

IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho. The Bulletin publishes the official text notice and full text of such actions.

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

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 00-1 refers to the first Bulletin issued in calendar year 2000, Bulletin 01-1 refers to the first Bulletin issued in calendar year 2001, etc. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 1 refers to January; Volume No. 2 refers to February; and so forth. Example: The Bulletin published in January of 2001 is cited as Volume 01-1, the December 1999 Bulletin is cited as Volume 99-12. The March 2000 Bulletin is cited as Volume 00-3.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

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

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

TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN

The state of Idaho administrative rulemaking process comprises five distinct activities; Negotiated, Proposed, Temporary, Pending, and Final rulemaking. Not all rulemakings consist of all five. At a minimum a rulemaking includes proposed, pending, and final rulemaking. Many rules are adopted as temporary rules when meeting required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek a consensus on the content of the rule. Agencies are encouraged to proceed through this informal rulemaking whenever it is feasible to do so. Publication of the text in the Administrative Bulletin by the agency is optional. This process should lead the rulemaking to the temporary and/or proposed rule stage.

PROPOSED RULEMAKING

A proposed rulemaking is an action by an agency in which the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a notice of proposed rulemaking in the Bulletin. The notice of proposed rulemaking must include:

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

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

TEMPORARY RULEMAKING

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

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

If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule.

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

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

An agency may rescind a temporary rule that has been adopted and is in effect if the rule is being replaced by a new temporary rule or has been published concurrently with a proposed rulemaking that is being vacated.

PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under the regular rulemaking process 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 Pending Rule. This includes:

- a) 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*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

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

FINAL RULEMAKING

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

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

AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN

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

SUBSCRIPTIONS AND DISTRIBUTION

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

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

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

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

Internet Access - The Administrative Code and Administrative Bulletin, individual chapters and dockets, are available on the Internet at the following address: <http://www2.state.id.us/adm/adminrules/>

EDITOR'S NOTE: All rules are subject to frequent change. Users should reference all current issues of the Administrative Bulletin for negotiated, temporary, proposed, pending, and final changes to all rules, or call the Office of the Administrative Rules at (208) 332-1820.

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

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

IDAPA 38.05.01.060.02.c.ii.

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

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

"05." refers to Title 05 which is the Department of Administration's Division of Purchasing.

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

"060." refers to Major Section 060, "Content of the Invitation to Bid".

"02." refers to Subsection 060.02.

"c." refers to Paragraph 060.02.c.

"ii." refers to Subparagraph 060.02.c.ii.

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER". The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0101). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket:

"DOCKET NO. 38-0501-0101"

"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).

"0101" denotes the year and sequential order of the docket submitted and published during the year; in this case the first rulemaking action of the chapter published in calendar year 2001.

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

"(BREAK IN CONTINUITY OF SECTIONS)"

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

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

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

It may also be cited to include the IDAPA, Title, and Chapter number also, as follows:

"...in accordance with IDAPA 38.05.01.201."

"38" denotes the IDAPA number of the agency.

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

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

"201" references the main Section number of the rule that is being cited.

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

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

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2002

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
02-1	January, 2002	*November 14, 2001	January 2, 2002	January 23, 2002
02-2	February, 2002	December 19, 2001	February 6, 2002	February 27, 2002
02-3	March, 2002	January 23, 2002	March 6, 2002	March 27, 2002
02-4	April, 2002	February 20, 2002	April 3, 2002	April 24, 2002
02-5	May, 2002	March 27, 2002	May 1, 2002	May 22, 2002
02-6	June, 2002	April 24, 2002	June 5, 2002	June 26, 2002
02-7	July, 2002	May 22, 2002	July 3, 2002	July 24, 2002
02-8	August, 2002	June 19, 2002	August 7, 2002	August 28, 2002
02-9	September, 2002	July 24, 2002	September 4, 2002	September 25, 2002
02-10	October, 2002	**August 21, 2002	October 2, 2002	October 23, 2002
02-11	November, 2002	September 25, 2002	November 6, 2002	November 27, 2002
02-12	December, 2002	October 23, 2002	December 4, 2002	December 25, 2002

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2003

Volume No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
03-1	January, 2003	*November 13, 2002	January 1, 2003	January 22, 2003
03-2	February, 2003	December 18, 2002	February 5, 2003	February 26, 2003
03-3	March, 2003	January 22, 2003	March 5, 2003	March 26, 2003
03-4	April, 2003	February 19, 2003	April 2, 2003	April 23, 2003
03-5	May, 2003	March 26, 2003	May 7, 2003	May 28, 2003
03-6	June, 2003	April 23, 2003	June 4, 2003	June 25, 2003
03-7	July, 2003	May 21, 2003	July 2, 2003	July 23, 2003
03-8	August, 2003	June 25, 2003	August 6, 2003	August 27, 2003
03-9	September, 2003	July 23, 2003	September 3, 2003	September 24, 2003
03-10	October, 2003	**August 20, 2003	October 1, 2003	October 22, 2003
03-11	November, 2003	September 24, 2003	November 5, 2003	November 26, 2003
03-12	December, 2003	October 22, 2003	December 3, 2003	December 24, 2003

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

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

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THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 2002-02

DESIGNATION OF THE STATE ENTITY RESPONSIBLE FOR DEVELOPING AND DELIVERING COMPREHENSIVE COMPUTER-BASED CAREER INFORMATION

WHEREAS, D. Perkins Vocational and Applied Technology Education Amendments of 1998, P.L. 105-800 mandates that the Idaho Division of Vocational Education and the Governor of the State of Idaho shall jointly designate an entity in the state to:

1. Provide support for career guidance and academic counseling programs designed to promote improved career and educational decision-making by individuals, especially in areas of career information delivery;
2. Make information and planning resources available to students, parents, teachers, and administrators that relate educational preparation to career goals;
3. Provide information to assist students and parents with career exploration, educational opportunities, and educational financing;
4. Improve coordination and communication to ensure nonduplication of efforts and shared information;
5. Provide a means for customers to provide comments and feedback on products and services to better meet customer requirements; and

WHEREAS, the Idaho State Occupational Information Coordinating Committee has provided oversight and management of the Idaho Career Information System in delivering current and accurate occupational, educational and related career information to the residents of Idaho; and

WHEREAS, career information is critical in helping people make successful career decisions, understand the link between educational preparation and work, explore education and career alternatives, and successfully seek work.

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho, do hereby designate the Idaho State Occupational Information Coordinating Committee consisting of representatives from the Idaho Division of Vocational Education, the Idaho Department of Commerce, the Idaho Department of Labor, the Office of the State Board of Education, the Idaho Division of Vocational Rehabilitation, and the Workforce Development Council as the entity responsible for oversight and management of Idaho's comprehensive, computer-based system of career information known as the Idaho Career Information System.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this twenty-second day of April in the year of our Lord two thousand and two, and of the Independence of the United States of America the two hundred twenty-fifth and of the Statehood of Idaho the one hundred eleventh.

DIRK KEMPTHORNE
GOVERNOR

PETE T. CENARRUSA
SECRETARY OF STATE

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.01 - RULES GOVERNING THE PURE SEED LAW

DOCKET NO. 02-0601-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED FEE RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2002.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 22-418(4), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 19, 2002.

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:

1. Increase service fees by 7 to 20%
2. Increase seed dealer license fees

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

The Seed Lab Advisory Board and the Idaho Eastern Oregon Seed Association recommended increases in service and license fees to improve seed analysis turn-around time 35-40% by hiring two (2) additional Senior Seed Analysts.

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

Service testing fees will be increased by 7 to 20%

Seed dealer license fees:

- a. Seed conditioning from \$50 to \$100.
- b. Selling seed from \$50 to \$100.
- c. Out-of-state seed dealer from \$100 to \$250.
- d. In-state seed dealer who has total annual gross seed sales of one thousand (\$1,000) or more from \$50 to \$100.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dr. Roger R. Vega, Administrator at (208) 332-8620 or Richard C. Lawson, Bureau Chief at (208) 332-8630.

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 June 26, 2002.

DATED this 9th day of April, 2002.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0601-0201

500. SERVICE TESTING FEES.

01. Table 1. Purity, Germination And Tetrazolium Fees.

Purity, Germination and Tetrazolium Fees			
Kind of Seeds:	Purity* \$/Unit	Germination** \$/Unit	Tetrazolium \$/Unit
Alfalfa	14.50 16.00	12.75 14.00	22.00 24.50
Alkali grass	17.50 19.00	11.00 12.50	22.00 24.50
Asparagus	14.50 15.50	12.75 14.00	22.00 24.50
Beans:			
Field and Garden	12.00 13.00	12.75 14.00	20.00 22.00
Lima	11.50 12.50	17.00 19.00	20.00 22.00
Beardgrass (Bluestem)	35.00 42.00	20.00 22.00	25.00 27.50
Beets	18.00 19.50	20.00 22.00	27.00 30.00
Bentgrass and Red top	32.00 34.50	15.00 16.50	24.00 26.50
Bermuda grass	21.00 22.50	14.00 15.50	22.00 24.50
Blue Gama	26.00	17.00 19.00	22.00 24.50
Bluegrass	22.50 24.50	15.00 16.50	22.00 24.50
Brassica (Except Radish)	33.00	15.00 16.50	24.00 26.50
Brittlebrush	70.00 84.00	18.00 20.00	22.00 24.50
Bromegrass	23.50 25.50	12.75 14.00	22.00 24.50
Canary grass	17.50 19.00	11.75 13.00	22.00 24.50
Cane Bluestem	35.00 42.00	20.00 22.00	25.00 27.50
Canola/Rapeseed	33.00 36.00	15.00 16.50	24.00 26.50
Cantaloupe	14.00 15.00	12.00 13.50	22.00 24.50
Carrot	14.50 15.50	13.00 14.50	22.00 24.50
Celery	16.50 17.50	12.75 14.00	22.00 24.50
Cereals (Except Oats)	18.00 19.50	12.50 14.00	22.00 24.50
Clovers:			
Red Clover	15.50 16.50	12.75 14.00	22.00 24.50
Other Clovers	15.00 16.00	13.00 14.50	22.00 24.50
Corn	14.50 15.50	12.50 14.00	18.00 20.00
Creosotebush	70.00	18.00 20.00	25.00 27.50
Cucumbers	14.00 15.00	12.00 13.50	22.00 24.50
Eggplant	14.00 15.00	12.00 13.50	22.00 24.50

Purity, Germination and Tetrazolium Fees			
Kind of Seeds:	Purity* \$/Unit	Germination** \$/Unit	Tetrazolium \$/Unit
Endive	44.00 <u>15.00</u>	42.50 <u>14.00</u>	22.00 <u>24.50</u>
Fescue	22.00 <u>24.00</u>	42.75 <u>14.00</u>	22.00 <u>24.50</u>
Flax	21.00 <u>22.50</u>	44.00 <u>15.50</u>	22.00 <u>24.50</u>
<i>Flowers</i>	46.00	46.00	25.00
Green Needlegrass	48.00 <u>19.50</u>	46.00 <u>18.00</u>	22.00 <u>24.50</u>
Indian Ricegrass	47.50 <u>19.00</u>	46.00 <u>18.00</u>	22.00 <u>24.50</u>
Kochia	22.50 <u>24.50</u>	42.75 <u>14.00</u>	22.00 <u>24.50</u>
Leek	47.00 <u>19.00</u>	45.00 <u>16.50</u>	22.00 <u>24.50</u>
Lentil	44.00 <u>15.00</u>	42.75 <u>14.00</u>	22.00 <u>24.50</u>
Lettuce	44.50 <u>15.50</u>	42.50 <u>14.00</u>	22.00 <u>24.50</u>
Little/Small Burnet	45.00 <u>16.50</u>	44.00 <u>15.50</u>	22.00 <u>24.50</u>
Meadow Foxtail	26.00 <u>31.50</u>	43.50 <u>15.00</u>	22.00 <u>24.50</u>
New Zealand Spinach	44.00 <u>15.00</u>	21.00 <u>23.50</u>	27.00 <u>30.00</u>
Oats	49.50 <u>21.00</u>	42.50 <u>14.00</u>	22.00 <u>24.50</u>
Oatgrass	47.50 <u>19.00</u>	41.00 <u>12.50</u>	25.00 <u>27.50</u>
Okra	26.00 <u>28.00</u>	44.00 <u>15.50</u>	22.00 <u>24.50</u>
Onion	44.50 <u>15.50</u>	42.75 <u>14.00</u>	22.00 <u>24.50</u>
Orchardgrass	25.50 <u>27.50</u>	44.00 <u>15.50</u>	22.00 <u>24.50</u>
Parsley	44.50 <u>16.00</u>	42.50 <u>14.00</u>	22.00 <u>24.50</u>
Parsnip	44.50 <u>16.00</u>	42.50 <u>14.00</u>	22.00 <u>24.50</u>
Peas: Field and Garden	44.00 <u>15.00</u>	43.00 <u>14.50</u>	20.00 <u>22.00</u>
Chickpeas / Garbanzo	42.00 <u>13.00</u>	46.50 <u>18.50</u>	20.00 <u>22.00</u>
Pepper	44.50 <u>15.50</u>	43.00 <u>14.50</u>	22.00 <u>24.50</u>
Pumpkin	44.00 <u>15.00</u>	42.50 <u>14.00</u>	22.00 <u>24.50</u>
Radish	44.50 <u>16.00</u>	42.75 <u>14.00</u>	22.00 <u>24.50</u>
Rubber Rabbitbush	70.00 <u>84.00</u>	20.00 <u>24.00</u>	22.00 <u>24.50</u>
Ryegrass	22.00 <u>24.00</u>	42.00 <u>13.50</u> 24.00 <u>26.50</u> ***	22.00 <u>24.50</u>
Sagebrush	70.00 <u>84.00</u>	45.50 <u>17.50</u>	25.00 <u>27.50</u>
Sainfoin	44.50 <u>16.00</u>	43.00 <u>14.50</u>	22.00 <u>24.50</u>
Saltbush	50.00 <u>53.50</u>	44.50 <u>16.00</u>	25.00 <u>27.50</u>
Senna	50.00 <u>54.00</u>	48.00 <u>20.00</u>	25.00 <u>27.50</u>

Purity, Germination and Tetrazolium Fees			
Kind of Seeds:	Purity* \$/Unit	Germination** \$/Unit	Tetrazolium \$/Unit
Sedges	30.00	20.00	25.00
Squash	14.00 <u>15.00</u>	12.50 <u>14.00</u>	22.00 <u>24.50</u>
Sudangrass/Sorghum	17.00 <u>18.50</u>	14.00 <u>15.50</u>	22.00 <u>24.50</u>
Sunflower	21.50 <u>23.50</u>	12.50 <u>14.00</u>	22.00 <u>24.50</u>
Swiss Chard	18.00 <u>19.50</u>	20.00 <u>22.00</u>	27.00 <u>30.00</u>
Timothy	17.00 <u>18.50</u>	12.00 <u>13.50</u>	22.00 <u>24.50</u>
Tomato	14.50 <u>15.50</u>	12.00 <u>13.50</u>	22.00 <u>24.50</u>
Trees/Shrubs	14.50	15.50	25.00
Trefoil	15.00 <u>16.00</u>	13.00 <u>14.50</u>	22.00 <u>24.50</u>
Vetches	15.00 <u>16.50</u>	12.75 <u>14.00</u>	22.00 <u>24.50</u>
Watermelon	14.00 <u>15.00</u>	12.50 <u>14.00</u>	22.00 <u>24.50</u>
Wheatgrasses	34.00 <u>36.50</u>	15.00 <u>16.50</u>	22.00 <u>24.50</u>
<u>Wheatgrass, fairway crested</u>	<u>41.00</u>	<u>16.50</u>	<u>24.50</u>
Wild rye	21.00 <u>25.50</u>	12.00 <u>13.50</u>	22.00 <u>24.50</u>
Winterfat	35.00 <u>Hour 96.00</u>	17.50 <u>19.50</u>	22.00 <u>24.50</u>

* All samples submitted for purity should contain a minimum of three thousand (3,000) seeds.
 ** All samples submitted for germination should contain a minimum of eight hundred (800) seeds.
 *** With Fluorescence.

(12/20/00)F(7-1-02)T

02. Table 2. Special Testing Fees.

Table 2. Special Testing Fees	
Test Procedures:	Fees \$/Unit
All States Noxious	40.50 <u>12.00</u>
Ammonia Test	<u>33.00</u>
Canada:	
Purity	11.50 <u>13.00</u> Added to purity fee
Germination	2.00 <u>2.50</u> Added to germination fee
Cold Test	21.00 <u>23.50</u>
Crop Check Only	22.00
Crop & Weed Check	22.00 <u>24.50</u>
Cut Test	20.00 <u>22.00</u>
Dodder Check	42.00

Table 2. Special Testing Fees	
Test Procedures:	Fees \$/Unit
Dormancy Percentage	5.50 or Dormant % found x germination fee
E.C. Norms	18.00 <u>20.00</u>
Ergot/Sclerotinia Check	11.00
Foreign Material	10.50 <u>12.00</u>
Fungus/Smut	16.00
Grading (beans)	16.00 <u>18.00</u>
Hay Pellet Germination	16.00 <u>18.00</u>
Identification	3.00 <u>3.50</u>
Inert Check Only	10.50
Inventory Germinations (For Carryover Seed Only, when requested)	20% Discount of listed germination fee; Available only for the months of March through July.
ISTA:	
Purity	11.50 <u>13.00</u> Added to purity fee
Germination	2.00 <u>2.50</u> Added to germination fee
Mixtures:	
Purity	11.00 <u>12.50</u> Added per kind exceeding 5%
Germination	11.00 <u>12.50</u> Added per kind exceeding 5%
Tetrazolium	16.00 <u>18.00</u> Added per kind exceeding 5%
Moisture Test	12.50 <u>14.00</u>
1,000 Seed Count	11.00 <u>13.50</u>
Pest & Disease, Soil & Ergot Check	11.00 <u>13.50</u>
Quarantine (Poa annua & Poa trivialis)	26.50 <u>29.50</u>
Sod Quality:	
Bentgrass	60.00 <u>66.00</u>
Bermudagrass	58.00 <u>64.00</u>
Bluegrass	58.00 <u>64.00</u>
Fescue	41.00
Ryegrass	33.00
Sodium Hydroxide	10.00
Soil Check	12.00
Soil Germination	21.00 <u>23.50</u>
<u>Species Test</u>	<u>24.50</u>
Sprout Check	10.50 <u>12.00</u>
Undesirable Grass Species	23.00 <u>25.50</u>
Weed Check Only	Weed Check Only

(12-20-00)F(7-1-02)T

03. Table 3. Miscellaneous Fees.

Table 3. Miscellaneous Fees	
Type of Service:	Fees \$/Unit
FAX	\$2.50 <u>3.00</u> per sheet
Hourly Charge for Analysis	\$35.00 <u>38.50</u>
Preparation Time	\$35.00 <u>38.50</u> /Hour: When necessary on germination and tetrazolium samples.
Reports:	
Copies	\$1.00 <u>1.50</u>
Merge Records	\$3.50 <u>4.00</u>
Retyped	\$4.00 <u>4.50</u>
Revised	\$6.00 <u>7.00</u>
Rush Service	\$18.00 <u>20.00</u>

(12-20-00)~~F~~(7-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

600. SEED DEALER'S LICENSE FEES.

Seed dealers shall obtain a seed dealer's license for each location in Idaho before they can sell, offer for sale, expose for sale or deliver agricultural seeds in packages of eight (8) ounces or more or bulk under contract within the state of Idaho. Seed dealers shall pay only for the service or services they render according to the following fee schedule:

(3-18-99)

01. ~~Condition Or Clean Seeds.~~ **In-State Seed Dealer's License Fees:** (7-1-02)T

a. License to condition or clean agricultural seeds in Idaho - ~~fifty~~ one-hundred dollars (\$~~50~~100).
 (3-18-99)(7-1-02)T

~~02b.~~ ~~Label Container Or Bulk Seeds.~~ License to label container or bulk agricultural seeds for sale in Idaho - fifty dollars (\$50).
 (3-18-99)(7-1-02)T

~~03c.~~ ~~Sell, Offer Or Expose For Sale, Or Deliver Seeds.~~ License to sell, offer for sale, expose for sale, or deliver agricultural seeds in packages of eight (8) ounces or more or in bulk under a contract in Idaho - ~~fifty dollars (\$50)~~.
 (3-18-99)(7-1-02)T

i. For annual gross sales of five hundred dollars (\$500) or more, but less than one thousand dollars (\$1,000) - fifty dollars (\$50). (7-1-02)T

ii. For annual gross sales of one thousand dollars (\$1,000) or more - one hundred dollars (\$100). (7-1-02)T

02. **Out-Of-State Seed Dealer's License Fee.** Two hundred fifty dollars (\$250). (7-1-02)T

~~043.~~ **Exemptions.** Any person selling seed who has total annual gross seed sales not exceeding five hundred dollars (\$500) is exempt from Section 600. (12-20-00)T

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.06.16 - CROP RESIDUE DISPOSAL RULES

DOCKET NO. 02-0616-0101

NOTICE OF RULEMAKING - AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is April 19, 2002.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted an amended temporary rule. The action is authorized pursuant to Section 22-4801, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for amending the existing temporary rule with an explanation of the reasons for the change. To delete the sections rejected by the Senate Concurrent Resolution 125 adopted by the 2002 Legislature effective March 1, 2002. Specifically Subsection 100.03 (require field registration one month prior to burning); Section 300 (spring and fall burning timeframes); Subsection 500.04 (requirements to not burn within 50 feet of structures); and Subsection 500.05 (have adequate fire suppression equipment on site prior to burning).

To incorporate suggestions received from statewide public meetings with the industry and the general public including: in conjunction with the Idaho Department of Environmental Quality rules IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho," Section 556, no new fires shall be ignited when ambient air quality levels reach 80% of the one-hour action criteria for particulate matter of 2.5 microns or less, and are predicted to remain above those levels; require all persons to obtain applicable local, state or federal permits prior to receiving Idaho State Department of Agriculture approval to burn crop residue; fields of perennial crop need not be re-registered after the initial registration; it shall be the responsibility of the grower to notify ISDA when a field of perennial crop is taken out of production; burning of fields adjacent to roads and highways may be approved on a case-by-case basis taking into account the time of day, field size and wind direction; number of acres to be burned and the hours to burn shall be based on local meteorological conditions and a test burn; and require a crop residue burning refresher training session every five years.

The temporary rule has been amended in response to SCR 125 and public comment.

Only the sections that have changes are printed in this bulletin. The original text of the temporary rule was published in the August 1, 2001 Idaho Administrative Bulletin, Volume 01-8, pages 37 through 41.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Dr. Roger Vega, Administrator, Division of Plant Industries. Phone number: 332-8620 or Curtis Thornburg, Program Manager, Division of Plant Industries. Phone number: 332-8620.

DATED this 19th day of April, 2002.

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

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0616-0101

010. DEFINITIONS.

The Idaho State Department of Agriculture adopts the definitions set forth in Section 22-4802, Idaho Code. In addition, as used in this chapter: a burn day will be defined as (7-1-01)T

~~01. **Airshed.** An area covered by a volume of air that has similar meteorological and air quality characteristics is separated from other volumes of air by weather patterns and topography.~~ (7-10-01)T

~~02. **Burn Day.** A period of time when meteorological conditions are conducive to adequate smoke dispersion and when the burning of crop residue would not likely violate exceed National Ambient Air Quality Standards established by the USEPA, the IDEQ, or an Indian tribe authorized by federal law to establish air quality standards.~~ (7-1-01)T(4-19-02)T

011. ABBREVIATIONS.

- 01. IACSGA. Idaho Alfalfa and Clover Seed Growers Association. (7-1-01)T(4-19-02)T
- 02. IDEQ. Idaho Department of Environmental Quality. (7-1-01)T
- 03. IEOSA. Idaho Eastern Oregon Seed Association. (7-1-01)T
- 04. IGP. Idaho Grain Producers. (7-1-01)T
- 05. IMGGA. Idaho Mint Growers Association. (7-1-01)T
- 06. ISDA. Idaho State Department of Agriculture. (7-1-01)T
- 07. NAAQS. National Ambient Air Quality Standards. (4-19-02)T
- ~~08.~~ NIFA. North Idaho Farmers' Association. (7-1-01)T
- ~~09.~~ NPGGA. Nez Perce Prairie Grass Growers Association. (7-1-01)T
- ~~10.~~ USEPA. United States Environmental Protection Agency. (7-1-01)T

(BREAK IN CONTINUITY OF SECTIONS)

100. REGISTRATION OF FIELDS TO BE BURNED.

01. ~~Fields Larger Than Five Acres Registration.~~ All persons in Idaho except in Benewah and Kootenai Counties shall register each field larger than five (5) acres to be burned with ISDA each year field burning is conducted prior to burning crop residue. (7-1-01)T(4-19-02)T

02. **Registration Forms.** Approved forms for registering fields may be obtained from offices of ISDA, IDEQ, County Extension Educators or Soil Conservation District offices. A single form is required for each person, however, more than one (1) field may be listed on a single form. County, township, range, and section for each field registered must be included on the registration form. Completed forms shall include permit numbers for any burning permits issued by county, state, or federal agencies, or local fire protection authorities. (7-1-01)T(4-19-02)T

03. ~~Deadlines for Registration.~~ Completed and signed registration forms shall be received by ISDA one (1) month prior to the burning of the crop residue. **Perennial Crops.** It is not necessary to re-register annually each field of perennial crops to be burned after the initial registration. It shall be the responsibility of the grower to notify the ISDA when a field of perennial crop is taken out of production. (7-1-01)T(4-19-02)T

(BREAK IN CONTINUITY OF SECTIONS)

200. DETERMINATION OF BURN OR NO BURN DAYS.

01. ~~Recommendation Of IDEQ~~ Designation Of Burn Days. The director or his designee shall designate for a given airshed county burn or no burn days; ~~the hours that burning shall be permitted, and the number of acres to be burned based on the recommendation of IDEQ.~~ (7-1-01)T(4-19-02)T

02. Daily Postings On Website. The department shall post daily on their website whether a given day is a burn or no burn day; ~~the hours that burning shall be permitted and the number of acres persons can burn in a given airshed.~~ (7-1-01)T(4-19-02)T

03. Time And Acres To Burn. The hours that burning shall be permitted, and the number of acres to be burned for a given county shall be based on local meteorological conditions and/or a test burn. (4-19-02)T

034. Toll Free Number. (7-1-01)T

a- The department shall make available a toll free number to receive ~~incoming complaints~~; requests for information, requests for approval to burn crop residue, and will include an updated message designating a burn or no burn day in a given county. (7-1-01)T(4-19-02)T

b- All persons in Idaho except in Benewah and Kootenai Counties shall report to ISDA via the toll free number the date of burning and acres burned. (7-1-01)T

201. -- 2499. (RESERVED).

~~300. CROP RESIDUE BURNING TIME FRAME.~~

01. ~~Spring Burning~~. Burning of crop residue shall be allowed for a maximum of fourteen (14) days within a forty-five (45) day time period during the spring within each airshed. (7-1-01)T

02. ~~Fall Burning~~. Burning of crop residue shall be allowed for a maximum of fourteen (14) days within a forty-five (45) day time period during the fall within each airshed. (7-1-01)T

~~301. 499. (RESERVED).~~

500. GENERAL PROVISIONS.

All persons in Idaho ~~except those in Benewah and Kootenai Counties~~ intending to dispose of crop residue through burning shall abide by the following provisions: (7-1-01)T(4-19-02)T

01. ~~Violation Of Ambient Air Quality Exceedence Of NAAQS~~. All persons planning to Bburning of crop residue in Idaho shall not be conducted burn if it would result in a violation of ambient air quality standards as established by USEPA and IDEQ the NAAQS have been reached, are predicted to reach, and persist at a level that would result in an exceedence of NAAQS. (7-1-01)T(4-19-02)T

02. Cessation Of Burning. In conjunction with IDEQ rules, IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho," Section 556, no new fires shall be ignited when particulate matter levels reach eighty percent (80%) of the one (1) hour action criteria for particulate matter of two and one-half (2.5) microns or less, and are predicted to remain above those levels. (4-19-02)T

023. Burning Prohibitions. Burning of crop residue shall not be conducted on weekends or federal or state holidays. (7-1-01)T

034. Designated Burn Day. Burning of crop residue shall not be conducted unless the department has

designated that day a burn day. (7-1-01)T

~~04. **Setback From Structures.** Burning of crop residue shall not be conducted within fifty (50) feet of any school or structure. (7-1-01)T~~

~~05. **Adequate Fire Suppression Equipment.** Adequate fire suppression equipment shall be on site prior to any burning of crop residue. (7-1-01)T~~

065. Location Of Field Burning. Disposal of crop residue through burning shall be conducted in the field where it was generated. (7-1-01)T

~~076. **Training Session.** All persons intending to burn crop residue shall attend a crop residue burning training session provided by ISDA, and shall attend a crop residue disposal refresher training session every five (5) years. (7-1-01)T(4-19-02)T~~

~~087. **Air Stagnation Advisory.** All field burning shall be prohibited during an IDEQ air stagnation advisory. (7-1-01)T~~

~~098. **Airsheds Reporting To ISDA.** All persons burning crop residue in Idaho shall first obtain approval to burn prior to field ignition. All persons burning crop residue shall also report to ISDA *shall designate for each airshed* the *names of persons* date burning was conducted and the number of acres ~~to~~ burned. (7-1-01)T(4-19-02)T~~

09. Burning Of Fields Adjacent To Roads. Burning of fields adjacent to roads and highways shall be approved on a case-by-case basis taking into account the time of day, field size and wind direction. (4-19-02)T

10. Additional Burning Permits. All persons intending to burn crop residue shall obtain any additional applicable permits from federal, state or local fire control authorities prior to receiving ISDA approval to burn crop residue. (4-19-02)T

(BREAK IN CONTINUITY OF SECTIONS)

800. ADDITIONAL BURN DAYS.

The director may declare additional burn days under special situations provided the burning of crop residue would not result in an violation of ambient air quality standards established by USEPA and IDEQ exceedence of NAAQS. (7-1-01)T(4-19-02)T

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.06 - RULES GOVERNING THE USE OF NATIONAL ELECTRICAL CODE

DOCKET NO. 07-0106-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2002.

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 54-1001 and 54-1006(5), 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 June 19, 2002.

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 adopts the 2002 edition of the National Electrical Code for the safety of the public in the State of Idaho.

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:

Prompt enactment of a temporary rule is necessary to adopt the most recent National Code, the 2002 edition, pursuant to Section 54-1001, Idaho Code, to protect the safety of the public in the state of Idaho.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because prompt enactment of a temporary rule was necessary to adopt the most recent National Electrical Code pursuant to Section 54-1001, Idaho Code.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Gary Malmen, Electrical Bureau Chief, Division of Building Safety, (208) 332-7147.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 26, 2002.

DATED this 24th day of April, 2002.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Telephone: (208) 334-3951
Facsimile: (208) 855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0106-0201

011. NATIONAL ELECTRICAL CODE, ~~1999~~ 2002 EDITION.

01. Documents. Under the provisions of Section 54-1001, Idaho Code, the National Electrical Code, ~~1999~~ 2002 Edition, is hereby adopted for the state of Idaho and shall be in full force and effect on and after ~~June 1,~~ ~~1999~~ July 1, 2002, ~~except~~ with the exception of Article 80 and the following: ~~(3-30-01)~~(7-1-02)T

a. Compliance with Article 675-8(~~b~~B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located. ~~(3-30-01)~~(7-1-02)T

b. Compliance with Article 550-~~232~~(~~b~~B)(~~2~~) shall limit installation of a service on a manufactured home to those homes manufactured after January 1, 1992. ~~(3-30-01)~~(7-1-02)T

c. Compliance with Article 210.12(B) shall not apply to the fire/smoke alarm branch circuit outlet. (7-1-02)T

02. Availability. This document is available at the office of the Division of Building Safety, Electrical Bureau ~~at 277 N. 6th Street, Boise~~ 1090 E. Watertower St., Meridian, Idaho. ~~(3-30-01)~~(7-1-02)T

IDAPA 08 - IDAHO STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is November 1, 2001.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 33-105 and Title 33, Chapter 43, 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 June 19, 2002.

The hearings 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 delete the line "An education agency's reassignment of a student to another classroom or building in the agency shall not be considered a change in placement as long as the IEP goals, services and degree of interaction with non-disabled peers remains unchanged" to be consistent with 34 CFR 300.552 and a change from "Part C policies and procedures" to "Part B policies and procedures" to be consistent with 34 CFR 300.342(c).

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that the temporary adoption of the rule is appropriate because it is necessary to ensure state compliance with the federal Individuals with Disabilities Education Act (IDEA) and to protect the rights of children with disabilities in the state of Idaho.

FEE SUMMARY: There is no fee associated with this rule change.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule change is not controversial in nature and other interested parties would not be harmed as a result of the change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Randi McDermott at 334-2270.

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 June 26, 2002.

DATED this 9th day of April, 2002.

Randi McDermott
State Board of Education
650 W. State St.
PO Box 83720
Boise, ID 83720-0037
Phone: 208-334-2270

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0203-0201

109. SPECIAL EDUCATION.

- 01. Definitions.** The following definitions apply only to Section 109 of these rules. (4-5-00)
- a. **Adult student.** A student who is eligible for special education, is eighteen (18) years of age or older and to whom special education rights have transferred. (4-5-00)
 - b. **Department.** State Department of Education. (4-5-00)
 - c. **Education agency.** Each school district and other public agency that is responsible for providing special education and related services to students with disabilities, including the Department of Juvenile Corrections and the Idaho School for the Deaf and Blind. (4-5-00)
 - d. **Expedited due process hearing.** An administrative hearing to resolve disputes concerning discipline for which shortened time lines are in effect in accordance with the Individuals with Disabilities Education Act. (4-5-00)
 - e. **Governing special education requirements.** Sections 33-201, 33-2001 through 2002, 33-2004 through 2005, and 33-2010, Idaho Code; Section 109 of these rules; the Individuals with Disabilities Education Act (IDEA), Parts A and B, (20 U.S.C., Sections 1400-1419); IDEA Regulations (34 C.F.R. Part 300); policies and procedures the State Department of Education is required to adopt to meet the eligibility requirements of 20 U.S.C. Section 1412; and special education case law that sets precedence in Idaho. (4-5-00)
 - f. **Regular due process hearing.** An administrative hearing that is conducted to resolve disputes on any matter related to identification, evaluation, placement, or the provision of a free appropriate public education except for disputes concerning discipline for which an expedited hearing may be requested under the Individuals with Disabilities Education Act. (4-5-00)
 - g. **Special education.** Specially designed instruction as defined by the Individuals with Disabilities Education Act or speech-language pathology services to meet the unique needs of a special education student. (4-5-00)
- 02. Legal Compliance.** The State Department of Education and education agencies shall comply with all governing special education requirements. (4-5-00)
- a. The Board of Trustees or other comparable governing body of each education agency shall adopt policies and procedures for providing special education services and obtain approval from the State Department of Education for the same. Department approval shall be based on current governing special education requirements. Each education agency shall revise its policies and procedures as necessary to conform with changes in governing special education requirements. (4-5-00)
 - b. The State Department of Education shall provide education agencies with a sample set of policies and procedures that is consistent with governing special education requirements. The Department shall monitor all education agencies and private agencies who provide special education services to students with disabilities for compliance with governing special education requirements and adopted policies and procedures. (4-5-00)
 - c. Each education agency shall ensure that charter schools and alternative schools located in its jurisdiction have nondiscriminatory enrollment practices. Each education agency shall ensure the provision of special education and related services to eligible students enrolled in charter and alternative schools in accordance with governing special education requirements. (4-5-00)
 - d. The child find, services plan, and proportionate expenditure requirements of the Individuals with

Disabilities Education Act that apply to students who are voluntarily enrolled in private schools by their parents shall also apply to home school students. (4-5-00)

e. Each education agency contracting with a private school or facility shall ensure that the private school or facility is approved by the State Department of Education to provide special education services. The Department may approve a private school or facility to provide special education services upon application to the Department if it: (4-5-00)

i. Is an accredited school or a licensed rehabilitation center; and (4-5-00)

ii. Meets minimum health, fire and safety standards; and (4-5-00)

iii. Is nonsectarian; and (4-5-00)

iv. Provides special education services consistent with governing special education requirements. (4-5-00)

v. Any private school or facility aggrieved by the Department's final decision may appeal that decision to the State Board of Education. (4-5-00)

f. Education agencies shall employ special education and related services professional personnel using certification standards approved by the State Board of Education or licensing standards adopted by the Bureau of Occupational Licensing. Education agencies shall employ individuals who meet the highest entry-level standard that applies to a specific discipline unless there is a shortage of fully qualified candidates for a specific position. If there is a shortage of fully qualified candidates, the education agency shall hire the most qualified individual available who is making satisfactory progress toward meeting the highest entry-level standard within three (3) years. (4-5-00)

g. Education agencies may employ paraprofessional personnel to assist in the provision of special education and related services to students with disabilities if they meet standards established by the State Department of Education. (4-5-00)

h. Education agencies shall collect and report data as necessary to meet state and federal requirements concerning special education services, staff or students. Education agencies shall develop, implement and revise district improvement plans as necessary to improve results as measured by data on goals and indicators for the performance of special education students that are established by the State Department of Education in accordance with the Individuals with Disabilities Education Act. (4-5-00)

i. Education agencies shall establish a team process to problem solve and plan general education interventions to ensure that referrals to special education are appropriate. (4-5-00)

03. Eligibility For Special Education. The State Department of Education shall provide state eligibility criteria for special education services for categorical and noncategorical eligibility consistent with the Individuals with Disabilities Education Act. Education agencies shall consider eligibility under all disability categories set forth in the Idaho Special Education Manual with the exception of developmental delay, which is an optional category. If an education agency elects to use the developmental delay category, it shall consider developmental delay for students ages three (3) through nine (9) using the eligibility criteria adopted by the Department and set forth in the Idaho Special Education Manual. Noncategorical eligibility procedures and criteria may be used only by schools and education agencies that have applied for and been granted a noncategorical eligibility waiver. (4-5-00)

04. Individualized Education Programs. Each education agency shall develop an individualized education program (IEP) for each student who is eligible for special education. The IEP shall be implemented as soon as possible after it is developed. The total timeline from the date of receipt of written parental consent for an initial assessment to the date of IEP implementation shall not exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days, unless all parties agree to an extension. A new IEP shall be developed at least annually, on or before the date the previous IEP was developed. (4-5-00)

a. IEP team meetings shall be convened upon reasonable request of any IEP team member at times other than the annual review. If the education agency refuses to convene an IEP team meeting requested by a parent or adult student, the agency shall provide written notice of the refusal. (4-5-00)

b. Education agencies shall document the attendance of all participants at each IEP team meeting. Any participant who does not agree with an IEP team decision regarding a student's educational program may place a minority report in that student's file. A minority report shall not prevent implementation of an IEP team decision. (4-5-00)

c. The IEP team shall determine the student's placement in the least restrictive environment. ~~An education agency's reassignment of a student to another classroom or building in the agency shall not be considered a change in placement as long as the IEP goals, services and degree of interaction with non-disabled peers remains unchanged.~~ (4-5-00)(11-1-01)T

d. At the discretion of the education agency, an individualized family service plan (IFSP) may be used in place of an IEP if: (4-5-00)

i. The child is ages three (3) through five (5), and (4-5-00)

ii. The child's parents are provided with a detailed explanation of the differences between an IFSP and an IEP, and (4-5-00)

iii. The child's parents provide written consent to use the IFSP, and (4-5-00)

iv. The IFSP is developed in accordance with Part ~~C~~ B policies and procedures. ~~(4-5-00)~~(11-1-01)T

v. Nothing in this part requires education agencies to develop IFSPs rather than IEPs for three (3) through five (5) year olds nor to implement more than the educational components of the IFSP. (4-5-00)

e. When a student who has been determined eligible for special education, as indicated by a current IEP, transfers from one (1) Idaho education agency to another, the student is entitled to continue to receive special education services. The receiving education agency may accept and implement the existing IEP or may convene an IEP team meeting to develop a new IEP. If a new IEP cannot be developed within five (5) school days, or if the education agency wishes to re-evaluate the child, an interim (short-term) IEP shall be implemented pending development of the standard IEP. (4-5-00)

f. If a student who is eligible for special education in another state transfers to an Idaho education agency, the Idaho education agency shall request a copy of the student's most recent eligibility documentation and IEP within two (2) school days. Within five (5) school days of receipt of the eligibility documentation and IEP, the Idaho education agency shall determine if it will adopt the existing eligibility documentation and IEP. If the education agency disagrees with the existing eligibility documentation, or if the documentation is not available within a reasonable time period, consent for an initial assessment shall be sought. While the assessment and evaluation is in process, the education agency may implement an interim IEP if the parent or adult student agrees. If the parent or adult student does not agree to an interim IEP, the student shall be placed in general education. (4-5-00)

05. Procedural Safeguards. Education agencies will use appropriate procedural safeguards consistent with the Individuals with Disabilities Education Act. (8-4-99)

a. If a parent or adult student disagrees with an individualized education program change or placement change proposed by the district, the parent or adult student may file a written objection to all or parts of the proposed change. If the written objection is postmarked or hand delivered within ten (10) calendar days of the date the parent or adult student receives written notice of the proposed change, the proposed change cannot be implemented. Informal methods such as additional IEP team meetings or voluntary mediation may be used to resolve the disagreement. If these methods fail, the education agency may request a due process hearing to obtain a hearing officer's decision regarding the proposed change. The written objection cannot be used to prevent the education agency from placing a student in an interim alternative educational setting in accordance with IDEA discipline

procedures. (4-5-00)

b. Mediation may be requested by an education agency, parent, or adult student, or offered by the State Department of Education at any time. The Department shall screen all such requests to determine appropriateness. Any time a hearing is requested, the Department shall offer mediation using policies and requirements set forth in the Individuals with Disabilities Education Act regulations. If the Department appoints a mediator, the Department will reimburse the mediator for an honorarium and travel expenses. All mediation participants shall be required to sign a confidentiality pledge. Attorney fees may not be awarded for a mediation that is conducted prior to a request for a due process hearing. (4-5-00)

c. The State Department of Education shall administer a single-tiered due process hearing system to resolve disputes between education agencies and parents or adult students. When a due process hearing is requested, the superintendent, special education director, or other agency administrator shall inform the agency's board of trustees or other governing body of the request. The education agency shall immediately notify the Department's Bureau of Special Education of any request for a due process hearing. Within ten (10) calendar days of a written request for a regular hearing, or within five (5) business days of a written request for an expedited hearing, an impartial hearing officer shall be assigned by the Department. The Department shall maintain a list of trained hearing officers and their qualifications. (4-5-00)

d. The education agency that is a party to the hearing shall be responsible for compensating the hearing officer and paying for the cost of a verbatim transcript of the hearing. (4-5-00)

e. Due process hearings shall be conducted pursuant to the Idaho Administrative Procedures Act (APA) and the Individuals with Disabilities Education Act (IDEA) requirements. In case of any conflict between the APA and the IDEA, the IDEA shall supersede the APA. (4-5-00)

f. The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within forty-five (45) calendar days of the date a regular hearing is requested, unless a specific extension of this time line is requested by one (1) of the parties and granted by the hearing officer. The hearing officer shall issue a written decision that includes findings of fact and conclusions of law within twenty (20) calendar days of a written request for an expedited hearing, unless a specific extension of this time line has been granted. An extension of the time line for an expedited hearing shall not exceed an additional twenty-five (25) calendar days, and may be granted only if requested by one (1) of the parties and agreed to by both parties. The decision shall be sent to the parent or adult student, the education agency administrator, their respective representatives, and the State Department of Education. (4-5-00)

g. The hearing officer's decision shall be binding unless either party appeals the decision by initiating a civil action. The hearing officer's decision shall be implemented not later than fourteen (14) calendar days from the date of issuance unless an appeal is filed by a parent or adult student or the decision specifies a different implementation date. An appeal to civil court must be filed within forty-two (42) calendar days from the date of issuance of the hearing officer's decision. (4-5-00)

h. During the hearing the education agency shall provide reasonable accommodations as required by federal and state regulations. Disputes concerning reasonable accommodations shall be referred to the Department of Education's Americans with Disabilities Act (ADA) Committee for resolution. (4-5-00)

i. During the pendency of any due process hearing or civil appeal the child's educational placement shall be determined by the Individuals with Disabilities Education Act "stay put" requirements. (4-5-00)

j. A parent or adult student has the right to an independent educational evaluation (IEE) at public expense if the parent or adult student disagrees with an evaluation obtained by the education agency. Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria the education agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent or adult student's right to an IEE. If an education agency has cost as one (1) of the criteria the education agency uses when it initiates an evaluation, the education agency may apply that criteria to independent educational evaluations. However, the parent or adult student has the right to demonstrate that unique circumstances justify an IEE that falls outside the education

agency's cost criteria, and if so demonstrated, that IEE shall be publicly funded. A due process hearing may be initiated by the education agency to determine if the evaluation conducted by the education agency is appropriate. If the final decision of a hearing officer, or civil court, if the hearing officer's decision is appealed, is that the evaluation conducted by the education agency is appropriate, the parent or adult student still has the right to an independent educational evaluation, but not at the education agency's expense. (4-5-00)

k. Student records shall be managed in accordance with IDEA and Family and Educational Rights and Privacy Act regulations governing security, confidentiality, access, maintenance, destruction, inspection and amendment. (4-5-00)

06. Assistive Technology Devices. Education agencies may hold a parent liable for the replacement or repair of an assistive technology device that is purchased or otherwise procured by the education agency if it is lost, stolen, or damaged due to negligence or misuse at home or in another setting outside of school time. (4-5-00)

07. Diplomas And Graduation. School districts shall use a regular diploma for students who are eligible for special education at the completion of their secondary program. The transcript serves as a record of individual accomplishments, achievements, and courses completed. A modified or differentiated diploma or certificate may not be used for students who are eligible for special education unless the same diploma or certificate is granted to students without disabilities. If a student is not granted a regular high school diploma or if a regular high school diploma is granted for completing requirements that are not comparable to regular graduation requirements, a student who is eligible for special education is entitled to receive a free appropriate public education through the semester in which the student turns twenty-one (21) years of age or until the student completes requirements that are comparable to regular graduation requirements, whichever comes first. (4-5-00)

08. Special Education Advisory Panel. The State Superintendent of Public Instruction shall appoint members to serve on the Special Education Advisory Panel. Panel members shall elect annually an individual to serve a one (1) year term as vice-chair followed by a one (1) year term as chair. (4-5-00)

IDAPA 11 - IDAHO STATE POLICE

11.10.03 - RULES GOVERNING THE SEX OFFENDER REGISTRY

DOCKET NO. 11-1003-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The temporary rule is effective April 1, 2002, and remains effective until rescinded or superseded by replacement rule or the approval of the final rule by the legislature or such other date specified in the concurrent resolution, or upon the conclusion of the 2003 legislative session, whichever is sooner.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Title 18, Chapter 83, Idaho Code.

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

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 June 19, 2002.

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 at the address below.

DESCRIPTIVE SUMMARY: The following is a statement in non-technical language of the substance of the proposed rule:

Changes in the requirements to register out-of-state offenders who are employed by or enrolled in an institution of higher learning in Idaho and the requirement of person(s) with a dismissed withheld judgment to obtain relief from registration under Section 18-8310, Idaho Code.

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

It is in compliance with federal Campus Sex Crimes Prevention Act.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Bob Taylor, Bureau of Criminal Identification, 884-7130.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered by June 26, 2002.

DATED this 24th day of April, 2002.

Margaret P. White
Deputy Attorney General
Department of Law Enforcement
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050 (208) 884-7090 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1003-0201

011. SEX OFFENDER CENTRAL REGISTRY - ADMINISTRATION.

01. Central Registry Established. Pursuant to Title 18, Chapter 83, Idaho Code, the department establishes a sex offender central registry in the bureau of criminal identification. The bureau is responsible for administration of the central registry pursuant to the requirements set forth in Title 18, Chapters 83 and 84, Idaho Code and these rules. (3-18-99)

02. Forms. The following forms and procedures are prescribed for providing notice to and collecting information from persons required to register as a sex offender pursuant to Title 18, Chapters 83 and 84, Idaho Code. (3-18-99)

a. "Notification and Initial Registration Form" (SOR-1) notifies an offender of the duty to register and obtains information for initial registration with the central registry. The court or appropriate correctional agency shall complete the form with the assistance of the offender required to register. Within three (3) working days of completing the form, the court or correctional agency shall forward the original copy to the bureau. (3-18-99)

b. "Local/Annual Registration Form" (SOR-2) collects from an offender information required for first-time registration in a county, annual re-registration, or a change of address or status within the county of residence. Under supervision of the sheriff or the sheriff's designee, the offender shall complete the form as prescribed by the accompanying instructions. Except when using the form to notify the central registry of a change of address or status, the sheriff shall forward the original copy, along with the offender's photograph and fingerprints, to the bureau within three (3) working days of completing the form. When using the form to notify a change of address or status, the sheriff shall forward only the original copy of the form to the bureau within three (3) working days of its completion. ~~(3-18-99)~~(4-1-02)T

c. "Local/Annual Registration Form Addendum" (SOR-3) collects offense information and provides notice of registration requirements to an offender who has not undergone Idaho or local registration previously or who has committed an additional sex offense since last annual registration. Under supervision of the sheriff or the sheriff's designee, the offender shall complete the form as prescribed by the accompanying instructions. In those cases when appropriate, the sheriff shall attach the form to the SOR-2 form and forward them to the bureau within three (3) working days of their completion. (3-18-99)

03. Information Required At Initial Registration. In addition to the information required by Section 18-8307(8), Idaho Code, the "Notification and Initial Registration Form" (SOR-1) shall collect the following information: (3-18-99)

a. Whether the offender is registering as an adult under Title 18, Chapter 83, Idaho Code, or as a juvenile under Title 18, Chapter 84, Idaho Code; (3-18-99)

b. Physical description of the offender, including gender, race, height, weight, eye color, hair color, and scars, marks, and tattoos; (3-18-99)

c. Offender's occupation and name and place of employment; (3-18-99)

d. The name and location of a school, college, or university that the offender attends; and (3-18-99)

e. Name of the offender's probation/parole officer. (3-18-99)

04. Photographs And Fingerprints. Whenever Form SOR-2 is used to register an offender who moves into a county, ~~or~~ to re-register an offender annually, or register an offender who resides out of state but is employed in the state or enrolled in an institution of higher learning as defined in Section 18-8304(1)(d), it is submitted to the central registry with the offender's photograph and fingerprints. ~~(3-18-99)~~(4-1-02)T

a. An offender's photograph shall be in color ~~and taken using equipment provided for drivers license photographs and using a special camera form supplied by the bureau.~~ The sheriff shall forward one (1) photograph of the offender with each registration Form SOR-2. Photographs submitted to the central registry shall be new photographs taken at the time of each registration. From collected registration fees, the sheriff shall pay to the state the cost of photography materials lawfully required by a state agency or department. ~~(3-18-99)~~(4-1-02)T

b. The sheriff shall submit the required fingerprints on the federal bureau of investigation form FD-249. ~~In 1998 and for~~ For each first-time registrant, the sheriff shall forward two (2) FBI fingerprint cards with each registration Form SOR-2. For subsequent annual re-registrations, the sheriff shall forward one (1) FBI fingerprint card with each registration form SOR-2. ~~(3-18-99)~~(4-1-02)T

05. Change Of Address Or Status Notification. (4-1-02)T

a. When an offender changes address or actual residence within a county, the offender will complete within five (5) days after the change Form SOR-2 to provide the required notification. (4-1-02)T

b. When an offender moves to another county to establish permanent or temporary domicile, the offender must register as a new resident with the sheriff having jurisdiction within ten (10) days of moving to the other county. (4-1-02)T

c. When an offender moves to another state, the offender shall notify the central registry by certified mail within five (5) days after moving to the other state. ~~(3-18-99)~~(4-1-02)T

d. When an offender enrolls as a student at or becomes an employee of a school, college, or university in the state, the offender, whether such enrollment or employment is part-time or full-time and is for more than fourteen (14) days or an aggregate period exceeding thirty (30) days per year, will complete within five (5) days of the commencement of employment or enrollment Form SOR-2 to provide the required notification. (4-1-02)T

e. When an offender, who is a student at or an employee of a school, college, or university, changes status as a student or employee, the offender will complete within five (5) days of the change of status Form SOR-2 to provide the required notification. (4-1-02)T

f. When a nonresident offender is required to register pursuant to Section 18-8304(1)(d), Idaho Code, the offender must register, within ten (10) days of the commencement of employment or enrollment, with the sheriff having jurisdiction. When the status of such employment or enrollment changes, the offender will complete within five (5) days after the change Form SOR-2 to provide required notification. (4-1-02)T

06. Notification To Local Law Enforcement. The bureau will provide to a local law enforcement agency on its request a list of registered sex offenders residing in its jurisdiction. The bureau will notify the local law enforcement agency with jurisdiction any time the bureau becomes aware of a change of status or residence of a registered sex offender and of a registered offender's intent to reside in the agency's jurisdiction. Whenever practical, the bureau will provide notification using the Idaho law enforcement telecommunication system (ILETS). (3-18-99)

07. Notification To Other States. Within one (1) working day of receiving notification that a registered sex offender is moving to another state, the bureau will notify the receiving state's designated sex offender registration agency of the move by mail or electronic means. (3-18-99)

08. Expungement Of Central Registry Information. (3-18-99)

a. Upon receipt of a certified copy of a death certificate recording the death of a person registered with the central registry, the bureau will expunge all records concerning the person from the central registry. (3-18-99)

b. Upon receipt of a duly attested copy of a pardon issued by the governor of a state as to a conviction reported to the central registry, the bureau will expunge all records concerning the conviction from the central registry. If the pardoned person has no other conviction requiring registration, the bureau will expunge all references

concerning the person from the central registry. (3-18-99)

c. Upon receipt of a duly attested document from a court clerk that a conviction previously reported to the central registry has been reversed or dismissed by the court, except where such a dismissal is on a withheld judgment, the bureau will expunge all records concerning the conviction from the central registry. If the person has no other conviction requiring registration, the bureau will expunge all references concerning the person from the central registry. An offender registered for a withheld judgment is required to obtain relief from registration under provisions of Section 18-8310, Idaho Code. ~~(3-18-99)~~(4-1-02)T

d. Upon receipt of a duly attested document from a court clerk that a registered sex offender has been released by the court from registration requirements pursuant to Section 18-8310, Idaho Code, the bureau will expunge all records and references concerning the offender from the central registry. (3-18-99)

09. Correction Of Central Registry Information. (3-18-99)

a. A person registered pursuant to Title 18, Chapters 83 or 84, Idaho Code, may submit a written request to the bureau to correct or modify information regarding that person in the central registry for the purpose of making the information accurate and complete. The bureau will respond to the request in writing within thirty (30) days after receipt of the request. When a request is denied, in whole or part, the bureau will explain the reasons for the decision. (3-18-99)

b. A person whose request, under Subsection 011.09.a. of this Section, is denied, in whole or part, may appeal to the director for review of the decision within thirty (30) days after the mailing of the bureau's written response. The appeal must be in writing and must set out the reasons for the appeal. The decision of the director will be in writing and made within forty-five (45) calendar days after the department's receipt of the appeal. (3-18-99)

012. RELEASE OF INFORMATION TO THE PUBLIC.

01. Method Of Access. Any person may inquire on a named person or obtain a list of sex offenders by geographic area by submitting a completed Request for Information Form SOR-4 to the bureau or local sheriff. The bureau or sheriff may only provide public access to central registry information by means of a completed Form SOR-4, which must include the requester's full name, address, and either driver's license number or social security number. The bureau or sheriff shall respond to a completed Form SOR-4 within ten (10) working days of receipt. A sheriff may refer a person to the bureau for public access to the central registry. (3-18-99)

02. Geographic Lists. Any person using a Form SOR-4 may request a list of offenders by county or zip code. (3-18-99)

03. ~~Statewide Lists~~ Electronic Access. Schools, state agencies, and organizations working with youth, women or other vulnerable populations may request ~~a statewide list of~~ electronic access to the database of registered offenders ~~from maintained by~~ the bureau. The bureau may request information additional to that required by the Form SOR-4 to determine eligibility status for a statewide list. ~~(3-18-99)~~(4-1-02)T

04. Information Released. Only central registry information authorized for release pursuant to Section 18-8323(2), Idaho Code, may be provided by the bureau or sheriff in response to a completed Form SOR-4. A conviction of incest (Section 18-6602, Idaho Code, or equivalent offense) shall be reported as sexual abuse of a child under sixteen (16) years of age (Section 18-1506, Idaho Code). (3-18-99)

05. Fee For Accessing Information. The bureau shall collect a fee of five dollars (\$5) for each inquiry on a named person or for each request for a list of sex offenders by geographic area. Schools, state agencies, and nonprofit organizations working with youth, women, or other vulnerable populations are exempt from payment of the fee. The bureau may request information additional to that required by the Form SOR-4 to determine eligibility status for nonfee access to central registry information. A registered offender may request a copy of the offender's own central registry information without payment of a fee. ~~(3-18-99)~~(4-1-02)T

06. Photographs. Any person may request the photograph of a registered sex offender by submitting to the bureau a completed Request for Registry Photograph Form SOR-5. The bureau may only provide public access to

central registry photographs by means of a completed Form SOR-5, which must include the requester's full name, address, and either driver's license number or social security number. (3-18-99)

07. Fee For Photographs. The bureau shall collect a fee of five dollars (\$5) for each photograph provided in response to a completed Form SOR-5. (3-18-99)

08. Retention Of Request Forms. The bureau and all sheriffs shall retain in their files the original copies of forms SOR-4 and SOR-5 for a period of two (2) years from the date of submission. These forms are available for inspection only by law enforcement and criminal justice agencies. (3-18-99)

IDAPA 11 - IDAHO STATE POLICE

11.11.03 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR JUVENILE PROBATION OFFICERS

DOCKET NO. 11-1103-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: These temporary rules are effective October 1, 2001.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules, and proposed regular rulemaking procedures have been initiated. 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 June 19, 2002.

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:

Establishes the minimum standards for employment and certification of juvenile probation officers.

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:

For the protection of the public health, safety, or welfare.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Michael N. Becar at (208) 884-7251.

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 June 26, 2002.

DATED this 4th day of April, 2002.

Michael N. Becar
Executive Director
Idaho State Police
Peace Officer Standards and Training
700 South Stratford Drive
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7251
(208) 884-7295 (FAX)

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1103-0201

IDAPA 11
TITLE 11
Chapter 03

**11.11.03 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING
COUNCIL FOR JUVENILE PROBATION OFFICERS**

000. LEGAL AUTHORITY.

01. Section 20-504(14), Idaho Code. Pursuant to Section 20-504(14), Idaho Code, the Idaho Department of Juvenile Corrections, by rule, and in cooperation with the courts and the counties, shall establish uniform standards, criteria and operating procedures for county juvenile probation services, as well as qualifications for and standards for the training of juvenile probation officers. (10-1-01)T

02. Section 19-5109(f), Idaho Code. Pursuant to Section 19-5109(f), Idaho Code, the Peace Officer Standards and Training Council may, upon recommendation of the Juvenile Training Council, implement minimum training and certification standards for juvenile probation officers. (10-1-01)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 11.11.03, "Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Probation Officers," IDAPA 11, TITLE 11, Chapter 03. (10-1-01)T

02. Scope. These rules are established to provide the opportunity for all county juvenile probation officers in the state to receive quality, consistent training to ensure that juveniles receive appropriate supervision. (10-1-01)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, any written statements which might pertain to the interpretations of these rules will be available for public inspection to the extent allowed by Title 9, Chapter 3, Idaho Code, and will be available at the Department of Juvenile Corrections, 400 N. 10th (second floor), P.O. Box 83720, Boise, Idaho, 83720-0285. Additional written interpretations are available for public inspection at 700 South Stratford Drive, Meridian, Idaho 83642, P.O. Box 700, Meridian, Idaho 83680-0700. (10-1-01)T

003. ADMINISTRATIVE APPEALS.

Any appeals allowed under these rules shall be governed by the Idaho Administrative Procedure Act and by the IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General". (10-1-01)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. (10-1-01)T

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

01. Idaho State Police, Peace Officer Standards and Training. The principal place of business of the Idaho State Police, Peace Officer Standards and Training, is in Meridian, Idaho. The office is located at 700 South Stratford Drive, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Peace Officer Standards and Training Academy, P.O. Box 700, Meridian, Idaho 83680-0700. The telephone of the office is (208) 884-7250. The facsimile number of the office is (208) 884-7295. (10-1-01)T

02. Idaho Department of Juvenile Corrections. The principal place of business of the Idaho Department of Juvenile Corrections is in Boise, Idaho. The office is located at 400 North Tenth Street, Second Floor, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Idaho Department of Juvenile Corrections, P.O. Box 83720, Boise, Idaho 83720-0285. The telephone of the office is (208) 334-5100. The facsimile number of the office is (208) 334-5120. (10-1-01)T

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public records. (10-1-01)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Basic Juvenile Probation Academy. A basic course of instruction for Juvenile Probation Officers as recognized by POST Council. (10-1-01)T

02. Challenge Exam. A test to determine a person's competence for waiver of the basic Juvenile Probation Academy. (10-1-01)T

03. Juvenile Probation Department. Any public or private agency administered by or contracted with the court, made up of one (1) or more staff to provide juvenile probation services to a county at the expense and concurrence of the county commissioners. Services may include intake, diversion, supervision, restitution, and community service work. (10-1-01)T

04. Juvenile Probation Officer. Any 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. (10-1-01)T

05. Juvenile Training Council. An advisory group to the POST Council that is represented by the Director of the Department of Juvenile Corrections, a Magistrate, a county Juvenile Detention Director, a county Chief Probation Officer, a county Commissioner, 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 Probation Academy. (10-1-01)T

06. Voluntary Certification. To issue a certificate to a juvenile probation officer based upon successful completion of the voluntary training requirements established by POST Council. (10-1-01)T

011. -- 029. (RESERVED).

030. JUVENILE PROBATION OFFICER CERTIFICATION.

01. Decertification. The council may decertify any juvenile probation officer in the same manner as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.03. (10-1-01)T

02. Certification. The following dates govern voluntary certification: (10-1-01)T

a. From October 1, 2001, any county Juvenile Probation Officer may receive voluntary certification from POST upon successful completion of the requirements outlined in Sections 031 or 032. (10-1-01)T

b. The requirement for successful completion of the POST Basic Juvenile Probation Academy will be waived if the officer scores a minimum of seventy-five percent (75%) on a challenge examination administered by POST and any other requirements for voluntary certification. The officer will be allowed two (2) attempts to pass the examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If the juvenile probation officer fails both attempts, the officer must successfully complete the POST Basic Juvenile Probation Academy to be certified. (10-1-01)T

03. Applications. All applications for award of the Juvenile Probation Officer Certificate shall be completed on the prescribed form "Application for Certification" as provided by the POST Council. (10-1-01)T

04. Submission. The Application for Certification form must be submitted by the officer/applicant to the applicant's department head, who shall forward the application to the Council. Certificates will be issued to the

department head for award to the applicant. (10-1-01)T

05. Minimum Standards. Each applicant must meet the minimum standards for employment and training as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," with the exception of height, weight, fitness, and physical disability which will be left to the discretion of the employing agency. (10-1-01)T

031. THE BASIC CERTIFICATE.

The following requirements are necessary for award of the basic certificate: (10-1-01)T

01. Employment Probation. The applicant must have completed at least a six (6) month satisfactory probationary period (may include basic training academy time). Probationary period may be extended by the agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time must be continuous with the department the officer is employed with when applying for certification. (10-1-01)T

02. Basic Training. The applicant shall have completed the POST Basic Juvenile Probation Academy and shall have passed the POST juvenile probation certification examination approved by the Council. The applicant shall be allowed two (2) attempts to pass the examination with a minimum score of seventy-five percent (75%). The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If an applicant fails both attempts, the applicant must reapply and successfully complete the POST Basic Juvenile Probation Academy to be certified. (10-1-01)T

03. Juvenile Probation Training Manual. Successful completion of forty (40) hours of supervised juvenile probation training in the employing department, or another department if necessary, is required. Evidence of such training must be submitted by applicant's employer to POST Council. (10-1-01)T

032. CHALLENGE PROCEDURE.

Any juvenile probation officer employed by an Idaho juvenile probation department who has, within the last five (5) years, been employed by another county, state, or the federal government as a juvenile probation officer or a student who has satisfactorily completed a Basic Juvenile Probation Academy equivalent to Idaho's POST Basic Juvenile Probation Academy within the last three (3) years shall be eligible for certification in the state of Idaho without attending the Basic Juvenile Probation Academy, provided the officer: (10-1-01)T

01. Documents. Submits a POST Juvenile Probation Certification Challenge Packet to POST Council, which must include copies of transcripts, certificates, diplomas, or other documents that substantiate the officer's training and experience; (10-1-01)T

02. Examination. Passes the POST juvenile probation certification examination approved by the Council and administered by a POST Training Specialist, conducted in the manner set forth in Subsection 030.02; (10-1-01)T

03. Training. Attends and passes the Idaho POST Juvenile Probation Academy's "Legal and Liability Issues" and "Appropriate Use of Physical Force" training or POST-approved equivalent; and (10-1-01)T

04. Probation Period. Satisfactorily completes the employment probationary period, as required by Subsection 031.01. (10-1-01)T

033. -- 999. (RESERVED).

IDAPA 11 - IDAHO STATE POLICE

11.12.01 - RULES GOVERNING RECORD CHECKS FOR TRANSFERS OF HANDGUNS

DOCKET NO. 11-1201-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

(REPEAL OF CHAPTER)

EFFECTIVE DATE: The temporary rule is effective April 1, 2002, and remains effective until rescinded or superseded by replacement rule or the approval of the final rule by the legislature or such other date specified in the concurrent resolution, or upon the conclusion of the 2003 legislative session, whichever is sooner.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules and has proposed rulemaking. The action is authorized pursuant to Title 19, Chapter 54, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows: 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 June 19, 2002.

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 at the address below.

DESCRIPTIVE SUMMARY: The following is a statement in non-technical language of the substance of the proposed rule: The proposed rule is intended to repeal the entire chapter due to changes in federal law making it null and void and of no force and effect.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: It is in compliance with deadlines in amendments to governing law or federal programs.

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

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this proposed rule, contact Bob Taylor, Bureau of Criminal Identification, 884-7130.

Anyone may submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked or delivered by June 26, 2002.

DATED this 24th day of April, 2002.

Margaret P. White
Deputy Attorney General
Department of Law Enforcement
P.O. Box 700
Meridian, ID 83680-0700
(208) 884-7050 (208) 884-7090 (FAX)

THIS CHAPTER IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 18 - DEPARTMENT OF INSURANCE RULES

18.01.19 - RULES GOVERNING CREDIT SCORING

DOCKET NO. 18-0119-0201

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220(1), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. The action is negotiated rulemaking authorized pursuant to Section 41-211, Idaho Code.

HEARING SCHEDULE: Public hearing on the negotiated rulemaking will be held as follows:

June 26, 2002, 1:00 p.m.
Conference Room A
Idaho Department of Insurance
700 W. State Street, 3rd Floor
Boise, ID 83720-0043

METHOD OF PARTICIPATION: Persons wishing to participate in the informal negotiated rulemaking must do the following: Any person may participate in this process, may give oral presentation, and/or submit written comments.

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

The purpose of the meeting is to take input from interested parties on the department's intention to promulgate a rule setting forth parameters on how it will enforce Section 41-1843, Idaho Code, enacted as Senate Bill No. 1408 by the legislature in 2002 relating to the use of credit rating or credit history by insurers in determining rating and coverage of insurance.

The department has not yet drafted a rule, so none is available at this time. The department anticipates having an informal meeting prior to the date of the negotiated rulemaking hearing. The main issue is to determine how the department shall interpret and apply the language in Section 41-1843, Idaho Code, restricting an insurer from charging a higher premium or canceling a policy or coverage "based primarily upon an individual's credit rating or credit history".

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule, contact Shad Priest, (208) 334-4250.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 26, 2002.

DATED this 23 day of May, 2002.

Mary L. Hartung, Director
Idaho Department of Insurance
700 West State Street – 3rd Floor
PO Box 83720
Boise, ID 83720-0043
Telephone No. (208) 334-4250

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-0201

NOTICE OF RULEMAKING - TEMPORARY RULE

EFFECTIVE DATE: This temporary rule is effective January 1, 2002.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules. The action is authorized pursuant to Section(s) 63-105A and 63-3624, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance of and reason for adopting the temporary rule:

Property Tax Rule 130 - Equalization By Category - Identification and Reappraisal is being amended to create a category for the assessment and listing of certain rural lots in counties under 100,000 in population as provided for in House Bill 488 passed by the 2002 Legislature. The rule is retroactive and has an effective date of January 1, 2002.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: Statutory timing of the program requires the rule be adopted as a temporary rule and it confers a benefit.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being adopted as a temporary rule and the time constraints require having the benefits in effect for the year 2002.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 3rd day of April, 2002.

Alan Dornfest
Tax Policy Specialist Supervisor
State Tax Commission
800 Park, Plaza IV
P.O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0201

130. EQUALIZATION BY CATEGORY -- IDENTIFICATION AND REAPPRAISAL (Rule 130).

Sections 63-109 and 63-315, Idaho Code. Property shall be identified for assessment purposes in the categories outlined below. These categories are to be used on the current year's assessment notice, assessment roll and abstract.
(3-15-02)

01. Category 1 - Irrigated Agricultural Land. Irrigated land and only such irrigated land eligible for

and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) This irrigated land must be capable of and normally producing harvestable crops and may be located inside or outside the boundaries of an incorporated city.

(3-30-01)

02. Category 2 - Irrigated Grazing Land. Irrigated land and only such irrigated land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) This irrigated land must be used for grazing and not normally capable of producing harvestable crops and may be located inside or outside the boundaries of an incorporated city.

(3-30-01)

03. Category 3 - Non-irrigated Agricultural Land. Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) This non-irrigated land must be capable of and normally producing harvestable crops without man-made irrigation and may be located inside or outside the boundaries of an incorporated city.

(3-30-01)

04. Category 4 - Meadow Land. Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) This meadow land must be capable of lush production of grass and may be located inside or outside the boundaries of an incorporated city.

(3-30-01)

05. Category 5 - Dry Grazing Land. Land and only such land eligible for and granted the partial exemption for the current year's assessment roll as actively devoted to agriculture. (See Sections 63-604 and 63-602K, Idaho Code, and Rule 645 of these rules.) This land must be capable of supporting grasses and not normally capable of supporting crops on regular rotation and may be located inside or outside the boundaries of an incorporated city.

(3-30-01)

06. Category 6 - Productivity Forestland. All land and only such land designated by the owner for assessment appraisal and taxation under Section 63-1703(a), Idaho Code, for the current year's assessment roll. This land must be assessed as forest land under the productivity option and may be located inside or outside the boundaries of an incorporated city. Also included is all land assessed under Section 63-1704, Idaho Code.

(3-30-01)

07. Category 7 - Bare Forestland. All land and only such land designated by the owner for assessment appraisal and taxation under Section 63-1703(b), Idaho Code, for the current year's assessment roll. This land must be assessed as bare land with the yield tax option and may be located inside or outside the boundaries of an incorporated city.

(3-30-01)

08. Category 8 - ~~Reforestation Land.~~ Repealed. Effective July 1, 1995, see 1995 Session Laws, Chapter 173. Speculative Home Site. In each county with a population of less than one hundred thousand (100,000), rural subdivision plat lots granted the exemption under Section 63-602FF, Idaho Code, for the current year's assessment roll.

~~(3-30-01)~~(1-1-02)T

09. Category 9 - Patented Mineral Land. All land used solely for mines and mining claims and only the part of such land not used for other than mining purposes for the current year's assessment roll. This land may be located inside or outside the boundaries of an incorporated city. See Section 63-2801, Idaho Code.

(3-30-01)

10. Category 10 - Homesite Land. Land being utilized for homesites on categories 1 through 9.

(3-23-94)

11. Category 11 - Recreational Land. Land used in conjunction with recreation but not individual homesites.

(3-23-94)

12. Category 12 - Rural Residential Tracts. Rural residential land not in a properly recorded subdivision.

(3-23-94)

13. Category 13 - Rural Commercial Tracts. Rural commercial land not in a properly recorded

- subdivision. (3-23-94)
14. **Category 14 - Rural Industrial Tracts.** Rural industrial land not in a properly recorded subdivision. (3-23-94)
15. **Category 15 - Rural Residential Subdivisions.** Rural residential land in a properly recorded subdivision. (3-23-94)
16. **Category 16 - Rural Commercial Subdivisions.** Rural commercial land in a properly recorded subdivision. (3-23-94)
17. **Category 17 - Rural Industrial Subdivisions.** Rural industrial land in a properly recorded subdivision. (3-23-94)
18. **Category 18 - Other Land.** Land not compatible with other categories. (4-5-95)
19. **Category 19 - Waste.** Public Rights-of-Way includes roads, ditches, and canals. Use this category to account for total acres of land ownership. Only list acres in this category on the abstract. (3-15-02)
20. **Category 20 - Residential Lots Or Acreages.** Land inside city limits zoned residential. (3-30-01)
21. **Category 21 - Commercial Lots Or Acreages.** Land inside city limits zoned commercial. (3-30-01)
22. **Category 22 - Industrial Lots Or Acreages.** Land inside city limits zoned industrial. (3-30-01)
23. **Category 25 - Common Areas.** Land and improvements not included in individual property assessments. (4-5-95)
24. **Category 26 - Residential Condominiums.** Land and improvements included in individual assessments of condominiums in areas zoned residential or in areas zoned commercial or industrial but maintained as residences. (7-1-97)
25. **Category 27 - Commercial Or Industrial Condominiums.** Land and improvements included in individual assessments of condominiums in areas zoned commercial or industrial. (3-23-94)
26. **Category 30 - Improvements.** Other than residential, located on category 20. (3-23-94)
27. **Category 31 - Improvements.** Residential improvements located on category 10. (3-30-01)
28. **Category 32 - Improvements.** Other than residential, located on categories 1 through 12 and 15. (3-23-94)
29. **Category 33 - Improvements.** Located on category 11. (3-23-94)
30. **Category 34 - Improvements.** Residential in nature, located on category 12. (3-23-94)
31. **Category 35 - Improvements.** Commercial in nature, located on category 13. (3-23-94)
32. **Category 36 - Improvements.** Industrial in nature, located on category 14. (3-23-94)
33. **Category 37 - Improvements.** Residential in nature, located on category 15. (3-23-94)
34. **Category 38 - Improvements.** Commercial in nature, located on category 16. (3-23-94)
35. **Category 39 - Improvements.** Industrial in nature, located on category 17. (3-23-94)

36. **Category 40 - Improvements.** Located on category 18. (3-23-94)
37. **Category 41 - Improvements.** Residential in nature, located on category 20. (3-23-94)
38. **Category 42 - Improvements.** Commercial in nature, located on category 21. (3-23-94)
39. **Category 43 - Improvements.** Industrial in nature, located on category 22. (3-23-94)
40. **Category 44 - Improvements.** Taxable improvements located on otherwise exempt property under the same ownership. (3-23-94)
41. **Category 45 - Utility Systems.** Locally assessed utility systems not under the jurisdiction of the State Tax Commission. (3-30-01)
42. **Category 46 - Manufactured Housing.** Structures transportable in one (1) or more sections, built on a permanent chassis, for use with or without permanent foundation located on land under the same ownership as the manufactured home. Include any manufactured home located on land under the same ownership as the manufactured home on which a statement of intent to declare a real property has been filed but becomes effective the following year. (3-15-02)
43. **Category 47 - Improvements To Manufactured Housing.** Additions not typically moved with manufactured housing. (3-23-94)
44. **Category 48 - Manufactured Housing.** Manufactured housing on which a statement of intent to declare as real property has been filed and has become effective. (3-15-02)
45. **Category 55 - Boats Or Aircraft.** Unlicensed watercraft or unregistered aircraft. (3-23-94)
46. **Category 56 - Construction Machinery, Tools, And Equipment.** Unlicensed equipment such as cranes, tractors, scrapers, and rock crushers, used in the building trade or road construction. (3-23-94)
47. **Category 57 - Equities In State Property.** Property purchased from the state under contract. (4-5-95)
48. **Category 59 - Furniture, Fixtures, Libraries, Art, And Coin Collections.** Trade articles used commercially for convenience, decoration, service, storage, including store counters, display racks, typewriters, office machines, surgical and scientific instruments, paintings, books, coin collections, and all such items held for rent or lease. (3-23-94)
49. **Category 60 - Improvements On Railroad Rights-Of-Way.** Improvements located on railroad rights-of-way under separate ownership. (3-23-94)
50. **Category 61 - Improvements By Lessee Other Than Category 62.** Improvements made by the tenant or lessee to landlord's property. (3-23-94)
51. **Category 62 - Improvements On Exempt Or Public Land.** Taxable improvements which are owned separately from exempt or public land on which they are located. (3-23-94)
52. **Category 63 - Logging Machinery, Tools, And Equipment.** Unlicensed logging machinery, shop tools, and equipment not assessed as real property. (3-23-94)
53. **Category 64 - Mining Machinery, Tools, And Equipment.** Unlicensed mining machinery, shop tools, and equipment not assessed as real property. (3-23-94)
54. **Category 65 - Manufactured Housing.** Manufactured housing not considered real property located on exempt, rented or leased land. Include any manufactured home located on exempt, rented or leased land on which a statement of intent to declare as real property has been filed but becomes effective the following year.

(3-15-02)

55. Category 66 - Net Profits Of Mines. That amount of money or its equivalent received from the sale or trade of minerals or metals extracted from the Earth after deduction of allowable expenses. See Section 63-2802, Idaho Code, and Rule 982 of these rules. (3-30-01)

56. Category 67 - Operating Property. Property assessed by the State Tax Commission. (3-30-01)

57. Category 68 - Other Miscellaneous Machinery, Tools, And Equipment. Unlicensed machinery, tools, and equipment not used in construction, logging, mining, or not used exclusively in agriculture. (3-15-02)

58. Category 69 - Recreational Vehicles. Unlicensed recreational vehicles. (3-23-94)

59. Category 70 - Reservations And Easements. Reservations, including mineral rights reserved divide ownership of property rights. Easements convey use but not ownership. (3-23-94)

60. Category 71 - Signs And Signboards. Signs and signboards, their bases and supports. (3-23-94)

61. Category 72 - Tanks, Cylinders, Vessels. Containers. (3-23-94)

62. Category 81 - Exempt Property. For county use in keeping an inventory, including acreage, of exempt real and personal property. (3-23-94)

IDAPA 35 - STATE TAX COMMISSION
35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0103-0202
NOTICE OF RULEMAKING - TEMPORARY RULE

EFFECTIVE DATE: This temporary rule is effective January 1, 2002.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted temporary rules. The action is authorized pursuant to Section(s) 63-105A and 63-3624, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance of and reason for adopting the temporary rule:

Property Tax Rule 635 - Partial Exemption For Parcels Of Land In A Rural Home Site Development Plat is being promulgated to clarify assessment procedures for certain rural lots in counties under 100,000 in population as provided for in House Bill 488 passed by the 2002 Legislature. The rule is retroactive and has an effective date of January 1, 2002.

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

Statutory timing of the program requires the rule be adopted as a temporary rule and it confers a benefit.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule is being adopted as a temporary rule and the time constraints require having the benefits in effect for the year 2002.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Alan Dornfest, at (208) 334-7530.

DATED this 24th day of April, 2002.

Alan Dornfest
Tax Policy Specialist Supervisor
State Tax Commission
800 Park, Plaza IV, P.O. Box 36
Boise, ID 83722
(208) 334-7530 FAX (208) 334-7844

THE FOLLOWING IS THE TEXT OF DOCKET NO. 35-0103-0202

630. -- ~~6434.~~ (RESERVED).

635. PARTIAL EXEMPTION FOR PARCELS OF LAND IN A RURAL HOME SITE DEVELOPMENT PLAT (Rule 635).

Section 63-602FF, Idaho Code.

(1-1-02)T

01. Definitions. For the purpose of implementing the partial exemption under Section 63-602FF, Idaho Code, beginning with assessments for 2002, the following terms are defined. (1-1-02)T

a. “Speculative home site exemption.” “Speculative home site exemption” means an exemption granted under Section 63-602FF, Idaho Code. (1-1-02)T

b. “Previously eligible.” Parcels of land in a rural home site development plat are “previously eligible” for the exemption provided in Section 63-602K, Idaho Code, provided the land was eligible for an exemption on the speculative portion of value of agricultural land on January 1 of the year immediately preceding the year for which eligibility for the speculative home site exemption is first determined. (1-1-02)T

c. “Continue to be eligible.” “Continue to be eligible” means the parcel must have been eligible for the speculative agricultural value exemption on January 1 of the year immediately preceding the year for which eligibility for the speculative home site exemption is to be determined. Continue to be eligible also means once granted, the speculative home site exemption will be granted each year, regardless of current use, until improvements are being built. (1-1-02)T

d. “Improvements are being built.” “Improvements are being built” or “construction of the improvements has begun” means construction of any structure has commenced or is observable on the land. Construction of improvements does not include construction of any fences or “associated site improvements,” as defined in Rule 645 of these rules. (1-1-02)T

02. Qualifying Criteria For The Speculative Home Site Exemption. To qualify for the speculative home site exemption, any parcel of land must meet each of the following criteria. (1-1-02)T

a. The county where the parcel of land is located is less than one hundred thousand (100,000) in population. (1-1-02)T

b. The parcel of land is in a recorded subdivision plat. (1-1-02)T

c. The parcel of land is rural; that is, not within the boundaries of an incorporated city. (1-1-02)T

d. The parcel of land was previously eligible, for the speculative agricultural value exemption under Section 63-602K, Idaho Code. (1-1-02)T

e. The parcel of land is not eligible for the speculative agricultural value exemption under Section 63-602K, Idaho Code, for the current year’s assessment. (1-1-02)T

f. No improvements, as defined in Subsection 635.01.d., are being or have been built upon the parcel of land. (1-1-02)T

03. Non-Qualifying Parcels In Subdivisions. (1-1-02)T

a. Any parcel never eligible for the exemption provided in Section 63-602K, Idaho Code, shall not be qualified for the speculative home site exemption. (1-1-02)T

b. Any rural subdivision parcel designated as timberland under Chapter 17, Title 63, Idaho Code, shall not be qualified for the speculative home site exemption. (1-1-02)T

04. Calculation Of Taxable Value Of Land Eligible For The Speculative Home Site Exemption. The taxable value of land eligible for the speculative home site exemption shall be calculated based on the prior use qualifying the parcel for the exemption provided in Section 63-602K, Idaho Code; that is, the taxable value per acre of this land shall be equal to the taxable value per acre of qualifying agricultural land in the same use as this land when it previously qualified for the speculative agricultural value exemption. Any additional value for the “associated site improvements”, as defined in Rule 645 of these rules, is part of the value exempt under the speculative home site exemption and is not included in the taxable value of the land as calculated pursuant to Section

63-602K, Idaho Code.

(1-1-02)T

05. Use Of Category. The county assessor shall use the category identified in Rule 130 of these rules for all parcels of land qualifying for the speculative home site exemption.

(1-1-02)T

06. Report Of Exempt Value. As provided in Rule 509 of these rules, the county auditor shall report to the State Tax Commission the total exempt value of all parcels of land qualifying for the speculative home site exemption.

(1-1-02)T

07. Removal Of The Speculative Home Site Exemption.

(1-1-02)T

a. The year following the year in which the population of a county exceeds one hundred thousand (100,000), the speculative home site exemption shall be removed from any parcels of land previously qualifying for the speculative home site exemption in that county. Population shall be determined from the most current census or estimate available from the Bureau of the Census as of January 1 of each year.

(1-1-02)T

b. The year following the year in which any parcel is annexed into an incorporated city or is incorporated into a newly incorporating city, the speculative home site exemption shall be removed from that parcel.

(1-1-02)T

c. The speculative home site exemption shall be removed from any parcel of land when "improvements are being built". The speculative home site exemption must not be removed until "improvements are being built" upon the parcel, even if, the ownership of a parcel of land has been transferred or any qualifying use for the speculative agricultural value exemption has been stopped.

(1-1-02)T

636. -- 644. (RESERVED).

IDAPA 54 - OFFICE OF THE STATE TREASURER

54.02.01 - RULES GOVERNING THE COLLEGE SAVINGS PROGRAM

DOCKET NO. 54-0201-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 1, 2002.

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 33-5402, 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 June 19, 2002.

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 rulemaking makes technical changes, revises definitions, and eliminates the state ten percent penalty assessed against non-qualified withdrawals.

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

In order to be in compliance with governing federal regulations and to confer a benefit to Idaho taxpayers.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was a need for temporary rulemaking in order to keep the College Savings Program in compliance with federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact Judy Comstock, Chair, at (208) 334-3200.

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 June 26, 2002.

DATED this 3rd day of April, 2002.

Judy Comstock
College Savings Program
Office of the State Treasurer
State Capitol Building, Room 101
P. O. Box 83720, Boise, Idaho 83720-0091
Telephone: (208) 334-3200
Facsimile: (208) 332-2960

THE FOLLOWING IS THE TEXT OF DOCKET NO. 54-0201-0201

010. DEFINITIONS.

01. **Act.** The College Savings Program, Title 33, Chapter 54, Idaho Code. (3-15-02)
02. **Account.** An individual trust account or savings account established as prescribed in Title 33, Chapter 54, Idaho Code. (3-15-02)
03. **Account Owner.** The Person ~~designated at the time an~~ identified as the Account ~~is opened as having the right to withdraw moneys from the Account before the Account is disbursed to or for the benefit of the Designated Beneficiary~~ Owner in the Program's participation agreement. ~~(3-15-02)~~(1-1-02)T
04. **Beneficiary Or Designated Beneficiary.** Except as provided in Section 33-5404, Idaho Code, with respect to an Account, the Person designated at the time the Account is opened as the Person whose higher education expenses are expected to be paid from the Account or, if this ~~Designated~~ Beneficiary is replaced in accordance with Section 33-5404, Idaho Code, the replacement Beneficiary. ~~(3-15-02)~~(1-1-02)T
05. **Board.** The State College Savings Program Board created by Section 33-5402, Idaho Code. (3-15-02)
06. **Cash.** Cash shall include checks (other than traveler's checks, cashier's checks or third-party checks exceeding ten thousand dollars (\$10,000)), ~~money orders~~, payroll deductions, automatic contribution plans, electronic funds transfers, and transfers from another Qualified ~~State~~ Tuition Program. Cash does not include property. ~~(3-15-02)~~(1-1-02)T
07. **Contingent Account Owner.** The Person designated by the Account Owner, pursuant to Subsection 021.02, to become the owner of the Account upon the death of the Account Owner. (3-15-02)
08. **Contribution.** Cash deposited into an Account established under the Act for the benefit of a Designated Beneficiary. (3-15-02)
09. **Earnings.** The total Account balance on a particular date minus the Contributions in the Account as of that date. (3-15-02)
- ~~10. **Higher Education Institution.** Shall have the meaning as provided in 26 U.S.C. Section 529. (3-15-02)~~
- ~~11. **Member Of The Family.** Shall have the meaning as provided in 26 U.S.C. Section 529. (3-15-02)~~
- ~~12. **Person Or Persons.** An individual, a trust, an estate, a partnership, an association or a corporation. (3-15-02)~~
- ~~13. **Program.** The College Savings Program established under Title 33, Chapter 54, Idaho Code. (3-15-02)~~
- ~~14. **Program Manager.** The financial institution selected by the Board pursuant to the provisions of Section 33-5403, Idaho Code, to act as manager of the Program. (3-15-02)~~
- ~~15. **Qualified Higher Education Expense.** Shall have the meaning as provided in ~~26 U.S.C. Section 529~~ 33-5401(10), Idaho Code. ~~(3-15-02)~~(1-1-02)T~~
- ~~16. **Qualified State Tuition Programs.** Shall have the meaning as provided in 26 U.S.C. Section 529. ~~(3-15-02)~~(1-1-02)T~~
16. **Qualified Withdrawal.** Shall have the meaning as provided in Section 33-5401(11), Idaho Code. (1-1-02)T

17. Rollover Distribution. ~~Includes any of the following:~~ Shall have the meaning set forth in 26 U.S.C. Section 529(c)(3)(C)(i). ~~(3-15-02)~~(1-1-02)T

~~a. Within sixty (60) days of a withdrawal, an Account Owner transfers on deposit the funds withdrawn from an Account to another Account (or funds are withdrawn from another Account and deposited in the Account Owner's Account);~~ (3-15-02)

~~b. Within sixty (60) days of an Account Owner's withdrawal of funds from another state's Qualified State Tuition Program, the Account Owner deposits such funds in an Account in the Program; or~~ (3-15-02)

~~e. Within sixty (60) days of an Account Owner's withdrawal of funds from an Account in the Program, the Account Owner transfers such funds to an account established in another state's Qualified State Tuition Program.~~ (3-15-02)

~~18. **Scholarship.** Shall have the meaning set forth in 26 U.S.C. Section 529(b)(3)(C) and shall also refer to an allowance or payment described in 26 U.S.C. Section 135(d)(1)(B) or (C). Scholarship includes certain educational assistance allowances under federal law and certain payments for educational expenses, or attributable to attendance at certain education institutions, that are exempt from federal income tax.~~ (3-15-02)

~~19. **Transfer.** A distribution as described in 26 U.S.C. Section 529(e)(3)(C)(i).~~ (3-15-02)

011. UNIFORM GIFT TO MINORS ACT.

Any action taken by an Account Owner with respect to an Account shall comply with any applicable laws governing gifts or transfers to minors. (1-1-02)T

~~0142.~~ -- 019. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

021. CHANGE OF ACCOUNT OWNERSHIP.

01. Transfer Of Ownership. An Account Owner may transfer ownership of an Account to another eligible Account Owner at any time. The change of ownership shall be effective if the transfer: (3-15-02)

a. Is irrevocable; (3-15-02)

b. Transfers all ownership, reversionary rights, powers of appointments, and powers to direct the withdrawal of funds; and (3-15-02)

c. Is submitted to the Program Manager in writing. (3-15-02)

02. Contingent Account Owner. An Account Owner may designate a contingent Account Owner to become the owner of the Account automatically upon the death of the Account Owner by submitting a written request to the Program Manager. The contingent Account Owner designation may be revoked by the Account Owner at any time by submitting to the Program Manager another written request that either designates a new contingent Account Owner or revokes all previous designation(s) of a contingent Account Owner. Upon the death of the Account Owner, ~~the~~ the successor Account Owner shall provide: ~~(3-15-02)~~(1-1-02)T

a. A certified copy of a death certificate sufficiently identifying the deceased by name and Social Security Number, or such other proof of death as is recognized under applicable law and is acceptable to the Program Manager, and (3-15-02)

b. A participation agreement signed by the successor Account Owner. (3-15-02)

03. **Court Order.** A change in an Account Owner may be effected by submitting to the Program Manager a written request that is not signed by the Account Owner of record if the request for change of Account ownership is accompanied by a court order directing the change of ownership or by an affidavit or declaration that is recognized under applicable law to require the transfer of ownership upon death without a court order. The Program Manager shall not implement a change in ownership (other than a change in ownership described in Subsection 021.02 of ~~this~~ these regulation rules) without first receiving a written request signed by the Account Owner of record, a court order, or an affidavit or declaration as herein described. Upon acceptance by the Program Manager of a request for change of Account ownership, ~~the~~ the successor Account Owner must submit a completed participation agreement to the Program Manager. (3-15-02)(1-1-02)T

(BREAK IN CONTINUITY OF SECTIONS)

030. WITHDRAWALS.

~~01. **Qualified Request For Withdrawal.** Contributions must be on deposit in an Account a minimum of ten (10) days before being withdrawn. Following the request of an Account Owner for a *qualified* withdrawal of all or part of the balance from an Account, payment shall be made not later than seven (7) days after the date on which a determination is made by the Program Manager, that a *qualified* withdrawal request should be effected.~~ (3-15-02)(1-1-02)T

~~02. **Non-qualified Withdrawal.** If the Program Manager determines that a withdrawal is a non-qualified withdrawal, the Program Manager shall pay the amount of the withdrawal to the Account Owner net of penalties described in Subsection 040.02. Following the request of an Account Owner for a non-qualified withdrawal of all or part of the balance from an Account, payment shall be made not later than seven (7) days after the date on which a determination is made by the Program Manager, that a non-qualified withdrawal request should be effected. If such withdrawal is subsequently determined to be a qualified withdrawal, pursuant to procedures established by the Board and the Program Manager, the Account Owner may request a refund of penalties from the Board and the Board shall refund such penalties not later than seven (7) days after the date on which the determination is made that the withdrawal was a qualified withdrawal.~~ (3-15-02)

~~03. **Excess Scholarship Withdrawal.** The portion of a sum withdrawn from an Account due to the award of a Scholarship to the Designated Beneficiary that is greater than the amount of the Scholarship identified in the third-party written confirmation required under Subsection 031.02.e. shall be considered a non-qualified withdrawal and subject to the penalty described in Subsection 040.02.~~ (3-15-02)

~~04. **Refunds Of Payments Of Qualified Higher Education Expenses.** If a Higher Education Institution refunds to a Beneficiary any portion of an amount withdrawn from an Account that the institution receives under the Program for the payment of Qualified Higher Education Expenses, the Beneficiary or Account Owner must provide the Program Manager with a signed statement identifying the amount of any such refunds at the end of each year in which withdrawals from the Account for Qualified Higher Education Expenses were made. Any such refund may be treated as a non-qualified withdrawal unless the Account Owner or Beneficiary provides substantiation that the refund has been allocated to other Qualified Higher Education Expenses or the refund was made due to the death of, disability of, or receipt of a scholarship by the Beneficiary.~~ (3-15-02)

~~031. **CONFIRMATION OF DEATH, DISABILITY OR SCHOLARSHIP OF DESIGNATED BENEFICIARY.**~~

~~01. **Certify Reason For Withdrawal.** Prior to a withdrawal from an Account due to the death or disability of the Designated Beneficiary of that Account, or because the Designated Beneficiary has received a Scholarship to be applied toward attendance at a Higher Education Institution, the Account Owner shall certify the reason for the withdrawal and provide written confirmation from a third party that the Designated Beneficiary has in fact died, become disabled, or received a Scholarship for attendance at a Higher Education Institution. A request to make a withdrawal due to the death or disability of, or a Scholarship award to, the Designated Beneficiary shall not be considered complete until such third party written confirmation is received by the Program Manager.~~ (3-15-02)

~~02. **Third Party Confirmation.** For purposes of Subsection 031.01 of these rules, third party written confirmation shall consist of the following documentation: (3-15-02)~~

~~a. For death of the Designated Beneficiary, a certified death certificate sufficiently identifying said Beneficiary by name and social security number, or such other proof of death as is recognized under applicable law. (3-15-02)~~

~~b. For disability of the Designated Beneficiary, a certification by a physician who is a doctor of medicine or osteopathy that indicates that he or she is legally authorized to practice in a state of the United States and that the Beneficiary is unable to attend any Higher Education Institution because of an injury or illness that is expected to continue indefinitely or result in death. Such certification shall be on a form provided or approved by the Program Manager. (3-15-02)~~

~~e. For a Scholarship award to the Designated Beneficiary, a letter from the grantor of the Scholarship or from the Higher Education Institution receiving or administering the Scholarship, that identifies the Beneficiary by name and social security number as the recipient of the Scholarship and states the amount of the Scholarship, the period of time or number of credits or units to which it applies, or the date of the Scholarship, and, if applicable, the Higher Education Institution to which the Scholarship is to be applied. (3-15-02)~~

~~0321. -- 039. (RESERVED).~~

040. ACCOUNT BALANCE LIMIT ON CONTRIBUTIONS—PENALTY.

~~01. **Account Balance Limit On Contributions.** (3-15-02)~~

~~a. That portion of Aa Contribution for any Designated Beneficiary shall be rejected (or, if accepted in error, returned to the Account Owner with any earnings thereon and less any penalties applicable thereto) if such contribution would which causes the total balance of the Account, together with other Accounts established under the Program for the benefit of the same Beneficiary, to exceed the maximum amount established by the Board from time to time (the "Account Balance Limit on Contributions"), but in no event more than the amount permitted under 26 U.S.C. Section 529, shall be rejected. Any payment of such excess amounts to the Account Owner may be a non-qualified withdrawal subject to the penalties set forth in Subsection 040.02. Accounts that have reached the Account Balance Limit on Contributions may continue to accrue earnings, and no withdrawal or Rollover Distribution will be required as the result of such accrual. In determining an Account's balance for purposes of the Account Balance Limit on Contributions, only balances in Accounts established under the Program shall be included. (3-15-02)(1-1-02)T~~

~~b. For purposes of applying the Account Balance Limit on Contributions, qualified withdrawals and withdrawals due to death or disability of, or Scholarship to, a Designated Beneficiary from an Account and all other Accounts in the Program, if any, for the same Beneficiary will be treated as reducing the Account Balance Limit on Contributions. Therefore, subsequent Contributions cannot be made to replenish the Account to the extent the Contribution would cause the aggregate amount held for the Beneficiary to exceed this reduced Account Balance Limit on Contributions. Such subsequent Contributions shall be rejected (or, if accepted in error, returned to the Account Owner with any earnings thereon and less any penalties applicable thereto as provided in Subsection 040.01.a. However, a non-qualified withdrawal or Rollover Distribution will not be treated as reducing the Account Balance Limit on Contributions, so that when such distributions are taken, subsequent Contributions may be made to the Account to effectively replenish the Account up to the Account Balance Limit on Contributions. (3-15-02)~~

~~02. **Penalty.** A penalty shall be withheld, and paid to the Board, from any non-qualified withdrawal from an Account, in an amount equal to ten percent (10%) of the portion of the withdrawal constituting earnings. Such penalty amount is a more than de minimis penalty for the purposes of 26 U.S.C. Section 529. Such penalty amount shall be increased, if required, in order for it to be "more than a de minimis penalty" for purposes of 26 U.S.C. Section 529. Penalties shall be imposed, collected, and applied in a manner consistent with 26 U.S.C. Section 529. (3-15-02)~~

041. ROLLOVER DISTRIBUTIONS.

01. Rollover Distribution From Another Qualified State Tuition Program. An Account Owner may transfer funds at any time from another Qualified *State* Tuition Program to an Account established under the Act, either owned by the same or a different Account Owner, by submitting a written request to the Program Manager. The rollover of funds from the other Qualified *State* Tuition Program shall be effective provided that: ~~(3-15-02)~~(1-1-02)T

a. The funds are transferred to an Account for a new Beneficiary who is a Member of the Family of the Beneficiary of the Account in the other Qualified *State* Tuition Program or the funds are transferred to an Account for the current Beneficiary (and such a transfer has not been made for the current Beneficiary within the preceding twelve (12) months); and ~~(3-15-02)~~(1-1-02)T

b. The transfer of funds does not cause the aggregate amount of contributions held for the new Beneficiary to exceed the Account Balance Limit on Contributions applicable to that Beneficiary. (3-15-02)

032. Transfer Of Account Funds As Rollover Distribution. An Account Owner may transfer funds from an Account established under the Act to another Account established under the Act, or an ~~A~~account established under a Qualified *State* Tuition Program in another state, either owned by the same or a different Account Owner, at any time by submitting a written request to the Program Manager. The transfer of Account funds shall be effective provided that: ~~(3-15-02)~~(1-1-02)T

a. The funds are transferred to an Account for a new Beneficiary who is a Member of the Family of the Beneficiary of the Account from which the funds are being transferred or the funds are transferred to an account for the current Beneficiary (and such a transfer has not been made for the current Beneficiary within the preceding twelve (12) months); and ~~(3-15-02)~~(1-1-02)T

b. The transfer of funds does not cause the aggregate amount of contributions held for the new Beneficiary to exceed the Account Balance Limit on Contributions applicable to that Beneficiary. (3-15-02)

023. Rollover Of Account Funds Methods. A rollover of Account funds from or to another Qualified *State* Tuition Program or within this Program shall be effected through a direct ~~T~~ransfer of funds to an Account or as a deposit of the funds into an Account established under a Qualified *State* Tuition Program within sixty (60) days of withdrawal of the funds from the other Qualified *State* Tuition Program. ~~(3-15-02)~~(1-1-02)T

04. Execution Of New Participation Agreement. Any Rollover Distribution that is intended to transfer funds to a new Account not yet established under the Act shall not be effective until the Account Owner who is to receive the transferred funds has submitted a completed participation agreement for the new Account and the Account has been established. (3-15-02)

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.06 - SOLID WASTE MANAGEMENT RULES AND STANDARDS

DOCKET NO. 58-0106-0101

NOTICE OF VACATION OF RULEMAKING (REWRITE)

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has vacated the rulemaking previously initiated under this docket number. The action is authorized by Chapters 1 and 74, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: In July 2001, DEQ published a proposed rule under Docket No. 58-0106-0101. In response to comments received, DEQ has revised the proposed rule. The revised proposed rule substantially varies in content from that which was proposed in July 2001. DEQ has vacated the July 2001 proposed rule and has published the revised proposed rule under Docket No. 58-0106-0201.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Dean Ehlert at (208)373-0502 or dehlert@deq.state.id.us.

DATED this 17th day of April, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
Fax No. (208)373-0481
pgradwoh@deq.state.id.us

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.06 - SOLID WASTE MANAGEMENT RULES AND STANDARDS

DOCKET NO. 58-0106-0102

NOTICE OF VACATION OF RULEMAKING (REPEAL)

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has vacated the rulemaking previously initiated under this docket number. The action is authorized by Chapters 1 and 74, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: In July 2001, DEQ published the proposed repeal of the Solid Waste Management Rules and Standards under Docket No. 58-0106-0102 in conjunction with the proposal of a new rule under Docket No. 58-0106-0101. The proposed rule initiated under Docket No. 58-0106-0101 has been vacated; therefore, the proposed repeal has been vacated.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Dean Ehlert at (208)373-0502 or dehlert@deq.state.id.us.

DATED this 17th day of April, 2002.

Paula J. Gradwohl
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1410 N. Hilton
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IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.06 - SOLID WASTE MANAGEMENT RULES

DOCKET NO. 58-0106-0201

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

(REWRITE OF CHAPTER)

EFFECTIVE DATE: The temporary rule was effective April 26, 2002.

AUTHORITY: In compliance with Sections 67-5226(1) and 67-5221(1), Idaho Code, notice is hereby given that the Board of Environmental Quality (Board) has adopted a temporary rule and the Department of Environmental Quality (DEQ) is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Sections 39-105, 39-107 and 39-7408C, Idaho Code.

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

June 27, 2002, 7 p.m.
Conference Room B
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208)373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to address the proper management of non-municipal solid waste. The rule will provide statewide consistency for non-municipal solid waste management, provide specific siting, operational, closure and post-closure care based on the volume of waste, waste characteristics, type of waste management facility, and potential impact to human health and the environment. The rule also provides variances to siting and operational requirements if the variance is equally as protective of human health and the environment. The rule provides an application submittal process for owners and operators and an application review and approval process for DEQ.

Coinciding with the publication of this proposed rule, DEQ is proposing repeal of the current rule (published under Docket No. 58-0106-0202). After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2002 for adoption of a pending rule. The rule is expected to be final upon the conclusion of the 2003 session of the Idaho Legislature.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate in that the rule is necessary to protect public health.

FEE SUMMARY: In 1996 DEQ was directed by the Legislature (Section 39-7408C, Idaho Code) to adopt a siting license fee to cover the cost incurred by DEQ when reviewing a commercial solid waste siting application. This fee was approved by the 1999 Legislature. The commercial solid waste siting license fee found at Section 994 of the existing Solid Waste Management Rules and Standards has been included in this proposed rule.

NEGOTIATED RULEMAKING: The text of the rule has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812 through 815. The negotiation was open to the public. Participants in the negotiation included industry and government representatives. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 97-5, May 7, 1997, page 47, under Docket No. 16-0106-9701.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Dean Ehlert at (208)373-0502 or dehlert@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before July 3, 2002.

DATED this 26th day of April, 2002.

Paula J. Gradwohl
Environmental Quality Section
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THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0106-0201

IDAPA 58
TITLE 01
Chapter 06

58.01.06 - SOLID WASTE MANAGEMENT RULES

000. LEGAL AUTHORITY.

Sections 39-105 and 39-107, Idaho Code, authorize the Board of Environmental Quality to adopt rules and administer programs to protect surface water quality, ground water quality and air quality, and to regulate solid waste treatment or disposal and the licensure and certification requirements pertinent thereto. Section 39-7408C, Idaho Code, authorizes the Board of Environmental Quality to establish by rule municipal solid waste commercial siting license fees. (4-26-02)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as Rules of the Department of Environmental Quality IDAPA 58.01.06, "Solid Waste Management Rules". (4-26-02)T

02. Scope. These rules establish requirements applicable to all solid waste and solid waste management facilities in Idaho, except as specifically provided in Subsections 001.03 and 001.04. (4-26-02)T

03. Wastes Not Regulated Under These Rules. (4-26-02)T

a. These rules do not apply to the following solid wastes: (4-26-02)T

i. Liquid wastes when the discharge or potential discharge of the liquid waste is regulated under a federal, state or local water pollution discharge or wastewater land application permit, including management of any solids if management of the solids are addressed in a permit term or condition; (4-26-02)T

ii. Hazardous wastes regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and the rules adopted thereunder; (4-26-02)T

- iii. Polychlorinated biphenyl (PCB) waste regulated under the Toxic Substance Control Act, 15 U.S.C. 2601, et seq., with the exception that the PCB Waste Disposal Act, Chapter 62, Title 39, Idaho Code, and these rules shall apply to PCB waste authorized by federal law to be disposed of at a nonhazardous waste landfill that is permitted, licensed or registered under Idaho Law; (4-26-02)T
- iv. Slash or slashing areas resulting from the harvesting of timber and the disposal of which is managed pursuant to Chapter 1, Title 38, Idaho Code or log landings or sorting sites; (4-26-02)T
- v. Wastes used, managed, stored and disposed in accordance with The Wood and Mill Yard Debris Technical Guidance Manual, as amended, published by the Department and developed pursuant to Sections 39-171 through 39-174, Idaho Code; (4-26-02)T
- vi. Clean soils and clean dredge spoils as regulated under Section 404 of the federal Clean Water Act provided that they are not hazardous wastes regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code and the rules adopted thereunder; (4-26-02)T
- vii. Septage taken to a sewage treatment plant permitted by either the U.S. Environmental Protection Agency or the Department pursuant to IDAPA 58.01.15, "Rules Governing the Cleaning of Septic Tanks"; (4-26-02)T
- viii. All radioactive waste and radioactive materials regulated pursuant to Section 39-4405(9), Idaho Code and rules adopted thereunder and radioactive waste and materials regulated under the authority of the Atomic Energy Act of 1954, as amended.; (4-26-02)T
- ix. Petroleum Contaminated Soils (PCS) from a leaking petroleum storage tank system managed as a one (1) time remediation pursuant to IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements"; or (4-26-02)T
- x. Asbestos as regulated by the Toxic Substances Control Act, as amended, 15 U.S.C. Sections 2601, et seq. (4-26-02)T
- xi. Nonhazardous wastes disposed in a permitted hazardous waste treatment, storage and disposal unit regulated by the Hazardous Waste Management Act, Chapter 44, Title 39, Idaho Code, and rules adopted thereunder; (4-26-02)T
- xii. Waste otherwise regulated under Department authorities. (4-26-02)T
- b.** These rules do not apply to the following solid waste unless these wastes are mixed with more than incidental quantities of regulated waste; (4-26-02)T
 - i. Inert wastes; (4-26-02)T
 - ii. Manures and crop (plant) residues ultimately returned to the soils at agronomic rates; (4-26-02)T
 - iii. Any agricultural solid waste which is managed and regulated pursuant to rules adopted by the Idaho Department of Agriculture. The Department reserves the authority to regulate agricultural waste that impacts human health or the environment; (4-26-02)T
 - iv. Overburden, waste dumps, low-grade stockpiles, tailings and other materials uniquely associated with mineral extraction, beneficiation or processing operations; (4-26-02)T
 - v. Slag from the production of elemental phosphorus; (4-26-02)T
 - vi. Phospho-gypsum from the production of phosphate fertilizers, which includes the production of phosphoric acid; and (4-26-02)T
 - vii. Wood waste used for ornamental, animal bedding, mulch and plant bedding, or road building

purposes. (4-26-02)T

04. Solid Waste Management Facilities Not Regulated Under These Rules. These Rules do not apply to the following solid waste management facilities: (4-26-02)T

a. Solid waste management facilities accepting only solid waste excluded by Subsection 001.03; (4-26-02)T

b. Recycling centers; or (4-26-02)T

c. Backyard composting sites. (4-26-02)T

d. Facilities which cease accepting solid waste prior to the effective date of these rules shall be required to only comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as follows: (4-26-02)T

i. Grading. The entire site, including the landfill surfaces, shall be graded and provided with drainage facilities to minimize runoff onto and into the sanitary landfill to prevent erosion or washing and to prevent the collection of standing water. The grading of the final surface of the fill area must provide a slope of not less than one percent (1%), but not exceeding fifteen percent (15%), except as approved by the Department or as required in Section 39-7415(3), Idaho Code. (4-26-02)T

ii. Seeding. Seeding to promote stabilization of the final soil cover shall be done as soon as weather permits seed bed preparation and planting operations and when seasonal conditions are suitable for the type of vegetation to be used. Re-seeding is mandatory until adequate vegetative cover is established to prevent erosion. (4-26-02)T

iii. Site Closure. An inspection of the entire site of the completed sanitary landfill, or other solid waste management site that is to be vacated, shall be made by a representative of the District before earth moving equipment or other equipment vital to disposal of solid waste is removed from the site or used on other projects. Any necessary corrective work shall be performed before the operation is accepted as completed. (4-26-02)T

(1) An official notice of closure of the site shall be sent to the District at the time the site is closed. (4-26-02)T

(2) Arrangements shall be made for the repair of all cracked, eroded, and uneven areas in the final cover during the year following completion of fill operations. (4-26-02)T

002. WRITTEN INTERPRETATIONS.

The Department of Environmental Quality may have written statements that pertain to the interpretation of the rules in this chapter. Any such written statements shall be available for review at the Department of Environmental Quality, 1410 N. Hilton, Boise, ID 83706-1255. (4-26-02)T

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under this chapter pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality". (4-26-02)T

004. APPLICABILITY.

These Rules apply to all solid waste unless excluded by Subsection 001.03 and to all existing, new or modified solid waste management sites in Idaho identified in Subsection 004.01 and 004.02, unless excluded by Subsection 001.04. Compliance with these Rules shall not relieve owners and operators from the obligation to comply with other applicable state or federal laws, including but not limited to the IDAPA 58.01.02, "Water Quality Standards and Wastewater Treatment Requirements", IDAPA 58.01.11, "Ground Water Quality Rule," and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". (4-26-02)T

01. Solid Waste Facility Other Than Municipal Solid Waste Landfills (MSWLF) Applicability. Sections 000 through 060 and Section 999 apply to all solid waste facilities other than MSWLF, as specified therein.

(4-26-02)T

02. Municipal Solid Waste Landfill Applicability. Sections 000 through 007, and Sections 994 through 999 apply to all MSWLFs, as specified therein. (4-26-02)T

005. DEFINITIONS.

01. Active Portion. That part of a new or existing facility or unit where waste had been, or may be, disposed of, treated, or otherwise managed, and that has not been closed in accordance with applicable rules. (4-26-02)T

02. Backyard Composting. Composting operations used only by the owner or person in control of a residential dwelling unit to process garbage and yard waste generated at that dwelling unit. (4-26-02)T

03. Beneficial Use. Various uses of ground water in Idaho including, but not limited to, domestic water supplies, industrial water supplies, industrial water supplies and agricultural water supplies. A beneficial use is defined as actual current and projected future uses of ground water. (4-26-02)T

04. Commercial Solid Waste Facility. A MSWLF owned and operated as an enterprise conducted with the intent of making a profit by any individual, association, firm, or partnership for the disposal of solid waste, but excluding a MSWLF owned or operated by a political subdivision, state or federal agency or, municipality or a MSWLF owned or operated by any individual, association, firm, or partnership exclusively for the disposal of solid waste generated by such individual, association, firm, or partnership. (4-26-02)T

05. Composting Facility. See definition of Processing Facility. (4-26-02)T

06. Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste. As defined in 40 CFR Part 261.5 (4-26-02)T

07. Conditionally Exempt Small Quantity Generator (CESQG) Management Facility. A facility or portion thereof where household hazardous waste or CESQG wastes are transferred from a vehicle or container and subsequently transported to another facility. A CESQG management facility does not include temporary drop off locations or other facilities where individuals or businesses are authorized to store waste for ultimate collection and disposal. (4-26-02)T

08. Contamination. The introduction of a substance into the surface or ground water causing: (4-26-02)T

a. At or beyond the point of compliance, the concentration of that substance in ground water to result in significant degradation, as determined pursuant to Section 400.02.b of the Idaho Ground Water Rule, or in an exceedance of the maximum contamination level (MCL) specified in the Idaho Ground Water Rule; (4-26-02)T

b. The concentration of that substance in surface water exceeds a numerical criteria or fails to protect designated beneficial uses specified in the Idaho Water Quality Standards and Wastewater Treatment Requirements; (4-26-02)T

c. A statistically significant increase in the concentration of that substance in the ground water at or beyond the point of compliance, or in surface water, where the existing concentration of that substance exceeds the contamination level specified in Subsections 005.08.a. or 005.08.b. of this rule; or (4-26-02)T

d. A statistically significant increase in the concentration of that substance in ground water at the point of compliance, or in surface water, above background of a substance which; (4-26-02)T

i. Is not specified in Subsections 005.08.a. or 005.08.b. of this rule; and (4-26-02)T

ii. Is a result of the disposal of solid waste; and (4-26-02)T

iii. Has been determined by the department to present a substantial risk to human health or the environment in the concentrations found in the ground water at the point of compliance, or in surface water. (4-26-02)T

09. Degradation. The lowering of ground water quality as measured in a statistically significant and reproducible manner. (4-26-02)T

10. Department. The Idaho Department of Environmental Quality. (4-26-02)T

11. Director. The Director of the Idaho Department of Environmental Quality. (4-26-02)T

12. Disposal. Discharge, deposit, injection, dumping, spilling, leaking, leaching, migration or placing of any solid waste into or on any land or water so that such solid waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground water. (4-26-02)T

13. Existing Facility. A facility operating and receiving solid waste on or after the effective date of these rules. (4-26-02)T

14. Facility. Any area used for any solid waste management activity, including but not limited to: (4-26-02)T

a. Storage; (4-26-02)T

b. Transfer; (4-26-02)T

c. Processing; (4-26-02)T

d. Separation; (4-26-02)T

e. Incineration; (4-26-02)T

f. Treatment; (4-26-02)T

g. Salvaging; or (4-26-02)T

h. Disposal of solid waste. (4-26-02)T

15. Garbage. Any waste consisting of putresible animal and vegetable materials resulting from the handling, preparation, cooking and consumption of food, including wastes materials from households, markets, storage facilities, handling and sale of produce and other food products. (4-26-02)T

16. Ground Water. Any water of the state that occurs beneath the surface of the earth in a saturated geological formation of rock or soil. (4-26-02)T

17. Household Waste. Any solid waste, including kitchen wastes, trash and sanitary waste in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas. (4-26-02)T

18. Incinerator. Any source consisting of a furnace and all appurtenances thereto designed for the destruction of solid waste by burning. "Open Burning" is not considered incineration. (4-26-02)T

19. Inert Waste. Noncombustible, nonhazardous, and non-putresible solid wastes that are likely to retain their physical and chemical structure and have a de minimis potential to generate leachate under expected conditions of disposal, which includes resistance to biological attack. "Inert waste" includes, but is not limited to, rock, concrete, cured asphaltic concrete, masonry block, brick, gravel, dirt, inert coal combustion by-products, inert precipitated calcium carbonate and inert component mixture of wood or mill yard debris. (4-26-02)T

- 20. Landfill.** An area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well or waste pile, as those terms are defined under 40 CFR 257.2. (4-26-02)T
- 21. Leachate.** A liquid that has passed through or emerged from waste and contains soluble, suspended, or miscible materials removed from such waste. (4-26-02)T
- 22. Lift.** A vertical rise of compacted solid waste that is complete when it is no longer practical to add additional height without the addition of a cover layer to provide structural stability. (4-26-02)T
- 23. Modification.** Any change in the physical characteristics, waste types managed, method of operation, or lateral expansion beyond the boundaries of a site. The following shall not be considered a modification: (4-26-02)T
- a.** Repair and replacement of existing equipment; (4-26-02)T
 - b.** Increase in production rate that does not exceed the Tier level criteria or approved facility capacity; (4-26-02)T
 - c.** An increase in hours of operation if more restrictive hours of operation are not specified in an approved operating plan; and (4-26-02)T
 - d.** Acquisition of property that is not to be used for the processing or disposal of solid waste. (4-26-02)T
- 24. Municipal Solid Waste Landfill Unit (MSWLF).** As regulated under Chapter 74, Title 39, Idaho Code, a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR 257.2. A MSWLF unit also may receive other types of RCRA subtitle D wastes, such as commercial solid waste, nonhazardous sludge, conditionally exempt small quantity generator waste and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. (4-26-02)T
- 25. Non-Municipal Solid Waste (NMSW).** A solid waste that is: (4-26-02)T
- a.** Not mixed with household waste; or (4-26-02)T
 - b.** Not excluded from these rules by Subsection 001.03. (4-26-02)T
- 26. Non-Municipal Solid Waste Landfill (NMSWLF).** A landfill that accepts only non-municipal solid waste. (4-26-02)T
- 27. Open Burning.** The combustion of solid waste without: (4-26-02)T
- a.** Control of combustion air to maintain adequate temperature for efficient combustion; (4-26-02)T
 - b.** Containment of the combustion reaction in an enclosed device so as to provide sufficient residence time and mixing for complete combustion; and (4-26-02)T
 - c.** Control of the emission of the combustion products. (4-26-02)T
- 28. Operator.** The person(s) responsible for the overall operation of all or part of a site or facility. (4-26-02)T
- 29. Owner.** The person(s) who owns land or a portion of the land on which a site or facility is located. (4-26-02)T

30. Person. Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties.

(4-26-02)T

31. Point Of Compliance. A vertical surface located no more than one hundred fifty (150) yards hydraulically down gradient from the active portion of a facility or site, located at the facility boundary down gradient of the land area, or located at the point of diversion of an identified beneficial use within the site, whichever is the smallest distance from the active portion.

(4-26-02)T

32. Processing Facility. A facility that uses biological or chemical decomposition to prepare solid waste for reuse, excluding waste handling at transfer stations or recycling centers.

(4-26-02)T

33. Projected Waste Volume. The total actual or potential solid waste volume measured in tons per day, cubic yards per day, or an equivalent measurement, proposed to be received or processed at a solid waste facility.

(4-26-02)T

34. Pumpable Waste. Wastes, including non-domestic septage, sludge, wastewater and non-municipal solid wastes, which are pumped from a holding area or container into a watertight tank truck or equivalent and transported for processing or disposal.

(4-26-02)T

35. Qualified Professional. Qualified professional means a licensed professional geologist or licensed professional engineer, as appropriate, holding current professional registration in good standing and in compliance with applicable provisions of Idaho Code.

(4-26-02)T

36. Recyclables. Used, end, or waste products with useful properties that can be reused.

(4-26-02)T

37. Recycling. The reclamation of solid waste and its subsequent introduction into an industrial process by which the materials are transformed into a new product in such a manner that the original identity as a product is lost.

(4-26-02)T

38. Recycling Center. A materials recovery facility that receives recyclables, then sorts, bales, loads, or physically alters the material and transports the commodities to markets.

(4-26-02)T

39. Salvage. The reclamation of solid waste at a disposal site.

(4-26-02)T

40. Scavenge. The unauthorized removal of materials from a facility.

(4-26-02)T

41. Septage. A semisolid consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a septic tank system.

(4-26-02)T

42. Site. Any contiguous geographic area with one (1) or more facilities owned or operated by the same person for any of the following activities:

(4-26-02)T

a. Storage;

(4-26-02)T

b. Transfer;

(4-26-02)T

c. Processing;

(4-26-02)T

d. Separation;

(4-26-02)T

e. Incineration;

(4-26-02)T

f. Treatment;

(4-26-02)T

g. Salvaging; or

(4-26-02)T

- h.** Disposal of solid waste. (4-26-02)T
- 43. Site Size.** The sum in acres of all proposed or existing facilities. (4-26-02)T
- 44. Solid Waste.** Any garbage or refuse, sludge from a waste water treatment plant, water supply treatment plant, or air pollution control facility and other discarded material including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and from community activities, but does not include solid or dissolved materials in domestic sewage, or solid or dissolved material in irrigation return flows or industrial discharges which are point sources subject to permits under Section 402 of the Federal Water Pollution Control Act, as amended (86 Stat. 880), or source, special nuclear, or by-product material as defined by the Atomic Energy Act of 1954, as amended (68 Stat. 923). (4-26-02)T
- 45. Speculative Accumulation.** Stock piles of materials or recyclables to be processed for reuse or disposal when fifty percent (50%) of the material is not reused or disposed by the end of the following calendar year after the date of first receipt by the facility, and which may create a nuisance or public health impact. (4-26-02)T
- 46. Storm Water.** Accumulation of water from natural precipitation, including snow melt. (4-26-02)T
- 47. Surface Water.** All surface accumulations of water, natural or artificial, public or private, or parts thereof which are wholly or partially within, which flow through or border upon the state, unless such waters are an integral part of the facility's operation for storm water control and or leachate management. (4-26-02)T
- 48. Tipping Floor.** An area at a transfer station, processing facility, CESQG management facility or incinerator that receives and contains all waste materials. (4-26-02)T
- 49. Toxic Leachate Or Gas.** Concentrations of leachate or gas that will cause contamination, as defined by these rules, or that will exceed standards in the IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". (4-26-02)T
- 50. Transfer Station.** A facility or portion thereof where solid wastes are transferred from a vehicle or container and subsequently transported off-site to another facility. A transfer station does not include an authorized rural drop-box or other facilities where persons are authorized to store individual waste for ultimate collection and disposal, or any other facility that stores solid waste generated at the facility for collection and disposal off-site. A transfer station shall include waste tire collection sites as defined in Section 39-6501, Idaho Code. (4-26-02)T
- 51. Wood Or Mill Yard Debris Facility.** A facility that manages exclusively, solid wood, bark, or wood fiber generated from the process of manufacturing wood products that may include ash from the burning of wood waste in amounts and in conformity with the requirements of the Wood & Mill Yard Technical Guidance Manual, components of soil, rock, or moisture. (4-26-02)T
- 52. Yard Waste.** Weeds, straw, leaves, grass clippings, brush, wood, and other natural, organic, materials typically derived from general landscape maintenance activities. (4-26-02)T
- 006. ABBREVIATIONS.**
- 01. BRC.** Below Regulatory Concern. (4-26-02)T
- 02. CFR.** Code of Federal Regulations. (4-26-02)T
- 03. EPA.** Environmental Protection Agency. (4-26-02)T
- 04. ISWFA.** Idaho Solid Waste Facilities Act, Chapter 74, Title 39, Idaho Code. (4-26-02)T
- 05. MSWLF.** Municipal Solid Waste Land Fill. (4-26-02)T
- 06. NMSW.** Non-Municipal Solid Waste. (4-26-02)T

- 07. NMSWLF. Non-Municipal Solid Waste Land Fill. (4-26-02)T
- 08. PCS. Petroleum Contaminated Soils. (4-26-02)T
- 09. RCRA. Resource Conservation and Recovery Act. (4-26-02)T
- 10. U.S.C. United States Code. (4-26-02)T

007. INCORPORATION BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 007.02 shall constitute the full adoption by reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (4-26-02)T

02. Documents Incorporated By Reference. The following documents are incorporated by reference into these rules: (4-26-02)T

- a. 40 CFR 257.24(a), revised as of July 1, 2001. (4-26-02)T
- b. 40 CFR 257.9, revised as of July 1, 2001. (4-26-02)T

03. Availability Of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (4-26-02)T

- a. Department of Environmental Quality, 1410 N. Hilton, Boise ID 83706-1255. (4-26-02)T
- b. Idaho State Law Library, 451 W. State Street, P.O. Box 83720, Boise ID 83720-0051. (4-26-02)T
- c. U.S. Government Printing Office, Superintendent of Documents, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194 Federal Bldg., 915 Second Ave., Seattle, WA 98174. (4-26-02)T

008. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, telephone number (208) 373-0502. The office hours are 8:00 a.m. to 5:00 p.m. Monday through Friday. (4-26-02)T

009. SOLID WASTE MANAGEMENT FACILITY CLASSIFICATION.

01. BRC Facilities. A facility is below regulatory concern (BRC) provided it is a processing facility that does not manage PCS or pumpable waste, and the cumulative volume of solid waste at the facility at any one (1) time is less than or equal to three hundred (300) cubic yards. (4-26-02)T

02. Tier I Facilities. Tier I facilities shall comply with the requirements identified in Section 011. A facility shall be classified as a Tier I facility if the Department determines the facility is: (4-26-02)T

a. A landfill that only accepts for disposal materials that are not likely to produce leachate including, but not limited to, glass, plastic, cardboard, wood, composition roofing material, roofing paper, or ceramics, and which has a total disposal capacity of less than or equal to two thousand (2000) cubic yards. (4-26-02)T

b. A processing facility that only processes wastes including, but not limited to, untreated or unpainted wood, yard waste, sheet rock, clean paper products, animal manures, plant or crop residues, or garbage without meats or animal fats, and the cumulative volume of wastes at the facility at any one time is less than or equal to six hundred (600) cubic yards. (4-26-02)T

c. A processing facility that only manages PCS not excluded under Subsection 001.03.a.ix. or

pumpable wastes and the cumulative volume of material at the facility at any one (1) time is less than or equal to two hundred (200) cubic yards; or (4-26-02)T

d. An emergency solid waste management facility that only accepts debris resulting from a natural disaster. (4-26-02)T

03. Tier II Facility. Tier II facilities shall comply with the Tier II general siting, operational and closure requirements and any applicable Tier II facility specific requirements. Tier II facilities are not required to install ground water monitoring wells, leachate collection systems or liners. Facilities shall be classified as a Tier II facility if the Department determines the facility is not: (1) landfilling or disposing of CESQG hazardous waste; (2) landfilling or disposing of materials with a high human pathogenic potential; (3) managing solid waste in a manner or volume that will form toxic leachate or gas; or (4) managing solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment. A Tier II facility is one that meets the four (4) above criteria and is identified below: (4-26-02)T

a. A NMSW landfill which has a total disposal capacity greater than two thousand (2000) cubic yards; or (4-26-02)T

b. A processing facility or incinerator that has a cumulative volume of wastes at the facility at any one time that is greater than six hundred (600) cubic yards; or (4-26-02)T

c. A processing facility that only manages PCS not excluded under Subsection 001.03.a.ix or pumpable wastes and the cumulative volume of material at the facility at any one (1) time is greater than two hundred (200) cubic yards; or (4-26-02)T

d. A transfer station or CESQG waste management facility. (4-26-02)T

04. Tier III Facility. Tier III facilities shall comply with the Tier III general siting, operating and closure requirements, ground water monitoring requirements, install leachate collection systems, liners, air contaminant control systems and any applicable Tier III facility specific requirements. Facilities shall be classified as a Tier III facility if the Department determines the facility is: (1) a facility landfilling or disposing of CESQG hazardous waste; (2) a facility landfilling or disposing of materials with a high human pathogenic potential; (3) a facility managing solid waste in a manner or volume that will form toxic leachate or gas; or (4) a facility managing solid waste in a manner or volume that is likely to pose a substantial risk to human health or the environment. (4-26-02)T

05. Wood or Mill Yard Debris Facilities. For the period of one (1) year after the final effective date of these rules, all Wood or Mill Yard Debris Facilities that are not exempt from these Rules as provided in Section 001.03 shall be regulated as Tier I Facilities. Thereafter, all Wood and Mill Yard Debris Facilities that are not exempt from these Rules as provided in Section 001.03 shall be regulated as Tier I Facilities unless, based on site-specific criteria including but not limited to site geology, site soils, groundwater characteristics, distance to surface waters, and site climatic data, the Department determines the facility is more appropriately regulated under a different tier classification. Facilities not regulated as a Tier I Facility shall be regulated as a Tier II Facility unless the Department determines the facility manages waste in a manner that will form toxic leachate or gas. (4-26-02)T

06. Site Specific Classification. An owner or operator of a facility classified as a Tier I, Tier II or Tier III facility may request to be regulated pursuant to the requirements of a lower classification. An owner or operator requesting site specific classification must submit information demonstrating to the Department that, when in compliance with the requirements of a lower classification, the facility would not cause contamination, toxic leachate or gas, or concentrations of a substance that exceed standards in the IDAPA 58.01.01 "Rules for the Control of Air Pollution in Idaho". The information included in any request under this subsection shall include: (4-26-02)T

a. Characterization of waste and expected quantities of waste; (4-26-02)T

b. Site characterization including; (4-26-02)T

i. Site geology report; (4-26-02)T

- ii. Site soils report; (4-26-02)T
- iii. Ground water report; (4-26-02)T
- iv. Site climatic data; (4-26-02)T
- c. Facility Design Plan; (4-26-02)T
- d. Operating Plan; and (4-26-02)T
- e. Closure Plan. (4-26-02)T

07. General and Site Specific Classification Process. The Department's review of a request for a site specific classification shall be conducted pursuant to the process set forth in Section 032. (4-26-02)T

010. BELOW REGULATORY CONCERN FACILITIES.

01. Applicable Requirements. The owner and operator of a new BRC facility shall comply with the following requirements prior to accepting waste. The owner and operator of an existing BRC facility shall comply with the following requirements within two (2) years from the effective date of these rules. During the two-year period from the effective date, existing facilities shall operate in compliance with their approved operating plan and 40 CFR 257.1 through 257.3: (4-26-02)T

- a. Prohibited Activities. The following activities are prohibited: (4-26-02)T
 - i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 010 shall have the same meaning as defined at 29 CFR 1910.1030; (4-26-02)T
 - ii. Speculative accumulation, unless otherwise approved by the Department in writing; and (4-26-02)T
 - iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-26-02)T
- b. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: (4-26-02)T
 - i. Disease or discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; (4-26-02)T
 - ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; (4-26-02)T
 - iii. Odor. The facility shall be operated to control malodorous gases; and (4-26-02)T
 - iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. (4-26-02)T
- c. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft; and

(4-26-02)T

d. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". (4-26-02)T

i. No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". (4-26-02)T

ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors. (4-26-02)T

iii. Open burning shall be conducted under the following conditions unless otherwise authorized by the Department or local fire authority with appropriate jurisdiction. The open burning shall be supervised by a person capable of extinguishing the fire at all times until it is extinguished, the open burning shall not occur within fifty (50) feet of any structure, the pile for open burning shall not be larger than one hundred and fifty (150) cubic yards, only one (1) pile at a time shall be burned, and each pile shall be extinguished before igniting another and the owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location. (4-26-02)T

02. Application Content, Review and Approval Requirements. The owner and operator of a BRC facility are not required to submit an application. (4-26-02)T

03. Documentation Requirements. The owner and operator shall maintain on site documentation, such as a daily log of the quantity and type of waste received or managed, that verifies the facility's BRC status. (4-26-02)T

011. APPLICABLE REQUIREMENTS FOR TIER I FACILITIES.

01. Applicable Requirements. The owner and operator of a new Tier I facility shall comply with the following requirements prior to accepting waste. The owner and operator of an existing Tier I facility shall comply with the following requirements within two (2) years from the effective date of these rules. During the two-year period from the effective date, existing facilities shall operate in compliance with their approved operating plan, if any, and 40 CFR 257.1 through 257.3: (4-26-02)T

a. Prohibited Activities. The following activities are prohibited: (4-26-02)T

i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 011 shall have the same meaning as defined at 29 CFR 1910.1030; (4-26-02)T

ii. Speculative accumulation, unless otherwise approved by the Department in writing; and (4-26-02)T

iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-26-02)T

b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility. The signs shall specify at a minimum the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. (4-26-02)T

c. Nuisance Control. The owner and operator shall control nuisances, including but not limited to:

(4-26-02)T

i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; (4-26-02)T

ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; (4-26-02)T

iii. Odor. The facility shall be operated to control malodorous gases; and (4-26-02)T

iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. (4-26-02)T

d. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty. The owner and operator shall maintain the fencing or other access controls for a period of ten (10) years after closure, or another timeframe approved in writing by the Department. (4-26-02)T

e. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. (4-26-02)T

f. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". (4-26-02)T

i. No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". (4-26-02)T

ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors. (4-26-02)T

iii. Open burning shall be conducted under the following conditions unless otherwise authorized by the Department or local fire authority with appropriate jurisdiction. The open burning shall be supervised by a person capable of extinguishing the fire at all times until it is extinguished, the open burning shall not occur within fifty (50) feet of any structure, the pile for open burning shall not be larger than one hundred and fifty (150) cubic yards, only one (1) pile at a time shall be burned, and each pile shall be extinguished before igniting another and the owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location. (4-26-02)T

g. Storm Water Run-On/Run-Off Controls. Implement sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of surface or ground water and prevent the spread and impact of contamination beyond the boundary of the facility. (4-26-02)T

h. Variance Request. An owner and operator may submit a written variance request for a variance from the requirements listed in Section 011. The owner and operator must demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 011. (4-26-02)T

02. Application Content, Review and Approval Requirements. The owner and operator of a Tier I

facility shall submit notification to the Department prior to operating. The notice shall include; the owners name, operators name, physical location of site, mailing address, facility phone number and type of solid waste management facility. (4-26-02)T

03. Documentation Requirements. The owner and operator shall maintain on site documentation, such as a daily log of the quantity and type of waste received, that verifies the facility's Tier I status. (4-26-02)T

012. APPLICABLE REQUIREMENTS FOR TIER II FACILITIES.

The owner and operator of a new Tier II facility shall establish compliance with the requirements of Section 012 by obtaining Department approval of the applications required in Subsection 012.02 before beginning construction and Subsection 012.04 prior to accepting waste. The owner and operator of an existing Tier II facility shall establish compliance with the requirements of Section 012 by obtaining Department approval of the applications required in Subsection 012.04 within two (2) years of the effective date of these rules, and Subsection 012.02 within five (5) years of the effective date of these rules. During the two-year period from the effective date, existing facilities shall operate in compliance with their approved operating plan, if any, and 40 CFR 257.1 through 257.3. In lieu of submitting an application, the owner and operator of existing facilities may demonstrate to the Department, compliance with Section 012 by submitting copies of existing permits and other approvals that establish compliance with the applicable siting, design, operating, closure, and post-closure requirements of Section 012 and Subsection 032.01. The owner and operator of a Tier II facility shall meet the requirements of Subsection 012.05 prior to facility closure; except that owners and operators closing Tier II facilities within eighteen (18) months of the effective date of these rules shall comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as enumerated in Subsection 001.04.d. of these rules. (4-26-02)T

01. General Siting Requirements. The owner and operator of a Tier II facility shall comply with the following siting requirements: (4-26-02)T

a. Flood Plain Restriction. A facility shall not be located within a one hundred (100) year flood plain if the facility will restrict the flow of the one hundred (100) year flood, reduce the temporary water storage capacity of the flood plain, or result in a washout of solid waste so as to pose a hazard to human health and the environment. (4-26-02)T

b. Endangered or Threatened Species Restriction. The facility shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17. (4-26-02)T

c. Surface Water Restriction. The active portion of a facility shall be located such that the facility shall not cause contamination of surface waters, unless such surface waters are an integral part of the non-municipal solid waste management facility's operation for storm water and/or leachate management. (4-26-02)T

d. Park, Scenic or Natural Use Restriction. The active portion of a facility shall not be located closer than one thousand (1,000) feet from the boundary of any state or national park, or land reserved or withdrawn for scenic or natural use. (4-26-02)T

e. Variance from Siting Requirement. An owner or operator of an existing or planned facility that cannot meet the siting requirements of Section 012 may apply for a variance from the Department. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of public health and the environment as the siting requirements in Section 012. (4-26-02)T

02. Siting Application. Documentation shall be submitted to the Department demonstrating compliance with the siting requirements and restrictions specified in Subsection 012.01 within the time frames specified in Section 012. If the documentation has been certified by a qualified professional, the Director shall approve the siting application unless the Director finds the evidence supports a contrary opinion. A map indicating the following shall also be submitted to the Department as part of a Siting Application: (4-26-02)T

a. Highways, roads, and adjacent communities; (4-26-02)T

- b.** Property boundaries; (4-26-02)T
- c.** Total acreage of the site; (4-26-02)T
- d.** Off-site and on-site access roads and service roads; (4-26-02)T
- e.** Type(s) of land use adjacent to the facility and a description of all facilities on the site; (4-26-02)T
- f.** All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the proposed facility property lines; (4-26-02)T
- g.** High tension power line rights-of-way, fuel transmission pipeline rights-of-way, and proposed and existing utilities; (4-26-02)T
- h.** Proposed or existing fencing; (4-26-02)T
- i.** Proposed and existing structures at the facility and within five hundred (500) feet of the facility boundary. This shall include location of employee buildings, and scales (if provided); and (4-26-02)T
- j.** Direction of prevailing winds. (4-26-02)T
- 03. General Operating Requirements.** The owner and operator of a Tier II facility shall comply with the following operating requirements: (4-26-02)T

 - a.** Prohibited Activities. The following activities are prohibited: (4-26-02)T

 - i.** Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 012 shall have the same meaning as defined at 29 CFR 1910.1030; (4-26-02)T
 - ii.** Speculative accumulation, unless otherwise approved in an operating plan; and (4-26-02)T
 - iii.** Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code, and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-26-02)T
 - b.** Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility. The signs shall specify at a minimum the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. (4-26-02)T
 - c.** Waste Types. Only the solid waste types listed in the approved operating plan may be accepted for disposal or processing. (4-26-02)T
 - d.** Waste Monitoring and Measurement. Provisions shall be made for monitoring or measuring all solid waste delivered to a facility. The waste monitoring program shall include: (4-26-02)T

 - i.** A daily written log listing the types and quantities of wastes received; (4-26-02)T
 - ii.** A plan for monitoring and handling receipt of unauthorized wastes; (4-26-02)T
 - iii.** Routine characterization of the wastes received; and (4-26-02)T
 - iv.** Other measures included in an approved Operating Plan. (4-26-02)T
 - e.** Communication. Communication devices shall be available or reasonably accessible at the site. (4-26-02)T

- f.** Fire Prevention and Control. Adequate provisions shall be made for controlling or managing fires at the site. (4-26-02)T
- g.** Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty. (4-26-02)T
- h.** Scavenging and Salvaging. Scavenging by the public at a facility is prohibited; however, salvaging may be conducted in accordance with a written operations plan and only by the owner, operator or an authorized agent. (4-26-02)T
- i.** Nuisance Control. The owner and operator shall control nuisances, including but not limited to: (4-26-02)T
- i.** Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; (4-26-02)T
- ii.** Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; (4-26-02)T
- iii.** Odor. The facility shall be operated to control malodorous gases; and (4-26-02)T
- iv.** Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. (4-26-02)T
- j.** Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. (4-26-02)T
- k.** Open Burning and Fires. Open burning is prohibited at facilities except as authorized by these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". (4-26-02)T
- i.** No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". (4-26-02)T
- ii.** Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors. (4-26-02)T
- iii.** Open burning shall be conducted under the following conditions unless otherwise authorized by the Department or local fire authority with appropriate jurisdiction. The open burning shall be supervised by a person capable of extinguishing the fire at all times until it is extinguished, open burning shall not occur within fifty (50) feet of any structure, the pile for open burning shall not be larger than one hundred and fifty (150) cubic yards, only one (1) pile at a time shall be burned, and each pile shall be extinguished before igniting another and the owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location. (4-26-02)T
- l.** Storm Water Run-On/Run-Off Controls. The operating plan shall include sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of surface and ground water and prevent the spread and impact of contamination beyond the boundary

of the facility. (4-26-02)T

m. Variance Request. An owner and operator of an existing or planned facility may submit to the Department a written variance request for a variance from the operating requirements listed in Section 012. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 012. (4-26-02)T

04. Operating Plan. The owner and operator of a Tier II facility shall submit to the Department an Operating Plan containing that information required by Subsection 012.03, within the time frames stated in Section 012. An Operating Plan shall include a description of the wastes to be accepted, the methods for maintaining compliance with each of the applicable general operating requirements of Subsection 012.03, and complies with any applicable facility specific requirements found in Subsections 012.09 through 012.11. (4-26-02)T

05. Closure Requirement. The owner and operator of a Tier II facility shall comply with the following closure and post-closure care requirements: (4-26-02)T

a. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This notice shall be published and the signs posted; (4-26-02)T

i. At least thirty (30) days and no more than ninety (90) days prior to the date of last receipt of waste for a facility that has reached disposal capacity; or (4-26-02)T

ii. If the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional waste, a notice shall be published and signs posted at least thirty (30) days and no more than ninety (90) days prior to closure. (4-26-02)T

b. Facility Closure. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within six (6) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan. (4-26-02)T

c. Clean Site/Access Control. The owner and operator shall close the facility by managing or removing all solid waste to prevent impact to human health or the environment and installing a gate or other device to prevent public access after the last receipt of waste; and (4-26-02)T

d. Drainage and Erosion Control. The owner and operator shall install appropriate measures to control erosion and install appropriate measures to control the run-on and runoff from a twenty-five (25) year, twenty-four (24) hour storm event and to provide for the diversion of other surface waters from the closed facility. (4-26-02)T

e. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the Department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as "as-built" plans, showing the final conditions of the facility. (4-26-02)T

06. Closure Plan Application. Except as specified in Subsection 012.10, the owner and operator of a Tier II facility shall submit to the Department a Closure Plan Application containing the following information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes or, if the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional wastes, no later than one (1) year after the most recent receipt of wastes: (4-26-02)T

a. A complete and accurate legal description of the facility; (4-26-02)T

b. A map of the facility, showing pertinent facility features, including: (4-26-02)T

i. Facility boundaries, drainage patterns, location of fill areas, and location of access control

- measures; (4-26-02)T
- ii. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the facility boundary; (4-26-02)T
 - iii. Location of disposal trenches and description of waste disposed; and (4-26-02)T
 - iv. Proposed final contours of the closed facility, drawn to a reasonable scale with five (5) foot intervals for the operational area, and ten (10) foot intervals for the remainder of the facility; (4-26-02)T
 - c. Estimated date of last receipt of waste; (4-26-02)T
 - d. A description of how public access to the closed facility will be controlled; (4-26-02)T
 - e. Estimated total cubic yards, or tons, of waste in place; (4-26-02)T
 - f. Total acreage of the facility and acres containing waste; (4-26-02)T
 - g. Closure equipment and procedures to be used; (4-26-02)T
 - h. Texture, depth and permeability of final cover material; (4-26-02)T
 - i. Design and construction plan for any necessary final cover; (4-26-02)T
 - j. Placement, design, and management of run-on and run-off storm water controls; (4-26-02)T
 - k. Types of vegetation and planting procedures to be used for establishing vegetative cover; (4-26-02)T
 - l. Other closure information the Department determines is necessary to protect human health and the environment. (4-26-02)T
- 07. Documentation Requirements.** The owner and operator of a Tier II facility shall maintain on site a copy of each Department-approved Application and Plan required by Section 012. (4-26-02)T
- 08. Modification Application.** The owner and operator shall submit to the Department for review and approval a Modification Application describing any proposed modification. The owner and operator of a Tier II facility shall not implement the modification prior to Department approval. If a proposed modification alters the classification of a facility, the owner and operator shall comply with the application content, review and approval requirements for the new classification. (4-26-02)T
- 09. Tier II Processing Facilities.** In addition to the requirements in Subsections 012.01 through 012.08, the owner and operator of a Tier II processing facility shall also comply with the following requirements: (4-26-02)T
- a. Siting Requirements: (4-26-02)T
 - i. Ground Water. The active portion of a facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of the ground water. (4-26-02)T
 - ii. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design. (4-26-02)T
 - iii. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. (4-26-02)T

b. Siting Application. The owner and operator shall provide in the Siting Application documentation that demonstrates compliance with the siting requirements specified in Subsection 012.01 and 012.09.a. (4-26-02)T

c. Operating Requirements: (4-26-02)T

i. Odor Management Plan. The owner and operator of a Tier II processing facility shall implement a Department approved Odor Management Plan designed to minimize malodorous gases. An Odor Management Plan shall include specific operating criteria for oxygen, moisture and temperature levels appropriate for the wastes to be processed and processing technologies to be employed, methods used to maintain the specific operating criteria and a monitoring strategy that includes the frequency and parameters for monitoring the specific operating criteria. (4-26-02)T

ii. Documentation requirement. The owner and operator of a processing facility shall maintain documentation of compliance with Section 012, including an operational log of the methods used to maintain the operating criteria and sampling results. (4-26-02)T

d. Operating Plan. The operating plan required in Subsection 012.04 shall identify methods used for maintaining compliance with each applicable operating requirement of Subsection 012.03 and Subsection 012.09.c. (4-26-02)T

10. Tier II Incinerators, CESQG Management Facility And Transfer Stations. In addition to the requirements in Subsections 012.01 through 012.04 and Subsections 012.07 and 012.08, the owner and operator of a Tier II incinerator, CESQG management facility or transfer station shall comply with the following requirements: (4-26-02)T

a. Design Requirements. The owner and operator shall comply with the following design requirements; (4-26-02)T

i. A tipping floor design constructed of impermeable and durable material and designed to contain, collect, and convey any liquids to a storage or leachate management system. Any transfer station that accepts only waste tires will not be required to construct a tipping floor; (4-26-02)T

ii. A leachate storage or management system. (4-26-02)T

b. Design Application. The following information shall be submitted to the Department in a Design Application: (4-26-02)T

i. A description of the tipping floor design; (4-26-02)T

ii. A description of the storage or leachate management system design; (4-26-02)T

iii. Building and construction design blueprints; (4-26-02)T

iv. A map illustrating a storm water run-on/run-off system designed to prevent contamination of surface and ground water, and prevent the spread and impact of contamination beyond the boundary of the facility; and (4-26-02)T

v. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes. (4-26-02)T

c. Operating Requirements. The owner and operator of a Tier II facility shall comply with the following operating requirements: (4-26-02)T

i. Implement cleaning procedures and waste residency times to maintain sanitary conditions on the surface of the tipping floor; and (4-26-02)T

ii. Implement and operate a leachate storage or management system. (4-26-02)T

d. Waste Tire Collection Site Requirements. Individual tire piles shall not exceed five thousand (5000) square feet of continuous area, nor fifty thousand (50,000) cubic feet in volume or ten (10) feet in height. (4-26-02)T

e. Closure Requirement. The owner and operator of a Tier II facility shall comply with the following closure and post-closure care requirements: (4-26-02)T

i. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This notice shall be published and the signs posted at least thirty (30) days prior to closure. (4-26-02)T

ii. Facility Closure. The owner and operator shall close the facility by removing all solid waste to prevent impact to human health or the environment and installing a gate or other device to prevent public access after the last receipt of waste; and (4-26-02)T

iii. Closure Time Period. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within two (2) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan. (4-26-02)T

iv. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the Department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as "as-built" plans, showing the final conditions of the facility. (4-26-02)T

f. Closure Plan Application. The owner and operator shall submit to the Department a Closure Plan Application containing the following information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes: (4-26-02)T

i. A complete and accurate legal description of the facility; (4-26-02)T

ii. A map of the facility, showing pertinent facility features, including facility boundaries, drainage patterns, and location of access control measures; (4-26-02)T

iii. Estimated date of last receipt of waste; (4-26-02)T

iv. A description of how public access to the closed facility will be controlled; (4-26-02)T

v. Closure equipment and procedures to be used; (4-26-02)T

vi. Anticipated future uses for the facility; (4-26-02)T

vii. Other closure information the Department determines is necessary to protect human health and the environment. (4-26-02)T

11. Tier II NMSWLF. In addition to the requirements in Subsections 012.01 through 012.08, the owner and operator of a Tier II NMSWLF shall also comply with the following requirements: (4-26-02)T

a. Siting Requirements: (4-26-02)T

i. Wetlands. A facility shall not be located in wetlands, except as provided in 40 CFR 257.9. (4-26-02)T

ii. Ground Water. The active portion of a facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of the ground water. (4-26-02)T

iii. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the

- design. (4-26-02)T
- iv. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. (4-26-02)T
- b. Siting Application. The owner and operator shall provide in the Siting Application documentation that demonstrates compliance with the siting requirements specified in Subsections 012.01 and 012.11.a.; (4-26-02)T
- c. Design Application. The owner and operator shall provide the following information for design approval: (4-26-02)T
- i. A facility map illustrating: (4-26-02)T
- (1) Surface water and erosion control systems; (4-26-02)T
- (2) Proposed fill area, including the location of waste disposal trenches or cells, noting the locations of trenches used for separated wastes such as animal carcasses, tree trunks, stumps, bulky wastes, car bodies, asbestos, and petroleum contaminated soils; (4-26-02)T
- (3) Location of borrow areas; (4-26-02)T
- (4) Design elevation grade of final cover; (4-26-02)T
- (5) Soil and water table test boring holes, wells, or excavations; (4-26-02)T
- (6) Proposed receiving, storage, and processing areas; (4-26-02)T
- (7) Proposed trench layout and development; and (4-26-02)T
- (8) Contour lines at five (5) foot intervals within the operating area and ten (10) foot intervals to the facility boundary. (4-26-02)T
- d. Operating Requirements: The owner and operator of a NMSWLF shall comply with the following operating requirements: (4-26-02)T
- i. Compaction and placement of waste in locations consistent with the approved operating plan; (4-26-02)T
- ii. Provision for storage of waste during periods when the NMSWLF is inaccessible; (4-26-02)T
- iii. Application of a six (6) inch compacted soil cover layer on exposed waste as necessary to prevent nuisance and vector conditions at periods consistent with the approved operating plan. An owner and operator may request that the Department approve an alternate cover that addresses vectors, litter, fire, odor, and scavenging concerns; (4-26-02)T
- iv. Placement of an interim cover layer of twelve (12) inches of compacted soil between lifts to provide erosion control and structural stability. An owner and operator may request that the Department approve an alternate interim cover that addresses erosion, and stability for subsequent lifts; (4-26-02)T
- v. Preservation of existing vegetation where attainable. (4-26-02)T
- e. Operating Plan. The operating plan required in Subsection 012.04 shall identify the methods used for maintaining compliance with each applicable operating requirement of Subsection 012.03 and Subsection 012.11.d.; (4-26-02)T
- f. Closure Requirements. The owner and operator of a Tier II NMSWLF shall comply with the following closure requirements: (4-26-02)T

i. Final Cover. Within seven (7) days of the date of last receipt of waste, a cover layer shall be applied to prevent nuisances and vector conditions. Within one hundred and twenty (120) days of the date of last receipt of waste, a final cover layer of eighteen (18) inches of compacted soil with an approved in-place permeability designed to minimize infiltration, or its functional equivalent, and, a six (6) inch soil layer that minimizes erosion and sustains plant growth shall be constructed; (4-26-02)T

ii. Facility Stabilization. All disturbed portions of the facility shall be stabilized. Stabilization practices may include but are not limited to: establishment of vegetation, mulching, geotextiles, and sod stabilization; (4-26-02)T

iii. Slope Stability. Finished grade shall be at a minimum of two percent (2%) and a maximum of thirty- three percent (33%) slope on the final surface of the completed fill area, after settlement; and (4-26-02)T

iv. Drainage Control. The completed landfill shall be graded to prevent surface water ponding and erosion, and to conform to the local topography. (4-26-02)T

g. Closure Plan. The owner and operator shall provide in the Closure Plan documentation that demonstrates compliance with closure requirements specified in Subsections 012.05 and 012.11.f. (4-26-02)T

h. Deed Notation: (4-26-02)T

i. After completion and certification of closure of a NMSWLF, the owner and operator shall record a notation on the deed to the landfill facility property, or some other recorded instrument that is normally examined during title search and is commonly recorded in the County where the landfill facility property is located, to provide notice to any potential purchaser that the property has been used as a solid waste processing or disposal facility and its future use may be restricted in accordance with a post-closure care plan. A copy of the notated deed, or other recorded instrument shall be sent to the Department after recording with the county clerk; (4-26-02)T

ii. The owner may request permission from the Department to remove the notation from the deed, or to remove the other recorded instrument, if all wastes are removed from the facility; (4-26-02)T

iii. Federal agencies with responsibility for management of landfills on federal property shall make a notation in the federal property records for the affected property. If the subject property is ever sold or transferred by the federal government, a notation on the deed or patent shall be made. (4-26-02)T

i. Post-Closure Care Plan. Owners and operators of a NMSWLF shall submit, in accordance with the time frames specified in Subsection 012.06, to the Department for review and approval a Post-Closure Care Plan, shall obtain Department approval of the Plan, and shall conduct post-closure care in accordance with the Plan. The Post-Closure Care Plan shall typically contain: (4-26-02)T

i. The name and address of an agent authorized to accept communications or service during the post-closure period. The name may be changed during the post-closure period by providing the Department with twenty (20) days advance written notice of the change; (4-26-02)T

ii. Provisions to maintain the integrity and effectiveness of the final cover; (4-26-02)T

iii. Provisions to continue to maintain and operate the systems required in the operating plan including run-on/run-off control systems; (4-26-02)T

iv. Provisions to maintain appropriate security of the closed facility; (4-26-02)T

v. Provisions for routine facility inspections by the owner and operator to insure compliance with the Post-Closure Care Plan; and (4-26-02)T

vi. A description of the planned use(s) of the property during the post-closure care period: (4-26-02)T

j. Post-closure care for the NMSWLF shall be conducted for a period of five (5) years, unless the Department establishes in writing an alternate facility-specific post-closure care period. (4-26-02)T

k. Post-Closure Standards and Inspection. Post-closure use or operation of the site shall not disturb any final cover or storm water control systems in a manner that will increase the potential to threaten human health or the environment. (4-26-02)T

l. The approved Post-Closure Care Plan shall be maintained and available for review on request by the Department. (4-26-02)T

013. APPLICABLE REQUIREMENTS FOR TIER III FACILITIES.

The owner and operator of a new Tier III facility shall establish compliance with the requirements of Section 013 by obtaining Department approval of the applications required in Subsection 013.02 before beginning construction and Subsection 013.04 prior to accepting waste. The owner and operator of an existing Tier III facility shall establish compliance with the requirements of Section 013 by obtaining Department approval of the applications required in Subsection 013.04 within two (2) years of the effective date of these rules, and Subsection 013.02 within five (5) years of the effective date of these Rules. During the two-year period from the effective date, existing facilities shall operate in compliance with their approved operating plan and 40 CFR 257.1 through 257.3. In lieu of submitting an application, the owner and operator of existing facilities may demonstrate to the Department, compliance with Section 013 by submitting copies of existing permits and other approvals that establish compliance with the applicable siting, design, operating, closure, and post-closure requirements of Section 013 and Subsection 032.01. The owner and operator of a Tier III facility shall meet the requirements of Subsection 012.07 prior to facility closure; except that owners and operators closing Tier III facilities within eighteen (18) months of the effective date of these rules shall comply with applicable cover, seeding, grading and closure requirements of the former Solid Waste Management Rules and Standards, as enumerated in Subsection 001.04.d. of these rules. (4-26-02)T

01. General Siting Requirements. The owner and operator of a Tier III facility shall comply with the following siting requirements: (4-26-02)T

a. Flood Plain Restriction. A facility shall not be located within a one hundred (100) year flood plain if the facility will restrict the flow of the one hundred (100) year flood, reduce the temporary water storage capacity of the flood plain, or result in a washout of solid waste so as to pose a hazard to human health and the environment. (4-26-02)T

b. Endangered or Threatened Species Restriction. The facility shall not cause or contribute to the taking of any endangered or threatened species of plants, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of endangered or threatened species as identified in 50 CFR Part 17. (4-26-02)T

c. Surface Water Restriction. The active portion of a facility shall be located such that the facility shall not cause contamination of surface waters, unless such surface waters are an integral part of the non-municipal solid waste management facility's operation for storm water and/or leachate management. (4-26-02)T

d. Ground Water. The active portion of the facility shall be located, designed and constructed such that the facility shall not cause contamination to a drinking water source or cause contamination of ground water. (4-26-02)T

e. Geologic Restrictions. No facility may be located on land that would threaten the integrity of the design. (4-26-02)T

f. Property Line Restriction. The active portion of a facility shall not be located closer than one hundred (100) feet to the property line. (4-26-02)T

g. Park, Scenic or Natural Use Restriction. The active portion of a facility shall not be located closer than one thousand (1,000) feet from the boundary of any state or national park, or land reserved or withdrawn for scenic or natural use. (4-26-02)T

h. Variance from Siting Requirement. Any existing or planned facility that does not meet the siting

requirements of Section 013 may apply for a variance from the Department. The Department may approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of public health and the environment as the siting requirements in Section 013. (4-26-02)T

02. Siting Application. Documentation shall be submitted to the Department demonstrating compliance with the siting requirements and restrictions specified in Subsection 013.01 within the time frames specified in Section 013. If the documentation has been certified by a qualified professional, the Director shall approve the siting application unless the Director finds the evidence supports a contrary opinion. A map indicating the following shall also be submitted to the Department as part of a Siting Application: (4-26-02)T

- a. Highways, roads, and adjacent communities; (4-26-02)T
- b. Property boundaries; (4-26-02)T
- c. Total acreage of the site; (4-26-02)T
- d. Off-site and on-site access roads and service roads; (4-26-02)T
- e. Type(s) of land use adjacent to the facility and a description of all facilities on the site; (4-26-02)T
- f. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the proposed facility property lines; (4-26-02)T
- g. High tension power line rights-of-way, fuel transmission pipeline rights-of-way, and proposed and existing utilities; (4-26-02)T
- h. Proposed or existing fencing; (4-26-02)T
- i. Proposed and existing structures at the facility and within five hundred (500) feet of the facility boundary. This shall include location of employee buildings, and scales (if provided); and (4-26-02)T
- j. Direction of prevailing winds. (4-26-02)T

03. General Operating Requirements. The owner and operator of a Tier III facility shall comply with the following operating requirements: (4-26-02)T

- a. Prohibited Activities. The following activities are prohibited: (4-26-02)T
 - i. Disposal in a landfill of regulated waste from any business that provides health care, support to health care businesses, or medical diagnostic services that has not been decontaminated. "Regulated waste" and "decontaminated" for the purpose of Section 013 shall have the same meaning as defined at 29 CFR 1910.1030; (4-26-02)T
 - ii. Speculative accumulation, unless otherwise approved in an operating plan; and (4-26-02)T
 - iii. Disposal of radioactive waste except in a facility regulated pursuant to Section 39-4405(9), Idaho Code and rules adopted thereunder or a facility regulated under the authority of The Atomic Energy Act of 1954, as amended. (4-26-02)T
- b. Signs. Facilities open to the general public shall clearly post visible and legible signs at each entrance to the facility. The signs shall specify at a minimum the name of the facility, the hours of operation, the waste accepted at the facility and an emergency phone number. (4-26-02)T
- c. Waste Types. Only the solid waste types listed in the approved operating plan may be accepted for disposal or processing. (4-26-02)T
- d. Waste Monitoring and Measurement. Provisions shall be made for monitoring or measuring all

- solid waste delivered to a facility. The waste monitoring program shall include: (4-26-02)T
- i. A daily written log listing the types and quantities of wastes received; (4-26-02)T
 - ii. A plan for monitoring and handling receipt of unauthorized wastes; (4-26-02)T
 - iii. Routine characterization of the wastes received; and (4-26-02)T
 - iv. Other measures included in an approved Operating Plan. (4-26-02)T
 - e. Communication. Communication devices shall be available or reasonably accessible at the site. (4-26-02)T
 - f. Fire Prevention and Control. Adequate provisions shall be made for controlling or managing fires at the site. (4-26-02)T
 - g. Facility Access. Unauthorized vehicles and persons shall be prohibited access to the facility. A facility open to the public shall accept waste only when an attendant is on duty. The facility shall be fenced or otherwise blocked to access when an attendant is not on duty. (4-26-02)T
 - h. Scavenging and Salvaging. Scavenging by the public at a facility is prohibited; however, salvaging may be conducted in accordance with a written operating plan and only by the owner, operator or an authorized agent. (4-26-02)T
 - i. Nuisance Control. The owner and operator shall control nuisances, including but not limited to: (4-26-02)T
 - i. Disease or Discomfort. Operations at any facility shall not provide sustenance to rodents or insects that cause human disease or discomfort; (4-26-02)T
 - ii. Vector. Vector control procedures shall prevent or control vectors that may cause health hazards or nuisances; (4-26-02)T
 - iii. Odor. The facility shall be operated to control malodorous gases; and (4-26-02)T
 - iv. Litter. Effective measures shall be taken to minimize the loss of debris from the facility. Debris blown from or within the facility shall be collected and properly disposed to prevent objectionable accumulations. (4-26-02)T
 - j. Bird Hazards to Aircraft. No facility may handle putrescible wastes in such a manner that may attract birds and increase the likelihood of bird/aircraft collisions. Facilities that are located within ten thousand (10,000) feet of any airport runway used by turbojet aircraft, or within five thousand (5,000) feet of any airport used by only piston-type aircraft shall operate the facility in such a manner that birds are not a hazard to aircraft. (4-26-02)T
 - k. Open Burning and Fires. Open burning is prohibited at facilities except as authorized by these rules and IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". (4-26-02)T
 - i. No open burning shall be conducted during an air pollution episode, declared in accordance with IDAPA 58.01.01, "Rules for the Control of Air Pollution in Idaho". (4-26-02)T
 - ii. Open burning is authorized only if it is infrequent and the materials are agricultural wastes, silviculture wastes, land clearing debris, diseased trees, or debris from emergency cleanup operations. Materials burned shall not include garbage, dead animals, asphalt, petroleum products, paints, tires or other rubber products, plastics, paper (other than that necessary to start the fire), cardboard, treated wood, construction debris, metal, pathogenic wastes, hazardous wastes, or any other substance (other than natural vegetation) that when burned releases toxic emissions, dense smoke or strong odors. (4-26-02)T

iii. Open burning shall be conducted under the following conditions unless otherwise authorized by the Department or local fire authority with appropriate jurisdiction. The open burning shall be supervised by a person capable of extinguishing the fire at all times until it is extinguished, open burning shall not occur within fifty (50) feet of any structure, the pile for open burning shall not be larger than one hundred and fifty (150) cubic yards, only one (1) pile at a time shall be burned, and each pile shall be extinguished before igniting another and the owner and operator of the facility shall contact the Department and the local fire authority prior to conducting open burning to report its nature and location. (4-26-02)T

l. Storm Water Run-On/Run-Off Controls. The operating plan shall include sufficient storm water management provisions, which may incorporate a NPDES storm water pollution prevention plan, to prevent contamination of ground or surface water and prevent the spread and impact of contamination beyond the boundary of the facility. (4-26-02)T

m. Variance Request. An owner and operator may submit to the Department a written variance request for a variance from the operating requirements listed in Section 013. The Department shall approve a written request for a variance provided the owner and operator demonstrate to the Department that the variance is at least as protective of human health and the environment as the requirements listed in Section 013. (4-26-02)T

04. Operating Plan. The owner and operator of a Tier III facility shall submit to the Department an Operating Plan containing that information required by Subsection 013.03, within the time frames stated in Section 013. An Operating Plan shall included a description of the wastes to be accepted, the methods for maintaining compliance with each of the applicable general operating requirements of Subsection 013.03, and complies with any applicable facility specific requirements found in Subsections 013.11 through Section 013.13. (4-26-02)T

05. Ground Water Monitoring Requirements. The owner and operator of a new Tier III facility shall comply with the following ground water monitoring requirements: (4-26-02)T

a. Install and maintain ground water monitoring wells at the point of compliance as approved by the Department; (4-26-02)T

b. Within thirty (30) days of completion of each well, submit a copy of the geologic log and record of well construction to the Department; (4-26-02)T

c. Monitor the ground water quarterly, unless otherwise directed by the Department. Constituents to be monitored shall be those listed in 40 CFR Part 257.24 unless otherwise authorized by the Department; and (4-26-02)T

d. The owner and operator of any facility required to monitor ground water pursuant to Section 013 shall continue the approved monitoring schedule for five (5) years following facility closure, unless otherwise approved by the Department upon request of the owner and operator for a modified monitoring schedule. (4-26-02)T

06. Ground Water Monitoring Application. The following information shall be submitted to the Department in a Ground Water Monitoring Application: (4-26-02)T

a. A map showing soil types, depth to ground water, ground water flow direction and locations of proposed ground water monitoring wells; and (4-26-02)T

b. A monitoring schedule indicating sample frequency and constituents to be analyzed. (4-26-02)T

07. Closure Requirement. The owner and operator of a Tier III facility shall comply with the following closure requirements: (4-26-02)T

a. Public Notice. For a facility open to the public the owner and operator shall provide public notice of the facility's closure by publishing a notice in the local newspaper and posting signs at the facility's entrance. This notice shall be published and the signs posted; (4-26-02)T

i. At least thirty (30) days and no more than ninety (90) days prior to the date of last receipt of waste for a facility that has reached disposal capacity; or (4-26-02)T

ii. If the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional waste, a notice shall be published and signs posted at least thirty (30) days and no more than ninety (90) days prior to closure. (4-26-02)T

b. Facility Closure. Unless the Department establishes an alternate closure time period, the owner and operator shall close the facility within six (6) months of the Department's approval of the Closure Plan. The facility shall be closed in accordance with the approved Closure Plan. (4-26-02)T

c. Clean Site/Access Control. The owner and operator shall close the facility by managing or removing all solid waste to prevent impact to human health or the environment and shall install a gate or other device to prevent public access after the last receipt of waste; (4-26-02)T

d. Drainage and Erosion Control. The owner and operator shall install appropriate measures to control erosion and install appropriate measures to control the run-on and runoff from a twenty-five (25) year, twenty-four (24) hour storm event and to provide for the diversion of other surface waters from the closed facility; and (4-26-02)T

e. Closure Plan Certification. Within thirty (30) days of closure, the owner and operator shall notify the department in writing that the facility was closed in accordance with the approved Closure Plan. If closure of the facility is different from the approved Closure Plan, the owner and operator shall submit for Department review and approval documents, such as "as-built" plans, showing the final conditions of the facility. (4-26-02)T

08. Closure Plan Application. The owner and operator of a Tier III facility shall submit to the Department a Closure Plan Application containing the information no later than ninety (90) days before the date on which the facility receives the known final receipt of wastes or, if the facility has remaining capacity and there is a reasonable likelihood that the facility will receive additional wastes, no later than one (1) year after the most recent receipt of wastes. The following information shall be submitted to the Department in a Closure Application: (4-26-02)T

a. A complete and accurate legal description of the facility; (4-26-02)T

b. A map of the facility, showing pertinent facility features, including: (4-26-02)T

i. Facility boundaries, drainage patterns, location of fill areas, and location of access control measures; (4-26-02)T

ii. All water courses, ponds, lakes, reservoirs, canals, irrigation systems, and existing water supplies, within one-quarter (1/4) mile of the facility boundary; (4-26-02)T

iii. Location of disposal trenches and description of waste disposed; and (4-26-02)T

iv. Proposed final contours of the closed facility, drawn to a reasonable scale with five (5) foot intervals for the operational area, and ten (10) foot intervals for the remainder of the facility; (4-26-02)T

c. Estimated date of last receipt of waste; (4-26-02)T

d. A description of how public access to the closed facility will be controlled; (4-26-02)T

e. Estimated total cubic yards, or tons, of waste in place; (4-26-02)T

f. Total acreage of the facility and acres containing waste; (4-26-02)T

g. Closure equipment and procedures to be used; (4-26-02)T

- h.** Texture, depth and permeability of final cover material; (4-26-02)T
- i.** Design and construction plan for any necessary final cover; (4-26-02)T
- j.** Placement, design, and management of run-on and run-off storm water controls; (4-26-02)T
- k.** Types of vegetation and planting procedures to be used for establishing vegetative cover; (4-26-02)T
- l.** Details of any proposed changes to any existing groundwater monitoring system; (4-26-02)T
- m.** Details of any proposed changes to any existing landfill gas control system; (4-26-02)T
- n.** Details of any proposed changes to any existing leachate collection system; and (4-26-02)T
- o.** Other closure information the Department determines is necessary to protect human health and the environment. (4-26-02)T

09. Documentation Requirements. The owner and operator of a Tier III facility shall maintain on site each Department-approved application required by Section 013. (4-26-02)T

10. Modification Application. The owner and operator shall submit to the Department a Modification Application describing the proposed modification no less than sixty (60) days prior to the proposed modification of the facility. The owner and operator of a Tier III facility shall not implement the modification prior to Department approval. If a proposed modification alters the classification of a facility, the owner and operator shall comply with the application content, review and approval requirements for the new classification. (4-26-02)T

11. Tier III Processing Facilities. In addition to the requirements in Subsections 013.01 through 013.10, the owner and operator of a Tier III processing facility shall comply with the following requirements: (4-26-02)T

a. Odor Management Plan. The owner and operator of a Tier III processing facility shall implement a Department approved Odor Management Plan designed to minimize malodorous gases. An Odor Management Plan shall include specific operating criteria for oxygen, moisture and temperature levels appropriate for the wastes to be processed and processing technologies to be employed; methods used to maintain the specific operating criteria and a monitoring strategy that includes the frequency and parameters for monitoring the specific operating criteria; (4-26-02)T

b. Additional Requirements for PCS. Owners and operators of Tier III PCS processing facilities shall comply with the following applicable requirements: (4-26-02)T

i. Leachate collection and control system to prevent contamination of ground and surface waters; (4-26-02)T

ii. Liner designed to prevent ground and surface water contamination. The liner design shall account for the types of wastes handled and the potential for migration of liquids and gaseous contaminants to ground water; and (4-26-02)T

iii. Air emission control system to prevent discharges of air pollutants. (4-26-02)T

iv. An owner and operator of a PCS processing facility may submit a written request for a variance from the leachate control and liner requirements. The owner and operator must demonstrate that the variance is at least as protective of surface and ground water as the leachate collection system and liner. (4-26-02)T

c. Design Application. The following information shall be submitted to the Department in a Design Application: (4-26-02)T

- i. Building and construction design blueprints; (4-26-02)T
 - ii. A map illustrating a storm water run-on/run-off system designed to prevent contamination of ground or surface water or and prevent contamination beyond the boundary of the facility; (4-26-02)T
 - iii. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and (4-26-02)T
 - iv. Design and Construction Requirements. The owner and operator of a Tier III PCS processing facility shall submit for Department review and approval the following information as part of the Design Application: (4-26-02)T
 - (1) A hydrogeologic evaluation, including the potential for migration of contamination to ground or surface water; (4-26-02)T
 - (2) A detailed description of treatment methods to be used; (4-26-02)T
 - (3) Design plans for a leachate collection and control system to prevent ground and surface water contamination from the leachate control system; (4-26-02)T
 - (4) Design plans for an air emissions control system to prevent discharges of air pollutants; and (4-26-02)T
 - (5) Design plans for a liner designed to prevent ground or surface water contamination. The liner design shall account for the types of wastes handled and the potential for migration of liquid and gaseous contaminants to ground water. (4-26-02)T
 - d. Operating Plan. The owner and operator of a PCS processing facility shall submit for Department review and approval the following information as part of the Subsection 013.04, Operating Plan: (4-26-02)T
 - i. A sampling plan that describes the methods and frequency that the owner and operator will use to sample and analyze the wastes when received, during processing, and on final testing of processed material; and (4-26-02)T
 - ii. A description of how the owner and operator will maintain and operate the liner, leachate collection and control system, and air emission control system consistent with the approved design application. (4-26-02)T
 - e. Documentation Requirement. The owner and operator of a processing facility shall maintain documentation of compliance with Section 013, including an operational log of the methods used to maintain the operating criteria and sampling results. (4-26-02)T
- 12. Tier III Incinerators.** In addition to the requirements in Subsections 013.01 through 013.04 and Subsections 013.09 and 013.10, the owner and operator of a Tier III incinerator shall comply with the following requirements: (4-26-02)T
- a. Design Requirements. The owner and operator of an incinerator comply with the following design requirements: (4-26-02)T
 - i. A tipping floor constructed of impermeable and durable material and designed to contain, collect, and convey any liquids to a storage or leachate management system. Any facility that accepts only waste tires will not be required to construct a tipping floor. (4-26-02)T
 - ii. A storage or leachate management system. (4-26-02)T
 - b. Design Application. The following information shall be submitted to the Department in a Design Application: (4-26-02)T

- i. A description of the tipping floor design; (4-26-02)T
- ii. A description of the storage or leachate management system design; (4-26-02)T
- iii. Building and construction design blueprints; (4-26-02)T
- iv. A map illustrating a storm water run-on/run-off system designed to prevent ground or surface water contamination, or contamination from the facility beyond the boundary of the facility; (4-26-02)T
- v. Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and (4-26-02)T
- vi. Any facility specific design elements required by these rules. (4-26-02)T
- c. Operating Requirements.** The owner and operator of an incinerator shall comply with the following operating requirements: (4-26-02)T
 - i. Maintain and operate the tipping floor to control odors, insects, and rodents; (4-26-02)T
 - ii. Implement cleaning procedures and waste residency times used to maintain sanitary conditions on the surface of the tipping floor; and (4-26-02)T
 - iii. Implement a storage or leachate management system operation. (4-26-02)T
- d. Waste Tire Collection Site Requirements.** Individual tire piles shall not exceed five thousand (5000) square feet of continuous area, nor fifty thousand (50,000) cubic feet in volume or ten (10) feet in height. (4-26-02)T
- e.** If it is determined that the tipping floor or leachate management system integrity has been breached, or waste has been handled or stored outside of the containment of the tipping floor, unless allowed in the facility Operating Plan, the owner and operator of the Tier III incinerator shall comply with Subsections 013.05 through 013.08. (4-26-02)T
- 13. Tier III NMSWLFs.** In addition to the requirements in Subsection 013.01 through 013.10, the owner and operator of a Tier III NMSWLF shall comply with the following requirements: (4-26-02)T
 - a.** Siting Requirements: A facility shall not be located in wetlands, except as provided in 40 CFR 257.9; (4-26-02)T
 - b.** Siting Application. The owner and operator shall include in the Siting Application documentation demonstrating compliance with the requirement specified in Subsection 013.13.a.; (4-26-02)T
 - c.** Design and Construction Requirements: The owner and operator of a new NMSWLF shall comply with the following design and construction requirements: (4-26-02)T
 - i. Leachate Collection and Control System. A leachate collection and control system shall be constructed to prevent ground and surface water contamination; (4-26-02)T
 - ii. Liner. A liner designed to prevent ground or surface water contamination shall be installed. The liner design shall account for the types of wastes handled and the potential for migration of liquid and gaseous contamination to ground or surface water; (4-26-02)T
 - iii. Landfill Emission Control System. Appropriate toxic and flammable gas monitoring devices shall be installed where the location, geophysical condition, and waste characteristics indicate that there is a reasonable probability that the facility will generate toxic and flammable gas: exceeding twenty-five (25) percent of the lower explosive limit for gases in facility structures (excluding gas control or gas recovery system components); exceeding the lower explosive limit at the property boundary; or otherwise presenting a potential threat to public health or the environment; and (4-26-02)T

iv. An owner or operator may submit a written request for a variance from the leachate collection and control system, liner, or emission control system requirements. The Department may approve the variance upon demonstration by the owner or operator that the variance is at least as protective of human health and the environment as the leachate collection and control system, liner, or emission control system. (4-26-02)T

d. Design Application. The following information shall be submitted to the Department in a Design Application: (4-26-02)T

i. Design plans shall address the need for and include as required a leachate collection and control system, liner, and emission control systems in Subsection 013.13.c.; (4-26-02)T

ii. A facility map illustrating: (4-26-02)T

(1) Surface water and erosion control systems; (4-26-02)T

(2) Proposed fill area, including the location of waste disposal trenches or cells, noting the locations of trenches used for separated wastes such as animal carcasses, tree trunks, stumps, bulky wastes, car bodies, asbestos, and petroleum contaminated soils; (4-26-02)T

(3) Location of borrow areas; (4-26-02)T

(4) Design elevation grade of final cover; (4-26-02)T

(5) Soil and water table test boring holes, wells, or excavations; (4-26-02)T

(6) Proposed receiving, storage, and processing areas; (4-26-02)T

(7) Proposed trench layout and development; and (4-26-02)T

(8) Contour lines at five (5) foot intervals within the operating area and ten (10) foot intervals to the facility boundary. (4-26-02)T

(9) Building and construction design blueprints; (4-26-02)T

(10) Operational design and capacity information including a description of the waste types and projected daily and annual waste volumes; and (4-26-02)T

e. Operating Requirements: The owner and operator of a NMSWLF shall comply with the following operating requirements: (4-26-02)T

i. Compaction and placement of waste in locations consistent with the approved operations plan; (4-26-02)T

ii. Provision for storage of waste during periods when the NMSWLF is inaccessible; (4-26-02)T

iii. Application of a six (6) inch compacted soil cover layer on exposed waste as necessary to prevent nuisance and vector conditions at periods consistent with the approved operations plan. An owner and operator may request that the Department approve an alternate cover that addresses vectors, litter, fire, odor, and scavenging concerns; (4-26-02)T

iv. Placement of an interim cover layer of twelve (12) inches of compacted soil between lifts to provide erosion control and structural stability. An owner and operator may request that the Department approve an alternate interim cover that addresses erosion, and stability for subsequent lifts; (4-26-02)T

v. Maintenance and operation of a leachate collection and control system and air emission control system consistent with the approved design application; and (4-26-02)T

- vi. Preservation of existing vegetation where attainable. (4-26-02)T
- f. Operating Plan. The operating plan required in Section 013 shall identify the methods used for maintaining compliance with each applicable operating requirement of Subsection 013.03. and Subsection 013.13.e. including but not limited to the type, the method of compaction and the frequency of application of respective cover materials; (4-26-02)T
- g. Closure Requirements. The owner and operator of a NMSWLF shall comply with the following closure requirements: (4-26-02)T
- i. Final Cover. Within seven (7) days of the date of last receipt of waste, a cover layer shall be applied to prevent nuisances and vector conditions. Within one hundred and twenty (120) days of the date of last receipt of waste, a final cover layer of eighteen (18) inches of compacted soil with an approved in-place permeability designed to minimize infiltration, or its functional equivalent, and, a six (6) inch soil layer that minimizes erosion and sustains plant growth shall be constructed; (4-26-02)T
- ii. Facility Stabilization. All disturbed portions of the facility shall be stabilized. Stabilization practices may include but are not limited to: establishment of vegetation, mulching, geotextiles, and sod stabilization; (4-26-02)T
- iii. Slope Stability. Finished grade shall be at a minimum of two percent (2%) and a maximum of thirty- three percent (33%) slope on the final surface of the completed fill area, after settlement; and (4-26-02)T
- iv. Drainage Control. The completed landfill shall be graded to prevent surface water ponding and erosion, and to conform to the local topography. (4-26-02)T
- h. Deed Notation: (4-26-02)T
- i. After completion and certification of closure of a NMSWLF, the owner and operator shall record a notation on the deed to the landfill facility property, or some other recorded instrument that is normally examined during title search and is commonly recorded in the County where the landfill facility property is located, to provide notice to any potential purchaser that the property has been used as a solid waste processing or disposal facility and its future use may be restricted in accordance with a post-closure care plan. A copy of the notated deed, or other recorded instrument, shall be sent to the Department after recording with the county clerk. (4-26-02)T
- ii. The owner may request permission from the Department to remove the notation from the deed, or the other recorded instrument, if all wastes are removed from the facility. (4-26-02)T
- iii. Federal agencies with responsibility for management of landfills on federal property shall make a notation in the federal property records for the affected property. If the subject property is ever sold or transferred by the federal government, a notation on the deed or patent shall be made. (4-26-02)T
- i. Closure Plan. The owner and operator shall provide in the Closure Plan documentation that demonstrates compliance with closure requirements specified in Subsections 013.07 and 013.13.g. (4-26-02)T
- j. Post-Closure Care Plan. Owners and operators of a NMSWLF shall submit, in accordance with the time frames specified in Subsection 013.08, to the Department for review and approval a Post-Closure Care Plan, shall obtain Department approval of the Plan, and shall conduct post-closure care in accordance with the Plan: (4-26-02)T
- i. Unless the Department determines otherwise, the Post-Closure Care Plan shall contain: (4-26-02)T
- (1) The name and address of an agent authorized to accept communications or service during the post-closure period. The name may be changed during the post-closure period by providing the Department with twenty (20) days advance written notice of the change; (4-26-02)T

- (2) Provisions to maintain the integrity and effectiveness of the final cover; (4-26-02)T
- (3) Provisions to continue to maintain and operate the systems required in the operating plan, including: run-on/run-off control systems, leachate collection and control systems, groundwater monitoring systems, and gas monitoring systems; (4-26-02)T
- (4) Provisions to maintain appropriate security of the closed facility; (4-26-02)T
- (5) Provisions for routine facility inspections by the owner and operator to insure compliance with the Post-Closure Care Plan; and (4-26-02)T
- (6) A description of the planned use(s) of the property during the post-closure care period. (4-26-02)T
- ii. Post-closure care for the NMSWLF shall be conducted for a minimum of five (5) years, but not more than thirty (30) years, as necessary to protect human health and the environment. (4-26-02)T
- iii. Post-Closure Standards and Inspection. Post-closure use or operation of the site shall not disturb any final cover, liner or other component of the containment system in a manner that will increase the potential to threaten human health or the environment. (4-26-02)T
- iv. The approved Post-Closure Care Plan shall be maintained and available for review on request by the Department. (4-26-02)T
- v. The requirements in Subsection 013.07 shall apply to owners and operators and their successors and assigns. (4-26-02)T

014. -- 031. (RESERVED).

032. TIER II AND TIER III APPLICATION AND PLAN REVIEW AND APPROVAL.

01. Application Submittal. The owner and operator shall submit three (3) copies of each required application to the Department. The owner and operator may submit applications for siting, design, operation, or ground water monitoring approval sequentially or concurrently. (4-26-02)T

02. Preapplication Conference. The owner or operator may request that the Department convene a preapplication conference with any interested federal, state and local entities to discuss the approval procedures, application content, time tables for application processing, siting and design requirements. (4-26-02)T

03. Application Review. (4-26-02)T

a. On receipt of an application the Department shall, within thirty (30) days, notify the owner and operator in writing whether the submission is complete and whether the application identifies an appropriate Tier level. The notice shall identify any deficiencies in the application, and the information relied upon in making the determination, and shall state that an applicant may submit additional information in the form of an amended application, withdraw the application or request a conference to discuss the Department's determination. (4-26-02)T

b. Upon receipt of the Department's determination that a siting application is complete, the owner and operator shall publish a notice in a newspaper of general circulation as determined in Section 31-819, Idaho Code, in the county and the immediate vicinity of the proposed facility. The notice shall include the name and location of the proposed facility, a general description of the proposed operations, the location where the application may be reviewed, and instructions directing the public to submit comments to the Department within sixty (60) days of the date of publication. The owner and operator shall provide a copy of the published notice to the Department within five (5) business days of publication. (4-26-02)T

c. The Department shall approve, deny, or approve with conditions each application. Failure to issue a decision within the stated time shall be deemed approval. Approval conditions shall relate to protection of human health and the environment as required in these rules. (4-26-02)T

i. For a siting application, the Department shall notify the owner and operator in writing of the Department's decision within thirty (30) days of the date of the close of the public comment period. The Department and the owner and operator may agree, in writing to a longer period of time for the Department's determination. Design, Operating and Ground Water Monitoring Applications shall not be reviewed until the Siting Application is approved. (4-26-02)T

ii. For the Design, Operating and Ground Water Monitoring applications, the Department shall notify the owner and operator in writing of the Department's decision within sixty (60) days from the date the application is determined to be complete. (4-26-02)T

d. If the Department denies an application, the written decision shall state the basis for the denial, and the information relied upon in making the determination. (4-26-02)T

04. Application Valid For Two Years. Unless otherwise stated in the Department's approval of the facility's application, the Department's approval shall become invalid if the owner and operator fail to begin construction within two (2) years from the date of approval, or if after construction has begun, work is suspended for more than two (2) years. Owners and operators may apply for an extension provided that the written request is received by the Department no less than one (1) month prior to expiration of the approval. Within fifteen (15) days from Department receipt of extension request, the Department shall approve the extension request or deny the extension request and state the basis for denial. (4-26-02)T

033. -- 059. (RESERVED).

060. VIOLATIONS.

01. Failure To Comply. Failure by any person to comply with the provisions of these rules shall be deemed a violation of these rules. (4-26-02)T

02. Falsification Of Statements And Records. It shall be a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of an approval. (4-26-02)T

03. Penalties. Any person violating any provision of these rules or any approved conditions or order issued thereunder shall be liable for civil penalty in accordance with Title 39, Chapter 1, Idaho Code. (4-26-02)T

061. -- 993. (RESERVED).

994. COMMERCIAL SOLID WASTE SITING LICENSE FEE.

An application for a commercial solid waste siting license required by the Idaho Solid Waste Facilities Act shall be accompanied by a siting license fee in an amount established by these rules. The license fee shall not exceed seven thousand five hundred dollars (\$7,500) and shall be submitted with the siting license application. (4-26-02)T

01. Commercial Solid Waste Siting License Fee Criteria. The commercial solid waste siting license fee required by the Idaho Solid Waste Facilities Act and these rules shall apply to commercial MSWLFs only and shall be based on the cost of the Department's review and the characteristics of the proposed commercial solid waste facility, including the projected site size, projected waste volume, and the hydrogeological and atmospheric characteristics surrounding the site. (4-26-02)T

02. Commercial Solid Waste Siting License Fee Scale. The commercial solid waste siting license fee required by the Idaho Solid Waste Facilities Act and these rules shall be determined using the table below. The fee determined using the table below may then be adjusted by the Department if necessary to reflect the cost of the Department's review, taking into account the hydrogeological and atmospheric characteristics surrounding the site.

COMMERCIAL SOLID WASTE SITING LICENSE FEE SCALE PROJECTED SOLID WASTE VOLUME Tons per day (TPD)			
Site Size	Up to 20 TPD	20 to 100 TPD	More than 100 TPD
5 acres or less	\$3,500	\$4,500	\$5,500
5 to 50 acres	\$4,500	\$5,500	\$6,500
more than 50 acres	\$5,500	\$6,500	\$7,500

(4-26-02)T

03. Notification Of Adjustment Of Fee. Within thirty (30) days of receipt of the application and fee, the Department shall notify the applicant if the fee has been adjusted and the date by which any additional fee must be paid by the applicant. (4-26-02)T

04. Expansion Or Enlargement Of A Commercial Solid Waste Facility. The expansion or enlargement of a commercial solid waste facility constitutes a new proposal for which a commercial solid waste siting license is required and for which a siting license fee must be paid. All commercial solid waste facilities not in operation on March 20, 1996 must submit a commercial solid waste license application and fee. (4-26-02)T

05. Commercial Solid Waste Siting License Fee Not Refundable. The commercial solid waste siting license fee required by the Idaho Solid Waste Facilities Act and by these rules shall not be refundable and may not be applied toward any subsequent application should the commercial solid waste siting license application be canceled, withdrawn or denied. (4-26-02)T

995. COMMERCIAL SOLID WASTE SITING LICENSE APPLICATION.

In addition to the contents of a Siting License Application as required in the Idaho Solid Waste Facilities Act, these rules require the applicant to include in the application the following items: (4-26-02)T

01. Location. A map indicating the location of the proposed commercial solid waste facility; (4-26-02)T

02. Copies Of Application. Ten (10) copies of the completed application; and (4-26-02)T

03. Application Format. A copy of the application in a format prepared for photocopying. (4-26-02)T

996. -- 998. (RESERVED).

999. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code. Information submitted under a trade secret claim may be entitled to confidential treatment by the Department as provided in Section 9-342A, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Department of Environmental Quality". (4-26-02)T

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.06 - SOLID WASTE MANAGEMENT RULES

DOCKET NO. 58-0106-0202 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: This action was effective April 26, 2002.

AUTHORITY: In compliance with Sections 67-5226(1) and 67-5221(1), Idaho Code, notice is hereby given that the Board of Environmental Quality (Board) has adopted a temporary rule and the Department of Environmental Quality (DEQ) is commencing proposed rulemaking to promulgate a final rule. The action is authorized by Sections 39-105, 39-107 and 39-7408C, Idaho Code.

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

**June 27, 2002, 7 p.m.
Conference Room B
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho.**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208)373-0418.

DESCRIPTIVE SUMMARY: Under Docket No. 58-0106-0201, DEQ has initiated proposed rulemaking for the adoption of a new rule addressing non-municipal solid waste. Coinciding with the publication of the proposed rule, DEQ is hereby proposing repeal of the current rule. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2002 for adoption of a pending rule. The rule is expected to be final upon the conclusion of the 2003 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: The text of the proposed rule written to replace this rule (Docket No. 58-0106-0201) has been drafted based on discussions held and concerns raised during a negotiation conducted pursuant to Section 67-5220, Idaho Code, and IDAPA 04.11.01.812 through 815. The negotiation was open to the public. Participants in the negotiation included industry and government representatives. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 97-5, May 7, 1997, page 47, under Docket No. 16-0106-9701.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption is appropriate in that the rule is necessary to protect public health.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact Dean Ehlert at (208)373-0502 or dehlert@deq.state.id.us.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. DEQ will consider all written comments received by the undersigned on or before July 3, 2002.

DATED this 26th day of April, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THIS CHAPTER IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.13 - RULES FOR ORE PROCESSING BY CYANIDATION

DOCKET NO. 58-0113-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Chapter 1, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before June 19, 2002. If no such written request is received, a public hearing will not be held.

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

This rulemaking changes the number of days to respond to a notice of intent to revoke permit from 20 to 35 days for consistency with the IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality".

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2002 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2003 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact Paula Gradwohl at (208)373-0418 or pgradwoh@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before June 26, 2002.

Dated this 17th day of April, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0113-0201

850. PERMIT REVOCATION.

01. **Cause For Revocation.** A material violation of a permit or these rules may be grounds for the Director to revoke a permit. A violation that is shown to have occurred as the result of an unforeseeable act of God despite a permittee's reasonable efforts to comply with all applicable legal requirements shall not be grounds for revocation. (1-1-88)

02. **Revocation Hearing.** If the Director decides to revoke a permit, he shall issue a notice of intent which shall become final within ~~twenty~~ thirty-five (2035) days of service upon the permittee, unless the permittee requests in writing an administrative hearing. ~~Written notice of the time and place of the hearing shall be mailed, at least twenty (20) days prior to the date set for the hearing, to the permittee.~~ The hearing shall be conducted in accordance with IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.17 - WASTEWATER-LAND APPLICATION PERMIT RULES

DOCKET NO. 58-0117-0201

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Department of Environmental Quality (DEQ) has proposed rulemaking. The action is authorized by Chapter 1, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before June 19, 2002. If no such written request is received, a public hearing will not be held.

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

This rulemaking changes the number of days to respond to a notice of intent to revoke permit from 20 to 35 days for consistency with the IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality".

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2002 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2003 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about DEQ's programs and activities, visit DEQ's web site at www.state.id.us/deq.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact Paula Gradwohl at (208)373-0418 or pgradwoh@deq.state.id.us.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before June 26, 2002.

Dated this 17th day of April, 2002.

Paula J. Gradwohl
Environmental Quality Section
Attorney General's Office
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
pgradwoh@deq.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0117-0201

920. PERMIT REVOCATION.

01. **Conditions For Revocation.** The Director may revoke a permit if the permittee violates any permit condition or these rules. (4-1-88)

02. **Notice Of Revocation.** Except in cases of emergency, the Director shall issue a written notice of intent to revoke to the permittee prior to final revocation. Revocation shall become final within ~~twenty~~ thirty-five (~~20~~35) days of receipt of the notice by the permittee, unless within that time the permittee requests an administrative hearing in writing. The hearing shall be conducted in accordance with IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality". (~~3-15-02~~)()

03. **Emergency Action.** If the Director finds the public health, safety or welfare requires emergency action, the Director shall incorporate findings in support of such action in a written notice of emergency revocation issued to the permittee. Emergency revocation shall be effective upon receipt by the permittee. Thereafter, if requested by the permittee in writing, the Director shall provide the permittee a revocation hearing and prior notice thereof. Such hearings shall be conducted in accordance with IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality". (3-15-02)

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PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

IDAPA 02 – DEPARTMENT OF AGRICULTURE P.O. Box 790, Boise, ID 83701

Docket No. **02-0601-0201**, Rules Governing the Pure Seed Law. Increases service fees by 7% to 20% and increases seed dealer license fees. Comment by: 6/26/02.

IDAPA 07 – DIVISION OF BUILDING SAFETY 1090 E. Watertower St., Meridian, ID 83642

Docket No. **07-0106-0201**, Rules Governing the Use of the National Electrical Code. Adopts the 2002 edition of the National Electrical Code. Comment by: 6/26/02.

IDAPA 08 – STATE BOARD OF EDUCATION PO Box 83720, Boise, ID 83720-0037

Docket No. **08-0203-0201**, Rules Governing Thoroughness. Changes ensure state compliance with the federal Individuals with Disabilities Education Act (IDEA). Comment by: 6/26/02.

IDAPA 11 – IDAHO STATE POLICE P.O. Box 700, Meridian, ID 83680-0700

Docket No. **11-1003-0201**, Rules Governing the Sex Offender Registry. Changes to the requirement to register out-of-state offenders who are employed by or enrolled in an institution of higher learning in Idaho and the requirement of persons with a dismissed withheld judgment to obtain relief from registration. Comment by: 6/26/02.

Docket No. **11-1103-0201**, Rules of the Idaho Peace Officers Standards and Training Council for Juvenile Probation Officers. Establishes minimum standards for employment and certification of juvenile probation officers. Comment by: 6/26/02.

Docket No. **11-1201-0201**, Rules Governing Records Checks for Transfers of Handguns. Repeal of chapter due to changes in federal law making it null and void. Comment by: 6/26/02.

IDAPA 54 – OFFICE OF THE STATE TREASURER P. O. Box 83720, Boise, ID 83720-0091

Docket No. **54-0201-0201**, Rules Governing the College Savings Program. Makes technical changes; revises definitions; and eliminates the state 10% penalty assessed against non-qualified withdrawals. Comment by: 6/26/02.

IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY 1410 N. Hilton, Boise, ID 83706-1255

Docket No. **58-0106-0201**, Solid Waste Management Rules. Rewrite of chapter provides statewide consistency for non-municipal solid waste management, specific siting, operational, closure and post-closure care based on the volume of waste, waste characteristics, type of waste management facility, and potential impact to human health and the environment. Comment by: 7/3/02.

Docket No. **58-0106-0202**, Solid Waste Management Rules and Standards. Repeal of chapter. Comment by: 7/3/02.

Docket No. **58-0113-0201**, Rules for Ore Processing by Cyanidation. Changes the number of days to respond to a notice of intent to revoke permit from 20 to 35 days. Comment by: 6/26/02.

Docket No. **58-0117-0201**, Wastewater-Land Application Permit Rules. Changes the number of days to respond to a notice of intent to revoke permit from 20 to 35 days. Comment by: 6/26/02.

SCHEDULED PUBLIC HEARINGS

Public hearing have been scheduled for the following dockets:

Department of Insurance

Docket No. **18-0119-0201** - Rules Governing Credit Scoring (Negotiated Rulemaking).

Department of Environmental Quality

Docket No. **58-0106-0201** and **58-0106-0202** – Solid Waste Management Rules.

Please refer to the Idaho Administrative Bulletin, **June 5, 2002, Volume 02-6** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact names.

Citizens of your county can view all issues of the Idaho Administrative Bulletin at the county law libraries.

Copies of the Administrative Bulletin and other rules publications are available for purchase. For subscription information and ordering call (208) 332-1820 or write the Office of Administrative Rules, Department of Administration, 650 W. State St., Room 100, Boise, Idaho 83720-0306. Visa and Mastercard accepted.

The Idaho Administrative Bulletin and Administrative Code are available on-line at: <http://www2.state.id.us/adm/adminrules/>

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**This index tracks the history of all agency rulemakings from 1993 to the present.
It includes all rulemaking activities on each chapter of rules
and includes negotiated, temporary, proposed, pending
and final rules, public hearing notices
and vacated rulemaking notices.**

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