39-0310-1401, Rules Governing When An Overlegal Permit Is Required. (Temp & Prop) Allows a motorized vehicle to be hauled on a trailer behind a self-propelled vocational vehicle when the hauled vehicle is to be used solely for the return trip after the delivery of the self-propelled vocational vehicle.

39-0350-1401, Rules Governing Safety Rest Areas. Defines **"**soliciting**"** and **"**fireworks**"** and reinstates the ban on fireworks at rest areas; increases occupancy time limit for rest areas on interstate highways to comply with federal law.

IDAPA 49 - CERTIFIED SHORTHAND REPORTERS BOARD
PO Box 83720, Boise, ID 83720-0063

49-0101-1401, Rules of Procedure of the Idaho Certified Shorthand Reporters Board. Clarifies the nature and scope of the certification exam and segments of the exam, and the qualifications for a temporary permit.

IDAPA 50 - IDAHO COMMISSON OF PARDONS AND PAROLE
3056 Elder St., Boise, ID 83705

50-0101-1401, Rules of the Commission of Pardons and Parole. Updates terminology and deletes obsolete language; expedites hearing process; updates language regarding general conditions of parole; grants authority to the executive director to add special conditions; changes detainer provision; clarifies Interstate Compact procedures; adds additional language to the section on victims for public safety; includes victims not included in the instant offense and those removed from the instant offense as a result of a plea bargain; and limits the time of jail time served on the first and each subsequent offense.

IDAPA 55 - DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION
PO Box 83720, Boise, ID 83720-00637

55-0104-1401, Rules Governing Idaho Quality Program Standards Incentive Grants and Agricultural Education Program Start-Up Grants. New chapter establishes the eligibility requirements, application process, and selection process for the two grant programs.

NOTICES OF ADOPTION OF TEMPORARY RULE

IDAPA 08 - STATE BOARD OF EDUCATION / DEPARTMENT OF EDUCATION
08-0202-1405, Rules Governing Uniformity
08-0203-1405, Rules Governing Thoroughness

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39-0203-1401, Rules Governing Vehicle Dealer's Principal Place of Business

NOTICES OF INTENT TO PROMULGATE - NEGOTIATED RULEMAKING

IDAPA 11 - IDAHO STATE POICE - ALCOHOL BEVERAGE CONTROL UNIT
11-0501-1401, Rules Governing Alcohol Beverage Control.

Please refer to the Idaho Administrative Bulletin, **October 1, 2014, Volume 14-10**, 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.**

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CUMULATIVE RULEMAKING INDEX
OF IDAHO ADMINISTRATIVE RULES

Idaho Department of Administration
Office of the Administrative Rules Coordinator

July 1, 1993 -- Present

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

This online index provides a history of all agency rulemakings from 1993 to the present. It tracks all rulemaking activities on each chapter of rules and includes negotiated, temporary, proposed, pending and final rules, public hearing notices, vacated rulemaking notices, and executive orders of the Governor.

ABRIDGED RULEMAKING INDEX
OF IDAHO ADMINISTRATIVE RULES
(Index of Current Rulemakings)

Idaho Department of Administration
Office of the Administrative Rules Coordinator

March 20, 2014 -- October 1, 2014

(eff. PLR) - Final Effective Date Pending Legislative Review And Approval
(eff. date)L - Denotes Adoption by Legislative Action
(eff. date)T - Temporary Rule Effective Date
SCR # - denotes the number of a Senate Concurrent Resolution (Legislative Action)
HCR # - denotes the number of a House Concurrent Resolution (Legislative Action)

(This Abridged Index includes rules promulgated before March 20, 2014 that are still in process and all current rulemakings promulgated after March 20, 2014 - Sine Die.)

IDAPA 01 -- IDAHO BOARD OF ACCOUNTANCY

01.01.01, Idaho Accountancy Rules

01-0101-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-8
01-0101-1401 Proposed Rulemaking, Bulletin Vol. 14-10
01-0101-1402 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 02 -- DEPARTMENT OF AGRICULTURE

02.01.05, Rules Governing Certificates of Free Sale

02-0105-1401 Proposed Rulemaking, Bulletin Vol. 14-8

02.02.14, Rules for Weights and Measures

02-0214-1401 Proposed Rulemaking, Bulletin Vol. 14-7
02-0214-1402 Proposed Rulemaking, Bulletin Vol. 14-7
02-0214-1403 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
02-0214-1401 Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)
02-0214-1402 Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)
02-0214-1403 Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-9

02.03.03, Idaho Department of Agriculture Rules Governing Pesticide and Chemigation Use and Application

02-0303-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
02-0303-1401 Proposed Rulemaking, Bulletin Vol. 14-8

02.04.05, Rules of the Idaho Department of Agriculture Governing Manufacture Grade Milk

02-0405-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
02-0405-1401 Proposed Rulemaking, Bulletin Vol. 14-9

02.04.06, Requirements for Licensed Dairy Plants

02-0406-1401 Proposed Rulemaking, Bulletin Vol. 14-6
02-0406-1401 Adoption of Pending Rule, Bulletin Vol. 14-8 (eff. PLR 2015)

02.04.14, Rules Governing Dairy Waste

02-0414-1401 Proposed Rulemaking, Bulletin Vol. 14-6
02-0414-1401 Adoption of Pending Rule, Bulletin Vol. 14-8 (eff. PLR 2015)

02.04.19, Rules Governing Domestic Cervidae

02-0419-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
02-0419-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-9 (eff. 9-1-14)T

02.04.21, Rules Governing the Importation of Animals

02-0421-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
02-0421-1402 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
02-0421-1401 Proposed Rulemaking, Bulletin Vol. 14-9
02-0421-1402 Proposed Rulemaking, Bulletin Vol. 14-9

02.04.24, Rules Governing Tuberculosis

02-0424-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
02-0424-1401 Proposed Rulemaking, Bulletin Vol. 14-9

02.04.28, Rules Governing Livestock Dealers, Buying Stations, and Livestock Trader Lots

02-0428-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
02-0428-1401 Proposed Rulemaking, Bulletin Vol. 14-9

02.04.29, Rules Governing Trichomoniasis

02-0429-1401 Proposed Rulemaking, Bulletin Vol. 14-6
02-0429-1401 Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)

02.06.02, Rules Pertaining to the Idaho Commercial Feed Law

02-0602-1401 Proposed Rulemaking, Bulletin Vol. 14-6
02-0602-1401 Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)

02.06.05, Rules Governing the Disease of Hops (Humulus Lupulus)

02-0605-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
02-0605-1401 Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-10 (eff. 9-1-14)T

02.06.12, Rules Pertaining to the Idaho Fertilizer Law

02-0612-1401 Proposed Rulemaking, Bulletin Vol. 14-6
02-0612-1401 Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)

02.06.27, Rules Governing Bacterial Ring Rot Caused by (Clavibacter michiganensis* subsp. *sepedonicus) of Potato

02-0627-1401 Temporary Rulemaking (New Chapter), Bulletin Vol. 14-3 (eff. 2-26-14)T
02-0627-1402 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
02-0627-1402* Notice of Intent to Promulgate Rules (***2nd Notice**) - Negotiated Rulemaking, Bulletin Vol. 14-7
02-0627-1401 Notice of Amendment to Temporary Rule, Bulletin Vol. 14-10
02-0627-1402 Proposed Rulemaking (Fee Rule) (New Chapter), Bulletin Vol. 14-10

02.06.33, Organic Food Products Rules

02-0633-1401 Proposed Rulemaking, Bulletin Vol. 14-6
02-0633-1401 Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)

02.06.41, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001

02-0641-1401 Proposed Rulemaking, Bulletin Vol. 14-6
02-0641-1401 Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)

02.08.01, Sheep and Goat Rules of the Idaho Board of Sheep Commissioners

02-0801-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
02-0801-1401 Proposed Rulemaking, Bulletin Vol. 14-9

IDAPA 05 -- DEPARTMENT OF JUVENILE CORRECTIONS

05.01.01, Rules for Contract Providers

05-0101-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
05-0101-1401 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 14-9

05.01.05, Rules for Reintegration Providers

05-0105-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
05-0105-1401 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 14-9

05.02.01, Rules for Residential Treatment Providers

05-0201-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 14-7
05-0201-1401 Proposed Rulemaking, Bulletin Vol. 14-9

05.02.02, Rules for Staff Secure Providers

05-0202-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 14-7
05-0202-1401 Proposed Rulemaking, Bulletin Vol. 14-9

05.02.03, Rules for Reintegration Providers

05-0203-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 14-7
05-0203-1401 Proposed Rulemaking, Bulletin Vol. 14-9

05.02.04, Rules for Supported Living Providers
05-0204-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 14-7
05-0204-1401 Proposed Rulemaking, Bulletin Vol. 14-9

IDAPA 06 -- STATE BOARD OF CORRECTION

06.01.02, Rules of Correctional Industries
06-0102-1401 Notice of Proclamation of Rulemaking (New Chapter), Bulletin Vol. 14-6 (eff. 7-4-14)

IDAPA 07 -- DIVISION OF BUILDING SAFETY

07.01.03, Rules of Electrical Licensing and Registration - General
07-0103-1401 Proposed Rulemaking, Bulletin Vol. 14-10

07.01.06, Rules Governing the Use of National Electrical Code
07-0106-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-5

07.01.07, Rules Governing Continuing Education Requirements
07-0107-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-5
07-0107-1401 Proposed Rulemaking, Bulletin Vol. 14-10

07.01.11, Rules Governing Civil Penalties
07-0111-1401 Proposed Rulemaking, Bulletin Vol. 14-10

07.02.04, Rules Governing Plumbing Safety Inspections
07-0204-1401 Proposed Rulemaking, Bulletin Vol. 14-10

07.02.05, Rules Governing Plumbing Safety Licensing
07-0205-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
07-0205-1401 Proposed Rulemaking, Bulletin Vol. 14-10

07.02.06, Rules Concerning Uniform Plumbing Code
07-0206-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-3
07-0206-1401 Proposed Rulemaking, Bulletin Vol. 14-10

07.03.01, Rules of Building Safety
07-0301-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
07-0301-1401 Proposed Rulemaking, Bulletin Vol. 14-10
07-0301-1402 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 10-1-14)T

07.05.01, Rules of the Public Works Contractors License Board
07-0501-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-5

IDAPA 08 -- IDAHO STATE BOARD OF EDUCATION AND STATE DEPARTMENT OF EDUCATION

08.01.11, Registration of Postsecondary Educational Institutions and Proprietary Schools
08-0111-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-8

08-0111-1401 Proposed Rulemaking, Bulletin Vol. 14-10

08.02.01, Rules Governing Administration

08-0201-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-8 (eff. 7-1-14)T
08-0201-1402 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 8-14-14)T

08.02.02, Rules Governing Uniformity

08-0202-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-8
08-0202-1401 Proposed Rulemaking, Bulletin Vol. 14-10
08-0202-1402 Proposed Rulemaking, Bulletin Vol. 14-10
08-0202-1403 Proposed Rulemaking, Bulletin Vol. 14-10
08-0202-1404 Proposed Rulemaking, Bulletin Vol. 14-10
08-0202-1405 Notice of Adoption of Temporary Rule, Bulletin Vol. 14-10 (8-14-14)T

08.02.03, Rules Governing Thoroughness

08-0203-1401 Proposed Rulemaking, Bulletin Vol. 14-10
08-0203-1402 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 8-14-14)T
08-0203-1403 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 8-14-14)T
08-0203-1404 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 8-14-14)T
08-0203-1405 Adoption of Temporary Rule, Bulletin Vol. 14-10 (eff. 8-14-14)T
08-0203-1406 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 8-14-14)T

08.05.01, Rules Governing Seed and Plant Certification - Regents of the University of Idaho

08-0501-1401 Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 14-6 (eff. 5-14-14)T

IDAPA 09 -- IDAHO DEPARTMENT OF LABOR

09.01.04, Unemployment Insurance Benefit Fraud and Overpayment Rules

09-0104-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
09-0104-1401 Proposed Rulemaking, Bulletin Vol. 14-9

09.01.06, Rules of the Appeals Bureau

09-0106-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
09-0106-1401 Proposed Rulemaking, Bulletin Vol. 14-9

09.01.30, Unemployment Insurance Benefits Administration Rules

09-0130-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
09-0130-1401 Proposed Rulemaking, Bulletin Vol. 14-9

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

10.01.01, Rules of Procedure

10-0101-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-5
10-0101-1401 Proposed Rulemaking, Bulletin Vol. 14-8
10-0101-1401 Adoption of Pending Rule, Bulletin Vol. 14-10 (eff. PLR 2015)

10.01.02, Rules of Professional Responsibility

10-0102-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-5
10-0102-1401 Proposed Rulemaking, Bulletin Vol. 14-8
10-0102-1401 Adoption of Pending Rule, Bulletin Vol. 14-10 (eff. PLR 2015)

10.01.03, Rules for Corner Perpetuation and Filing

10-0103-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-8
10-0103-1401 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 11 -- IDAHO STATE POLICE

IDAHO STATE POLICE FORENSIC SERVICES

11.03.01, Rules Governing Alcohol Testing

11-0301-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 9-2-14)T

IDAHO STATE RACING COMMISSION

11.04.02, Rules Governing Simulcasting

11-0402-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-9 (eff. 9-1-14)T

11.04.09, Rules Governing Claiming Races

11-0409-1401 Proposed Rulemaking, Bulletin Vol. 14-10

11.04.10, Rules Governing Live Horse Races

11-0410-1401 Proposed Rulemaking, Bulletin Vol. 14-10

ALCOHOL BEVERAGE CONTROL BUREAU

11.05.01, Rules Governing Alcohol Beverage Control

11-0501-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-10

PEACE OFFICER STANDARDS AND TRAINING (POST) COUNCIL

11.11.01, Rules of the Idaho Peace Officer Standards and Training Council

11-1101-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-8 (eff. 6-5-14)T
11-1101-1402 Proposed Rulemaking, Bulletin Vol. 14-8
11-1101-1401 Adoption of Pending Rule, Bulletin Vol. 14-10 (eff. PLR 2015)
11-1101-1402 Adoption of Pending Rule, Bulletin Vol. 14-10 (eff. PLR 2015)
11-1101-1403 Proposed Rulemaking, Bulletin Vol. 14-10

11.11.04, Rules of the Idaho POST Council for Correctional Officers and Adult Probation and Parole Officers

11-1104-1401 Proposed Rulemaking, Bulletin Vol. 14-10

IDAHO STATE POLICE COMMERCIAL VEHICLE SAFETY

11.13.01, The Motor Carrier Rules

11-1301-1401 Proposed Rulemaking, Bulletin Vol. 14-10
11-1301-1402 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 12 -- DEPARTMENT OF FINANCE

12.01.10, Rules Pursuant to the Idaho Residential Mortgage Practices Act

12-0110-1401 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 13 -- IDAHO FISH AND GAME COMMISSION

13.01.02, Rules Governing Hunter Education and Mentored Hunting

13-0102-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 8-1-14)T

13.01.04, Rules Governing Licensing

13-0104-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-1
13-0104-1402 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 8-1-14)T
13-0104-1403 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 8-1-14)T
13-0104-1404 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 8-11-14)T

13.01.08, Rules Governing the Taking of Big Game Animals in the State of Idaho

13-0108-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-1
13-0108-1402 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
13-0108-1402 Proposed Rulemaking, Bulletin Vol. 14-10
13-0108-1403 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 8-1-14)T
13-0108-1404 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 8-1-14)T

13.01.09, Rules Governing the Taking of Game Birds in the State of Idaho

13-0109-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-2
13-0109-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 8-1-14)T

13.01.17, Rules Governing the Use of Bait and Trapping for Taking Big Game Animals

13-0117-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-1

IDAPA 15 -- OFFICE OF THE GOVERNOR

Executive Orders of the Governor

Executive Order No. **2014-04** Bulletin Vol. 14-5
Executive Order No. **2014-03** Bulletin Vol. 14-5
Executive Order No. **2014-02** Bulletin Vol. 14-5
Executive Order No. **2014-01** Bulletin Vol. 14-2
Executive Order No. **2013-07** Bulletin Vol. 14-2
Executive Order No. **2013-06** Bulletin Vol. 14-2
Executive Order No. **2013-05** Bulletin Vol. 14-2

Idaho Commission for the Blind and Visually Impaired

15.02.02, Vocational Rehabilitation Services

15-0202-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
15-0202-1401 Proposed Rulemaking, Bulletin Vol. 14-9

15.02.30, Business Enterprise Program

15-0230-1401* *Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7 (*Rulemaking has been terminated)*

Idaho Forest Products Commission

15.03.01, Rules of Administrative Procedure of the Idaho Forest Products Commission

15-0301-1401 Proposed Rulemaking, Bulletin Vol. 14-10

Idaho Military Division

15.06.05, Hazardous Substance Response Rules

15-0605-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7

Idaho State Liquor Division

15.10.01, Rules of the Idaho State Liquor Division

15-1001-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-6 (eff. 7-1-14)T
15-1001-1401 Adoption of Pending Rule, Bulletin Vol. 14-8 (eff. PLR 2015)

IDAPA 16 -- DEPARTMENT OF HEALTH AND WELFARE

16.01.02, Emergency Medical Services (EMS) - Rule Definitions

16-0102-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-7 (eff. 7-1-14)T

16.02.01, Rules of the Idaho Time Sensitive Emergency System Council

16-0201-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 14-9

16.02.02, Rules of the Idaho Emergency Medical Services (EMS) Physician Commission

16-0202-1401 Proposed Rulemaking, Bulletin Vol. 14-10

16.02.08, Vital Statistics Rules

16-0208-1401 Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-9

16.02.10, Idaho Reportable Diseases

16-0210-1401 Proposed Rulemaking, Bulletin Vol. 14-9

16.02.19, Food Safety and Sanitation Standards for Food Establishments (The Idaho Food Code)

16-0219-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-3
16-0219-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (2nd Notice), Bulletin Vol. 14-4
16-0219-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 9-1-14)T

16.02.27, Idaho Radiation Control Rules

16-0227-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
16-0227-1401* Notice of Intent to Promulgate Rules - Negotiated Rulemaking (***2nd Notice**), Bulletin Vol. 14-7
16-0227-1401 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 14-9
16-0227-1402 Proposed Rulemaking (Chapter Rewrite-Fee Rule), Bulletin Vol. 14-9

16.03.01, Eligibility for Health Care Assistance for Families and Children

16-0301-1401 Proposed Rulemaking, Bulletin Vol. 14-10

16.03.03, Rules Governing Child Support Services

16-0303-1401 Proposed Rulemaking, Bulletin Vol. 14-10

16.03.04, Rules Governing the Food Stamp Program in Idaho

16-0304-1401 Proposed Rulemaking, Bulletin Vol. 14-10

16.03.05, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)

16-0305-1401 Proposed Rulemaking, Bulletin Vol. 14-10

16.03.10, Medicaid Enhanced Plan Benefits

16-0310-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-5
16-0310-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-7 (eff. 7-1-14)T

16.03.11, Rules Governing Intermediate Care Facilities for People With Intellectual Disabilities (ICF/ID)

16-0311-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-5

16-0311-1401 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 14-9
16-0311-1402 Proposed Rulemaking (Chapter Rewrite), Bulletin Vol. 14-9

16.03.17, Medicare/Medicaid Coordinated Plan Benefits

16-0317-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-4
16-0317-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-6 (eff. 7-1-14)T

16.03.22, Residential Care or Assisted Living Facilities in Idaho

16-0322-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-5
16-0322-1401 Proposed Rulemaking, Bulletin Vol. 14-8

16.05.01, Use and Disclosure of Department Rules

16-0501-1401 Proposed Rulemaking, Bulletin Vol. 14-9

16.05.06, Criminal History and Background Checks

16-0506-1401 Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-7 (eff. 7-1-14)T

16.05.07, The Investigation and Enforcement of Fraud, Abuse, and Misconduct

16-0507-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
16-0507-1401 Proposed Rulemaking, Bulletin Vol. 14-10

16.06.01, Child and Family Services

16-0601-1401 Proposed Rulemaking, Bulletin Vol. 14-9
16-0601-1402 Proposed Rulemaking, Bulletin Vol. 14-9 ***(VOID - Pulled and Not Published)***

16.06.12, Rules Governing the Idaho Child Care Program (ICCP)

16-0612-1401 Temporary Rulemaking, Bulletin Vol. 14-1 (eff. 11-1-13)T
16-0612-1401 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 148, Bulletin Vol. 14-5 (eff. 11-1-13)T
16-0612-1401 Proposed Rulemaking, Bulletin Vol. 14-5

16.07.33, Adult Mental Health Services

16-0733-1401 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 17 -- INDUSTRIAL COMMISSION

17.02.04, Administrative Rules of the IC Under the Worker's Compensation Law - Benefits

17-0204-1401 Proposed Rulemaking, Bulletin Vol. 14-10

17.02.06, Employers' Reports

17-0206-1401 Proposed Rulemaking, Bulletin Vol. 14-10

17.02.08, Miscellaneous Provisions

17-0208-1401 Proposed Rulemaking, Bulletin Vol. 14-10

17.02.09, Medical Fees

17-0209-1401 Proposed Rulemaking, Bulletin Vol. 14-10

17.02.11, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Self-Insured Employers

17-0211-1401 Proposed Rulemaking, Bulletin Vol. 14-8

17.05.01, Rules Under the Crime Victims Compensation Act

17-0501-1401 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 18 -- DEPARTMENT OF INSURANCE

18.01.25, Title Insurance and Title Insurance Agents and Escrow Officers

18-0125-1401* *Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7 (*Rulemaking has been terminated)*

18.01.30, Individual Disability and Group Supplemental Disability Insurance Minimum Standards Rule

18-0130-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-7

18.01.44, Schedule of Fees, Licenses, and Miscellaneous Charges

18-0144-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
18-0144-1401 Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-9

18.01.46, Recognition of New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities and Pure Endowment Contracts

18-0146-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
18-0146-1401 Proposed Rulemaking, Bulletin Vol. 14-9

18.01.53, Continuing Education

18-0153-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
18-0153-1401 Proposed Rulemaking, Bulletin Vol. 14-9

18.01.56, Rebates and Illegal Inducements to Obtaining Title Insurance Business Rules

18-0156-1401* *Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7 (*Rulemaking has been terminated)*

IDAPA 19 -- BOARD OF DENTISTRY

19.01.01, Rules of the Idaho State Board of Dentistry

19-0101-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
19-0101-1401 Proposed Rulemaking, Bulletin Vol. 14-9

IDAPA 20 -- DEPARTMENT OF LANDS

20.03.16, Rules Governing Oil and Gas Leasing on Idaho State Lands

20-0316-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7

20.07.02, Rules Governing Conservation of Crude Oil and Natural Gas in the State of Idaho

20-0702-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
20-0702-1401 Proposed Rulemaking, Bulletin Vol. 14-9

IDAPA 23 -- BOARD OF NURSING

23.01.01, Rules of the Idaho Board of Nursing

23-0101-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
23-0101-1402 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
23-0101-1401 Proposed Rulemaking, Bulletin Vol. 14-9
23-0101-1402 Proposed Rulemaking, Bulletin Vol. 14-9

IDAPA 24 -- BUREAU OF OCCUPATIONAL LICENSES

24.02.01*, *Rules of the Board of Barber Examiners
24-0201-1401 Proposed Rulemaking, Bulletin Vol. 14-10

24.04.01*, *Rules of the Idaho Board of Cosmetology
24-0401-1401 Proposed Rulemaking, Bulletin Vol. 14-10

24.06.01*, *Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants
24-0601-1401 Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-10

24.09.01*, *Rules of the Board of Examiners of Nursing Home Administrators
24-0901-1401 Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-10

24.10.01*, *Rules of the State Board of Optometry
24-1001-1401 Proposed Rulemaking, Bulletin Vol. 14-8

24.11.01*, *Rules of the State Board of Podiatry
24-1101-1401 Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-9

24.14.01*, *Rules of the State Board of Social Work Examiners
24-1401-1401 Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-10

24.15.01*, *Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists
24-1501-1401 Proposed Rulemaking, Bulletin Vol. 14-10

24.17.01*, *Rules of the State Board of Acupuncture
24-1701-1401 Proposed Rulemaking, Bulletin Vol. 14-8

24.19.01*, *Rules of the Board of Examiners of Residential Care Facility Administrators
24-1901-1401 Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-9

24.23.01*, *Rules of the Speech and Hearing Services Licensure Board
24-2301-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-9

24.25.01*, *Rules of the Idaho Driving Businesses Licensure Board
24-2501-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-7 (eff. 5-23-14)T

24.26.01*, *Rules of the Idaho Board of Midwifery
24-2601-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-7 (eff. 7-1-14)T
24-2601-1402 Proposed Rulemaking, Bulletin Vol. 14-10

24.27.01*, *Rules of the Idaho State Board of Massage Therapy
24-2701-1401 Proposed Rulemaking, Bulletin Vol. 14-8

IDAPA 26 -- DEPARTMENT OF PARKS AND RECREATION

26.01.03*, *Rules Governing Recreational Registration Vendors
26-0103-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-7 (eff. 7-1-14)T

26.01.20*, *Rules Governing the Administration of Park and Recreation Areas and Facilities
26-0120-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-7 (eff. 7-1-14)T

26.01.21*, *Rules Governing Leasing Practices and Procedures for Recreational Residences Within

Heyburn State Park

26-0121-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-5 (eff. 3-18-14)T

26.01.30, Idaho Safe Boating Rules

26-0130-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-7 (eff. 7-1-14)T

26.01.31, Rules Governing the Administration of the Idaho Department of Parks and Recreation State and Federal Grant Funds

26-0131-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-7 (7-1-14)T

26.01.34, Idaho Protection Against Invasive Species Sticker Rules

26-0134-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-7 (eff. 7-1-14)T

26.01.36, Rules Governing the Winter Recreational Parking Permit Program

26-0136-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-7 (eff. 7-1-14)T

IDAPA 27 -- BOARD OF PHARMACY

27.01.01, Rules of the Idaho State Board of Pharmacy

27-0101-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
27-0101-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (**2nd Notice**), Bulletin Vol. 14-8
27-0101-1401 Proposed Rulemaking, Bulletin Vol. 14-10
27-0101-1402 Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-10 (9-1-14)T
27-0101-1403 Proposed Rulemaking, Bulletin Vol. 14-10
27-0101-1404 Proposed Rulemaking, Bulletin Vol. 14-10
27-0101-1405 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 28 -- DEPARTMENT OF COMMERCE

28.04.01, Rules Governing the Idaho Reimbursement Incentive Act

28-0401-1401 Adoption of Temporary Rule (New Chapter), Bulletin Vol. 14-8 (eff. 7-1-14)T
28-0401-1401 Notice of Amendment to Temporary Rule, Bulletin Vol. 14-10 (eff. 8-29-14)T
28-0401-1402 Proposed Rulemaking (New Chapter), Bulletin Vol. 14-10

IDAPA 29 -- IDAHO POTATO COMMISSION

29.01.02, Rules Governing Payment of Tax and Usage of Certification Marks and Trademarks

29-0102-1401 Proposed Rulemaking, Bulletin Vol. 14-9

IDAPA 31 -- PUBLIC UTILITIES COMMISSION

31.02.01, Public Records Act Rules of the Idaho Public Utilities Commission

31-0201-1401 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 14-9

IDAPA 33 -- REAL ESTATE COMMISSION

33.01.01, Rules of the Idaho Real Estate Commission

33-0101-1401 Proposed Rulemaking, Bulletin Vol. 14-10

33.01.02, Rules of Practice and Procedure of the Idaho Real Estate Commission Governing Contested Cases

33-0102-1401 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 35 -- STATE TAX COMMISSION

35.01.01, Income Tax Administrative Rules

35-0101-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
35-0101-1402 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-8
35-0101-1401 Proposed Rulemaking, Bulletin Vol. 14-10
35-0101-1402 Proposed Rulemaking, Bulletin Vol. 14-10
35-0101-1403 Proposed Rulemaking, Bulletin Vol. 14-10

35.01.02, Idaho Sales and Use Tax Administrative Rules

35-0102-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-5
35-0102-1402 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
35-0102-1403 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-7
35-0102-1401 Proposed Rulemaking, Bulletin Vol. 14-10
35-0102-1402 Proposed Rulemaking, Bulletin Vol. 14-10
35-0102-1403 Proposed Rulemaking, Bulletin Vol. 14-10
35-0102-1404 Proposed Rulemaking, Bulletin Vol. 14-10

35.01.03, Property Tax Administrative Rules

35-0103-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-5
35-0103-1402 Adoption of Temporary Rule, Bulletin Vol. 14-6 (1-1-14)T
35-0103-1401 Proposed Rulemaking, Bulletin Vol. 14-8
35-0103-1403 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-8
35-0103-1404 Proposed Rulemaking, Bulletin Vol. 14-8
35-0103-1405 Temporary and Proposed Rulemaking, Bulletin Vol. 14-8 (eff. 8-6-14)T
35-0103-1406 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-8
35-0103-1403 Proposed Rulemaking, Bulletin Vol. 14-10
35-0103-1406 Proposed Rulemaking, Bulletin Vol. 14-10

35.01.05, Motor Fuels Tax Administrative Rules

35-0105-1401 Proposed Rulemaking, Bulletin Vol. 14-6
35-0105-1402 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
35-0105-1402 Proposed Rulemaking, Bulletin Vol. 14-8

35.02.01, Tax Commission Administration and Enforcement Rules

35-0201-1401 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 37 -- DEPARTMENT OF WATER RESOURCES

37.03.03, Rules and Minimum Standards for the Construction and Use of Injection Wells

37-0303-1401 Proposed Rulemaking, Bulletin Vol. 14-9

37.03.11, Rules for Conjunctive Management of Surface and Ground Water Resources

37-0311-1101 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-2
37-0311-1101 Notice of Intent to Promulgate Rules - Negotiated Rulemaking **(2nd Notice)**, Bulletin Vol. 14-5
37-0311-1401 Proposed Rulemaking, Bulletin Vol. 14-10

37.03.13, The Water Management Rules

37-0313-9701 Notice of Intent to Promulgate Rules - 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

37.03.14, Transfers

37-0314-9801 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 98-5

37.03.15, Water Management Rules - Eastern Snake Plain Aquifer

37-0315-0001 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 00-12

IDAPA 38 -- IDAHO DEPARTMENT OF ADMINISTRATION

38.03.01, Rules Governing Group Insurance

38-0301-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-8 (eff. 7-1-14)T

38.04.04, Rules Governing Capitol Mall Parking

38-0404-1401 Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 14-7 (eff. 7-1-14)T

38.05.01, Rules of the Division of Purchasing

38-0501-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-10

38.06.01, Rules of the Department of Administration Governing Billing Procedures of the Office of the Chief Information Officer

38-0601-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 14-6
38-0601-1401 Proposed Rulemaking (New Chapter), Bulletin Vol. 14-10

IDAPA 39 -- IDAHO TRANSPORTATION DEPARTMENT

39.02.03, Rules Governing Vehicle Dealer's Principle Place of Business

39-0203-1401 Adoption of Temporary Rule, Bulletin Vol. 14-10 (eff. 8-2-14)T
39-0203-1402 Proposed Rulemaking, Bulletin Vol. 14-10

39.03.10, Rules Governing When An Overlegal Permit Is Required

39-0310-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-10 (eff. 9-1-14)T

39.03.16, Rules Governing Oversize Permits For Non-Reducible Vehicles And/Or Loads

39-0316-1401 Temporary and Proposed Rulemaking, Bulletin Vol. 14-6 (eff. 5-1-14)T

39.03.50, Rules Governing Safety Rest Areas

39-0350-1401 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 46 -- BOARD OF VETERINARY MEDICAL EXAMINERS

46.01.01, Rules of the State of Idaho Board of Veterinary Medicine

46-0101-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
46-0101-1401 Proposed Rulemaking, Bulletin Vol. 14-8
46-0101-1401 Adoption of Pending Rule, Bulletin Vol. 14-10

IDAPA 49 -- CERTIFIED SHORTHAND REPORTERS BOARD

49.01.01, Rules of Procedure of the Idaho Certified Shorthand Reporters Board

49-0101-1401 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 50 -- COMMISSION FOR PARDONS AND PAROLE

50.01.01, Rules of the Commission of Pardons and Parole

50-0101-1401 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 54 -- OFFICE OF THE STATE TREASURER

54.03.01, Idaho Unclaimed Property Administrative Rules

54-0301-1401 Notice of Rescission of Temporary Rule and Vacation of Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 55 -- DIVISION OF PROFESSIONAL-TECHNICAL EDUCATION

55.01.04, Rules Governing Agricultural and Natural Resource Education Programs

55-0104-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 14-6
55-0104-1401 Proposed Rulemaking, Bulletin Vol. 14-10

IDAPA 57 -- SEXUAL OFFENDER MANAGEMENT BOARD

57.01.01, Rules of the Sexual Offender Management Board

57-0101-1401 Proposed Rulemaking, Bulletin Vol. 14-9

57.01.02, Rules Governing Juvenile Sexual Offender Management Practices

57-0102-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking (New Chapter), Bulletin Vol. 14-6

IDAPA 58 -- DEPARTMENT OF ENVIRONMENTAL QUALITY

58-0000-1401 The Palisades Subbasin Total Maximum Daily Loads (TMDL) 2013 Addendum and Five Year Review (HUC 17040104), Bulletin Vol. 14-1
58-0000-1402 The Lake Walcott TMDL 2013 Addendum: Marsh Creek (HUC ID 17040209), Bulletin Vol. 14-1
58-0000-1403 Pahsimeroi River Subbasin Total Maximum Daily Loads (TMDL) 2013 Addendum and Five-Year Review (HUC ID 17060202), Bulletin Vol. 14-2
58-0000-1404 Cow Creek Total Maximum Daily Load (TMDL) Addendum (HUC ID 17060108), Bulletin Vol. 14-4
58-0000-1405 Assessment of Water Quality in Kootenai River and Moyie River Subbasins Total Maximum Daily Load (TMDL) 2014 Temperature Addendum (HUC ID 17010104 and 17010105), Bulletin Vol. 14-9

58.01.01, Rules for the Control of Air Pollution in Idaho

58-0101-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-4
58-0101-1402 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-6
58-0101-1403 Proposed Rulemaking, Bulletin Vol. 14-8
58-0101-1401 Proposed Rulemaking, Bulletin Vol. 14-9
58-0101-1402 Proposed Rulemaking, Bulletin Vol. 14-9

58.01.02, Water Quality Standards

58-0102-1201 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 12-9
58-0102-1301 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 13-8
58-0102-1301 Proposed Rulemaking, Bulletin Vol. 13-12
58-0102-1401 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 14-4
58-0102-1301 Notice of Adoption of Pending Rule and Temporary Rule, Bulletin Vol. 14-6 (eff. *PLR 2015) - (6-4-14)T
58-0102-1401 Proposed Rulemaking, Bulletin Vol. 14-9

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IDAPA 59 -- PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO (PERSI)

59.01.03, PERSI Contribution Rules

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59-0106-1400 Notice of Correction to Final Rule, Bulletin Vol. 14-5 (eff. 3-20-14)
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59-0106-1401 Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)

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59-0201-1401 Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 14-7 (eff. 7-1-14)T
59-0201-1401 Adoption of Pending Rule, Bulletin Vol. 14-9 (eff. PLR 2015)

Subject Index

A

Abbreviations, IDAPA 02.06.27 37
BRR 37
Cms 37
ICIA 37
ISDA 37
Acceptable Charges For Medical Services Provided By Hospitals & Ambulatory Surgery Centers Under The Idaho Workers' Compensation Law 296
Acceptable Charge 296
Adjustment of Hospital & ASC Base Rates 297
Adoption of Standards for Hospitals & ASCs 296
Disputes 297
Acceptable Charges For Medical Services Provided By Physicians Under The Idaho Workers' Compensation Law 294
Acceptable Charge 294
Adjustment of Conversion Factors 295
Adoption of Standard for Physicians 294
Anesthesiology 295
Coding 295
Conversion Factors 294
Medicine Dispensed By Physicians 296
Services Without CPT Code, RVU or Conversion Factor 295
Acceptance Or Rejection Of Bids & Proposals 466
Best Interest 466
Bidder Is Not Responsible 466
Deviations 467
Does Not Meet Specifications 466
Not Lowest Responsible Bid 466
Accessing Adult Mental Health Services 275
Accountability 149
Additional Academic Indicator 151
Adequate Yearly Progress (AYP) 149
Adequate Yearly Progress (AYP) Definitions 149
Annual Measurable Achievement Objectives (AMAOs) 151
Full Academic Year 149
Graduation Rate 151
IELA Language Proficiency Levels 149
ISAT Student Achievement Levels 149
Participation Rate 150
Schools 150
Subgroups 150
Acquisition Of Concession Services 454
Address, Office Hours, Telephone, & Fax Numbers 36
Fax Number 36
Mailing Address 36
Office Hours 36
Physical Address 36
Telephone Number 36
Administrative Appeal 35
Administrative Appeals 373, 528
Adoption And Incorporation By Reference Of The Idaho State Plumbing Code 57
Adult Mental Health Services 280
Assertive Community Services 280
Assessment 280
Case Management 280
Crisis Intervention 280
Medication Management 280
Outpatient Services 280
Psychiatric Services 280
Rehabilitative & Community-Based Services 280
Residential Care 280
Agreements 369, 377
Agreement Terms Defined 369, 377
Incentive Agreement 369, 377
Alternate Routes To Certification 112
Alternative Authorization -- Content Specialist 113
Alternative Authorization -- Teacher To New Certification 112
Alternative Authorization - Pupil Personnel Services 127
Alternative Route Preparation Program 127
Initial Qualifications 127
Term of Validity 127
Alternative Authorization -- Teacher To New Certification
Alternative Route Preparation Program 113
Non-traditional Route To Teacher Certification 114
Annual Reporting By Applicant 378
New State Revenues 378
Tax Commission Letter 378
Annual Reporting By Buisness Entity 370
Authorization Document 370
Known or Expected Detriments 370
New Jobs Created 370
New State Revenues 370
Other Entitle to Rebate 370
Supporting Documentation 370
Tax Commission Affidavit Letter 370
Annual Reporting By Department 370, 378
Actual Costs and Benefits 370, 379
Economic Impact to State 370, 379
Estimated Costs and Benefits 370, 379
Estimated Tax Credit Commitments 370, 379
Submittal of Report 370, 379
Successes 370, 378
APA Applicability 498
Appeals 532
Final Decision 532
Presentation 532
Review 532
Applicability 37
Application Process 366, 375
Application 367, 375
Application Recommendation Letter 368, 376
Application Schedule 368, 377
Economic Advisory Council 368, 376
Inquiry 366, 375
Pre-Application 366, 375
Pre-Application Estimate Letter 367, 375
Pre-Application Schedule 368, 377
Technical Review - Application 368, 376
Technical Review - Pre-Application 368, 376
Applications For Compensation 301
Allowable Payments for Medical Services 301
Claim for Benefits 301
Effective Date 305
Employment Verification 301
Finality of Order 301
Limit on Compensation 305
Order 301
Overpayment 304
Payment of Bills 305
Providing Information 301
Recipients of Payments for Medical Services 301
Reimbursement for Transportation Expenses 305
Treating Physician 304
Wage Loss Benefits 304
Weekly Compensation Benefits If Victim Employable But Not Employed 305
Apprentice Registration 53
Journeyman Examination 53
Schooling Requirements 53
Work Requirements 53
Assessment In The Public Schools 153
Comprehensive Assessment Program 154
Comprehensive Assessment Program Schedule 155
Content 153
Costs of Additional Services 156
Costs Paid by the State 155
Demographic Information 156
Dual Enrollment 156
Philosophy 153
Purposes 153
Scoring & Report Formats 154
Services 156
Test Security, Validity & Reliability 156
Testing Population 153

Assessments & Fees 240
Assessments 240
Cooperation With Other Departments 240
Awards Of Payments Compensation, Summaries of Payment 286
Awards Of Payments, Summaries of Payment, Employers' Reports 287

B

Barber Shop Requirements 308
Barber Shop Changes in Ownership - Location 309
Contiguous Shop, Licensure & Operation Requirements 308
Primary Shop, Licensure & Operation Requirements 308
Billing & Payment Requirements For Medical Services & Procedures
Preliminary To Dispute Resolution 297
Authority 297
Dispute Resolution Process 299
Failure of Payor to Finally Object 299
Partial Payment 298
Payor Shall Pay or Issue Final Objection 299
Preliminary Objections & Requests for Clarification 298
Prompt Payment 298
Provider Reply to Preliminary Objection or Request for Clarification 298
Provider to Furnish Information 297
Time Periods 297
Black Bear Landowner Appreciation Seasons 219
Broadband Equipment Investment Credit
In General 390
Carryovers 391
Credit Allowed 390
Limitations 390
Pass-Through Entities 391
Taxpayers Entitled to the Credit 391
Burial & Other Expenses, Summaries of Payment 286
Business Meetings 498

C

Cadastral Certification Program 439
Application for Certification 439
Certification Requirements 439
Cross Reference 440
Maintaining Cadastral Specialist Certification 439
Cancellation Of Solicitation 467
Cancellation Is in Best Interest of State 467
Inadequate or Ambiguous Specifications 467
Specifications Have Been Revised 467
Carrier Safety Requirements 199, 202
Adoption of Federal Regulations 199, 202
Availability of Incorporated Documents 200, 203
Obligation of Familiarity With Rules 199, 202
Recognition of Federal Waivers 200, 203
Version of Federal Regulations Adopted 200, 203
Certificates For Resale & Other Exemption Claims 422
Burden of Proof 422
Description and Proper Execution of Approved Forms 422
In General 422
Purchaser's Responsibility 426
Qualified Buyers for Purposes of Resale 422
Qualified Buyers for Purposes Other Than Resale 422
Seller's Responsibility - Purchases Claimed Exempt From Sales Tax for Reasons Other Than Resale 424
Seller's Responsibility -- Purchases for Resale 424
Timely Acceptance of Certificates 426
Certification Of Mandatory Errors & Omissions Insurance 382
Certification of Licensees Obtaining Independent Coverage 382
Certification of Licensees Under Group Insurance Plan 382
Changes To Solicitations Issued Under A Formal Sealed Procedure 460
Civil Penalties
Corrections 48
Electrical Contractor 48
Employees 48
Failure to Disclose 48
Fees & Permits 48
Gross Violation 49
Journeyman to Apprentice Ratio 48
Judicial Review 49
License or Registration 48
Performance Outside Scope of License 48
Supervision 48
Client's Rights & Responsibilities 277
Client to Be Informed of Rights & Responsibilities 277
Code Of Ethics For Idaho Professional Educators 127
Aspirations & Commitments 127
Principle I - Professional Conduct 128
Principle II - Educator/Student Relationship 128
Principle III - Alcohol & Drugs Use or Possession 129
Principle IV - Professional Integrity 129
Principle IX - Duty to Report 130
Principle V - Funds & Property 129
Principle VI - Compensation 130
Principle VII - Confidentiality 130
Principle VIII - Breach of Contract or Abandonment of Employment 130
Principle X - Professionalism 131
Commission & Staff 498
Commission Members 499
Commission Staff 499
Commutation 516
Approving & Granting 517
Authority to Grant 518
Death Sentence 518
Hearing 517
Petition 516
Compounding Drug Products 339
Application 339
Drug Compounding Controls 340
General Compounding Standards 340
Limited Compounding 340
Prohibited Compounding 340
Computer Equipment, Software, & Data Services 406
Canned Software 407
Computer Hardware 407
Custom Software 410
Definitions 406
Digital Games 409
Digital Products 408
Digital Subscriptions 408
Maintenance Contracts 408
Online or Remote Data Storage 409
Purchases for Resale 410
Remotely Accessed Computer Software 408
Reports Compiled by a Computer 409
Training Services 409
Conduct Of Purchasing 453
Authority of the Administrator 453
Delegation of Authority of the Administrator 454
Conflict Of Interest 368, 377
Consolidated Services 476
Content Of Solicitations Issued Under A Formal Sealed Procedure 459
Contract Terms 460
Evaluation Criteria 460
Incorporation by Reference 460
Pre-Solicitation Conference 460
Specifications 459
Submission Information 459
Trade-In Property 460
Content, Pedagogy & Performance Assessment For Certification 104
Assessments 104
Idaho Comprehensive Literacy Assessment 105
Out-of-State Waivers 104

Technology Assessment 105
Continuation Of Tax Credit 371, 379
Continuing Education Requirements, Electricians 43
Contract Administration 469
Contract Renewals & Extensions 469
General 469
High Dollar Service Contracts 469
Contract Terms - Policies & Limitations 468
Prohibited Terms 468
Terms Requiring Special Consideration 469
Contractors Improving Real Property 415
Contract 415
Cross-References 417
Custom-Made Goods 416
Exempt Purchases by Contractors 417
Fuels 416
In General 415
Land Leveling 417
Materials Provided by Project Owner 416
Purchases by Contractors 416
Real Property 416
Subcontractor 417
Use 416
Use Tax Reporting Number 416
Value 416
Controlled Substances
Inventories 351
Annual Inventory Compliance 351
Annual Inventory of Stocks of Controlled Substances 351
Inventory After Discovery of Theft or Loss 351
Inventory on Addition to Schedule of Controlled Substances 351
Inventory on PIC or Director Change 351
Separate Inventories for Each Location 351
Cosmetological Establishment Changes
In - Ownership - Location - Licensure Requirements 313
Addition of an Owner 313
Board Must Be Informed of All Changes 313
Change of Ownership or Location 313
Deletion of an Owner 313
License Status 314
Out of Business 313
Supervision in an Establishment 313
Transfer of Owner 313
Coupled Entries
Coupled Entries 182
Overnight Race 182
Course Approval Requirements
Appeals 45
Code Update Programs 43
General Course Requirements 43
Industry Related Programs 44
Instructor Approval Procedures 45
Program Approval Procedures 44
Requirements for Credit 46
Revocation of Approval 45
Schedule of Approved Classes 46
Crisis Intervention Services 277
Determination of the Need for Crisis Intervention Services 277
Identification of the Crisis Intervention Services Needed 277
Immediate Intervention 277
Cybersecurity Services 475
Number of Positions 475
Usage Allocation 475

D

Data Collection 166
New Data Elements In State Student Data System 166
Data Collection and Required Data Elements 166
Definitions 242, 473 477, 481
Aggregated Costs 473
Billing Methodologies 473
Communications Services 473
Communications Systems 473
Consolidated Services 473
Credentialed EMS Personnel 242
Credentialing 242
Cybersecurity Services 473
Department 473
Designated Clinician 242
Direct (On-Line) Supervision 242
Direct Costs 473
Direct Services 473
Emergency Medical Services (EMS) 242
Emergency Medical Services (EMS) Bureau 243
Emergency Medical Services (EMS) Physician Commission 243
EMS Agency 243
EMS Medical Director 243
Fiscal Year 473
Hospital 243
Hospital Supervising Physician 243
Idaho Agency 473
Idaho Technology Authority 473
Indirect (Off-Line) Supervision 243
Information Technology 473
Internet Service 473
License 243
Licensed EMS Personnel 243
Medical Clinic 243
Medical Clinic Supervising Physician 243
Medical Supervision 243
Medical Supervision Plan 244
Network Services 473
Number of Positions 473
Nurse Practitioner 244
Out-of-hospital 244
Physician 244
Physician Assistant 244
Shared Services 474
Supported Devices 474
Telephone 478, 482
Telephone Services 474
Usage Allocation 474
Vehicle Dealer File System 477, 481
Vehicle Dealer Sign Requirements 478, 482
Workload Factors 474
Definitions - A Through F 272
Adult 272
Adult Mental Health Services 272
Applicant 272
Assertive Community Services 273
Assessment 273
Behavioral Health 273
Behavioral Health Center 273
Case Management 273
Client 273
Clinical Judgment 273
Clinical Necessity 273
Clinical Team 273
Crisis Intervention Services 273
Department 273
Federal Poverty Guidelines 274
Functional Impairment 274
Definitions - G Through Z 274
Good Cause 274
Gravely Disabled 274
Individualized Treatment Plan 274
Medication Management 274
Mental Health Crisis 274
Outpatient Services 274
Psychiatric Services 274
Rehabilitative & Community-Based Services 274
Residential Care 274
Serious & Persistent Mental Illness (SPMI) 275
Serious Mental Illness (SMI) 274
Sliding Fee Scale 275
Substantial Material Change in Circumstances 275
Definitions (A Through L) 249
Adult 249
Advanced Payment of Premium Tax Credit 249
Affordable Care Act 249
Applicant 249
Application 249
Application Date 249
Caretaker Relative 249
Child 249
Citizen 249
Cost-Sharing 249
Creditable Health Insurance 249
Department 249
Disenrollment 249
Electronic Account 250

Eligibility 250
Enrollment 250
Extended Medicaid 250
Federal Poverty Guidelines (FPG) 250
Health Assessment 250
Health Care Assistance (HCA) 250
Health Insurance Exchange or Marketplace 250
Health Insurance Premium Program (HIPP) 250
Health Plan 250
Health Questionnaire 250
Insurance Affordability Programs 250
Internal Revenue Code 250
Internal Revenue Service (IRS) 250
Lawfully Present 250
Lawfully Residing 251
Definitions & Abbreviations 172, 365, 374
Alcohol 172
Approved Vendor 172
Blood Alcohol Analysis 172
Breath Alcohol Analysis 172
Breath Alcohol Test 172
Breath Alcohol Testing Sequence 172
Breath Testing Certification Class 172
Breath Testing Specialist (BTS) 172
Calibration 172
Certificate of Analysis 173
Certificate of Instrument Calibration 173
Changeover Class 173
Department 173
Evidentiary Test 173
Idaho State Police Forensic Services (ISPFS) 173
Incentive Agreement 374
Laboratory 173
MIP/MIC 173
Operator 173
Operator Certification 173
Performance Verification 173
Performance Verification Standard 173
Pre-Application 365, 374
Proficiency Testing 173
Quality Control 173
Recertification Class 173
Tax Reimbursement Incentive Act (TRI) 365, 374
Urine Alcohol Analysis 174
Waiting Period/Monitoring Period/ Deprivation Period/Observation Period 174
Definitions & Abbreviations (A -- I) 326
Accredited School or College of Pharmacy 326
ACPE 326
Acute Care Hospital 326
ADS -- Automated Dispensing & Storage 326
Biological Product 326
Biosimilar 326
CDC 326
Central Drug Outlet 326
Central Pharmacist 326
Central Pharmacy 326
Centralized Pharmacy Services 326
Change of Ownership 326
Charitable Clinic or Center -- Authorized Personnel 327
Chart Order 327
CME 327
COE -- Central Order Entry 327
Collaborative Pharmacy Practice 327
Collaborative Pharmacy Practice Agreement 327
Continuous Quality Improvement Program 327
Correctional Facility 327
CPE 327
DEA 327
Distributor 327
DME 327
Drug Order 327
Drug Product Selection 327
Drug Product Substitution 327
DTM -- Drug Therapy Management 327
Emergency Drugs 327
Executive Director 327
FDA 328
Flavoring Agent 328
Floor Stock 328
FPGEC 328
HIPAA 328
Hospital System 328
Idaho State Board of Pharmacy or Idaho Board of Pharmacy 328
Individually Identifiable Health Information 328
Institutional Pharmacy 328
Interchangeable 328
Definitions & Abbreviations (J -- R) 331
LTCF -- Long-Term Care Facility 331
Mail Service Pharmacy 331
MPJE 331
MTM -- Medication Therapy Management 331
NABP 332
NAPLEX 332
NDC 332
Non-Institutional Pharmacy 332
Outsourcing Drug Outlet 332
Parenteral Admixture 332
Pharmaceutical Care Services 332
Pharmacist Extern 333
Pharmacist Intern 333
Pharmacy Operations 333
PHI -- Protected Health Information 333
PIC 333
PMP 333
Prepackaging 333
Prescriber 333
Prescriber Drug Outlet 333
R.N. 334
Readily Retrievable 333
Relative Contraindication 333
Remote Dispensing Site 334
Remote Office Location 334
Retail Non-Pharmacy Drug Outlet 334
Retail Pharmacy 334
Definitions & Abbreviations, IDAPA 55.01.04 528
Administrator 529
Agricultural & Natural Resources Program 529
Board 529
Division 529
FTE 529
School District or District 529
Definitions, IDAPA 02.06.27 30, 36
Bacterial Ring Rot 30, 36
Contact Lot 30, 36
Department 30, 36
Director 30, 36
Idaho Crop Improvement Association, Inc 31, 36
Person 31, 36
Seed Lot 31, 36
Seed Potato Certification Process 31, 36
Seed Stock 31, 37
Sister Lot 31, 37
Definitions, IDAPA 08.02.02 93
Active Teacher 93
Alternative Routes 93
Credential 94
Endorsement 94
Idaho Student Achievement Standards 94
Individualized Learning Plan 94
Institutional Recommendation 94
Measurable Student Achievement/ Growth 94
Orientation 94
Para-Educator 94
Pedagogy 94
Performance evaluation system 94
Student Learning Objective (SLO) 95
Teacher Leader 95
Definitions, IDAPA 11.11.01 187
Act 187
Adult Probation & Parole Officer 187
Agency 187
Agency Head 187
Applicant 187
Basic Adult Probation & Parole Academy 187
Basic Correction Academy 187

Basic Detention Academy 187
Basic Juvenile Detention Academy 187
Basic Juvenile Probation Academy 187
Basic Patrol Academy 187
College Credit 187
Correction Officer 187
Correction Standards & Training Council 188
Council 188
County Detention Officer 188
Crime of Deceit 188
Direction 188
Field Training 188
Full Time 188
In-Service Training 189
Juvenile Detention Center 189
Juvenile Detention Officer 189
Juvenile Probation Officer 189
Juvenile Training Council 189
Law Enforcement Profession 189
Manual 189
Part Time 189
Part-Time Juvenile Detention Officer 189
Peace Officer 189
POST 190
POST Basic Training Academy 190
Prosecutor 190
Qualified Instructor 190
Reserve Peace Officer 190
School 190
School Director or Coordinator 190
Specification 190
Supervision 190
Temporary 190
Trainee 190
Definitions, IDAPA 13.01.02 207
Accompanied 207
Definitions, IDAPA 13.01.04, Rules Governing Licensing 216
Authorized Corporate Representative 216
Blind Person 216
Disabled 216
Domicile 216
Eligible Applicant 216
Eligible Property 216
Landowner 217
Permanent Disability 217
Physician 217
Qualified Organization 217
Resident 217
Definitions, IDAPA 24.02.01 307
Access 307
Approved or Approval 307
Barber 307
Barber College 307
Barber Shop 307
Barber Teacher or Instructor 307
Barber-Stylist 307
Board 307
Bureau 307
Direct Personal Supervision 307
First Aid Kit 307
Hospital Grade 307
Practice of Barbering 307
Practice of Barber-Styling 307
Theoretical Scientific Study 307
Definitions, IDAPA 33.01.02 385
Administrative Code 385
Agency 385
Agency Head 385
Commission 385
Contested Case 385
Executive Director 385
Hearing Officer 385
Order 385
Party 385
Person 385
Provision of Law 386
Rule 386
Rulemaking 386
Definitions, IDAPA 35.01.02 429
Admissions 429
Aircraft 429
Cash Discount 429
Contractor Improving Real Property 429
Fleet 429
Hand Tool 429
Logging 429
Manufactured Home/Mobile Home 429
Manufacturer's Discount Coupon 429
Manufacturer's Rebates 429
Mining 429
Modular Building 429
Office Trailer 430
Orthopedic Appliances 430
Prescription or Work Order 430
Real Property 430
Tax Rate 430
Definitions, IDAPA 38.05.01 450
Administrator 450
Alternate 450
Brand Name or Equal Specification 450
Brand Name Specification 450
Buyer 450
Concession Services 451
Consultant Services 451
Contract 451
Director 451
Division 451
Document 451
Formal Sealed Procedure 451
High Dollar Service Contract 451
Informal Solicitation 451
Invitation to Bid 451
Offeror 452
Open Contract 452
Professional Services 452
Proposal 452
Public Agency 452
Purchase Order 452
Purchasing Authority 452
Quote 452
Request for Proposals 452
Request for Quote 453
Requisition 453
Sealed 453
Sealed Procedure Limit 453
Small Purchase 453
Solicitation 453
Specifications 453
State 453
Telecommunications 453
Vendor 453
Written 453
Definitions, IDAPA 50.01.01 494
Abscond 494
Case Worker/Manager 494
Commission 494
Commission Warrant 494
Commutation 494
Concurrent Sentence 494
Conditions of Parole 494
Confidential 494
Consecutive Sentence 495
Decision 495
Detainer 495
Determinate Sentence 495
DOR, Disciplinary Offense Report 495
Early Parole Discharge 495
Escape 495
Evidence Based Program 495
Executive Session 495
Fixed Term 495
Full Term Release Date 495
Good Time Release Date 495
Hearing 495
Hearing Officer 495
Hearing Session 495
Indeterminate Sentence 495
Institutional Parole 495
Jacket, File, or Case Review 495
NCIC, National Crime Information Center 496
Non Restricted Sentence 496
Non Technical Violation 496
Offender 496
On-Site Parole Violation Hearing 496
Open Parole Date 496
Pardon 496
Parole 496
Parolee 496
Permanently Incapacitated 496
Reprieve 496
Rescission 496
Restricted Sentence 496
Return of Service 496
Revocation/Violation File 496
Risk Assessment 496
Session 496
Statutory Release Date 496
Substantive Conditions of

Parole 496
Technical Violation 497
Terminally Ill 497
Victim 497
Witness 497
Department Of Health & Human Services 269
Dependents, Summaries of Payment 286
Description & Sketch Of Monument & Accessories Established To Perpetuate The Location Of This Corner 170
Description Of Corner Evidence Found 170
Determination Of Fair Market Price For Rehabilitation Agency Acquisitions 459
Disability Licenses 210
Applicants for Disability Licenses Must Attest to the Disability Requirements 210
Required Documentation 210
Disabled Veterans Special Big Game Tag 213
Application 213
Application of Big Game Rules 214
Availability 213
Eligibility 213
Fees 213
Hunters with Disabilities Permit Fees 213
Issuance 213
Validity of Tag 213
Drop Shipments 412
In General 412
Parties to the Contract 412
Resale Certificate 413
Sales Tax Responsibilities of the Permitted Manufacturer 412
Sales Tax Responsibilities of the Retailer 413
Sales Tax Responsibilities of the Unpermitted Manufacturer 412
Drug Distribution By A Dispenser 362
Authorized Dispensing 362
Authorized Recipients 362
Delivery Requirements 362
Invoice 362
Reporting 363
Suspicious Order Monitoring 362
Drug Product
Substitution 328
Biosimilars 329
Drug Shortage 329
Hospital 328
Skilled Nursing Facility 328

E

Education 190, 195
Acceptable Education 190
Documentation 191
Foreign Education 191
Home Schooling 191
Eligibility 365, 374
Eligible Projects 366, 374
Eligible Recipients 366, 374
Eligibility Determination 276
Court-Ordered Assessment, Treatment, & Services 276
Eligibility Requirements 276
Ineligible Conditions 276
The Department Determines Eligibility for Mental Health Services 276
Eligibility Screening & Mental Health Assessment 275
Eligibility Screening 275
Mental Health Assessment 276
Elk Zone Descriptions 235
Bannock Zone 236
Bear River Zone 236
Beaverhead Zone 235
Big Desert Zone 235
Boise River Zone 235
Brownlee Zone 235
Diamond Creek Zone 236
Dworshak Zone 235
Elk City Zone 235
Hells Canyon Zone 235
Island Park Zone 235
Lemhi Zone 235
Lolo Zone 235
McCall Zone 235
Middle Fork Zone 235
Owyhee Zone 235
Palisades Zone 236
Palouse Zone 235
Panhandle Zone 235
Pioneer Zone 235
Salmon Zone 235
Sawtooth Zone 235
Selway Zone 235
Smoky-Bennett Zone 235
Snake River Zone 236
South Hills Zone 235
Tex Creek Zone 236
Weiser River Zone 235
Emergency Purchases 457
Conditions 457
Definition of Emergency Conditions 457
Endorsements 108
Clinical Experience Requirement 108
Evaluation & Award 462
Extension of Time for Acceptance 463
General 462
Information Pertaining to Responsibility 463
Only One Submission Received 463
Partial Award 463
Standards of Responsibility 462
Written Determination of Nonresponsibility Required 463
Examinations 490
Examination Process 490
Grading 490
Inspection of Examination 491
Inspection Review 491
Retention of Examinations 491
Scope of Examination 490
Exceptional Child Certificate 125
Deaf/Hard of Hearing Endorsement (K-12) 125
Early Childhood Special Education Endorsement (Pre-K-3) 125
General Education Requirements 125
Generalist Endorsement (K-12) 125
Visual Impairment Endorsement (K-12) 126
Exceptions To Formal Sealed Procedure 456
Correctional Industries 456
Emergency Purchases 456
Exempt Purchases 456
Existing Open Contracts 456
Federal Government Acquisitions 456
Interagency Agreements & Agreements for the Joint Exercise of Powers 457
Purchases from General Services Administration Federal Supply Contractors 456
Rehabilitation Agency Acquisitions 456
Reverse Auctions 456
Small Purchases 456
Sole Source Purchases 456
Exceptions, Extensions, & Exemptions 21
Exceptions & Extensions 21
Exemptions for Inactive or Retired 21

F

Failure To Maintain Insurance 382
Failure to Maintain Insurance 382
Notice of Noncompliance 382
Fee Schedule 334
Administrative Services & Publications 336
Certificates of Registration – Professionals 334
Certificates of Registration & Licensure - Facilities 334
Controlled Substance Registration 336
Licenses -- Professionals 334
Fees 39, 115, 316, 320 318
Active License Renewal Fee 316
Additions, Changes, or Late Fees During the Life of an Existing Certificate 116
All Fees Under This Act Are Non-Refundable 320
Alternate Route Authorization 116
Application & Original License

Fee 320
Application Fees 318
Endorsement & License Fee 320
Examination Fee 320
Fees 316
Inactive License Renewal Fee 316
Inactive to Active License Fee 316
Initial Licensure 316
License Reinstatement Fee 318
Limited Permit or Temporary License 316
New or Renewal Certificate 115
Original License & Annual Renewal Fee 318
Reinstatement Fee 316, 320
Renewal Fee 320
Residency Certificate 115
Temporary Fee 318
To Replace an Existing Certificate 116
Fees & Charges 28
General Fees & Charges 28
Special Permits 28
Financial Responsibility For Mental Health Services 280
Foreign National Treaty 525
Form Of Income Withholding Order 254
Form Of Submission For Solicitations Issued Under A Formal Sealed Procedure 460
Electronic Submissions 460
Manual Submissions 460

G

Game Animals 246
Donated Game Meat 247
Field Dressed Game Animals 246
Processing Game Animals 246
Un-Inspected Game Animals 246
General Provisions 497
479, 482
Declared Business Hours 483
Idaho Consumer Asset Recovery (ICAR) Fund 479, 482
Liability Insurance 479, 482
Physical or Electronic Records System Inspection 479, 482
Surety Bond 479, 482
Title Fee Disclosure 479, 482
Vehicle Dealer License Suspension 479, 483
Good Cause Determination In License Suspension Proceedings 254
Definitions 254
Good Cause in Motor Vehicle & Occupational License Suspension Proceedings 254
Good Cause in Recreational License Suspension Proceedings 255
Not Good Cause in Motor Vehicle & Occupational License Suspension Proceedings 255
Res Judicata 254
Grocery Credit
Taxable Years Beginning After December 31, 2007 402
Circumstances Causing Ineligibility 402
Claiming the Credit 403
Donating the Credit 403
Illegal Residents 403
Members of the Uniformed Services 403
Nonresidents 402
Part-Year Residents 402
Residents 402
Spouse or Dependents of Members of the Uniformed Services 403

H

Hazardous Drugs Preparation 344
Clear Identification 345
Compliance With Laws 345
Contamination Prevention 345
Labeling 345
Protective Equipment & Supplies 345
Training 345
Ventilated Cabinet 344
Ventilation 344
Hearing Process 499
Conflict of Interest 501
Decisions 501
Information for Scheduled Commission Hearings 499
Interview Method 500
Interview/Hearing 500
Location of Hearings 500
Official Record of Hearing/ Review 502
Psychological Reports, Mental Health Evaluations, Sex Offender Risk Assessment, or Other 500
Rules of Conduct at Hearings 501
Witnesses & Documents 501
Hearing Sessions 497
Designation of Presiding Officer 497
Number of Hearings Scheduled 497
Hearings 497
Deliberations 497
High School Graduation
Requirements 143, 161
College Entrance Examination 144, 162
Content Standards 144, 162
Credit Requirements 143, 161
Foreign Exchange Students 147, 164
Health/Wellness 144, 162
Humanities 144, 162
Middle School 145, 163
Proficiency 145, 163
Senior Project 145, 163
Social Studies 144, 162
Special Education Students 147, 164
Hold Harmless 38
Hold Orders 33, 38
Hunter Education 207
Exemption from Practical Handling & Shooting of Firearms Requirement 207
Fees 207
Mandatory Hunter Education Program 207
Parent to Attend Shooting Clinic with Student 207

I

Idaho Agency Information Technology (IT) Support 474
Number of Positions 474
Number of Supported Devices 474
Idaho Educator Credential 95
Additional Renewal Requirements 102
Certification Standards for Professional-Technical Educators 100
Degree Based Professional-Technical Certification 100
Early Childhood / Early Childhood Special Education Blended Certificate 98
Elementary Certificate 97
Exceptional Child Certificate 99
Idaho Master Professional Certificate 97
Idaho Professional Certificate 96
Idaho Residency Certificate 95
Inactive Status 104
Leave of Absence 104
Measurable student achievements/ growth 95
Occupational Specialist Certificate 101
Secondary Certificate 98
Idaho Interim Certificate 107
Foreign Institutions 108
Idaho Comprehensive Literacy Course 108
Occupational Specialist Certificate 108
Reinstatement of Expired Certificate 108
Teacher Holding Certificates From States Other Than Idaho 107
Idaho Medical Savings Accounts 400
Contributions That Exceed the Amount Deductible 400
Death of a Spouse 400
Designation as a Medical Savings Account 400
Pretax Contributions 400
Withdrawal to Reimburse the Account Holder 400
Idaho Source Income Of Nonresident & Part-Year Resident Individuals -- Investment Income From Qualified Investment Partnerships 394
Examples 394

In General 394
Investment Income 394
Qualified Investment Partnership 394
Idaho Source Income Of Nonresident & Part-Year Resident Individuals -- Suspended Losses From Pass-Through Entities 393
In General 393
Losses from Multiple Years 393
Idaho Source Income Of Nonresident And Part-Year Resident Individuals -- Distributive Share Of S Corporation & Partnership Income 401
Distributions 401
Guaranteed Payments Treated As Compensation 401
In General 401
Nonbusiness Income 401
Pass-Through Items 401
Idaho Technology Authority 475
Number of Positions 476
Technology Expenditures 476
Incentive Grant 529
Application Process 529
Eligibility Requirements 529
Incentive Grant Award 530
Selection of Grant Recipients 530
Incorporation By Reference 30, 36, 121, 141, 205, 272, 373, 528
Availability of Documents 205
IDAPA 08.05.01.000 et seq., "Rules Governing Seed & Plant Certification" and materials incorporated therein by reference 30, 36
NMLS Policy Guidebook 205
Regulation X 205
Regulation Z 205
The Real Estate Settlement Procedures Act 205
The Truth in Lending Act 205
Individual Polling of the Commission 498
Individualized Treatment Plan 278
Individualized Treatment Plan Requirements 279
One Hundred Twenty Day Review 280
Treatment Plan Renewals 280
Inspection & Sanitary Rules 309
Classification of Shops & Schools 310
Dispensers 310
Floors, Walls, & Ceilings 309
Instrument Cleaning 309
Instrument Sanitation 309
Licenses & Certificates 310
Premises 309
Safety 310
Storage of Equipment 310
Toilet Facilities 310
Towels 310
Uniforms 310
Water Supply 310
Institutional Facility
Emergency Drug Access 356
Emergency Cabinets 357
Emergency Drug Access 357
Emergency Pharmacy Access 356
Intentional Program Violation (IPV) 260
Concealing 260
False Statement 260
Misleading Statement 260
Misrepresenting 260
Trafficking in Food Stamps 260
Violation of Regulations 260
Interest Rates 444
Idaho Interest Rates & Applicable Revenue Rulings 444
In General 444
Internet Service 476
Number of Positions 476
Usage Allocation 476

J

Job Creation Criteria 366, 374
Job Shift 366, 375
New Jobs 366, 375
New Jobs Wages 366, 375
Rural Community 366, 374
Urban Community 366, 374
Journeyman 53
Examination 54
Out of State Journeyman Applications 54
Qualifications for Journeyman Plumber 53

L

Labeling Of Distributed Compounded Drug Product 339
Administration 339
Base or Diluents 339
Compounder Identifier 339
Date 339
Drug Name 339
Instructions, Cautions, & Warnings 339
Quantity 339
Resale 339
Strength or Concentration 339
Landowner Appreciation Program 217
Application of Controlled Hunt Restrictions 218
Applications for Landowner Appreciation Controlled Hunt Tags 217
Eligible Applicants 217
Hunt Units 217
Issuance of Controlled Hunt Tag(s) 218
Left Over Tags 218
Prohibitions 218
Property & Applicant Registration 218
Qualifying Property 217
Special Restrictions 219
Late Bids/Proposals, Late Withdrawals & Late Modifications 461
Legal Authority 35, 373, 528
Licensure & Operation Of Primary & Contiguous Establishments 312
Adequate Toilet Facilities 313
Applications 312
Businesses Other Than Cosmetological Establishments or Barber Shops 313
Conditions for Issuance 313
Contiguous Establishment License 312
Primary Establishment License 312
Licensure History 41
Local District Evaluation Policy - School Principal 136
Evaluation Policy - Content 138
Evaluation Policy - Frequency of Evaluation 139
Evaluation Policy - Personnel Records 139
Evaluation System Approval 139
Professional Practice 137
Standards 136
Student Achievement 138
Local District Evaluation Policy -- Teacher & Pupil Personnel
Certificate Holders 116, 133
Evaluation Policy - Content 117, 135
Evaluation Policy - Frequency of Evaluation 119, 136
Evaluation Policy - Personnel Records 119, 136
Evaluation System Approval 119, 136
Participants 117, 134
Professional Practice 117, 134
Standards 116, 133
Student Achievement 117, 134
Logging 420
Directly Used 420
Election to Pay Sales Tax 421
In General 420
Logging Exemption 420
Logging Process Begins & Ends 420
Not Included in Logging Exemption 421
Property Used in Logging Operations 420
Real Property 420
Timber Production 421

M

Mandatory Reporting Of BRR Contents 31
Mandatory Reporting 31
Methods of Reporting 32
Mental Examination 193, 196
Procedure 193
Requirement 193
Mentored Hunting Program 207

Eligibility of Mentee 208
Eligibility of Mentor 208
Hunting Passport 207
Minimum Standards For Employment For Correction Officers
Mental Examination Requirement 196
Physical - Medical Requirements 195
Mistakes 461
Mistakes Discovered After Award 462
Mistakes Discovered After Opening But Before Award 462
Mistakes Discovered Before Opening 461
Mistakes in Responses 461
Written Approval or Denial Required 462
Movement Of Used Farming Equipment 27
Clean & Free 27
Requirements 27

N

Negotiations 464
Conditions of Use 465
Examples 465
Timing of Use 466
Use of Negotiations 465
Network Services 474
Aggregated Costs 475
Direct Costs 474
Newborn Transfer Of Care Or Consultation 324
Newborn Consultation Required 324
Newborn Transfer of Care 324
Nominations, Vacancies & Terms 240
Chair & Vice-Chair 240
Nominations 240
Terms 240
Vacancies 240
Nonresident Pharmacist Practice Standards 353
Drug Product Selection 353
Drug Product Substitution 353
Pharmacy Technician 353
Staffing Ratio 353
Notice Of Decision On Eligibility 277
Notification of Eligibility Determination 277
Reapplication for Mental Health Services 277
Right to Accept or Reject Mental Health Services 277

O

Occupancy Of Developed Rest Areas 487
Animals 487
Assembling 487
Camping/Occupancy of Site 487
Failure to Clean 487
Fires 487
Time Limits 487
Office -- Office Hours -- Mailing Address And Street Address 373
Office Information 528
Facsimile 528
Mailing Address 528
Office Hours 528
Street Address 528
Telephone Number 528
Website 528
Office Use 345
Outsourcing Facility 346
Operating Property -- Definitions 442
Other Required Instruction 158
Elementary Schools 158
High Schools 159
Middle Schools/Junior High Schools 158
Outsourcing Facility 337
Federal Act Compliance 337
Policies & Procedures 337
Outsourcing Facility Registration 336
Application 336
Coincidental Activity 337
Overlegal Permits For Self Propelled Vehicles 485

P

Pardon 519
Application 520
Authority to Grant 521
General 520
Hearing 520
Report 520
Parents & Caretaker Relatives Eligible For Medicaid Coverage 251
Live in Same Household 251
MAGI Income Eligibility 251
Member of More Than One Budget Unit 251
More Than One Medicaid Budget Unit in Home 251
Parent, Caretaker Relative, or a Pregnant Woman 251
Responsible for Eligible Dependent Child 251
Parole 502
Detainers 507
Discharge From Parole 507
General Conditions of Parole 504
Institutional Parole 505
Interstate Compact 508
Medical Parole 506
Parole Determination 502
Primary Review 503
Special Conditions of Parole 505
Special Progress Reports 508
Parole Plan & Release Procedures 510
Contract 511
Interstate Compact Parole Plan 510
Parole Plan 510
Reporting & Release Instructions 511
Tentative Parole Dates 511
Parole Revocation Process 512
Attorney 514
Due Process 512
Findings/Decisions 516
Forfeiture of Time on Parole 516
Hearings 514
Inability to Assist in Defense 515
Initiated 512
Intermediate Sanctions on Technical Violations & Absconding Supervision 512
Miscellaneous Revocation Information 515
Warrants 512
Witnesses 513
Patient Liability 262
Patient Liability For Participant With Community Spouse 263
Patient Liability For Person With No Community Spouse 262
Community Property Income of Long-Term Care Participant With Long-Term Care Spouse 262
Income of Participant in Facility 262
Income of Participants in Long-Term Care 262
Payments 532
Pest Detection 27
Consequences 28
Inspection 27
Pharmacist
Administered Immunizations 351
Emergencies 353
Maintaining Qualification 352
Patient Eligibility 351
Pharmacist Qualifications 351
Recordkeeping 352
Required Reports 352
Required Resources 352
Student Pharmacist Administration 352
Vaccine Information Statements 352
Waste Disposal 352
Pharmacist Licensure By Examination
Foreign Pharmacy Graduates 348
Affidavit 348
Licensure Submission Requirements 348
Pharmacy Authorized Entry 356
Closed Pharmacy 356
Institutional Pharmacy Temporary Pharmacist Absence 356
Non-Institutional Temporary Pharmacist Absence 356
Open Pharmacy 356
Pharmacy Product Storage & Removal 354
Emergency Drug Access & Pharmacist Absence 354
Institutional Facility Alternative Storage 354
Qualified Returns to the Secured

Delivery Area 355
Storage for Delivery 354
Pharmacy Security 355
Alarm 355
Differential Hours 355
Doors 355
Drop Box 355
Hinges & Locks 355
Walls 355
Physical - Medical 191, 195
Requirements 191
Plumbing Contractor 54
Advertising 55
Effective Dates 55
Out of State Contractor Applications 54
Plumbing Contractor's Responsibility 55
Previous Revocation 55
Qualifications for Plumbing Contractor 54
Restrictive Use of Contractor Certificate 55
Reviving an Expired License 55
Preference for Commercially Available Products, Specifications -- Policies & Development 468
Pre-Opening Withdrawal Or Modification 461
Pre-Solicitation Conference 461
Presumptive Eligibility For Children & Parents 251
Presumptive Eligibility Decisions 251
Presumptive Eligibility Determination 251
Presumptive Eligibility Period 252
Previous Decisions 498
Price Agreements 466
Dollar Value 466
Multiple Agreements 466
Non-exclusive Agreements 466
Property 466
Procedure Followed In Solicitations 454
Agency Procurement Contact 454
Procurements Subject to Formal Sealed Procedure - Sealed Procedure Limit 454
Use of E-procurement System 455
Vendor Communication 455
Vendor Qualification 454
Procedures On Settlements Over Fifty Thousand Dollars 445
Amount in Issue 445
Annual Summary 446
Applicable Settlements 446
Final Review 446
Final Review When the Offer to Settle is Based on Inability to Pay 446
Signatures for Settlement 445
Written Summary 446
Prohibitions
Agreement 180
Financial or Beneficial Interest 180
Ineligible or Undisclosed Person 180
No more than One Horse 180
Undisclosed Financial or Beneficial Interest 180
Proof Of Service 388
Property Tax Appraiser Certification Program 438
Application for Certification 438
Certification Requirements 438
Cross Reference 439
Maintaining Property Tax Appraisal Certification 438
Proposal Discussion With Individual Offerors 464
Best & Final Offer 464
Classifying Proposals 464
Conduct of Discussions 464
Offerors Defined 464
Purposes of Discussions 464
Prospective Eligibility 262
Public Behavior & Treatment Of Public Property 487
Behavior 487
Fireworks/Incendiary Devices 487
Noise Producing Devices 487
Soliciting 487
Treatment of Natural Features or Plants 487
Treatment of Public Property 487
Public Records Act Compliance 36, 373, 528
Pupil Personnel Services Certificate 123
Audiology Endorsement 124
Counselor Endorsement (K-12) 123
Interim Endorsement - School Nurse 124
Interim Endorsement-Speech Language Pathologist 125
School Nurse Endorsement 124
School Psychologist Endorsement 123
School Social Worker Endorsement 124
Speech-Language Pathologist Endorsement 124
Purchase 452
Purchase Of Telecommunications Or Information Technology Property 454

Q

Quarantine Area 26

R

Receipt, Opening, & Recording Of Bids & Proposals 461
Record Of Hearings & Meetings 498
Minutes of Hearings & Case Reviews 498
Minutes Reviewed & Approved 498
Record Of Original Corner & Subsequent History 170
Registration Of Post-Secondary Educational Institutions 87
Application 88
Deadline for Registration 88
Delegation 87
Idaho Presence 87
Information Required 89
Institutions Exempt from Registration 88
Institutions That Must Register 88
Registration Fees 88
Registration Requirement 87
Regulated Articles 26
Machinery 26
Plant Material 26
Regulated Pest - Bacterial Ring Rot 37
Regulated Pests
Hop Stunt Viroid 26
Ilarvirus Species 26
Powdery Mildew 26
Verticillium Wilt 25
Reinstatement After Exclusion From Medicaid Program 268
Applying for Reinstatement 268
Complete Application for Reinstatement 268
Conditions for Reinstatement 268
Department Decision 268
Reinstatement Denied 269
Request for Reinstatement 268
Remission Of Fine Or Penalty 524
Hearing 524
Request 524
Review 524
Satisfaction of Judgment 525
Rentals Or Leases Of Tangible Personal Property 417
Bare Equipment Rental 417
Cross-References 419
Exempt Equipment Rentals 419
Fully Operated Equipment Rentals 418
In General 417
Lease-Purchase & Lease With Option to Purchase 419
Maintenance of Rental Equipment 418
Mixed Use of Rental Equipment 418
Operator Required to Be Paid by Customer 418
Out-of-State Rental/Lease 419
Personal Property Tax 419
Rental Payments Applied to Future Sales 419
Rentals to Exempt Entities 419
Repackaging 350
Adulterated Drugs 350
Date of Repackaging 350
Intermingled Drugs 350
Labeling 350
Pharmacist Verification 350
Policy & Procedures 350

Record 350
Time for Repackaging 350
Unit Dose 350
Report Contents & Procedure, Issuance Of Administrative Complaint 387
Reporting & Paying State Income Tax Withholding 403
Extension of Time to Pay or File Returns 404
Filing of Annual Reconciliation Returns 404
Payment of State Income Tax Withheld 403
Valid Returns 404
Reporting Of BRR 31, 37
Contents 37
Mandatory Reporting 37
Methods of Reporting 38
Reporting To The Board 23
Firm Registration Form 23
Peer Review Documentation 23
Requirements For Laboratory Alcohol Analysis 174
Blood Collection 175
Blood Reported 175
Laboratory 174
Records 175
Urine Collection 175
Urine Reported 175
Requirements For Performing Breath Alcohol Testing 175
Administration 176
Deficiencies 178
Instruments 175
MIP/MIC 178
Performance Verification Checks 177
Records 177
Report 175
Standards 178
Training 176
Requirements In Addition To The Plumbing Code 51
Cross Connection Control Manual 51
Jurisdiction/Septic Systems 51
Waste Disposal 51
Restoration Of Firearms Rights Under Section 18-310, Idaho Code 521
Application 521
Authority to Grant 522
Exceptions 522
General 521
Hearing 522
Restriction On The Use Of Infected Potatoes 38
Restrictions 474
Cash Reserves 474
Expenditure Recovery 474
Other Interagency Agreements 474
Restrictions On Import 26
Retail Telepharmacy With Remote Dispensing Sites 357
Access & Operating Limitations 359
Common Electronic Recordkeeping System 358
Continuous Quality Improvement Program 360
Delivery & Storage of Drugs 359
Independent Entity Contract 358
Patient Counseling 360
Pharmacist Inspection of Remote Dispensing Site 360
PIC Responsibility 358
Records Maintenance 358
Remote Dispensing Site Limitations 358
Remote Dispensing Site Sign 360
Returns Prohibited 359
Security 359
Technician Staffing 358
Telepharmacy Practice Sites & Settings 358
Video & Audio Communication Systems 358
Wasting or Discarding of Drugs Prohibited 359
Rights, Powers, & Authority Of The Commission 498
Advisory Commission to Board of Correction 498
Commutation, Pardon, & Remission 498
Decision to Release to Parole 498
Rule Governing Approval Of Attorney Fees In Workers' Compensation Cases 289
Rule Governing Approval Of Attorney Fees In Workers' Compensation Cases
Authority & Definitions 289
Disclosure 290
Procedure if Fees Are Determined Not to Be Reasonable 290
Statement of Charging Lien 289
Rule Governing Notice To Claimants Of Status Change Pursuant To Section 72-806, Idaho Code 291
By Whom Given 291
Copies of Notice 292
Form of Notice 291
Medical Reports 292
Notice of Change of Status 291
Rule Governing Reimbursement For Travel Expenses 282
Calculating Distance 282
Commercial Transportation 282
Mileage Rate 282
Request for Reimbursement 282

S

Self-Initiated Progress Report 518
Amended Decision 519
Hearing 519
Petition 518
Service By Agency 386
Electronic Service 386
Personal Service & Service by Mail 386
Proof of Service 386
When Service Complete 386
Service On Representatives Of Parties & Other Persons 387
Electronic Service 387
Method of Service 387
Proof of Service 387
Service by Parties 387
When Service Complete 387
Small Purchases 457
Limitations 458
Procedure 458
Small Purchase Categories 458
Sole Source Purchases 459
Administrator Makes Determination 459
Examples of Sole Source 459
Negotiation in Sole Source Purchase 459
Only a Single Supplier 459
Special Education Funding For Districts With Approved Programs 91
Contracting for Educational & Related Services 91
Reimbursement for Exceptional Child Support Units 91
Special Permits 27
Application 27
Conditions 27
Special Procedures For High Dollar Service Contracts 455
Administration Agreement 456
Approval of Solicitation Release 455
Negotiations 455
Oversight Board 455
Reporting 455
Third Party Validation 455
Special Rules 390
Alternate Methods 390
In General 390
Special Industry Methods 390
Specifications -- Policies & Development 467
Brand Name or Equal Specification 468
Brand Name Specification 468
Purpose 467
Specification of Alternates May Be Included 468
Use of Functional or Performance Descriptions 468
Staff Progress Report 522
Acceptable Form 522
Amended Decision 524
Case Manager Guidelines 523
Exceptions to the Staff Progress Report 523
Hearing 524
Time of Consideration 522
Standard Prescription Drug Labeling 349

Cautionary Information 349
Date 349
Directions 349
Dispenser Information 349
Drug Name & Strength 349
Expiration 349
Identification 349
Name 349
Prescriber 349
Quantity 349
Refills 349
Serial Number 349
Warning 349
Start-Up Grant 531
Application Process 531
Eligibility Requirements 531
Selection of Grant Recipients 531
Start-up Grant Award 531
Sterile Product Preparation 341
Application 341
Compounder Responsibilities 342
Documentation Requirements 343
Dosage Forms Requiring Sterility 342
Environmental Controls 342
Policies & Procedures 344
Sterile Product Preparation Equipment 342
Summaries Of Payment 285
Approval 287
Authority & Definitions 285
Changes in Status 287
Form 285
Summaries Requirement 285
Summary Of Payments Fatal Case, Employers' Reports 286
Summary Of Payments Time-Loss Case, Employers' Reports 286
Suspension Of Idaho Reimbursement Incentive Act
Existing Approved Agreements 380
Removal of Suspension 380
Support of Existing Agreements 380
Temporary Spending Reduction 379
Suspension Of Idaho Reimbursement Incentive Act. 379

T

Tags For Controlled Hunts 221, 228
Applicant Requirements 225, 232
Applications 224, 231
Controlled Hunt Drawing 226, 233
Eligibility 223, 230
Nonresident Tag Limitations 223, 230
Refunds of Controlled Hunt Fees 226, 233
Second Drawing Exclusion 226, 233
Unclaimed Tags 226, 233
Use of Controlled Hunt Tags 221, 228
Tax Credit Authorization 369, 378
Claiming Tax Credit 369, 378
Duplicate Copy 370, 378
Tax On Individuals, Estates, & Trusts 397
In General 397
Tables Identifying the Idaho Tax Rates and Income Tax Brackets 397
Tax Computation 397
Technician-In-Training
Registration 348
Cancellation of Registration 348
Duties 348
Registration Expiration 348
Renewal 348
Telephone Services 475
Direct Services 475
Prorating Appropriation 475
Shared Services 475
Temporary Permit 491
Eligibility 491
Permit 492
Termination Or Suspension Of Tax Credit 371, 379
Denial of Tax Credit 371, 379
Request for Additional Documentation 371, 379
Termination of Agreement 371, 379
Testing For BRR 32, 38
Compliance With Certification Standards 32, 38
Seed Potatoes to Be Exported Tested 32, 38
Tie Responses 463
Award 463
Drawing Lots 464
Tie Responses -- Definition 463
Time & Imposition Of Tax, Returns, Payments & Partial Payments 430
Filing Dates--General Rule 432
Forms Required 432
Payment of Tax 432
Perpetual Extensions of Time to File Revoked 431
Returns 430
Time & Imposition of Tax 430
Use of Estimates Extension of Time Returns 431
Valid Return 431
Title & Scope 272, 528
Scope 272, 528
Title 272, 528
Title And Scope 364, 373
Scope 365, 373
Title 364, 373
Title, Scope, & Investigations 30, 35
Scope 35
Title 35
Trace Back Investigations 35
Trace Back and Investigation 32, 38
Trace Back Investigation, Sampling, & Testing 32, 38
Testing Positive for Cms 32, 38

U

Upland Game Bird Methods Of Take 238
Taking of Upland Game Birds 238
Wild Turkey 238

V

Vehicles & Vessels - Gifts, Military Personnel, Nonresident, New Resident, Tax Paid To Another State, Sales To Family Members, Sales To American Indians, & Other Exemptions 433
Bulk Sale Transfers 435
Gifts of Motor Vehicles 433
In General 433
Military Personnel 434
Motor Vehicles & Trailers Used in Interstate Commerce 436
New Residents 434
Nonresidents 433
Related Party Transfers & Sales 436
Sales to American Indians 435
Sales to Family Members 435
Tax Paid to Another State 434
Vehicles & Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho 435
Victims 508
Confidentiality of Victim's Address & Written Testimony 509
Program for Victims 509
Testimony of Victim 509
Violations 39

W

Written Interpretations 35, 373, 528