

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 monthly compilation of all administrative rule-making documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.

State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of 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 Rulemaking Notice published in the Bulletin. 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 rule-making activities.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin 04-1 refers to the first Bulletin issued in calendar year 2004; Bulletin 05-1 refers to the first Bulletin issued in calendar year 2005. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 04-1 refers to January 2004; Volume No. 05-2 refers to February 2005; and so forth. Example: The Bulletin published in January of 2005 is cited as Volume 05-1. The December 2004 Bulletin is cited as Volume 04-12.

RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE

The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules that have been 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, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises five distinct activities: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings involve all five. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of administrative rule.

NEGOTIATED RULEMAKING

Negotiated rulemaking is a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a "Notice of Intent to Promulgate" a rule in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed and/or temporary rule.

PROPOSED RULEMAKING

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

- a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) 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 as provided in Section 67-5222, Idaho Code; 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. 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) 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. However, a temporary rule that imposes a fee or charge may be adopted only if the Governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.

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

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

An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rulemaking that is being vacated, the agency, in most instances, should rescind the temporary rule.

PENDING RULEMAKING

A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures and remains subject to legislative review before it become 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 Rulemaking". This includes:

- a) a statement giving the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective;*
- 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 change is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the "Notice of Pending Rulemaking" is published.

FINAL RULEMAKING

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

No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that an agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A "Notice of Final Rule" must be published in the Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule 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 that 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, Twin Falls, Lewiston and East Bonner County 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 83720-00306, telephone (208) 332-1820.

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

The Idaho 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 Rule Making Dockets*, are specific portions of the Bulletin and Administrative Code produced on demand.

Internet Access - The Administrative Code and Administrative Bulletin are available on the Internet at the following address:

<http://www2.state.id.us/adm/adminrules/>

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 38.07.01.200.02.c.ii.

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

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

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

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

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

"**02.**" refers to Subsection 200.02.

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

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

DOCKET NUMBERING SYSTEM

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

"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**).

"0501" denotes the year and sequential order of the docket received during the year; in this case the first rule-making action in calendar year 2005.

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

"(BREAK IN CONTINUITY OF SECTIONS)"

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

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

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

The citation may also include the IDAPA, Title, or Chapter number, as follows"

"...in accordance with IDAPA 38.05.01.201..."

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the rule.

"01" denotes the Chapter number of the rule.

: "201" references the main Section number of the rule that the citation refers to.

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 2005

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
05-1	January 2005	*November 19, 2004	January 5, 2005	January 26, 2005
05-2	February 2005	January 5, 2005	February 2, 2005	February 23, 2005
05-3	March 2005	February 2, 2005	March 2, 2005	March 23, 2005
05-4	April 2005	March 2, 2005	April 6, 2005	April 27, 2005
05-5	May 2005	April 1, 2005	May 4, 2005	May 25, 2005
05-6	June 2005	May 4, 2005	June 1, 2005	June 21, 2005
05-7	July 2005	June 1, 2005	July 6, 2005	July 27, 2005
05-8	August 2005	July 1, 2005	August 3, 2005	August 24, 2005
05-9	September 2005	August 3, 2005	September 7, 2005	September 28, 2005
05-10	October 2005	**August 24, 2005	October 5, 2005	October 26, 2005
05-11	November 2005	October 5, 2005	November 2, 2005	November 23, 2005
05-12	December 2005	November 2, 2005	December 7, 2005	December 28, 2005

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2006

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
06-1	January 2006	*November 16, 2005	January 4, 2006	January 25, 2006
06-2	February 2006	January 4, 2006	February 1, 2006	February 22, 2006
06-3	March 2006	February 1, 2006	March 1, 2006	March 22, 2006
06-4	April 2006	March 1, 2006	April 5, 2006	April 26, 2006
06-5	May 2006	April 5, 2006	May 3, 2006	May 24, 2006
06-6	June 2006	May 3, 2006	June 7, 2006	June 28, 2006
06-7	July 2006	June 2, 2006	July 5, 2006	July 26, 2006
06-8	August 2006	June 30, 2006	August 2, 2006	August 23, 2006
06-9	September 2006	August 2, 2006	September 6, 2006	September 27, 2006
06-10	October 2006	**August 23, 2006	October 4, 2006	October 25, 2006
06-11	November 2006	October 4, 2006	November 1, 2006	November 22, 2006
06-12	December 2006	November 1, 2006	December 6, 2006	December 27, 2006

****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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IDAPA 54	Treasurer, Office of the State	VOLUME 8
IDAPA 21	Veterans Services, Division of	VOLUME 6
IDAPA 46	Veterinary Medical Examiners, Board of	VOLUME 8
IDAPA 55	Vocational and Technical Education, Division of	VOLUME 9
IDAPA 47	Vocational Rehabilitation, Division of	VOLUME 8
IDAPA 37	Water Resources, Department of	VOLUME 8
IDAPA 42	Wheat Commission	VOLUME 8

THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT STATE OF IDAHO BOISE

EXECUTIVE ORDER NO. 2005-13

REVIEWING THE PREPARATION AND ADMINISTRATION OF IDAHO'S PLAN UNDER THE JUVENILE JUSTICE AND DELINQUENCY PREVENTION ACT

WHEREAS, the State of Idaho, in accordance with the provisions of the Juvenile Justice and Delinquency Prevention Act of 2002, 42 U.S.C. Section 5601 ("JJJPA"), is required to designate a state agency to supervise and administer Idaho's plan under the JJJPA and to establish a state juvenile justice advisory group;

WHEREAS, the first regular session of the 53rd Idaho Legislature established the Idaho Department of Juvenile Corrections ("Department") and amended existing law to create a juvenile corrections system based on principles of accountability, community protection, and competency development;

WHEREAS, the purposes and intent of Idaho's Juvenile Corrections Act of 1995 and the JJJPA was better served by transferring the Idaho Juvenile Justice Commission ("Commission") to the Department;

WHEREAS, the Department was designated as the sole agency for supervising the preparation and administration of Idaho's plan under the JJJPA, and the Office for Juvenile Justice and Delinquency Prevention was abolished effective July 1, 1995; and

WHEREAS, the Commission was transferred from the Office of the Governor to the Department effective July 1, 1995, and has functioned as the advisory group referenced in Title 42, Section 5633(a)(3), United States Code.

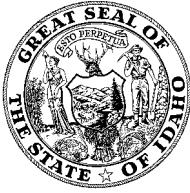
NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me by Article IV, Section 5, of the Idaho Constitution, and Section 67-802, Idaho Code, do hereby order that:

1. The composition of membership of the Commission shall be in conformity with the JJJPA. The chairman, vice-chairman, and members of the Commission shall be appointed by, and serve at the pleasure of the Governor. Members shall serve a term of three years, except for the youth members who shall serve a term of one year. The chairman and vice-chairman shall serve in such capacities for three years.

2. The Commission shall perform the following functions:

- a. Advise the Department on juvenile justice and delinquency prevention issues;
- b. Participate in the development and review of Idaho's plan under the JJJPA;
- c. Be afforded an opportunity to review and comment on all grant applications under the JJJPA submitted to the Department;
- d. Perform such other duties that the JJJPA requires to be performed by the advisory group referenced in Title 42, Section 5633(a)(3), United States Code;
- e. Perform such other duties that the JJJPA requires to be performed by the supervisory board referenced in Title 42, Section 5671(c)(1), United States Code, and Title 28, Section 31.102(b), Code of Federal Regulations, until such time as the director of the Department may establish another committee, commission, or board within the Department to perform those duties; and
- f. Perform such other duties as requested by the director of the Department, which may include submitting reports to the director of the Department and making decisions on grant applications under the JJJPA submitted to the Department

This Executive Order repeals and replaces Executive Order No. 1999-09. This Executive Order shall cease to be effective four years after its entry into force.



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 1st day of September in the year of our Lord two thousand and five, and of the Independence of the United States of America the two hundred thirtieth and of the Statehood of Idaho the one hundred sixteenth.

DIRK KEMPTHORNE
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2005-15

AUTHORIZING THE TRANSFER OF FUNDS TO THE DISASTER EMERGENCY ACCOUNT

WHEREAS, in May, 2005, in Disaster Proclamation ID-01-2005, I, DIRK KEMPTHORNE, Governor of the State of Idaho declared a state of disaster emergency in Nez Perce County, Latah County, and the Nez Perce Reservation in accordance with title 46, section 1008 of the Idaho Code; and

WHEREAS, tremendous financial obligations and expenses have been incurred by various departments, agencies, Nez Perce County, Latah County, and the Nez Perce Tribe in responding to and assisting in efforts to deal with the extreme threat to public safety, health, property and the environment; and

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

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

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

NOW, THEREFORE, I, 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 order as follows:

1. The State Controller is directed to transfer money in the General Fund to the Disaster Emergency Account in such amount and at such times as directed by me or my designee, the Administrator of the Division of Financial Management. In no event shall more than three hundred thousand dollars (\$300,000) be transferred from the General Fund to the Disaster Emergency Account during the current fiscal year.
2. In no event may the revenues made available under this Executive Order exceed, during any fiscal year, one percent (1%) of the annual appropriation of the General Fund Account moneys for the fiscal year.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 17th day of August in the year of our Lord two thousand and five and of the Independence of the United States of America the two hundred thirtieth and of the Statehood of Idaho the one hundred sixteen.

DIRK KEMPTHORNE
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE

EXECUTIVE ORDER NO. 2005-16

CONTINUING THE GOVERNOR'S MOTOR CARRIER ADVISORY COMMITTEE REPEALING AND REPLACING EXECUTIVE ORDER NO. 2000-15

WHEREAS, the people of Idaho are dependent upon the motor carrier industry to deliver raw materials, manufactured goods, agricultural products and other necessities; and

WHEREAS, the motor carrier industry, which employs thousands of Idahoans, requires user participation in developing the rules and regulations to guide the industry;

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of this state do hereby order the continuation of the Governor's Motor Carrier Advisory Committee as follows:

1. The purpose of the committee shall be to review laws, rules, regulations, policies and procedures affecting motor carrier operations; advise state agencies of appropriate program revisions to improve efficiency and effectiveness; and to advise the Governor of the Committee's findings and recommendations. The Committee shall meet quarterly or as needed.
2. The Committee shall consist of seven members, including a chairman, appointed by the Governor. Each Transportation District within the state shall be represented by at least one appointee. The members shall represent the various elements of the trucking industry, including agriculture, logging/wood products, manufactured housing, truck/trailer manufacturing, tankers, interstate/international transport and concrete/aggregate transport as deemed appropriate by the Governor. No industry segment shall have more than one representative on the committee. Each committee member must be actively involved in the trucking industry either through ownership or employment.
3. Appointment of the members to the Committee shall be made by the Governor. The Committee shall assist the Governor in this task by recommending to him the names of at least two persons for appointment to each seat that becomes open on the Committee. Appointments shall be for staggered three-year terms expiring on July 1, three years after appointment.
4. Committee members shall receive no salary for their services. The Idaho Transportation Department shall, however, reimburse Committee members for expenses incurred in attending Committee meetings.
5. A representative from each of the following state agencies shall provide support to the Committee: The Idaho Transportation Department, the Idaho State Police, and the Tax Commission. The Idaho Transportation Department shall be the lead agency responsible for providing administrative support.
6. The Committee shall present all formal recommendations to the participating agencies and to the Governor. It shall also present to the Governor each December a report of the activities of the Committee during that year.

This Executive Order repeals and replaces Executive Order 2000-15.



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 17th day of August in the year of our Lord two thousand and five, and of the Independence of the United States of America the two hundred thirtieth and of the Statehood of Idaho the one hundred sixteenth.

DIRK KEMPTHORNE
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT STATE OF IDAHO BOISE

EXECUTIVE ORDER NO. 2005-17

EXPANDING MEMBERSHIP IN THE CRIMINAL JUSTICE COMMISSION FOR OVERSIGHT OF THE STATE'S CRIMINAL JUSTICE SYSTEM REPEALING AND REPLACING EXECUTIVE ORDER 2005-06

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

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

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

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

WHEREAS, the continued growth of the State's adult incarcerated offender population necessitates more in-depth analysis of the State's criminal justice system; and

WHEREAS, the manufacture, trafficking and abuse of methamphetamine is a critical issue that plagues communities across the state and is a drain on state and local resources; and

WHEREAS, we need to be increasingly vigilant in the adoption of a zero tolerance policy against emerging gang activity in Idaho;

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

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of the State of Idaho, do hereby establish the Idaho Criminal Justice Commission.

1. The Idaho Criminal Justice Commission ("Commission") shall consist of 23 members. The Commission members representing the judiciary will serve in a non-voting, advisory capacity. The Commission's membership shall be as follows:
 - a. A representative from the Governor's Office;
 - b. The Attorney General or his or her designee;
 - c. The Chair and Ranking Minority member of the Senate Judiciary and Rules Committee;
 - d. The Chair and Ranking Minority member of the House Judiciary, Rules and Administration Committee;
 - e. The Chief Justice of the Idaho State Supreme Court
 - f. The Director of the Idaho Department of Correction;
 - g. The Director of the Idaho State Police;
 - h. The Director of the Idaho Department of Juvenile Corrections;
 - i. The Executive Director of the Idaho Commission of Pardons and Parole;
 - j. The Director of the Idaho Department of Health and Welfare;
 - k. Four (4) representatives of the judiciary as designated by the Chief Justice, including a Supreme Court Justice, Court of Appeals Judge, District Judge and Magistrate Judge;
 - l. One (1) representative from the Idaho Prosecuting Attorneys Association;
 - m. One (1) representative from the Office of the Idaho State Appellate Public Defender;

- n. *One (1) representative from the Idaho Sheriffs' Association;*
 - o. *One (1) representative from the Idaho Chiefs of Police Association;*
 - p. *Three (3) citizens at large*
2. *The purpose of the Criminal Justice Commission shall be to provide policy- level direction and to promote efficient and effective use of resources for matters related to the State's criminal justice system. To that end it shall:*
- a. *Identify critical problems within the criminal justice system and recommend strategies to solve these problems;*
 - i. *Areas to be addressed include, but are not limited to:*
 - 1. *Continued growth in the adult incarcerated offender population;*
 - 2. *The manufacturing, trafficking and abuse of methamphetamine;*
 - 3. *Gang violence;*
 - b. *Advise and develop recommendations for the Governor and the Legislature, when appropriate, on public policy and strategies to improve the State's criminal justice system;*
 - c. *Review and evaluate criminal justice policies and proposed legislation to determine impact on the State's adult and juvenile justice systems;*
 - d. *Promote communication among criminal justice professionals and the respective branches of state government to improve professionalism, create partnerships, and to improve cooperation and coordination at all levels of the criminal justice system.*
 - e. *Research best practices of other states;*
 - f. *Analyze the long-range needs of the criminal justice system, including an assessment of the cost-effectiveness of the use of state and local funds in the criminal justice system;*
 - g. *Partner with Idaho's colleges and universities to conduct research, planning and analysis activities, including, but not limited to, studies that analyze a variety of crime trends and criminal justice issues.*
3. *The Criminal Justice Commission members shall be appointed and serve at the pleasure of the Governor.*
4. *The Governor may, at any time, increase the number of non-voting members of the Commission.*
5. *The Commission members shall serve a term of 4 years, with the only exception being the inaugural membership being appointed to serve staggering two (2), three (3) and four (4) year terms.*
6. *The Chair of the Commission shall be appointed annually by the Governor. A Vice-Chair shall be selected annually by the members of the Commission. The term of office for the Chair and Vice-Chair shall be one year. The Chair and Vice-Chair may succeed themselves if approved by the Governor.*
7. *The Criminal Justice Commission shall receive administrative staff support from the state agencies represented on the Commission.*
8. *The Criminal Justice Commission will meet no less than four times annually.*
9. *The Criminal Justice Commission may appoint sub-committees consistent with the needs of the Commission to pertinent issues that merit more in-depth consideration.*
10. *Commission members will serve without compensation or reimbursement for expenses, including related travel and per diem to attend Commission meetings.*

This Executive Order repeals and replaces Executive Order 2005-06. This Executive Order shall cease to be effective four years after its entry into force.



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 17th day of August in the year of our Lord two thousand and five, and of the Independence of the United States of America the two hundred thirtieth and of the Statehood of Idaho the one hundred sixteen.

DIRK KEMPTHORNE
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2005-18

AUTHORIZING "HALF-GALLON PRICING" AT ANALOG GASOLINE PUMPS IN IDAHO

WHEREAS, gasoline prices in the state of Idaho have been impacted by Hurricane Katrina, and as a result gasoline prices are on the rise; and

WHEREAS, there is a requirement in Idaho that a gasoline computing device shall be able to display on the face of the dispenser the unit price at which the device is set to compute; and

WHEREAS, In the face of the hurricane, and to be consistent with other states dealing with older analog gas pumps that are unable to display a unit price greater than \$2.99 on the face of the dispenser, Idaho will make an exception to the requirement that: a device shall be able to display on the face of the dispenser the unit price at which the device is set to compute;

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by virtue of the authority vested in me by the Constitution and laws of this state, do hereby order that:

There shall be an exception allowing analog pumps that have the maximum price capacity of \$2.999 to sell by "half-gallon pricing" provided the criteria established by the Idaho State Department of Agriculture, Bureau of Weights and Measures for selling by "half-gallon pricing" is met.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 2nd day of September in the year of our Lord two thousand and five, and of the Independence of the United States of America the two hundred thirtieth and of the Statehood of Idaho the one hundred sixteenth.

**DIRK KEMPTHORNE
GOVERNOR**

**BEN YSURSA
SECRETARY OF STATE**

THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2005-19

**CONCURRING WITH THE ACTION OF THE U.S. ENVIRONMENTAL PROTECTION AGENCY,
TEMPORARILY WAIVING SUMMER GASOLINE AND DIESEL SULFUR FUEL REQUIREMENTS**

WHEREAS, the U.S. Environmental Protection Agency, in an attempt to increase gasoline supply and minimize fuel shortages due to the effects of Hurricane Katrina, is waiving the requirement that summer gasoline be sold in all 50 states through September 15; and

WHEREAS, the U.S. Environmental Protection Agency is allowing regulated parties to supply motor vehicle diesel fuel having a sulfur content greater than 500 ppm with visible evidence of red dye. The EPA's diesel waiver will continue until Sept. 15, 2005, or until supplies are depleted; and

WHEREAS, the State of Idaho supports the U.S. Environmental Protection Agency for authorizing the emergency waiver, the state of Idaho agrees with the EPA action; and

NOW THEREFORE, I DIRK KEMPTHORNE, Governor of the state of Idaho, by virtue of the authority vested in me by the Constitution and laws of this State, do hereby order that:

The state of Idaho concurs with the waiver as set forth by the U.S. Environmental Protection Agency to temporarily waive the requirement that summer gasoline be sold in Idaho, and to allow regulated parties to supply motor vehicle diesel fuel having a sulfur content greater than 500 ppm with visible evidence of red dye. The diesel waiver will continue until Sept. 15, 2005, or until supplies are depleted.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 2nd day of September in the year of our Lord two thousand and five, and of the Independence of the United States of America the two hundred thirtieth and of the Statehood of Idaho the one hundred sixteenth.

*DIRK KEMPTHORNE
GOVERNOR*

*BEN YSURSA
SECRETARY OF STATE*

THE OFFICE OF THE GOVERNOR

EXECUTIVE DEPARTMENT STATE OF IDAHO BOISE

EXECUTIVE ORDER NO. 2005-20

ESTABLISHING THE GOVERNOR'S TASK FORCE ON EVACUEE RESETTLEMENT

WHEREAS, there has been a threat to life, property and the environment of fellow Americans in Louisiana and Mississippi due to a natural disaster-Hurricane Katrina;

WHEREAS, there is extreme peril to public safety, health, and the environment beyond the control and capability of law enforcement, emergency, and health services in Louisiana and Mississippi;

WHEREAS, the State of Idaho accepts and welcomes the opportunity to take part in efforts to assist our fellow Americans who have been displaced due to Hurricane Katrina-a natural disaster;

WHEREAS, the State of Idaho understands that the evacuee experience is a major upheaval in the lives of those affected by this catastrophe; and

WHEREAS, the State of Idaho recognizes the opportunity to provide relief and hope to those evacuees who have been displaced by this disaster;

NOW, THEREFORE, I, DIRK KEMPTHORNE, Governor of the State of Idaho, by the authority vested in me by the Constitution and laws of the State of Idaho do hereby order the immediate development of the Governor's Task Force on Evacuee Resettlement.

The purpose of the Task Force shall be to assess the needs of evacuees, evaluate and prepare for their possible integration into the State of Idaho.

The Task Force's responsibilities are to address:

- 1. The possible relocation of evacuees within Idaho as determined. This shall be a planned endeavor that seeks to identify favorable placement in communities. Such placement should provide the necessary conditions to meet the primary goal of evacuee resettlement, which is self-sufficiency.*
- 2. To ensure the most suitable community placement, the Task Force shall be authorized to coordinate with the following entities and agencies: voluntary agencies ("VOLAGs"); local officials; state agencies; faith based organizations; and charities.*
- 3. The purpose of the above consultations shall be to determine the availability of food, clothing, shelter, education, employment opportunities, health care, and other needed services and the proximity of supportive institutions and organizations.*
- 4. Upon placement of evacuees in the community, the Task Force shall coordinate the following transitional services for evacuees, in order to assist them during the period they are being prepared for and are actively seeking employment: medical and other assistance, health assessment and follow-up services, emergency services, information and referral, case management, and employment preparation.*
- 5. The above transitional services shall be provided with a view to maximizing their accessibility and cultural appropriateness. The characteristics and concerns of the evacuee communities should be taken into account in the shaping of specific service delivery procedures and mechanisms and the determination of their cultural sensitivity.*

The members of the Task Force shall be appointed by and serve at the pleasure of the Governor. The Governor shall appoint the chair of the Task Force.

The Governor's office shall be the lead agency and the Department of Commerce and Labor shall provide support for the Task Force and shall maintain office staff to carry out the activities directed by the Task Force, as funding is available.



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 3rd day of September in the year of our Lord two thousand and five, and of the Independence of the United States of America the two hundred thirtieth and of the Statehood of Idaho the one hundred sixteenth.

DIRK KEMPTHORNE
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

IDAPA 01 - IDAHO BOARD OF ACCOUNTANCY

01.01.01 - IDAHO ACCOUNTANCY RULES

DOCKET NO. 01-0101-0501

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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:

Update the standards being incorporated by reference. Idaho Code requires agencies to cite the specific year when we incorporate standards by reference. We incorporate CPE, AICPA and PCAOB standards. The CPE Standards are still accurate, but the AICPA and PCAOB Standards need to be updated from 2005 to 2006.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were discussed in public meetings and newsletters, without any objections from the public.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Barbara R. Porter, Executive Director, at 208-334-2490.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 12th Day of August, 2005.

Barbara R. Porter
Executive Director
Idaho State Board of Accountancy
1109 Main Street
Owyhee Plaza Suite 470
PO Box 83720
Boise, Idaho 83720-0002
Phone: 208-334-2490
Fax: 208-334-2615
E-mail: bporter@boa.state.id.us

THE FOLLOWING IS THE TEXT OF DOCKET NO. 01-0101-0501

004. INCORPORATION BY REFERENCE (RULE 004).

The following documents are hereby incorporated by reference into IDAPA 01.01.01 and can be obtained at the Board office. Licensees are required to comply with the following standards when applicable. (3-1-05)

01. AICPA Standards. 2005~~6~~ AICPA Professional Standards, except as superceded by Section 54-206(8), Idaho Code. (~~4-6-05~~)()

02. CPE Standards. 2002 Statements on Standards for Continuing Professional Education Programs jointly approved by NASBA and AICPA. (4-2-03)

03. PCAOB Standards. 2005~~6~~ Standards issued by the Public Company Accountability Oversight Board. (~~4-6-05~~)()

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.03.03 - RULES GOVERNING PESTICIDE AND CHEMIGATION USE AND APPLICATION

DOCKET NO. 02-0303-0501 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 22-3421, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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 pesticide Container Recycling Program is a voluntary program that involves the collection of empty pesticide containers throughout the state for recycling. The number of pesticide containers collected in this program continues to increase every year and is currently near maximum capacity. This fee increase will allow ISDA to meet the increasing demand for this program. In addition, the USEPA is currently considering a rule revision to make recycling pesticide containers mandatory. This rule change will increase the amount of the annual fee for an annual pesticide registration from \$145 to \$160 per product per calendar year and will allow the Container Recycling Program to continue to collect empty pesticide containers without a major disruption in service to the industry.

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

The annual fee for the registration of pesticides in Idaho will be increased from \$145 to \$160 per product per year. Approximately 0.1% of pesticide registrants are located in Idaho (19 of 1,237).

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

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact George Robinson, Bureau Chief at (208) 332-8593.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 22nd Day of August, 2005

Patrick A. Takasugi
Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
Boise, ID 83712
Phone (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0303-0501**200. FEES.**

01. Pesticide Registration. On and after July 1, 200~~7~~⁶, one hundred ~~forty-five~~ sixty dollars (\$1~~45~~⁶⁰) per product. (~~3-30-01~~)()

02. Professional Applicator's License. On and after July 1, 1996, one hundred twenty dollars (\$120) per licensing period of fourteen (14) months or more, sixty dollars (\$60) per licensing period of thirteen (13) months or less. (3-20-97)

03. Pesticide Dealer's License. Beginning August 31, 2000, one hundred dollars (\$100) per licensing period of fourteen (14) months or more, fifty dollars (\$50) per licensing period of thirteen (13) months or less. Prior to August 31, 2000, fifty dollars (\$50) for an annual license or partial year if the license is issued after August 31, 1999. (4-5-00)

04. Private Applicator's License. A Restricted Use Category, ten dollars (\$10); a Chemigation Category, twenty dollars (\$20); or thirty dollars (\$30) for both categories. (3-20-97)

05. Examination Fee per Examination Category. Ten dollars (\$10). (3-20-97)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.20 - RULES GOVERNING BRUCELLOSIS

DOCKET NO. 02-0420-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 25-207, and 25-601, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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 updates the documents incorporated by reference to reflect the most current editions, clarifies the language describing calfhood vaccination, and updates the protocol for the adult vaccination of imported cattle to better allow for disease prevention.

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

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

NEGOTIATED RULEMAKING: This rule was developed with input from the livestock industry in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Chatburn, Deputy Administrator at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

Patrick A. Takasugi
Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500
Fax (208) 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0420-0501

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference and copies of these documents may be obtained from the Idaho State Department of Agriculture Central Office and the State Law Library: (5-3-03)

01. The ~~February 1, 1998~~ October 1, 2003 Edition of the Brucellosis Eradication Uniform Methods and Rules. (5-3-03)(____)

02. The September 30, ~~1998~~ 2003 Edition of the Brucellosis in Cervidae: Uniform Methods and Rules. (5-3-03)(____)

03. The April 1998 Edition of the Swine Brucellosis Control/Eradication: State-Federal-Industry Uniform Methods and Rules. (5-3-03)

04. The Code of Federal Regulations Title 9, Parts 71, 78, and 161, January 1, 2002~~5~~. (5-3-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

101. OFFICIAL VACCINATION.

Female cattle and domestic bison may be officially vaccinated through one of the following methods: (5-3-03)

01. **Calfhood Vaccination.** Female cattle and domestic bison native to the state of Idaho or imported into the state of Idaho shall be calfhood vaccinated while not less than one hundred twenty (120) days of age or more than three-hundred sixty-five (365) days of age or be consigned to an approved feedlot, for finish feeding for slaughter only, prior to becoming three hundred sixty-five (365) days of age. (5-3-03)

02. **Adult Vaccination.** Idaho origin ~~F~~female cattle or domestic bison may be vaccinated as adults with the approval of the Administrator. (5-3-03)(____)

a. Female ~~cattle or domestic bison that are part of a herd, which is at risk of becoming infected with brucellosis, may be vaccinated as adults. Such female~~ cattle or bison which are three hundred sixty-five (365) days of age or older shall be negative to an official brucellosis test within ten (10) days prior to being vaccinated. Vaccinal dose to be administered shall be determined by the administrator, in consultation with the designated brucellosis epidemiologist and the USDA brucellosis program manager. (5-3-03)(____)

b. ~~Female cattle or domestic bison which are over three hundred sixty-five (365) days of age and which are not officially vaccinated may be imported to an approved feedlot or to another location approved by the administrator, on a permit issued by the administrator, to be vaccinated upon arrival in Idaho. Such cattle or domestic bison shall be negative to an official brucellosis test within ten (10) days prior to being vaccinated. Vaccinal dose to be administered shall be determined by the administrator, in consultation with the designated brucellosis epidemiologist and the USDA brucellosis program manager. The Administrator may make exceptions to the provisions of Section 101 of this rule on a case-by-case basis.~~ (5-3-03)(____)

03. **Approval for Adult Vaccination.** ~~Owners, a~~Accredited veterinarians representing owners, or accredited veterinarians authorized to perform services for specifically approved livestock markets who desire to have female cattle or domestic bison, which are over three hundred sixty-five (365) days of age vaccinated shall request approval from the Administrator. The Administrator may grant or deny the request to adult vaccinate the cattle based upon origin, history, age, pregnancy status and the potential of the cattle or domestic bison to spread other diseases of concern, such as tuberculosis or trichomoniasis. Approval or denial of the request to adult vaccinate the cattle shall be made within seven (7) working days of the date of the request. (5-3-03)(____)

04. **Adult Vaccinations Required.** The Administrator may require animals at risk of becoming infected with brucellosis to be adult vaccinated. The animals shall be vaccinated at intervals and with the vaccinal

dose determined by the designated brucellosis epidemiologist. Such vaccination shall be accomplished whether or not the animals have been previously vaccinated. (5-3-03)

102. SALE OF FEMALE CATTLE OR DOMESTIC BISON THAT ARE NOT OFFICIALLY VACCINATED.

Female cattle and domestic bison that are not officially vaccinated, and are sold or otherwise transferred to another person by private treaty or through a specifically approved livestock market shall meet the following requirements: (5-3-03)

01. Less Than Three Hundred Sixty Five Days of Age. Female cattle and domestic bison that are more than one hundred twenty (120) days of age and not more than three hundred sixty five (365) days of age at the time of sale or transfer to another person, may be sold to approved feedlots, directly to slaughter, to out of state destinations, or be consigned for sale at specifically approved livestock markets without being officially vaccinated. Such female cattle or domestic bison sold for breeding, grazing, or dairy purposes within Idaho shall be officially vaccinated prior to or immediately upon consummation of the sale. (5-3-03)

02. Over Three Hundred Sixty Five Days of Age. Female cattle and domestic bison over three hundred sixty five (365) days of age at the time of sale or transfer to another person may be consigned directly to an approved feedlot, out of state destination, slaughter, or specifically approved livestock market for sale to an approved feedlot, out of state destination, or slaughter. ~~Such cattle or domestic bison may be consigned to an approved feedlot or other destination approved by the Administrator where the cattle or domestic bison shall be held in isolation until they have been tested negative to an official brucellosis test and officially vaccinated for brucellosis as provided in Section 101. Officially vaccinated cattle and domestic bison may be utilized for breeding, dairy, or grazing purposes.~~ (5-3-03)(____)

103. OFFICIAL IDENTIFICATION OF CATTLE AND DOMESTIC BISON.

01. Official Calfhood Vaccinates. Official calfhood vaccinates shall be permanently identified as vaccinates by tattoo and official vaccination eartag. (5-3-03)

a. Vaccination tattoos shall be applied to the right ear. The tattoo shall start with the letter "R", followed by the U.S. registered "shield and V", followed by a number corresponding to the last digit of the year in which the vaccination was done. (5-3-03)

b. Official vaccination (orange) eartags shall be applied to the right ear. (5-3-03)

c. Individual animal registration tattoos or individual animal registration brands may be used for identifying animals in place of official eartags if the cattle or domestic bison are registered by a breed association. (5-3-03)

02. Official Adult Vaccinates. Official adult vaccinates shall be permanently identified as vaccinates by tattoo and by official identification eartag. Animals that have previously been officially identified as vaccinates shall have the prior official identification recorded on a vaccination certificate or test chart in lieu of the identification provided for in this subsection. (5-3-03)

a. ~~Vaccination tattoos shall be applied to the right ear. The tattoo shall start with the letter "M", followed by the U.S. registered "shield and V", followed by a number corresponding to the last digit of the year in which the vaccination was done.~~ Adult vaccinated cattle or bison must be identified with a vaccination tattoo applied to the right ear that begins with the letter "R", followed by "AV", followed by the last digit of the year in which the vaccination is performed. (5-3-03)(____)

b. Official identification (silver) eartags shall be applied to the right ear. (5-3-03)

c. Individual animal registration tattoos or individual animal registration brands may be used for identifying animals in place of official eartags if the cattle or domestic bison are registered by a breed association. (5-3-03)

03. Reactor Animals. All animals designated as reactors by the designated brucellosis epidemiologist shall be marked by branding the letter "B" on the left jaw or tail head not less than three (3) inches high and tagged with an official metal reactor tag in the left ear, bearing a serial number and the inscription U.S., brucellosis reactor or a similar reactor tag. Identification of reactors shall be accomplished within fifteen (15) days of the test date. The time may be extended for reasons mutually acceptable to the cooperating state and federal officials in charge. (5-3-03)

04. Suspect Animals. All suspect animals shall be marked by branding the letter "S" on the left jaw or tail head not less than two (2) nor more than three (3) inches high. Suspect animals returning from a livestock market to the herd of origin under quarantine, pending further testing, are exempt from this requirement. (5-3-03)

05. Spayed Heifers. Spayed heifers may be officially identified by applying a hot iron brand high on the tailhead on either or both sides using an open spade symbol as used in playing cards, of not less than three (3) inches high, or as provided by the administrator. (5-3-03)

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.21 - RULES GOVERNING THE IMPORTATION OF ANIMALS
DOCKET NO. 02-0421-0501
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 25-207, 25-305, and 25-601, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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 updates the documents incorporated by reference to reflect the most current editions, clarifies the importation requirements for cattle that are not vaccinated for brucellosis, and adds additional testing requirements for dairy cattle entering Idaho.

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

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

NEGOTIATED RULEMAKING: This rule was developed with input from the livestock industry in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Chatburn, Deputy Administrator at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

Patrick A. Takasugi
Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500
Fax (208) 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0421-0501

004. INCORPORATION BY REFERENCE.

Copies of these documents may be obtained from the Idaho State Department of Agriculture Central Office. IDAPA 02.04.20~~1~~ incorporates by reference: (5-3-03)(____)

01. The ~~February 1, 1998~~ October 1, 2003 Edition of the Brucellosis Eradication Uniform Methods and Rules. (5-3-03)(____)

02. The September 30, ~~1998~~ 2003 Edition of the Brucellosis in Cervidae: Uniform Methods and Rules. (5-3-03)(____)

03. The April 1998 Edition of the Swine Brucellosis Control/Eradication: State-Federal-Industry Uniform Methods and Rules. (5-3-03)

04. The Code of Federal Regulations Title 9, Parts 71, 75, 77, 78, 85, 145, 147, and 161, January 1, 200~~2~~5. (5-3-03)(____)

05. The January ~~22, 1999~~ 1, 2005 Edition of the Bovine Tuberculosis Eradication Uniform Methods and Rules. (5-3-03)(____)

06. The ~~January 1, 1993~~ November 1, 2003 Edition of the Pseudorabies Eradication, State-Federal-Industry Program Standards. (5-3-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

201. WHEN PERMITS ARE REQUIRED FOR CATTLE.

01. Dairy. For all intact male and female cattle of dairy breeds not consigned directly to an approved slaughter establishment, or to a specifically approved livestock market. Dairy cattle three hundred sixty-five (365) days of age or older shall be officially identified as provided in IDAPA 02.04.20. The Administrator may require the identification of dairy cattle less than three hundred sixty-five (365) days of age. (5-3-03)

02. Beef Bulls. All bulls of beef breeds not consigned directly to an approved slaughter establishment, or to a specifically approved livestock market, except intact male calves accompanying their dams. (5-3-03)

03. Female Beef Cattle. All intact female cattle of beef breeds not consigned directly to an approved slaughter establishment or to a specifically approved livestock market that are: (5-3-03)

a. From states or areas that are not Brucellosis Class Free; or (5-3-03)

b. Not officially vaccinated pursuant to IDAPA 02.04.20, "Rules Governing Brucellosis," except calves over one hundred twenty (120) days of age accompanying their dam; or (5-3-03)(____)

c. Under one hundred twenty (120) days of age, except calves accompanying their dam. (5-3-03)

04. Restricted Areas. All cattle from areas or states on which Idaho or USDA has imposed restrictions. (5-3-03)

05. Other. Cattle of any classification that do not meet other entry requirements. (5-3-03)

202. -- 209. (RESERVED).

210. BRUCELLOSIS VACCINATION REQUIREMENTS.

All intact female cattle entering Idaho shall have been officially vaccinated for brucellosis except: (5-3-03)

- 01. Cattle Consigned to Slaughter.** Female cattle consigned directly to an approved slaughter establishment; or (5-3-03)
- 02. Cattle Consigned to Specifically Approved Livestock Markets.** Female cattle consigned directly to a specifically approved livestock market; or (5-3-03)
- 03. Approved Feedlot.** Female cattle consigned directly to an Idaho approved feedlot, by permit; or (5-3-03)
- 04. Calves.** Female calves less than one hundred twenty (120) days of age by permit; or (5-3-03)
- 05. Vaccination on Arrival.** Non-vaccinated females ~~more than~~ between one hundred twenty (120) and three hundred sixty-five (365) days of age may, by permit, be consigned to a qualified destination approved by the Administrator to be officially vaccinated on arrival pursuant to IDAPA 02.04.20, "Rules Governing Brucellosis"; or ~~(5-3-03)~~()
- 06. Show Cattle.** Female cattle may enter Idaho for the purpose of participating in shows or exhibitions, by permit. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

240. TUBERCULOSIS TEST REQUIREMENTS.

Cattle and domestic bison may enter the state of Idaho provided: (5-3-03)

01. Tuberculosis Accredited Free State or Zone. Cattle and bison that originate from a bovine tuberculosis accredited free state or zone, as defined by USDA in Title 9, Part 77, CFR, in which there are no animals or herds infected with or exposed to tuberculosis may ~~enter the state without a tuberculosis test.~~ be imported upon meeting the following requirements: ~~(5-3-03)~~()

a. Cattle of beef breeds may enter the state without a tuberculosis test. ()

b. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, shall be officially identified and tested negative for tuberculosis, within sixty (60) days prior to entry into the state of Idaho. ()

c. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, may enter Idaho for the purpose of participating in shows or exhibitions, by permit, without a tuberculosis test. ()

02. Tuberculosis Accredited Free Herd. Cattle and bison that originate in an accredited tuberculosis free herd in either an accredited free state or zone, a modified accredited advanced state or zone, or a modified accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, and for which both an accredited herd number and date of last tuberculosis test are shown on the certificate of veterinary inspection, may enter the state without a tuberculosis test. (5-3-03)

03. Tuberculosis Modified Accredited Advanced State or Zone. Cattle and bison that originate from a modified accredited advanced state or zone, as defined by USDA in Title 9, Part 77, CFR, and are not known to be infected with or exposed to tuberculosis, may be imported upon meeting the following requirements: (5-3-03)

a. Steers, spayed heifers, and intact heifers of beef breeds that are less than fifteen (15) months of age, which are consigned for grazing, or steers, spayed heifers, and intact heifers of beef breeds that are consigned directly to a feedlot approved for finish feeding of cattle or bison relative to tuberculosis, may enter without individual identification or testing for tuberculosis; and (3-20-04)

b. All other cattle and bison, except those moving on grazing permits issued by the Administrator under the provisions of Section 220 and those consigned for immediate slaughter at an approved slaughter establishment, shall be tested for tuberculosis with negative results within sixty (60) days prior to entry into Idaho.

(3-20-04)

04. Tuberculosis Modified Accredited State or Zone. Cattle and bison that originate in a modified accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, and which are not known to be infected with or exposed to tuberculosis, may enter Idaho under one (1) of the following conditions: (5-3-03)

a. The cattle and bison are steers, spayed heifers or intact heifers which are consigned directly to a feedlot approved for finish feeding of cattle and bison relative to tuberculosis and that have been individually identified and classified negative on an official tuberculosis test within sixty (60) days prior to entry into Idaho; or (5-3-03)

b. The cattle and bison are consigned for immediate slaughter at an approved slaughter establishment; or (5-3-03)

c. The cattle and bison have been subjected to two (2) official tuberculosis tests, the results of which are negative, the first test shall be a whole herd test, the second test shall be at least sixty (60) days, and no more than six (6) months, after the whole herd test and shall be not more than sixty (60) days prior to entry into Idaho. (5-3-03)

05. Tuberculosis Accredited Preparatory State or Zone. Cattle and bison that originate in an accredited preparatory state or zone, as defined by USDA in Title 9, Part 77, CFR, and which are not known to be infected with or exposed to tuberculosis, may enter Idaho under one (1) of the following conditions: (5-3-03)

a. The cattle and bison are steers, spayed heifers or intact heifers which are consigned directly to a feedlot approved for finish feeding of cattle and bison relative to tuberculosis and that are individually identified and have been classified negative on two (2) official tuberculosis tests conducted at least sixty (60) days but not more than six (6) months apart with the second test being conducted not more than sixty (60) days prior to entry into Idaho; or (5-3-03)

b. The cattle and bison originate in a tuberculosis accredited free herd, are individually identified, and have been tested negative on an official tuberculosis test within sixty (60) days prior to entry into Idaho; or (5-3-03)

c. The cattle and bison are individually identified, are from a herd that has been subjected to a complete tuberculosis herd test with negative results within the past twelve (12) months and the animals being imported have been subjected to two (2) additional official tuberculosis tests with negative results, conducted not less than sixty (60) days apart with the second test being conducted not more than sixty (60) days prior to the date of importation. (5-3-03)

06. Tuberculosis Non-Accredited State or Zone. Cattle and bison that originate in a non-accredited state or zone, as defined by USDA in Title 9, Part 77, CFR, may not enter Idaho except by special permit issued by the administrator and under the conditions specified by the administrator at the time the permit is issued. (5-3-03)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.24 - RULES GOVERNING TUBERCULOSIS

DOCKET NO. 02-0424-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 25-207, and 25-305, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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 updates the documents incorporated by reference to reflect the most current editions, clarifies the identification requirements for tuberculosis reactors.

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

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

NEGOTIATED RULEMAKING: This rule was developed with input from the livestock industry in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Chatburn, Deputy Administrator at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

Patrick A. Takasugi
Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
(208) 332-8500
Fax (208) 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0424-0501

004. INCORPORATION BY REFERENCE.

- 01. Incorporated Documents.** The following documents are incorporated by reference. (3-20-04)
- a.** The January ~~22, 1999~~ 1, 2005 Edition of "Bovine Tuberculosis Eradication Uniform Methods and Rules". ~~(3-20-04)~~(____)
- b.** The Code of Federal Regulations, Title 9, Parts 71, 77, and 161, January 1, 200~~3~~5. ~~(3-20-04)~~(____)
- 02. Availability of Incorporated Documents.** Copies of these documents are available from the Idaho State Department of Agriculture Central Office. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

250. IDENTIFICATION OF REACTOR CATTLE AND BISON.

Reactor cattle and bison shall be identified in the following manner: (3-20-04)

01. "T" Branding and Tagging. Reactor cattle and bison shall be identified by branding the letter "T" on the left hip near the tailhead, not less than two (2) inches and not more than three (3) inches high, and by tagging with an approved metal eartag bearing a serial number and inscription "U.S. Reactor" or a similar State reactor tag suitably attached to the left ear of each animal. (3-20-04)

02. Shipping Without Branding. In lieu of branding, the reactor(s) may be shipped to slaughter in an officially sealed vehicle or accompanied to slaughter by a state or federal animal health official provided such reactor(s) ~~are tattooed with the letters "TB" in the left ear and the same letters are~~ have the letters "TB" sprayed on the left ear ~~hip~~ with yellow paint. ~~(3-20-04)~~(____)

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.27 - RULES GOVERNING DELETERIOUS EXOTIC ANIMALS
DOCKET NO. 02-0427-0501
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2005.

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 25-3903, Idaho Code.

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

October 13, 2005, 6 p.m.
Nampa Civic Auditorium
311 3rd Street South
Nampa, ID 83651

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: In order to better regulate the deleterious exotic animals in Idaho, the department has proposed this rule which defines hybrids of deleterious exotic animals as deleterious exotic animals, adds provisions for permit revocation, record keeping, annual inventories, reporting, and adds additional species to the list of deleterious exotic animals.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To protect the public health, safety, or welfare.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

NEGOTIATED RULEMAKING: This rule was developed in coordination with the Idaho Department of Fish and Game.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact John Chatburn, Deputy Administrator at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701-0790
(208) 332-8500, Fax (208) 334-4062

THE FOLLOWING IS THE TEXT OF DOCKET NO. 02-0427-0501

004. INCORPORATION BY REFERENCE.

01. Incorporated Documents. This chapter incorporates the following documents by reference: Code of Federal Regulations, Title 9, Parts 1, 2, 3, 4, and 161, CFR, January 1, 2003~~5~~. ~~(3-20-04)~~(9-1-05)T

02. Availability of Documents. Copies of these documents may be obtained from the Idaho State Department of Agriculture Central Office. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter. (3-20-04)

01. Accredited Veterinarian. A veterinarian approved by the Administrator and the USDA/APHIS/VS, in accordance with provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. (3-20-04)

02. Administrator. The administrator of the Division of Animal Industries, Idaho State Department of Agriculture, or his designee. (3-20-04)

03. Animal. Any member of the animal kingdom, except man. (3-20-04)

04. Deleterious Exotic Animal. Any live animal, or hybrid thereof, that is not native to the state of Idaho and is determined by the Administrator to be dangerous to the environment, livestock, agriculture, or wildlife of the state. ~~(3-20-04)~~(9-1-05)T

05. Department. The Idaho State Department of Agriculture. (3-20-04)

06. Director. The director of the Idaho State Department of Agriculture or his designee. (3-20-04)

07. Division of Animal Industries. Idaho State Department of Agriculture, Division of Animal Industries. (3-20-04)

08. Federal Animal Health Official. An employee of the United States Department of Agriculture, Animal Plant Health Inspection Service, Veterinary Services who is authorized to perform animal health activities. (3-20-04)

09. Livestock. Cattle, domestic bison, swine, horses, mules, asses, domestic cervidae, sheep, goats, camelids, and ratites. (3-20-04)

10. Operator. The person who has authority to manage or direct a premises or other area where animals are kept. (3-20-04)

11. Owner. The person who owns or has financial control of premises or other areas where animals are kept. (3-20-04)

12. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (3-20-04)

13. Premises. The ground, area, buildings, corrals, enclosures, pens, cages, ponds, raceways, tanks, and equipment utilized to keep, hold, or maintain animals. (3-20-04)

14. State Animal Health Official. The Administrator, or his designee, responsible for disease control and eradication activities. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

151. REVOCATION OF PERMITS.

Permits issued pursuant to this chapter may be revoked at any time if the Administrator finds violations of any of the provisions of this chapter. (9-1-05)T

~~152.~~ -- 199. (RESERVED).

200. CONFINEMENT OF DELETERIOUS EXOTIC ANIMALS.

All deleterious exotic animals shall be confined in appropriate facilities, as determined by the Administrator. These facilities shall be constructed and maintained to: (3-20-04)

01. Prevent Escape. Prevent the escape of deleterious exotic animals. (3-20-04)

02. Prevent Ingress of Wildlife. Prevent the ingress of free ranging wildlife that could be negatively impacted by the confined deleterious exotic animals. (3-20-04)

03. Assure Animal Care. Assure the appropriate level of animal care, including maintaining the facilities in a sanitary condition. (~~3-20-04~~)(9-1-05)T

04. Escapes. The escape of any deleterious exotic animal shall be reported to the Administrator within twenty-four (24) hours of the discovery of the escape. (9-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

201. -- 299. (RESERVED).

300. DISPOSITION OF DELETERIOUS EXOTIC ANIMALS WITHIN IDAHO.

No person shall sell, barter, trade, change ownership, or release into the wild within Idaho, any deleterious exotic animal except: (3-20-04)

01. To Permitted Facilities. Deleterious exotic animals may be sold, bartered, traded, or given to a zoo, educational institution, USDA licensed facility, or research facility that has a possession permit pursuant to Section 111. (3-20-04)

02. Between Permitted Facilities. Zoos, educational institutions, USDA licensed facilities, or research facilities that have a possession permit, pursuant to Section 111 of this rule, may sell, trade, barter, or exchange deleterious exotic animals with other zoos, educational institutions, USDA licensed facilities, or research facilities that have possession permits pursuant to Section 111. (3-20-04)

03. Records. All persons who sell, barter, trade, change ownership or possession of deleterious exotic animals shall keep complete and accurate records of the disposition of any deleterious exotic animals, including the new contact information for persons in possession of the deleterious exotic animal and date of disposition. Such records shall be maintained for a minimum of three (3) years and shall be presented to the Administrator upon request. (9-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

302. ANNUAL INVENTORY.

Any person that possesses deleterious exotic animals shall submit a complete and accurate inventory of such animals to the Administrator on or before the first day of July each year. Each inventory shall clearly show the disposition of all deleterious exotic animals including, but not limited to: (9-1-05)T

01. Date and Cause of Death. The date and cause of death of any deleterious exotic animals. (9-1-05)T

02. New Owner Information. The name and address of any person to whom deleterious exotic animals were transferred. (9-1-05)T

~~3023.~~ -- 309. (RESERVED).

310. DEAD ANIMALS.

All deleterious exotic animals that die, or are euthanized, shall be disposed of in accordance with IDAPA 02.04.17 "Rules Governing Dead Animal Movement and Disposal" and the death shall be reported to the Administrator within five (5) business days of the discovery of the death. (~~3-20-04~~)(9-1-05)T

311. -- 399. (RESERVED).

400. DELETERIOUS EXOTIC ANIMALS - INVERTEBRATES.

01. Zebra Mussel (*Dreissenia polymorpha*). (3-20-04)

02. New Zealand Mud Snail (*Potamopyrgus antipodarum*). (3-20-04)

03. Red Claw Crayfish (*Cherax quadricarinatus*). (~~3-20-04~~)(9-1-05)T

04. ~~Yamabe~~ Yabby Crayfish (*Cherax albidus/C. destructor*). (~~3-20-04~~)(9-1-05)T

05. Marone Crayfish (*Cherax tenuimanus*). (~~3-20-04~~)(9-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

800. DELETERIOUS EXOTIC ANIMALS - MAMMALS - CERVIDAE.

01. Red Deer (*Cervus elaphus elaphus*). (3-20-04)

02. Sika Deer (*Cervus nippon*). (3-20-04)

~~03. European or Russian Wild Boar (*Sus scrofa*).~~ (~~3-20-04~~)

~~04. Brush-Tailed Possum (*Trichsurus vulpecula*).~~ (~~3-20-04~~)

~~05. European Hedgehog (*Erinaceus*).~~ (~~3-20-04~~)

~~06. Nutria (*Myocastor coypus*).~~ (~~3-20-04~~)

~~07. Prairie Dogs (*Cynomys*).~~ (~~3-20-04~~)

08.	African Tree Squirrels (<i>Heliosciurus</i>).	(3-20-04)
09.	African Rope Squirrels (<i>Funisciurus</i>).	(3-20-04)
10.	African Dormicees (<i>Graphiurus</i>).	(3-20-04)
11.	Gambian Giant Pouched Rats (<i>Cricetomys</i>).	(3-20-04)
12.	Brush-tailed Porcupines (<i>Atherurus</i>).	(3-20-04)
13.	African Striped Mice (<i>Hybomys</i>).	(3-20-04)
14.	Peccary (<i>Tayassuidae</i>).	(3-20-04)
15.	Capibara (<i>Hydrochoerus hydrochaeris</i>).	(3-20-04)
16.	Barbary Sheep (<i>Ammotragus lervia</i>).	(3-20-04)
17.	Lion (<i>Panthera leo</i>).	(3-20-04)
18.	Tiger (<i>Panthera tigris</i>). All tigers.	(3-20-04)
19.	Leopard (<i>Panthera pardus</i>). All leopards.	(3-20-04)
21.	Jaguar (<i>Panthera onca</i>).	(3-20-04)
22.	Cheetah (<i>Acinonyx jubatus</i>).	(3-20-04)
23.	Serval (<i>Felis cerval</i>).	(3-20-04)
24.	Caracal (<i>Felis caracal</i>).	(3-20-04)
25.	Ocelot.	(3-20-04)
26.	Margay.	(3-20-04)
27.	Jeoffroy's Cat.	(3-20-04)
28.	South American Rodents. All South American rodents except guinea pigs.	(3-20-04)
29.	Mouflon Sheep (<i>Ovis musimon</i>).	(3-20-04)
801.	<u>DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- OVIDAE.</u>	
01.	<u>Barbary Sheep (<i>Ammotragus lervia</i>).</u>	(9-1-05)T
02.	<u>Mouflon Sheep (<i>Ovis musimon</i>).</u>	(9-1-05)T
802.	<u>DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- TAYASSUIDAE</u>	
01.	<u>Peccary (<i>Dicotyles tajacu</i>).</u>	(9-1-05)T
803.	<u>DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- SUIDAE.</u>	
01.	<u>European or Russian Wild Boar (<i>Sus scrofa</i>).</u>	(9-1-05)T

- 804. DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- MARSUPIALS.**
- 01. Brush Tailed Possum (*Trichsurus vulpecula*).** (9-1-05)T
- 805. DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- INSECTIVORES.**
- 01. European Hedgehog (*Erinaceus europeaus*).** (9-1-05)T
- 806. DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- RODENTIA.**
- 01. South American Rodents.** All South American rodents except guinea pigs and chinchillas. (9-1-05)T
- a. Nutria (*Myocastor coypus*).** (9-1-05)T
- b. Capybara (*Hydrochoerus hydrochaeris*).** (9-1-05)T
- 02. Prairie Dogs (*Cynomys*).** (9-1-05)T
- 03. African Tree Squirrels (*Heliosciurus*).** (9-1-05)T
- 04. African Rope Squirrels (*Funisciurus*).** (9-1-05)T
- 05. African Dormice (*Graphiurus*).** (9-1-05)T
- 06. Gambian Giant Pouched Rats (*Cricetomys*).** (9-1-05)T
- 07. Brush-tailed Porcupines (*Atherurus*).** (9-1-05)T
- 08. African Striped Mice (*Hybomys*).** (9-1-05)T
- 807. DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- FELIDAE.**
- 01. Lion (*Panthera leo*).** (9-1-05)T
- 02. Tiger (*Panthera tigris*).** All tigers. (9-1-05)T
- 03. Leopard (*Panthera pardus*).** All leopards. (9-1-05)T
- 04. Jaguar (*Panthera onca*).** (9-1-05)T
- 05. Cheetah (*Acinonyx jubatus*).** (9-1-05)T
- 06. Serval (*Felis serval*).** (9-1-05)T
- 07. Caracal (*Felis caracal*).** (9-1-05)T
- 08. Ocelot (*Felis pardalis*).** (9-1-05)T
- 09. Margay (*Felis wiedii*).** (9-1-05)T
- 10. Jeoffroy's Cat (*Felis geoffroyi*).** (9-1-05)T
- 808. DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- CANIDAE.**
All non-native canidae species. (9-1-05)T
- 809. DELETERIOUS EXOTIC ANIMALS -- MAMMALS -- PROCYONIDAE.**

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.29 - RULES GOVERNING FUR FARMS

DOCKET NO. 02-0429-0501 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2005.

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 25-3004, Idaho Code.

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

**October 13, 2005, 7 p.m.
Nampa Civic Auditorium
311 3rd Street South
Nampa, ID 83651**

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: Captive or acquired wildlife from unregulated sources can harbor diseases such as rabies and pose a hazard to human health. This rule outlines the requirements for a facility to be classified as an agricultural fur farm under Title 25, Chapter 30, Idaho Code, and allows for the differentiation between agricultural fur farms and either captive wildlife facilities or fur bearing animals kept as pets.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To protect the public health, safety, or welfare.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

NEGOTIATED RULEMAKING: This rule was developed with input from the Idaho Department of Fish and Game and representatives of the fur farm industry in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact John Chatburn, Deputy Administrator at (208) 332-8540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

Patrick A. Takasugi, Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790, Boise, Idaho 83701-0790
(208) 332-8500, Fax (208) 334-4062

IDAPA 02
TITLE 04
CHAPTER 29

02.04.29 - RULES GOVERNING FUR FARMS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 25, Chapter 30, Idaho Code. (10-1-05)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.29, "Rules Governing Fur Farms". (10-1-05)T

02. Scope. These rules govern the operation of fur farms in Idaho. The official citation of this chapter is IDAPA 02.04.29.000 et seq. For example, this Section's citation is IDAPA 02.04.29.001. (10-1-05)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. (10-1-05)T

003. ADMINISTRATIVE APPEAL.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to Title 67, Chapter 52, Idaho Code. (10-1-05)T

004. INCORPORATION BY REFERENCE.

01. Incorporated Documents. This chapter incorporates the following document by reference: Code of Federal Regulations, Title 9, Part 161, January 1, 2005. (10-1-05)T

02. Availability of Documents. Copies of these documents may be obtained from the Idaho State Department of Agriculture Central Office. (10-1-05)T

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

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (10-1-05)T

02. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-05)T

03. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701-0790. (10-1-05)T

04. Telephone Number. The telephone number for the Division of Animal Industries at the central office is (208) 332-8540. (10-1-05)T

05. Fax Number. The fax number for the Division of Animal Industries at the central office is (208) 334-4062. (10-1-05)T

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records available for inspection and copying at the Central Office of the Idaho State Department of Agriculture. (10-1-05)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter. (10-1-05)T

01. Accredited Veterinarian. A veterinarian approved by the Administrator and the USDA/APHIS/VS, in accordance with provisions of Title 9, Part 161, Code of Federal Regulations, to perform functions of State-Federal animal disease control programs. (10-1-05)T

02. Administrator. The administrator of the Division of Animal Industries, Idaho State Department of Agriculture, or his designee. (10-1-05)T

03. Animal. Any member of the animal kingdom, except man. (10-1-05)T

04. Cage. An area for confining fur farm animals that is enclosed on all sides and meets generally accepted fur farm industry standards as determined by the Administrator. (10-1-05)T

05. Department. The Idaho State Department of Agriculture. (10-1-05)T

06. Director. The director of the Idaho State Department of Agriculture or his designee. (10-1-05)T

07. Division. Idaho State Department of Agriculture, Division of Animal Industries. (10-1-05)T

08. Domestic Fur-Bearing Animal. Any fur-bearing animal owned by a person for the express purpose of producing a pelt or replacement animals for a fur farm. (10-1-05)T

09. Federal Animal Health Official. An employee of the United States Department of Agriculture, Animal Plant Health Inspection Service, Veterinary Services who is authorized to perform animal health activities. (10-1-05)T

10. Fur Farm. A premises located in Idaho where domestic fur-bearing animals are held or kept, in cages, and the fur farm is actively engaged in raising domestic fur-bearing animals for the purpose of producing pelts or breeding stock for fur farms that are actively engaged in producing pelts. (10-1-05)T

12. Fur-Bearing Animal. Any fur-bearing animal. (10-1-05)T

13. Operator. The person who has authority to manage or direct a premises or other area where animals are kept. (10-1-05)T

14. Owner. The person who owns or has financial control of premises or other areas where animals are kept. (10-1-05)T

15. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (10-1-05)T

16. Premises. The ground, area, buildings, enclosures, cages, and equipment utilized to keep, hold, or maintain animals. (10-1-05)T

17. State Animal Health Official. The Administrator, or his designee, responsible for disease control and eradication activities. (10-1-05)T

011. ABBREVIATIONS.

01. CFR. Code of Federal Regulations. (10-1-05)T

02. IDFG. Idaho Department of Fish and Game. (10-1-05)T

03. ISDA. Idaho State Department of Agriculture. (10-1-05)T

- 04.** USDA. United States Department of Agriculture. (10-1-05)T
- 012. -- 019.** (RESERVED).
- 020. APPLICABILITY.**
These rules apply to all fur farms in Idaho. (10-1-05)T
- 021. INSPECTIONS.**
In order to ascertain compliance with this chapter, state and federal animal health officials are authorized to enter and inspect fur farm premises during normal business hours. (10-1-05)T
- 022. -- 099.** (RESERVED).
- 100. FUR-BEARING ANIMALS.**
No owner or operator of a fur farm shall take from the wild any fur-bearing animals in Idaho. (10-1-05)T
- 101. IMPORTATION OF DOMESTIC FUR-BEARING ANIMALS.**
No person shall import any domestic fur-bearing animals into Idaho, except to a fur farm. (10-1-05)T
- 102. IMPORT PERMIT AND CERTIFICATE OF VETERINARY INSPECTION.**
All fur-bearing animals imported, pursuant to Section 101 of this rule, shall be accompanied in transit by an import permit issued by the Administrator, any permits required by the IDFG, and an official certificate of veterinary inspection. (10-1-05)T
- 103. CONTENTS OF CERTIFICATES OF VETERINARY INSPECTION.**
All certificates shall be written, legibly, and attest that the animal(s) meet the importation requirements of the state of Idaho. The certificate shall be on an official form from the state of origin, be approved by its livestock sanitary official, and be issued by an accredited veterinarian. An equivalent form of the USDA issued by a federal animal health official is acceptable in lieu of a certificate of veterinary inspection. All certificates shall contain the following information: (10-1-05)T
- 01. Name and Address.** Name and address of the consignor and consignee; and (10-1-05)T
- 02. Origin of Shipment.** Including city and state; and (10-1-05)T
- 03. Final Destination.** Final destination of shipment in Idaho, including city; and (10-1-05)T
- 04. Description of Animals.** An accurate description of each animal; and (10-1-05)T
- 05. Purpose of Shipment.** The purposes for which the animals were shipped; and (10-1-05)T
- 06. Method of Transportation;** and (10-1-05)T
- 07. Health Status.** The certificate shall indicate the health status of the animals involved including dates and results of inspection and of tests and vaccinations, if any, required by the state of Idaho; and (10-1-05)T
- 08. Signature.** The signature of the accredited veterinarian, or state or federal animal health official, conducting the veterinary inspection. (10-1-05)T
- 09. Submission of Certificate.** The required copies of certificates of veterinary inspection or other approved certificates shall be submitted, within thirty (30) days of inspection, to the Division. (10-1-05)T
- 10. Period of Certificate Validity.** Certificates of veterinary inspection shall be valid for no longer than thirty (30) days after the date of inspection. (10-1-05)T
- 104. -- 199.** (RESERVED).

200. LOCATION OF DOMESTIC FUR-BEARING ANIMALS.

All domestic fur-bearing animals located in Idaho shall be confined on fur farms. (10-1-05)T

201. CONFINEMENT OF DOMESTIC FUR-BEARING ANIMALS.

All domestic fur-bearing animals shall be confined in appropriate facilities, as determined by the Administrator. These facilities shall be constructed and maintained to: (10-1-05)T

01. Prevent Escape. Prevent the escape of domestic fur-bearing animals. (10-1-05)T

02. Prevent Ingress of Wildlife. Prevent the ingress of free ranging wildlife that could be negatively impacted by the confined domestic fur-bearing animals. (10-1-05)T

03. Assure Animal Care. Assure the appropriate level of animal care. (10-1-05)T

202. -- 299. (RESERVED).

300. DISPOSITION OF FUR-BEARING ANIMALS WITHIN IDAHO.

No person shall release into the wild within Idaho, any domestic fur-bearing animal. (10-1-05)T

301. EXPORT OF DOMESTIC FUR-BEARING ANIMALS.

Any domestic fur-bearing animals exported from Idaho shall meet all applicable federal regulations for the interstate movement of animals. (10-1-05)T

302 -- 399. (RESERVED).

400. DEAD ANIMALS.

All domestic furbearing animals that die, or are euthanized, shall be disposed of in accordance with IDAPA 02.04.17 "Rules Governing Dead Animal Movement and Disposal". (10-1-05)T

401. -- 989. (RESERVED).

990. PENALTIES FOR VIOLATIONS.

Any person who violates the provisions of this chapter shall be subject to the penalty provisions of Section 25-3006, Idaho Code. (10-1-05)T

991. -- 998. (RESERVED).

999. MINOR VIOLATIONS.

Nothing in this chapter shall be construed as requiring ISDA to report minor violations when ISDA believes that the public interest will be best served by suitable warnings or other administrative actions. (10-1-05)T

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.17 - RULES GOVERNING THE DISPOSAL OF CULL ONIONS AND POTATOES

DOCKET NO. 02-0617-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2005.

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 22-103(22) and 22-2006, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

The proposed amendment will improve the uniformity of the language in the rule relative to cull disposal methods.

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

The current rules have requirements that must be completed by March 15 of each year. This proposed amendment will clarify the intent of the rule and the responsibilities of parties involved in the disposal of cull onions and potatoes in order to ensure better control of the onion maggot and potato pests in the onion and potato growing areas of Idaho.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

There are no fees associated with this rule change.

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

NEGOTIATED RULEMAKING: This rule was developed in coordination with onion and potato growers, packers, shippers and private landowners receiving cull onions and potatoes for disposal or feeding within the regulated areas.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Michael E. Cooper, Bureau Chief or Eoin Davis, Program Manager at (208) 332-8620.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 19th day of August, 2005.

Patrick A. Takasugi, Director
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. 02-0617-0501

060. REGULATED PRODUCTS.

01. Cull Onions. All cull onions produced as a result of market conditions, the grading process, or as a result of breakdown in storage or sorted out in the field during harvest and bulbs and waste left over from seed production. (~~3-30-01~~)(9-1-05)T

02. Cull Potatoes. All cull potatoes produced as a result of market conditions, the grading process, or as a result of breakdown in storage, or sorted out in the field during harvest and tubers and waste left over from potato seed production. (~~3-30-01~~)(9-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

070. DISPOSITION OF CULL ONIONS.

All cull onions existing in the control area shall be disposed of by a method approved of in Section 071 of this rule, to prevent sprouting. Disposal of all existing cull onions and debris must be completed prior to March 15th, of each year; provided; however, that in the case of onions sorted on or after ~~such date~~ March 15th of each year, the cull onions resulting therefrom shall be disposed of within one (1) week after such sorting regardless of the disposal method. (~~3-30-01~~)(9-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

071. DISPOSAL METHODS.

The intent of Section 071 of the rule is to control the spread of the onion maggot and related onion diseases. All disposal methods listed in Section 071 must be carried out to the extent that control of the regulated pest(s) is achieved in order to be in compliance with this rule. (9-1-05)T

01. Disposal by Covering in Dumps or Pits. (7-1-93)

a. Cull onions disposed of by being dumped in pits shall be managed and covered as recommended by the University of Idaho Agricultural Extension Service. (3-30-01)

b. Covering shall be accomplished by March 15th of each year or as provided in Section 070 of this rule. (3-30-01)

02. Disposal by Feeding After March 15th of Each Year. (3-30-01)

a. Sheep or goats shall be fed no more than fifty-three (53) pounds of cull onions per individual animal per day. Cull onions shall be fed from either bunks or by spreading throughout the pasture or feedlot. Cull onions shall not be fed from piles. (3-30-01)

b. Cattle shall be fed a ration containing no more than twenty-five percent (25%) cull onions on a dry matter basis. (3-30-01)

c. Onion debris shall be completely removed from feeding areas and buried under twelve (12) inches or more of onion-free soil by March 15th of each year. (3-30-01)

d. In the case of residues of onion debris two (2) inches or less in depth, or onions tramped into the

soil so that they cannot be removed, such areas shall be disked and plowed ~~to a depth of twelve (12) as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil~~ by March 15th of each year. ~~(3-30-01)(9-1-05)T~~

e. Feeding areas and areas where onions are buried shall be treated in the manner set out in Section 071. (3-30-01)

f. Cattle and sheep being finished for market or dairy cattle shall not be fed forage or grains grown on feeding areas treated in the manner set forth in Section 071. (3-30-01)

03. Disposal by Composting. Cull onions being composted shall be covered by twelve (12) inches or more of onion-free soil or composting material until the onions have turned to compost. (3-30-01)

04. Disposal of Residue in Onion Producing Fields. (7-1-93)

a. Commercial onion fields where sort-out bulbs are left at harvest shall be disked and plowed ~~to a depth of twelve (12) as deep as possible, and such that all onions and debris are buried under eight (8) inches or more inches of onion-free soil~~ by March 15th of each year. ~~(3-30-01)(9-1-05)T~~

b. Following final seed harvest, seed bulbs shall be disked and plowed ~~to a depth of twelve (12) as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil~~ by March 15th of each year. ~~(3-30-01)(9-1-05)T~~

05. Disposal by Chopping or Shredding. Cull onions that have been chopped or shredded to the point that they are incapable of sprouting, shall be disked and plowed ~~to a depth of twelve (12) as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil~~ by March 15th of each year. ~~(3-30-01)(9-1-05)T~~

06. Disposal by Spreading. Cull Onions may be disposed of by being spread on agricultural fields destined to be planted to a crop other than onions provided the onions are disked and plowed ~~to a depth of twelve (12) as deep as possible, and such that all onions and debris are buried under eight (8) inches or more of onion-free soil.~~ ~~(3-30-01)(9-1-05)T~~

(BREAK IN CONTINUITY OF SECTIONS)

074. NOTIFICATION REQUIRED.

Any person or entity delivering cull onions for disposal in the area regulated for cull onion disposal shall provide written notification to the recipient of those cull onions advising the recipient of this rule and the recipient's obligations for the disposal of the cull onions under this rule. If the recipient is not the property owner, written notification shall also be made to the owner of the property where the onions are to be disposed of. Failure to make such notification in writing is a violation of this rule. ~~(3-30-01)(9-1-05)T~~

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.26 - RULES GOVERNING SEED POTATO CROP MANAGEMENT AREAS

DOCKET NO. 02-0626-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2005.

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 22-2017, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

The proposed amendment will define the geographical boundaries for a new Seed Potato Crop Management Area in Fremont County, specifically designated as the Hog Hollow Seed Potato Crop Management Area.

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

This Seed Potato Crop Management Area will help ensure disease-free seed and help control Idaho's potato pest problems.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

There are no fees associated with this rule change.

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

NEGOTIATED RULEMAKING: This rule was developed in cooperation with the effected property owners of the proposed Seed Potato Crop Management Area.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Michael E. Cooper, Bureau Chief at (208) 332-8620 or Garry West, Program Manager at (208) 736-2195.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 19th day of August, 2005.

Patrick A. Takasugi, Director
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. 02-0626-0501

020. SEED POTATO CROP MANAGEMENT AREAS.

01. Fremont Seed Potato Crop Management Area. That portion of Fremont county described as follows: Beginning at a point which is the southwest corner of Section 16, Township 7 North, Range 43 East, Boise, Meridian, Fremont County, Idaho; Thence north approximately 1 mile to the northwest corner of Section 16, Township 7 North, Range 43 East; Thence west approximately 2 miles to the southwest corner of Section 7, Township 7 North, Range 43 East; Thence north approximately 1 mile to the northwest corner of Section 7, Township 7 North, Range 43 East; Thence west approximately 3 miles to the southwest corner of Section 3, Township 7 North, Range 42 East; Thence north approximately 2 miles to the northwest corner of Section 34, Township 8 North, Range 42 East; Thence west approximately 2 miles to the southwest corner of Section 29, Township 8 North, Range 42 East; Thence north approximately 1-3/8 miles to the center line of Fall River; Thence northwest along Fall River approximately 1-1/8 miles to where Fall River intersects the west line of Section 8, Township 8 North, Range 41 East; Thence north approximately 1-7/8 miles to the northwest corner of Section 7, Township 18 North, Range 41 East; Thence west approximately 2 miles to the southwest corner of Section 2, Township 8 North, Range 41 East; Thence north approximately 1 mile to the northwest corner of Section 2, Township 8 North, Range 41 East; Thence west approximately 1/4 of 1 mile; Thence north along an existing road approximately 4 miles; Thence northeasterly along said road approximately 1-1/10 miles to the northwest corner of Section 11, Township 9 North, Range 41 East; Thence north approximately 1 mile to the northwest corner of Section 2, Township 9 North, Range 41 East; Thence east approximately 14 miles to the northeast corner of Section 1, Township 9 North, Range 43 East; Thence south approximately 2 miles to the southeast corner of Section 12, Township 9 North, Range 43 East; Thence east approximately 4 miles to the northeast corner of Section 15, Township 9 North, Range 44 East, which is the west boundary line of the Targhee National Forest; Thence south along said forest boundary approximately 3 miles to the southeast corner of Section 27, Township 9 North, Range 44 East; Thence east continuing along said forest boundary approximately 2 miles to the northeast corner of Section 36, Township 9 North, Range 44 East; Thence south along said forest boundary approximately 1 mile to the east 1/4 corner of Section 1, Township 8 North, Range 44 East; Thence east continuing along said forest boundary approximately 2 miles to the east 1/4 corner of Section 5, Township 8 North, Range 45 East; Thence south continuing along said forest boundary approximately 5 miles to the east 1/4 corner of Section 32, Township 8 North, Range 45 East; Thence east continuing along said forest boundary approximately 1-1/2 miles to the center of Section 34, Township 8 North, Range 45 East; Thence south continuing along said forest boundary approximately 1-1/8 miles to the center line of Bitch Creek; Thence southwesterly along the center line of Bitch Creek approximately 10-1/2 miles to the confluence of Bitch Creek with the Teton River; Thence westerly 8 miles along the center line of the Teton River to the west line of Section 21, Township 7 North, Range 43 East; Thence north approximately 1/10 of a mile to the southwest corner of Section 16, Township 7 North, Range 43 East and the point of beginning. (5-3-03)

02. Teton And Portions Of Madison County Seed Potato Crop Management Area. (5-3-03)

a. All of Teton County, Idaho; (5-3-03)

b. That portion of Madison County, Idaho, located in Township 6 North and Township 7 North lying East of Canyon Creek; and (5-3-03)

c. That portion of Madison County, Idaho located in Township 6 North, Range 42 East which includes portions of Sections 11 and 13 located south of Highway 33 and all of Sections 14, 15, 23, and 24. (5-3-03)

03. Lost River Seed Potato Crop Management Area. Those portions of Butte and Custer Counties within Township 3 North to Township 7 North and Range 23 East to Range 27 East. (5-3-03)

04. Caribou And Franklin County Seed Potato Crop Management Area. All of Caribou County, Idaho and all of Franklin County, Idaho. (5-3-03)

05. Almo Valley Bridge Seed Potato Crop Management Area. (5-3-03)

a. That portion of Cassia County, Idaho located in Township 16 South, Range 24 East which includes all of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; (5-3-03)

b. That portion of Cassia County, Idaho located in Township 15 South, Range 24 East which includes all of Sections 1, 2, 3, 4, 9, 10, 11, 12, 13, 14, 15, 16, 21, 22, 23, 24, 25, 26, 27, 28, 33, 34, 35, and 36; (5-3-03)

c. That portion of Cassia County, Idaho located in Township 14 South, Range 24 East which includes all of Section 36; (5-3-03)

d. That portion of Cassia County, Idaho located in Township 14 South, Range 25 East which includes all of Sections 19, 20, 29, 30, 31, and 32; (5-3-03)

e. That portion of Cassia County, Idaho located in Township 15 South, Range 25 East which includes all of Sections 5, 6, 7, 8, 18, 19, 20, 29, 30, 31, 32 and the Northeast ¼ of Section 33; (5-3-03)

f. That portion of Cassia County, Idaho located in Township 16 South, Range 25 East which includes all of Sections 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 29, 30, 31, 32, 33, 34, 35, and 36; (5-3-03)

g. That portion of Cassia County, Idaho located in Township 16 South, Range 26 East; and (5-3-03)

h. That portion of Cassia County, Idaho located in Township 16 South, Range 27 East which includes all of Sections 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, and 30. (5-3-03)

06. Ririe Reservoir Seed Potato Crop Management Area. (5-3-03)

a. That portion of Bonneville County, Idaho located in Township 3 North, Range 40 East which includes all of Sections 19, 20, 21, 22, 25, 26, 27, 28, 29, 30, 31, 33, 34, 35, and 36; (5-3-03)

b. That portion of Bonneville County, Idaho located in Township 3 North, Range 41 East which includes all of Sections 8, 15, 16, 17, 18, 20, 21, 22, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36; (5-3-03)

c. That portion of Bonneville County, Idaho located in Township 2 North, Range 42 East which includes all of Sections 3, 4, 5, 6, 7, 8, 9, 10, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, and 34; and (5-3-03)

d. That portion of Bonneville County, Idaho located in Township 3 North, Range 42 East which includes all of Sections 31, 32, and 33. (5-3-03)

07. Picabo Seed Potato Crop Management Area. That portion of Blaine County, Idaho beginning with Township 1S, in Range 18, all of sections 23 and 24, leading into Township 1N, in Range 19 all of sections: 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, 31, 32, 33, and 34. Leading into Township 1S, in Range 19, the W ½ of section 1, and all of sections: 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29. Leading into Township 1S, Range 20, all of sections: 7, 8, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29, 30, 35, and 36, including the N ½ of Sections 33 and 34. Leading into Township 2S, Range 20, all of sections 1, 2, and 12. Leading into Township 1S, Range 21, all of sections: 3, 4, 5, 6, 7, 8, 9, 10, 16, 17, 18, 19, 20, W ½ of section 28, and all of sections 29, 30, 31, 32, and the NW ¼ of section 33, from Hwy 20 North, plus section 21 from Dry Creek Road North. Leading into Township 2S, Range 21, all of the W ½ of section 3, and all of the following sections: 4, 5, 6, 7, 8, E ½ of section 9, all of sections 17, 18, 19, 20, 21, 28, 29, 30, and 31, W ½ and the SE ½ of the NE ¼ of section 10. Leading into Township 1N, Range 21, all of sections: 30, 31, and 32. All U.S. Department of the Interior, Bureau of Land Management property and property owned by the state of Idaho existing within the above mentioned areas will not be considered part of the management area. (3-20-04)

08. Little Camas Ranch Seed Potato Crop Management Area. (4-6-05)

a. That portion of Elmore County, Idaho located in Township 1 North, Range 9 East, Boise Meridian, which includes the S ½ N ½ SE ¼, S ½ SE ¼, SW ¼ of Section 27, the SE ¼ SE ¼, SW ¼ SW ¼ of Section 28, the S

½ S ½, N ½ SE ¼, SE ¼ NE ¼, W ½ NE ¼, NE ¼ NE ¼ NW ¼, S ½ NE ¼ NW ¼, SE ¼ NW ¼, N ½ SW ¼, NE ¼ NE ¼ of Section 32, the E ½, E ½ W ½, SW ¼ SW ¼, NW ¼ SW ¼, SW ¼ NW ¼, NW ¼ NW ¼ of Section 33, and all of Section 34; and (4-6-05)

b. That portion of Elmore County, Idaho located in Township 1 South, Range 9 East, Boise Meridian which includes all of Section 4, all less the SW ¼ NW ¼ and less the W ½ SW ¼ of Section 5, the N ½ NE ¼ of Section 8, and the NW ¼ NE ¼, N ½ NW ¼ of Section 9; and (4-6-05)

c. That portion of Elmore County, Idaho located in Township 1 South, Range 9 East, Boise Meridian, which includes Lots 1, 2, 3, and 4, and the S ½ N ½, N ½ SE ¼, SW ¼ of Section 3 less Tax Lot 1 described as follows: That portion of Elmore County, Idaho located in Township 1 South Range 9 East, Boise Meridian, described above as Tax Lot 1: Save and Except that portion of S ½ SW ¼, Section 3, Township 1 South, Range 9 East, Boise Meridian, Elmore County, Idaho more particularly described as follows: Commencing at the Southwest corner of Section 3, Township 1 South, Range 9 East, Boise Meridian, and running thence South 89o51' East along the South Section line of said Section 3, a distance of 437 feet to a steel pin in the center of a graveled road, the Real Point of Beginning. Thence continuing from the Real Point of Beginning North 0o04' West a distance of 1,000 feet to a steel pin; thence South 89o51' East a distance of 1,742.4 feet to a steel pin; thence South 0o04' East a distance of 1,000 feet to a steel pin on the South Section line of said Section 3; thence North 89o51' West along the South Section line of said Section 3 a distance of 1,742.4 feet, more or less to the Real Point of Beginning more particularly described as Tax Lot 1. (4-6-05)

09. Hog Hollow Seed Potato Crop Management Area. (8-1-05)T

a. Beginning at a point that is the northeast corner of Section 19, Township 7 North, Range 43 East, Boise Meridian; Thence south along the eastern border of Section 19, Township 7 North, Range 43 East approximately 3/4 mile to the centerline of the Teton River as it enters said Section 19 at the eastern border of said Section 19; Thence southwesterly along the centerline of the Teton River as it runs through the southeast corner of Section 19, Township 7 North, Range 43 East; Continuing along the centerline of the Teton River as it runs southwesterly into the N1/2 NE1/4 of Section 30, Township 7 North, Range 43 East and then northwesterly out of the N1/2 NE1/4 of said Section 30; Continuing along the centerline of the Teton River as it runs northwesterly from the southern borderline of Section 19, Township 7 North, Range 43 East and then as the river curves southwesterly to the western border of said Section 19; Continuing along the centerline of the Teton River as it runs generally northwesterly through Section 24, Township 7 North, Range 42 East to the western border of said Section 24; Continuing along the centerline of the Teton River as it runs generally northwesterly through Section 23, Township 7 North, Range 42 East and to the northern border of said Section 23; Continuing along the centerline of the Teton River as it runs northwesterly through the SW1/4 SW1/4 of Section 14, Township 7 North, Range 42 East to the western border of said Section 14; Continuing along the centerline of the Teton River as it runs generally westerly through Section 15, Township 7 North, Range 42 East to the western border of said Section 15; Continuing along the centerline of the Teton River as it runs southwesterly through the SE1/4 SE1/4 of Section 16, Township 7 North, Range 42 East to the southern border of said Section 16; Thence west approximately 3/4 mile along the southern border of Section 16, Township 7 North, Range 42 East to the southwest corner of said Section 16; Thence north 1 mile along the western border of Section 16, Township 7 North, Range 42 East to the northwest corner of said Section 16; Thence north approximately 1/4 mile along the western border of Section 9, Township 7 North, Range 42 East to the northwest corner of the SW1/4 SW1/4 of said Section 9; Thence west 1 mile along the northern border of the S1/2 S1/2 of Section 8, Township 7 North, Range 42 East to the western border of said Section 8; Thence west 1 mile along the northern border of the S1/2 S1/2 of Section 7, Township 7 North, Range 42 East to the western border of said Section 7; Thence south 1/4 mile to the southeast corner of Section 12, Township 7 North, Range 41 East; Thence west approximately 3/4 mile along the southern border of Section 12, Township 7 North, Range 41 East to the southwest corner of the SE1/4 SW1/4 of said Section 12; Thence north approximately 3/4 mile to the northwest corner of the SE1/4 NW1/4 of Section 12, Township 7 North, Range 41 East; Thence east 1/4 mile along the northern border of the S1/2 NW1/4 of Section 12, Township 7 North, Range 41 East to the southwest corner of the N1/2 NE1/4 of said Section 12; Thence north 1/4 mile along the western border of the NE1/4 of Section 12, Township 7 North, Range 41 East to the northern border of said Section 12; Thence east along the northern border of Section 12, Township 7 North, Range 41 East to the northeast corner of said Section 12; Excluding from the described portion of Section 12, Township 7 North, Range 41 East, Boise Meridian the following parcel: Commencing at the northeast corner of Section 12, Township 7 North, Range 41 East thence North 89°02'34" West, along the north line of said Section, 40.03 feet to a point on the westerly line of a county road; said point being the true point of beginning;

thence continuing North 89°02'34" West, along the Section line, 612.05 feet; thence South 253.12 feet; thence East 611.96 feet, to a point on the westerly line of said county road; thence North 242.89 feet to the true point of beginning, containing 3.48 acres more or less; Thence east along the northern border of Section 7, Township 7 North, Range 42 East, Boise Meridian to the northeast corner of said Section 7; Thence east along the northern border of Section 8, Township 7 North, Range 42 East to the northeast corner of said Section 8; Thence east along the northern border of Section 9, Township 7 North, Range 42 East to the northeast corner of said Section 9; Thence east along the northern border of Section 10, Township 7 North, Range 42 East to the northeast corner of said Section 10; Thence east 1/4 mile along the northern border of Section 11, Township 7 North, Range 42 East to the northeast corner of the NW1/4 NW1/4 of said Section 11; Thence south approximately 3/4 mile to a county road known as the Old Hog Hollow Road, located approximately along the northern border of the S1/2 S1/2 of Section 11, Township 7 North, Range 42 East; Thence east along the county road known as the Old Hog Hollow Road as it travels easterly approximately along the northern border of the S1/2 S1/2 of Section 11, Township 7 North, Range 42 East approximately to the northeast corner of the SW1/4 SE1/4 of said Section 11; Thence southeast along the county road known as the Old Hog Hollow Road as it travels southeasterly through the SE1/4 SE1/4 of Section 11, Township 7 North, Range 42 East to the eastern border of said Section 11; Thence generally easterly along the county road known as the Old Hog Hollow Road as it travels generally easterly through the S1/2 S1/2 of Section 12, Township 7 North, Range 42 East to the eastern border of said Section 12; Thence south approximately 1/14 mile along the eastern border of Section 12, Township 7 North, Range 42 East to the southeast corner of said Section 12; Thence south 1 mile along the eastern border of Section 13, Township 7 North, Range 42 East to the southeast corner of said Section 13; Thence east 1 mile along the northern border of Section 19, Township 7 North, Range 43 East to the northeast corner of said Section 19 the point of beginning. (8-1-05)T

b. Including also the following non-contiguous parcel: Beginning at a point that is the northeast corner of Section 5, Township 7 North, Range 42 East, Boise Meridian and continuing south along the eastern border of said Section 5 to the southeast corner of the NE1/4 of said Section 5; Thence west 1 mile along the northern border of the S1/2 of Section 5, Township 7 North, Range 42 East to the western border of said Section 5; Thence north 1/2 mile along the western border of Section 5, Township 7 North, Range 42 East to the northwest corner of said Section 5; Thence north 1/4 mile along the western border of Section 32, Township 8 North, Range 42 East to the northwest corner of the SW1/4 SW1/4 of said Section 32; Thence east 1 mile along the northern border of the S1/2 S1/2 of Section 32, Township 8 North, Range 42 East to the eastern border of said Section 32; Thence south 1/4 mile along the eastern border of Section 32, Township 8 North, Range 42 East to the northeast corner of Section 5, Township 7 North, Range 42 East the point of beginning. (8-1-05)T

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.01 - RULES GOVERNING ELECTRICAL INSPECTION TAGS

DOCKET NO. 07-0101-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1006(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 October 19, 2005.

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

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

The rule clarifies that industrial accounts must designate a supervising master electrician.

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

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

This rulemaking will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking, which included discussions of the changes being promulgated under this rulemaking, was conducted under Docket No. 07-0103-0403. The Notices of Negotiated Rulemaking were published in the August 4, 2004 Idaho Administrative Bulletin, Volume 04-8, page 25, October 6, 2004, Volume 04-10, page 122, and the April 6, 2005 Idaho Administrative Bulletin, Volume 05-4, page 12.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Bureau Chief, 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 October 26, 2005.

DATED this 2nd day of September, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100
Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0101-0501

014. ELECTRICAL INSPECTION TAG REQUIREMENTS FOR INDUSTRIAL ACCOUNTS.

Property owners, companies, firms, associations, or corporations who use employees to make electrical installations coming under the provisions of Section 54-1001, Idaho Code, on their own premises, must establish an Industrial Account with the Electrical Bureau and secure electrical inspection tags by making application to the Electrical Bureau. Employees performing non-maintenance electrical installations on an Industrial Account must be licensed electrical journeymen as provided by Section 54-1002(2). One (1) properly licensed employee must hold a master electrician license and shall be designated the supervising ~~journeyman~~ master electrician for the Industrial Account with the Electrical Bureau. ~~(7-1-98)~~(_____)

01. Application Forms. The application form shall be properly completed, signed by the property owner or agent of the company, firm, association, or corporation, and mailed to the Electrical Bureau, P.O. Box 83720, Boise, Idaho, 83720-0028, with the proper inspection fee as hereinafter provided. (7-1-98)

02. Posting of Electrical Inspection Tag. Upon receipt of a properly completed application from a property owner, company, firm, association, or corporation for an electrical inspection tag, together with the proper inspection fee, the Electrical Bureau shall immediately issue an electrical inspection tag for the electrical installations designated in the application. Parts No. 1 and No. 4 shall be retained by the Electrical Bureau. Part No. 2 of the 4-part tag shall be mailed to the applicant and shall be placed at the location of the service switch. Part No. 3 shall be mailed or delivered to the power supplier, and Part No. 4 shall be forwarded to the State Electrical Inspector who will make the electrical inspection as provided by Sections 54-1004 and 54-1005, Idaho Code. (1-14-87)

03. Power Supply Company. In the event the power supplier deems it necessary to energize an electrical installation without delay to preserve life or property, the power supply company may accept the application properly completed and signed, with the proper inspection fee attached, in lieu of the electrical inspection tag required by Section 54-1004, Idaho Code, provided the power supply company or its authorized agent shall assume the responsibility of mailing the application and inspection fee to the Electrical Bureau, P.O. Box 83720, Boise, Idaho, 83720-0028. The Electrical Bureau shall, upon request, furnish application forms and self-addressed, postage-paid envelopes to power supply companies operating within the state of Idaho. (7-1-98)

IDAPA 07 – DIVISION OF BUILDING SAFETY
07.01.02 - RULES GOVERNING FEES FOR ELECTRICAL INSPECTIONS
DOCKET NO. 07-0102-0501 (FEE RULE)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 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 October 19, 2005.

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 establishes a ten dollar (\$10) “small work” permit and inspection fee to address those particular installations that do not exceed two hundred dollars (\$200) and do not involve a change in service connection.

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

This rule change establishes a ten (\$10) dollar permit and inspection fee. The fee is authorized pursuant to Section 54-1006(5), Idaho Code.

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

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the fee was discussed at publicly held Idaho State Electrical Board meetings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Bureau Chief, 208-332-8986.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100
Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0102-0501

011. FEES FOR ELECTRICAL INSPECTIONS.

Electrical inspection fees are to cover the cost of electrical inspection as provided by Section 54-1005, Idaho Code; any person, partnership, company, firm, association, or corporation making an electrical installation coming under the provisions of Section 54-1001, Idaho Code, shall pay to the Electrical Bureau an inspection fee as provided in the following schedule. (1-14-87)

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

a. Two hundred (200) amp or less, one (1) location: forty dollars (\$40). (3-18-99)

b. All others shall be calculated using Subsection 011.06, Other Installations Including Industrial and Commercial. (3-18-99)

02. New Residential - Single Family Dwelling. (Includes everything contained within the residential structure and attached garage wired at the same time.)

New Residential - Single-Family Dwelling
Up to 200 Amp Service - \$120*
201 to 400 Amp Service - \$210*
Over 400 Amp Service - Use Subsection 011.06, Other Installations Including Industrial and Commercial.
* Fee is to include maximum of three (3) inspections. Additional inspections charged at requested electrical inspection rate of forty dollars (\$40) per hour.
Other residential structures (unattached): see Subsection 011.06, Other Installations Including Industrial and Commercial.
New Residential - Multi-Family Dwellings
Duplex Apartment - \$210
Three (3) or more multi-family units - \$120 per Building plus \$60 per Unit

(3-18-99)

a. Existing residential: forty dollars (\$40) plus ten dollars (\$10) for each additional branch circuit. (3-18-99)

b. Residential spas, hot tubs, hydro massage tubs, swimming pools: forty dollars (\$40) basic fee plus forty dollars (\$40) grounding grid where applicable. (Other than residential, use Subsection 011.06, Other Installations Including Industrial and Commercial.) (3-18-99)

03. Residential Electric Space Heating and/or Air Conditioning. When not part of a new residential construction permit, and no additional wiring: forty dollars (\$40). (3-18-99)

04. Domestic Water Pumps. See Subsection 011.07 -- Pumps (Water, Domestic Water, Irrigation, Sewage.) (3-18-99)

05. Mobile/Manufactured Homes. Fifty dollars (\$50) basic fee plus ten dollars (\$10) for each additional circuit. (3-18-99)

a. Mobile home and RV parks for distribution wiring including pedestal, service conductors and lot supply to individual units come under Subsection 011.06, Other Installations Including Industrial and Commercial. (3-18-99)

06. Other Installations Including Industrial and Commercial. (3-18-99)

a. Wiring cost not exceeding two thousand dollars (\$2000): forty dollars (\$40) plus two and one-half percent (2.5%) of total wiring cost. (3-18-99)

b. Wiring cost over two thousand dollars (\$2000) but not exceeding ten thousand dollars (\$10,000): one hundred dollars (\$100) plus one percent (1%) of total wiring cost. (3-18-99)

c. Wiring cost over ten thousand dollars (\$10,000): one hundred eighty dollars (\$180) plus one-half of one percent (.5%) of the portion of wiring costs exceeding ten thousand dollars (\$10,000). (3-18-99)

d. All fees calculated under this schedule must be calculated on the total wiring cost of the job, and this figure must be shown on the permit. The inspection fees listed in this Subsection shall apply to any and all electrical installations not specifically mentioned elsewhere in this schedule. The wiring cost shall be the cost to the owner of all labor charges and all wiring materials and equipment installed as part of the wiring system. When labor is performed by the owner, such labor cost shall be based upon the market value of said labor and used- or reused materials shall be based at fifty percent (50%) of the column 3 pricing as published by Trade Service Publication or National Price Service Pricing or the actual cost, whichever is greater. For all owner-supplied, factory assembled equipment to be installed, the inspection will be based on one-half of one percent (.5%) of total cost of the equipment OR an hourly rate of eighty dollars (\$80) for the first hour of each inspection and forty dollars (\$40) for each subsequent hour. (3-18-99)

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

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

To 25 HP - \$40
26 to 200 HP - \$60
Over 200 HP - \$80
Phase inverters and roto phase equipment use Subsection 011.06, in addition to the pump motor fee.

(3-18-99)

08. Electrically-Driven Irrigation Machine. Center Pivot: fifty dollars (\$50) plus ten dollars (\$10) per tower or drive motor. Other types: fifty dollars (\$50) plus ten dollars (\$10) per motor. (Note: No additional fee required for underground feeder). (3-18-99)

09. Electric Signs and Outline Lighting. Electric signs: forty dollars (\$40) per sign; Outline Lighting: forty dollars (\$40) per each occupancy. (3-18-99)

10. Requested Inspections. ~~Forty dollars (\$40) minimum for one (1) hour or less. Over one (1) hour: A base fee of forty dollars (\$40) plus an additional twenty dollars (\$20) for each one-half (1/2) hour or portion thereof in excess of one (1) hour, including travel time. Out of state travel subject to additional expense.~~ (3-18-99)()

11. Additional Fees and Reinspection Fees. A base fee of forty dollars (\$40) per hour and plus an additional twenty dollars (\$20) for each additional one-half (1/2) hour or portion thereof in excess of one (1) hour, including travel time. shall also be paid before approval of the installation if the following services are necessary: (3-18-99)()

- a.** Trips to inspect when the submitter of the permit had given notice to the inspector that the work is ready for inspection when it was not, or if the submitter has not clearly given the location of the installation either by directions or maps, or if the inspector cannot gain access to make the inspection. (1-14-87)
- b.** Trips to inspect corrections required by the inspector as a result of the submitter improperly responding to a corrective notice. (1-14-87)
- c.** Each trip necessary to remove a red tag from the jobsite. (1-14-87)
- d.** When corrections have not been made in the prescribed time, unless an extension has been requested and granted. (1-14-87)
- e.** No permit -- Failure to post or send permit and required fee in the prescribed time will, at the discretion of the Division, result in the assessment of a double fee. (3-18-99)
- 12. Plan Check Fee.** Forty dollars (\$40) minimum for one (1) hour or less. Over one (1) hour: forty dollars (\$40) plus twenty dollars (\$20) for each one-half (1/2) hour or portion thereof in excess of one (1) hour. (3-18-99)
- 13. Fees for Temporary Amusement/Industry Electrical Inspections.** Each time a ride, concession or generator is set up: forty dollars (\$40) base fee plus ten dollars (\$10) for each ride, concession or generator. (3-18-99)
- 14. Expiration of Permits.** Every permit issued by the Electrical Bureau shall expire by limitation and become null and void if the work authorized by such permit is not commenced within ninety (90) days from the date of issuance of such permit or if the work authorized by such permit is suspended or abandoned at any time after work is commenced for a period of one hundred eighty (180) days. A permit may be renewed for an additional year upon receipt of Bureau approval and forty dollars (\$40) renewal fee. (3-18-99)
- 012. -- 999. (RESERVED).**

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.03 - RULES OF ELECTRICAL LICENSING AND REGISTRATION - GENERAL

DOCKET NO. 07-0103-0403

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1006(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 October 19, 2005.

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

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

The rule substitutes the master electrician in place of the journeyman electrician and clarifies master electrician qualifications and duties.

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

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

This rulemaking will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notices of Negotiated Rulemaking were published in the August 4, 2004 Idaho Administrative Bulletin, Volume 04-8, page 25, October 6, 2004, Volume 04-10, page 122, and the April 6, 2005 Idaho Administrative Bulletin, Volume 05-4, page 12.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Bureau Chief, 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 October 26, 2005.

DATED this 2nd day of September, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100
Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0103-0403

015. ELECTRICAL CONTRACTOR.

01. Qualifications for Electrical Contractor. (4-7-91)

a. Except as hereinafter provided, any person, partnership, company, firm, association, or corporation shall be eligible to apply for an electrical contractor license upon the condition that such applicant shall have at least one (1) full-time employee who holds a valid master electrician license ~~or journeyman electrician license~~ issued by the Electrical Bureau, ~~and has held a valid journeyman electrician's license for a period of not less than two (2) years, during which time he was actively employed as a journeyman electrician for a minimum of four thousand (4,000) hours,~~ and who will be responsible for supervision of electrical installations made by said company, firm, association, or corporation as provided by Section 54-1010, Idaho Code. An individual electrical contractor may act as his own supervising ~~journeyman~~ master electrician upon the condition that he holds a valid master electrician license ~~or journeyman electrician license~~ issued by the Electrical Bureau, ~~and has held a valid journeyman electrician's license for a period of not less than two (2) years, during which time he was actively employed as a journeyman electrician for a minimum of four thousand (4,000) hours.~~ The supervising ~~journeyman~~ master electrician shall be available during working hours to carry out the duties of supervising ~~journeymen~~ master, as set forth herein. (4-5-00)(____)

b. ~~Those~~ The duties of a supervising master electrician include assuring that all electrical work substantially complies with the National Electrical Code and other electrical installation laws and rules of the state, and that proper electrical safety procedures are followed; assuring that all electrical labels, permits, and licenses required to perform electrical work are used; assuring compliance with correction notices issued by the Bureau; and any person designated under Subsection 015.01.a., and the contractor he represents, shall each notify the Bureau in writing if the supervising ~~journeyman's~~ master's working relationship with the contractor has been terminated. Each notice must be filed with the Bureau within ten (10) days of the date of termination. If the supervising ~~journeyman's~~ master's relationship with the contractor is terminated, the contractor's license is void within ninety (90) days unless another supervising ~~journeyman~~ master is qualified by the Bureau. (7-27-94)(____)

02. Required Signatures on Application. An application for an electrical contractor license shall be signed by the applicant or by the official representative of the partnership, company, firm, association, or corporation making the application. The application shall be countersigned by the supervising ~~journeyman~~ master electrician. (4-1-91)(____)

03. Electrical Contracting Work Defined. An electrical contractor license issued by the Division of Building Safety must be obtained prior to acting or attempting to act as an electrical contractor in Idaho. (4-5-00)

a. Electrical contracting work includes electrical maintenance or repair work, in addition to new electrical installations, unless such work is expressly exempted by Section 54-1016, Idaho Code. (4-5-00)

b. Any person or entity providing or offering to provide electrical contracting services, including, but not limited to, submitting a bid shall be considered as acting or attempting to act as an electrical contractor and shall be required to be licensed. (4-5-00)

c. Any person or entity, not otherwise exempt, who performs or offers to perform electrical contracting work, is acting as an electrical contractor, whether or not any compensation is received. (4-5-00)

04. Previous Revocation. Any applicant for an electrical contractor license who has previously had his electrical contractor license revoked for cause, as provided by Section 54-1009, Idaho Code, shall be considered as unfit and unqualified to receive a new electrical contractor license so long as such cause for revocation is continuing and of such nature that correction can be made by the applicant. (1-14-87)

05. Reviving an Expired License. Any applicant for an electrical contractor license who has allowed his license to expire and seeks to revive it under the provisions of Section 54-1013, Idaho Code, may be denied a license as unfit and unqualified if, while operating under the license prior to expiration, he violates any of the laws and/or rules applicable to electrical contractors. (4-1-91)

06. Qualification for Supervising Journeyman Master Electrician. A journeyman master electrician shall not be considered as qualified to countersign an electrical contractor license application as the supervising journeyman master, nor shall said application be approved if he does countersign said application as the supervising journeyman master, if said journeyman master has had his Idaho Electrical Contractor license revoked for cause under Section 54-1009, Idaho Code. A supervising journeyman master shall not countersign for more than one (1) contractor. A journeyman master electrician who is a full time employee of a company, corporation, firm or association with an industrial account may sign as supervising journeyman master for that industrial account in addition to signing as supervising journeyman master for his own contractor's license so long as the journeyman master is listed as the owner and complies with the provisions of Subsections 015.01.a. and 015.01.b. (~~7-1-97~~)(____)

07. Failure to Correct Defects in Electrical Installations. If a journeyman master countersigns an electrical contractor license application pursuant to Subsection 015.03 and thereafter willfully fails to correct defects in electrical installations he made or supervised, and such defects are within his power to correct and are not the fault of the contractor, then the Electrical Bureau shall have the power to suspend or revoke said journeyman master's license pursuant to Section 54-1009, Idaho Code. (~~1-14-87~~)(____)

08. Overcharging of Fees. It shall be grounds for suspension or revocation of an electrical contractor license if he charges and collects from the property owner an electrical permit or inspection fee which is higher than the fee actually in effect at the time of such charging and collection, pursuant to the current Electrical Laws and Rules of the Division of Building Safety, Electrical Bureau, and the fee remitted by the contractor to the Bureau is less than the fee actually charged and collected by him. (4-6-83)

09. Electrical Contractor's Examination. (9-1-94)

a. Each electrical contractor's license applicant must pass a contractor's examination to be administered by the Bureau or its designee. Any applicant which purports to be a non-individual (i.e., corporation, partnership, company, firm, or association), must designate in writing an individual to represent the partnership, company, etc., for examination purposes. Any such designee shall be a full-time supervisory employee and may not represent any other applicant for an electrical contractor's license. (9-1-94)

b. Any person designated under Subsection 015.09.a., and the contractor he represents, shall each notify the Bureau in writing if the designee's working relationship with the contractor has been terminated. Each notice must be filed with the Bureau within ten (10) days of the date of termination. If the designee's relationship with the contractor is terminated, the contractor's license is void within ninety (90) days unless another duly qualified designee passes the electrical contractor's examination on behalf of the contractor. (9-1-94)

c. Passage of the contractor's examination shall only be required for new electrical contractor license applications submitted after the effective date of this rule, September 1, 1994, and shall not apply to license renewal or revival under Section 54-1013, Idaho Code. (9-1-94)

IDAPA 07 – DIVISION OF BUILDING SAFETY
07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING
DOCKET NO. 07-0104-0501
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1006(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 October 19, 2005.

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

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

The proposed rule will change the number of resident effluent pumps a specialty electrical licensee in the well driller/pump installer category may install from one- or two-family residential installations to one-, two-, or three-family residential installations under certain conditions.

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

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

This rulemaking will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change was discussed at publicly held Idaho State Electrical Board meetings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Gary Malmen, Electrical Bureau Chief, 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 October 26, 2005.

DATED this 23rd day of August, 2005.

Dave Munroe
Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100
Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0104-0501

014. ELECTRICAL SPECIALTIES REQUIRING A SPECIAL LICENSE.

The following shall be considered as electrical specialties, the practice of which shall require a special license:

(4-9-79)

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

(4-9-79)

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

(3-15-02)

03. Manufacturing or Assembling Equipment.

(4-5-00)

a. A licensed specialty manufacturing or assembling equipment electrician must be employed by a licensed specialty manufacturing or assembling equipment contractor in order to work in this category. The holder of a specialty license in this category may not countersign a contractor's license application as supervising journeyman except for work within this specialty.

(4-5-00)

b. Any person licensed pursuant to Subsection 014.03.a. may install, maintain, repair, and replace equipment, controls, and accessory wiring, integral to the specific equipment, on the load side of the equipment disconnecting means. Electrical service and feeder are to be installed by others. The licensee may also install circuitry in modules or fabricated enclosures for the purpose of connecting the necessary components which individually bear a label from a nationally recognized testing laboratory when such equipment is designed and manufactured for a specific job installation. All wiring completed shall meet all requirements of Title 54, Chapter 10, Idaho Code, all rules promulgated pursuant thereto, and the most current edition of the National Electrical Code.

(7-1-94)

04. Limited Energy Electrical License.

(9-17-85)

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

(7-1-99)

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

(7-1-99)

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

(7-1-98)

05. Irrigation Sprinkler Electrical. Any person qualifying for and having in his possession, an irrigation system electrical license may install, maintain, repair and replace equipment, controls and wiring beyond the disconnect switch supplying power to the electric irrigation machine. The irrigation machine is considered to

include the hardware, motors and controls of the irrigation machine and underground conductors connecting the control centers on the irrigation machine to the load side of the disconnecting device. Disconnect device to be installed by others. All such installations performed by individuals under this section shall be done in accordance with the applicable provisions of the National Electrical Code. He shall be employed by a licensed electrical contractor whose license is contingent upon the granting of a specialty electrical license to an employee and whose installations shall be limited to this category. The holder of a specialty license may not countersign a contractor's license application as supervising specialty journeyman except for work in his specialty. (1-1-92)

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

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

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

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

d. Individual residential wastewater pumping units. Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device for systems that serve one-, or two-, or three-family residential installations. (~~4-6-05~~)(____)

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

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

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

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

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING
DOCKET NO. 07-0104-0502
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1006(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 October 19, 2005.

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

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

This rule change will clarify and carry out requirements for HB 139 effective July 1, 2005 by incorporating communications installations into Limited Energy Electrical License requirements.

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

The proposed rule does not impose or increase a fee or charge.

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

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change was discussed at publicly held Idaho State Electrical Board meetings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Bureau Chief, 208-332-8986.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100
Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0104-0502

014. ELECTRICAL SPECIALTIES REQUIRING A SPECIAL LICENSE.

The following shall be considered as electrical specialties, the practice of which shall require a special license:

(4-9-79)

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

(4-9-79)

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

(3-15-02)

03. Manufacturing or Assembling Equipment.

(4-5-00)

a. A licensed specialty manufacturing or assembling equipment electrician must be employed by a licensed specialty manufacturing or assembling equipment contractor in order to work in this category. The holder of a specialty license in this category may not countersign a contractor's license application as supervising journeyman except for work within this specialty.

(4-5-00)

b. Any person licensed pursuant to Subsection 014.03.a. may install, maintain, repair, and replace equipment, controls, and accessory wiring, integral to the specific equipment, on the load side of the equipment disconnecting means. Electrical service and feeder are to be installed by others. The licensee may also install circuitry in modules or fabricated enclosures for the purpose of connecting the necessary components which individually bear a label from a nationally recognized testing laboratory when such equipment is designed and manufactured for a specific job installation. All wiring completed shall meet all requirements of Title 54, Chapter 10, Idaho Code, all rules promulgated pursuant thereto, and the most current edition of the National Electrical Code.

(7-1-94)

04. Limited Energy Electrical License.

(9-17-85)

a. Limited energy systems are defined as fire and security alarm systems, class 2 and class 3 signaling circuits, key card operators, nurse call systems, motor and electrical apparatus controls ~~and other limited energy applications, communication circuits, wires and apparatus that include telephone systems, outside wiring for fire and security alarm systems which are used for communication purposes, and central station systems of a similar nature,~~ PBX systems, audio-visual and sound systems, public address and intercom systems, data communication systems, radio and television systems, antenna systems and other similar systems covered by the NEC.

~~(7-1-99)()~~

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

~~(7-1-99)()~~

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

~~(7-1-98)()~~

d. The term “telephone company” as used in Section 54-1016, Idaho Code, for the purpose of this rule shall mean “a public utility that provides telephone service”. ()

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

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

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

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

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

d. Individual residential wastewater pumping units. Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device for systems that serve one (1) or two (2) family residential installations. (4-6-05)

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

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

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

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

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING
DOCKET NO. 07-0104-0503
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1006(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 October 19, 2005.

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 clarifies that specialty electrical contractors are required to have a supervising specialty journeyman to countersign while an electrical contractor must have a supervising master electrician.

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

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

This rulemaking will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notices of Negotiated Rulemaking were published in the August 4, 2004 Idaho Administrative Bulletin, Volume 04-8, page 25, October 6, 2004, Volume 04-10, page 122, and the April 6, 2005 Idaho Administrative Bulletin, Volume 05-4, page 12.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Bureau Chief, 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 October 26, 2005.

DATED this 2nd day of September, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100
Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0104-0503

017. SPECIALTY CONTRACTOR LICENSE.

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

a. Holds a valid specialty journeyman electrician license issued by the Electrical Bureau, in the same category as the specialty contractor, and has held a valid specialty journeyman electrician's license for a period of not less than two (2) years, during which time he was employed as a specialty journeyman electrician for a minimum of four thousand (4,000) hours; (3-30-01)

b. Holds a valid specialty journeyman electrician license issued by the Electrical Bureau, in the same category as the specialty contractor, and has at least four (4) years of experience in the specialty electrical category with a minimum of two (2) years practical experience in planning, laying out, and supervising electrical installations in this specialty category. (3-30-01)

02. Modification to Qualifications. Applicants for specialty contractor licenses, or individuals countersigning such applications, shall be subject to the same requirements, restrictions, and fees applicable to other electrical contractors ~~and countersigning journeyman~~, as set forth in the current Electrical Laws and Rules with the exception that an electrical contractor requires a master electrician to countersign as supervising master, whereas a supervising specialty journeyman for a specialty electrical contractor must meet the requirements of Subsection 017.01. (~~3-30-01~~)(____)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.01 - RULES OF BUILDING SAFETY - GENERAL

DOCKET NO. 07-0301-0501 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

This docket proposes the repeal of IDAPA 07.03.01, "Rules of Building Safety - General," effective July 1, 2006. This is one of six proposed dockets, which will consolidate six existing chapters into one chapter by repealing the existing chapters and eliminating redundant language. The resulting consolidated chapter will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars (\$25) to one-hundred dollars (\$100).

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

The proposed rule does not increase or impose a fee.

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

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100
Fax: 208-855-2164

IDAPA 07.03.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.03.01 - RULES OF BUILDING SAFETY
DOCKET NO. 07-0301-0502 (CHAPTER REWRITE)
NOTICE OF RULEMAKING - PROPOSED RULE (FEE RULE)

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

This docket proposes the consolidation of six (6) existing chapters into one (1) chapter by repealing the existing chapters and eliminating redundant language. This resulting consolidated chapter (IDAPA 07.03.01) will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars (\$25) to one-hundred dollars (\$100).

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

This docket includes an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars (\$25) to one-hundred dollars (\$100).

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

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100/Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0301-0502

IDAPA 07
TITLE 03
CHAPTER 01

RULES OF BUILDING SAFETY

000. LEGAL AUTHORITY.

The Idaho Building Code Board of the Division of Building Safety is authorized under Section 39-4107, Idaho Code, to promulgate rules concerning the enforcement and administration of the Idaho Building Code Act. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety. ()

02. Scope. These rules prescribe the criteria for enforcement and administration of the Idaho Building Code Act by the Idaho Building Code Board and the Building Bureau of the Division of Building Safety. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency has statements that pertain to the interpretation of the rules of this chapter. These statements are available for review and copying at the offices of the Division of Building Safety. ()

003. ADMINISTRATIVE APPEALS.

This chapter does not provide for administrative relief of the provisions contained herein. ()

004. ADOPTION AND INCORPORATION BY REFERENCE

Under the provisions of Section 39-4109, Idaho Code, the following codes are hereby adopted and incorporated by reference into IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety and shall be in full force and effect on and after January 1, 2005. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or <http://www.iccsafe.org>. ()

01. International Building Code. 2003 Edition. ()

02. International Residential Code. 2003 Edition. ()

03. International Energy Conservation Code. 2003 Edition. ()

005. OFFICE -- OFFICE HOURS -- STREET ADDRESS -- MAILING ADDRESS -- TELEPHONE, FACSIMILE AND WEB ADDRESS.

The principal place of business of the Division of Building Safety is in Meridian, Idaho. The office is located at 1090 E. Watertower St., Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Division of Building Safety, 1090 E. Watertower St., Meridian, Idaho 83642. The telephone number of the office is (208) 334-3896. The facsimile number of the office is (208) 855-9399. The web address of the office is <http://dbs.idaho.gov/>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

007. -- 025. (RESERVED).

026. DEFINITIONS.

The terms defined in Section 026 of this rule shall have the following meaning for all parts of IDAPA 07.03.01, unless the context clearly indicates another meaning: ()

01. Act. The Idaho Building Code Act, Title 39, Chapter 41, Idaho Code. ()

02. Administrator. The administrator of the Division of Building Safety for the state of Idaho. ()

03. Alterations or Conversions of Modular Buildings. Any change from the approved plans or installation instructions which would affect the structural, mechanical, electrical or plumbing systems of modular buildings bearing a division insignia of approval and shall include the replacement, addition, modification or removal of any structural member, plumbing, heat-producing or electrical equipment, or installation which may effect such systems prior to first occupancy. Any such alteration or conversion shall first be approved by testing and inspection in the same manner as original systems or component parts. The following shall not constitute alteration or conversion: ()

a. Repairs with approved replacement parts; ()

b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing; ()

c. Replacement of equipment and appliances in kind; ()

d. Adjustment and maintenance of equipment. ()

04. Alterations to Manufactured Homes. The replacement, addition, and modification, or removal of any equipment or installation after sale by a manufacturer to a dealer but prior to sale by a dealer to a purchaser which may affect the construction, fire safety, occupancy, plumbing, heat-producing or electrical system. It includes any modification made in a manufactured home which may affect the compliance of the home with the standards, but it does not include the repair or replacement of a component or appliance “plug-in” to an electrical receptacle where the replaced item is of the same configuration and rating as the one being replaced. It also does not include the addition of an appliance requiring “plug-in” to an electrical receptacle, which appliance was not provided with the manufactured home by the manufacturer, if the rating of the appliance does not exceed the rating of the receptacle to which it is connected. ()

05. Alterations or Conversions of Commercial Coaches. Any change from the approved plans or installation instructions which would affect the structural, mechanical, electrical or plumbing systems of commercial coaches bearing a division insignia of approval and shall include the replacement, addition, modification or removal of any structural member; plumbing, heat-producing or electrical equipment; or installation which may affect such systems prior to first occupancy. Any such alteration or conversion shall first be approved by testing and inspection in the same manner as original systems or component parts. The following shall not constitute alteration or conversion: ()

a. Repairs with approved replacement parts; ()

b. Conversion of listed fuel-burning appliances in accordance with the terms of their listing; ()

c. Replacement of equipment and appliances in kind; ()

d. Adjustment and maintenance of equipment. ()

06. Board. The Idaho Building Code Board created under the provisions of Title 39, Chapter 41, Idaho Code. ()

07. Bureau. The Building Bureau of the Division of Building Safety. ()

08. Commercial Coach. In order to further clarify the definition of “commercial coach” as cited in Section 39-4105(5), Idaho Code, the phrase “made so as to be readily movable as a unit on its own running gear”

shall mean that the running gear shall be a permanent part of the unit and not intended to be removed or replaced, and such modular structure is used for commercial purposes. ()

09. Division. The Division of Building Safety of the state of Idaho. ()

10. Equipment. All equipment, materials, appliances, devices, fixtures, fittings or accessories installed in the manufacture and assembly of modular buildings. ()

11. Field Technical Service. Interpretation and clarification of the technical data relating to the application of these rules, but not including inspection. ()

12. First Purchaser. The first purchaser of a commercial coach for other than resale. ()

13. Insignia. A label, tab or tag issued by the division to indicate compliance with the codes, standards, rules and regulations established for manufactured building systems, subsystems, or building elements, modular buildings, and commercial coaches. ()

14. Labeled. Equipment or other building components bearing a label or other approved marking authorized or issued for use by a recognized testing/listing or evaluation agency. ()

15. Listed. Equipment or other building components included within a current list published by a recognized testing/listing agency that maintains periodic inspection on current production of listed equipment or other building components and whose listing states either that the equipment or component complies with recognized standards or has been tested and determined to be suitable for the use intended. ()

16. Listing Agency. A person, firm, association, partnership or corporation which is in the business of listing or labeling and which maintains a periodic inspection program on current production of listed materials, and which makes available, not less frequently than annually, a published report of such listing in which specific information is included that the product has been tested to nationally approved standards and found safe for use in a specified manner. ()

17. Model. As referred to in Section 39-4113(3), Idaho Code, for modular buildings and commercial coaches shall mean a specific outside dimension and floor plan with specific structural, plumbing, electrical, and mechanical systems as designated by the manufacturer to be the standard for imitation reproduction. ()

18. Testing/Listing Agency. A person, firm, association, partnership or corporation which is: ()

a. In the business of testing equipment or other building components; and ()

b. Recognized by the division as being qualified and equipped to conduct experimental testing in accordance with recognized standards; and ()

c. Not under the jurisdiction or control of any single manufacturer or supplier for an affected industry; and ()

d. Making available, not less frequently than annually, a published report in which specific information is included stating that the equipment and systems have been tested and found safe for use in a specified manner. ()

19. Transit Damage. Application to manufactured home means that damage encountered enroute from the place of manufacture to the dealer or first owner involving structural integrity or any repair that does not result in return to the same construction or assembly as specified in the manufacturer's design approval without additional reinforcement or change. ()

20. State Buildings. All buildings to be constructed, altered, or repaired by or for any state of Idaho agency or entity, without regard to purpose, occupancy, or the source of funding for such construction, alteration, or repair. ()

21. Running Gear. Springs, spring hangers, axles, bearings, wheels, brakes, rims and tires and their related hardware. ()

22. Substantially Prefabricated or Assembled. The module or major portion of modular buildings assembled in such manner that all portions may not be inspected without disassembly or destruction of the part. ()

23. Substantially Prefabricated or Assembled. The module or major portion of commercial coaches is assembled in such manner that all portions may not be inspected without disassembly or destruction of the part. ()

24. Systems Plan. A design plan concept that allows the interchanging of various approved construction systems to include structural, electrical, plumbing, and mechanical aspects of the system. ()

25. Technical Service. Conducting research, evaluation, consultation, model and systems plan reviews, interpretation and clarification by the division of technical data relating to the application of these rules, and shall also include special field inspections that are not covered in other portions of these rules. ()

027. PERMITS.

Building permits shall be obtained from the division prior to the construction of structures governed by the act or rules promulgated by the board. ()

028. PLAN REVIEW.

01. Jurisdiction. The Division shall have exclusive jurisdiction and authority to conduct plan reviews of the construction, additions, repairs, and occupancy of all state buildings regardless of the source of funding for such construction, addition, repair, or occupancy. ()

02. Plans Specifications. Plans shall be drawn to scale and shall be on uniformly sized standard stock drawing sheets not to exceed thirty-six (36) inches by sixty (60) inches. ()

03. Plan Review Fees. Plan review fees shall be sixty-five percent (65%) of the calculated building permit fee. ()

04. Plans Not Required. Plans shall not be required for group U occupancies of Type V conventional light-frame wood construction. ()

05. Addenda and Change Orders. ()

a. Documents enforcing changes or modifications. Addenda, contract change orders, changes-in-work requests, and other similar written documents enforcing changes or modifications to plans or specifications, already approved by the division, which addenda, change orders, or change-in-work requests deal with structural or fire resistance changes, or such other changes affecting code conformance, shall be submitted to the bureau for approval. The use of the terms "addenda," "change orders," and "changes-in-work requests" shall not be limited exclusively to such phraseology, but shall be inclusive of such other language used in the professions which essentially have the same meaning. ()

b. Application provisions. The provisions of Section 028 of this rule shall apply to that work which will be accomplished. ()

029. FEES.

The following fee schedule shall be applicable for the functions cited: ()

01. Document Fees. ()

a. The administrator shall charge such reasonable and suitable fees necessary for copies of any record,

plan approval, permit, map, sketch, drawing or other instrument. ()

b. Charges for copies of separate published documents shall be actual cost to the division plus postage. ()

02. Technical Service Fee. Thirty six dollars (\$36) per hour. ()

03. Modular Building Fees. Other than as herein specified in Section 029 of this rule, the fee schedule for modular buildings shall be as provided herein in Table 1-A, and such fees shall be based on the Freight On Board (FOB) cost to the dealer at the point of manufacture. ()

04. Systems Submittal Plan Review Fee. For all systems, the plan approval fees shall be charged at thirty six dollars (\$36) per hour. ()

05. Insignia Tag Fee. In instances where building permit fees are not charged for modular buildings, a one hundred dollar (\$100) fee will be charged for an insignia. ()

06. Payment of Fees. Fees shall be paid to and collected by the division. ()

07. Commercial Coaches. Other than as herein specified in Section 029 of this rule, the fee schedule for commercial coaches shall be as provided in Table 1-A, and such fees shall be based on the Freight On Board (FOB) cost to the dealer at the point of manufacture. ()

08. Building Permit Fees. The building permit fee for each permit shall be as set forth in Section 107.2 and Table 1-A of the Uniform Building Code, 1997 edition, as seen in the following table. The determination of value or valuation shall be made by the administrator and shall be the total value of all construction work for which a permit is issued. ()

TABLE 1-A - BUILDING PERMIT FEES	
Total Valuation	Fee
\$1 to \$500	= \$23.50
\$501 to \$2,000	= \$23.50 for the first \$500 plus \$3.05 for each additional \$100, or fraction thereof, to and including \$2,000
\$2,001 to \$25,000	= \$69.25 for the first \$2,000 plus \$14 for each additional \$1,000, or fraction thereof, to and including \$25,000
\$25,001 to \$50,000	= \$391.75 for the first \$25,000 plus \$10.10 for each additional \$1,000, or fraction thereof, to and including \$50,000
\$50,001 to \$100,000	= \$643.75 for the first \$50,000 plus \$7 for each additional \$1,000, or fraction thereof, to and including \$100,000
\$100,001 to \$500,000	= \$993.75 for the first \$100,000 plus \$5.60 for each additional \$1,000, or fraction thereof, to and including \$500,000
\$500,001 to \$1,000,000	= \$3,233.75 for the first \$500,000 plus \$4.75 for each additional \$1,000, or fraction thereof, to and including \$1,000,000
\$1,000,001 and up	= \$5,608.75 for the first \$1,000,000 plus \$3.65 for each additional \$1,000, or fraction thereof

()

09. Plan Review Fees. Plan review fees shall be sixty-five percent (65%) of the calculated building permit fee. ()

10. Refund of Plan Review Fees. There shall be no refund of plan review fees. ()

030. RIGHT OF ENTRY.

Whenever necessary to make an inspection to enforce any of the provisions of Title 39, Chapters 40 and 41, Idaho Code, or whenever the administrator or his authorized representative has reasonable cause to believe that there exists in any building or upon any premises, any condition which makes such building or premises unsafe, the administrator or his authorized representative shall enter such building or premises at all reasonable times to inspect the same or to perform any duty imposed upon the division by Title 39, Chapters 40 and 41, Idaho Code; provided that if such building or premises is occupied, he shall first present proper credentials and demand entry; and if such building or premises be unoccupied, he shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and demand entry. If such entry is refused, the administrator shall have recourse to every remedy provided by law to secure entry. ()

031. WORK PROCEEDING WITHOUT PERMIT OR APPROVAL.

Where any work for which a permit or approval, to include plan or system approval, is required by these rules, or by the codes enumerated in Title 39, Chapter 41, Idaho Code, is started or proceeded with prior to obtaining said approval or permit, and after notice to such person or persons doing or causing such work to be done, and such person or persons continues or causes to continue such work, the fees specified in these rules shall be doubled, but the payment of such double fee shall not relieve any persons from fully complying with the requirements of Title 39, Chapters 40 or 41 or both, Idaho Code, or these rules in the execution of the work nor from any other penalties prescribed by law. ()

032. STOP WORK ORDERS.

Whenever any work is being done contrary to any provisions of the codes enumerated in Title 39, Chapters 40 and/or 41, Idaho Code, or contrary to these rules, the administrator or his authorized representative may order the work stopped by notice in writing served on any persons engaged in the doing or causing such work to be done, and any such persons shall forthwith stop such work until authorized by the administrator or his representative to proceed with the work. Stop work orders shall be accompanied by a notice of violation which shall state the specific violation and code reference. Stop work notices shall be red in color. ()

033. PROHIBITED SALE OR OCCUPANCY NOTICE.

Whenever any mobile/manufactured home, commercial coach or other modular building is in violation of any of the provisions of Title 39, Chapter 40 and/or 41, Idaho Code, or these rules, the administrator or his authorized representative may prohibit the sale or occupancy of such building, and any and all persons shall be forthwith prohibited from selling or occupying such building. Prohibited sale or occupancy notices shall be removed only on authority of the administrator or his authorized representative. Prohibited sale or occupancy notices shall be orange in color. ()

034. REMOVAL OF ORDERS AND NOTICES; SALE, RENT, LEASE OR OCCUPANCY OF A UNIT BEARING SUCH ORDER OR NOTICE.

Removal of stop work orders, prohibited sale or occupancy notices, or the sale, rent, lease or occupancy of a building or structure, bearing such order or notice by any person or persons not authorized by the administrator or his authorized representative, shall constitute a violation under the provisions of Section 39-4126, Idaho Code, and shall fall under the provisions of Section 18-317, Idaho Code. ()

035. MODULAR BUILDINGS.

01. Enforcement and Administration. The administrator shall administer and enforce all the provisions of these rules. Any officer, agent or employee of the division is authorized to enter any premises during any normal or operational hours where modular buildings are manufactured, leased, sold or offered for sale for the purpose of examining any records pertaining to quality control and inspection and may inspect any such units, equipment or installations to insure compliance with the provisions of these rules and codes enumerated in Title 39, Chapter 41, Idaho Code. When it becomes necessary, he may require that a portion or portions of such modular building units be removed in order that an inspection may be made to determine compliance. Every manufacturer of modular buildings shall obtain prior approval and an insignia for each modular building unit to be installed in the state of Idaho. ()

02. Alternates and Equivalents. ()

a. Alternatives Acceptable. The provisions of these rules are not intended to prevent the use of alternate designs, materials, appliances, systems, devices, arrangements, or methods of construction not specifically prescribed by Title 39, Chapter 41, Idaho Code, or of these rules; provided, any such alternate has first been recognized by the division. ()

b. Satisfactory Alternatives. The division shall recognize any such alternate if it finds that the proposed design is satisfactory and that the material, appliance, device, arrangement, method, system or method of construction is at least the equivalent in performance in quality, strength, effectiveness, fire resistance, durability and adequate for the protection of the health, safety and general welfare of the people of the state of Idaho. ()

c. Unsatisfactory Alternatives. Recognition by the division shall not be given if there is substantial evidence that any design, material, appliance, device, arrangement, system or method of construction does not conform to the provisions or requirements of prescribed standards or these rules; provided, however, the division may, in order to substantiate claims for alternates, upon written request cause tests or proof of compliance to be made at the expense of the manufacturer, his agent, or the seller. ()

d. Test Methods. Test methods shall be as specified in the standards of the codes listed in Title 39, Chapter 41, Idaho Code, or by other nationally recognized standards recognized by the division. If there are no appropriate test methods specified in the standards listed above, the division shall determine the test procedure. ()

03. Permits. Prior to construction of modular buildings, appropriate building permits shall first be obtained from the division. ()

04. Plans. ()

a. Specifications for Submittal. Plans shall be submitted in accordance with Subsection 028.03 of this rule. ()

b. Nonconformance. Should the plan submittal not conform to the requirements of these rules, the applicant shall be notified in writing within fifteen (15) work days of the date they are received by the division. Should the applicant fail to submit a completely corrected plan submittal in accordance with the information supplied by the division within ninety (90) days of such notice, the plan submittal will be deemed abandoned and all fees submitted shall be forfeited to the division. Subsequent submission thereafter shall be processed as a new plan submittal. ()

c. Distribution of Approved Copies. An approved copy of the plan submittal shall be returned to the manufacturer. An approved copy shall be retained at each place of manufacture, and a copy shall be retained by the division. ()

d. Proprietary Information. All material submitted by the manufacturer in the form of design plans, engineering data, test results, and other design information relating to their application will be considered proprietary information and will not be released for public scrutiny except when so ordered by a court of competent jurisdiction. ()

e. Changes to Approved Modular Building Plans. Where the manufacturer proposes to change his submitted designs or the division rule is amended to necessitate such a change, the manufacturer shall submit changed plans for examination and approval. ()

05. Inspections. ()

a. Inspections at Manufacturing Plants. The division shall conduct inspections at the manufacturing plant to determine compliance with the provisions of these rules and with Title 39, Chapter 41, Idaho Code. ()

b. In-Plant Inspections. Due to the repetitive nature of the manufacturing process, the required inspections outlined in the International Building Code or International Residential Code may not be required if, in the opinion of the division, compliance can be obtained by periodic inspections. The division shall conduct periodic unannounced inspections at any manufacturing site to review any or all aspects of a manufacturer's production and inspectional control procedures. Each unit, however, shall be inspected at least once during the course of production for compliance with the adopted standards. No unit manufactured to be installed in the state of Idaho will be shipped from the point of manufacture without inspection and attached insignia. ()

c. Field Inspections. All existing modular buildings to be installed in the state of Idaho not bearing the division's insignia shall not be used or occupied until required Idaho insignia has been issued by the division and properly affixed in accordance with these rules. Applicants for insignia shall obtain permits, plan approvals and inspections as required by these rules. ()

d. Field Inspection for Alterations and Conversions. Any alteration or conversion of division approved modular buildings after leaving the manufacturing facility shall be field inspected in accordance with Section 035 of this rule by a the local unit of government having jurisdiction. ()

06. Installation Inspection. In order to complete the installation of the modular building, approval and inspection of said installation by the enforcement agency having jurisdiction over the site location shall be required. ()

a. In-Plant Inspection in Sister States. Where there is evidence that the in-plant inspectional controls in out-of-state plants in states having reciprocal agreements with the state of Idaho are not being maintained for units to be sold or placed in Idaho, the division reserves the right to make out-of-state inspections, and fees for such inspection as set forth in these rules shall be paid by the manufacturer. ()

b. Field Technical Service. Any person may request field technical service and requests for such service shall be submitted to the division in writing. ()

07. Local Enforcement Agencies. ()

a. Rights of Local Enforcement Agency. A local enforcement agency shall have the right to require a complete set of plans and specifications approved by the division for each modular building to be installed within its jurisdiction, to require that all permits be obtained before delivery of any unit to a building site and to require permits for alterations, repairs or conversions of existing division approved modular buildings. ()

b. Limitations of Rights of Local Enforcement Agency. A local enforcement agency shall not have the right to: open for inspection any modular building or component bearing an insignia to determine compliance with any codes or ordinances; require by ordinance or otherwise that modular buildings meet any requirements not equally applicable to on-site construction; or require or charge fees for any portion of the structure completed in a construction facility remote from the building installation site. ()

08. Insignia. ()

a. Required Insignia. Each modular building section substantially prefabricated and assembled shall bear a division insignia prior to leaving the manufacturing facility. Assigned insignia are not transferable and are void when not affixed as assigned. All such voided insignia shall be returned to, or may be confiscated by the division. Insignia remain the property of the division and may be reappropriated by the division in the event of violation of conditions of approval. Assigned insignia affixed in the field shall be under the direction of the division's authorized agent. ()

b. Insignia Location. Single units shall have the insignia permanently attached below the electrical service entrance. Multiple section units shall have the insignia permanently attached on all perimeter sections to the outside wall next to the major access opening. For interior units and second story units the insignia shall be permanently attached on the interior wall next to the major access opening. ()

c. Application for Insignia. The manufacturer shall make application for an insignia for each unit to

be manufactured as required by Subsection 035.03 of this rule. The permit/insignia application shall be submitted to the division in accordance with Section 035 of this rule and shall include the appropriate fees. Applications shall include the serial number of each unit for which an insignia is requested. ()

d. Alteration or Conversion. Factory alterations or conversions of an approved modular building prior to first occupancy shall NOT take place until a permit under the provisions of Section 035 of this rule, has been obtained. The jurisdiction for non-factory produced additions, repairs or alterations to modular buildings and commercial coaches built in conformance with and as prescribed in the Idaho Building Code Act, Section 39-4109, Idaho Code, once such unit has left the manufacturing facility and/or a dealer's lot, and bears an appropriate insignia of compliance, rests with the local unit of government having the jurisdiction for the administration and enforcement of locally adopted codes prescribed within the Idaho Building Code Act. ()

e. Denial of Insignia. Should inspection reveal that a manufacturer is not manufacturing units according to the codes specified in Title 39, Chapter 41, Idaho Code, and these rules, and such manufacturer after having been served with a notice setting forth in what respect the provisions of the codes or rules have been violated continues to manufacture units in violation of the codes or rules, applications for new insignia shall be denied and insignia issued for units in noncompliance such manufacturer may resubmit an application for insignia. ()

f. Removal of Insignia. In the event any unit bearing an insignia is found to be in violation of the codes enumerated in Title 39, Chapter 41, Idaho Code, or these rules, the division may remove the insignia and shall furnish the owner or his agent with a written statement of violations. The owner or his agent shall request an inspection after making corrections to bring the unit into compliance before the division shall issue a replacement insignia. ()

g. Serial Number. Each commercial coach rented, leased or sold, or offered for rent, lease or sale in Idaho, shall bear a legible identifying serial number in accordance with the provisions of Section 035 of this rule, which shall include the state of manufacture. Each section of a multiple modular building shall have the same identifying serial number followed by a numerical sequence identifier and letter suffix. ()

h. Stamp of Serial Number and State of Manufacture. The unit serial number and the state of manufacture shall be stamped into the foremost cross member of all commercial coaches. Letters and numbers shall be three-eighths (3/8) inch minimum height. Numbers shall not be stamped into a hitch assembly or draw bar. The insignia shall be made of etched brass, stainless steel, anodized or alclad aluminum, or other approved material, not less than two hundredths (0.02) inches thick, and three (3) inches by one and three-fourths (1 3/4) inches minimum size, with lettering not less than one-eighth (1/8) inch high. ()

i. Multiple Commercial Coaches. Each section of multiple commercial coaches shall have the same identifying serial number followed by a numerical sequence identifier and letter suffix. ()

j. Data on Insignia. The date of manufacture, showing month, week and year will be shown on the insignia. Such data will be provided by the manufacturer on the application for insignia. ()

09. Reciprocal Agreements. The provisions for insignia of compliance as specified in a written and signed reciprocal agreement between the division and any other state shall take precedence over the provisions of these rules. ()

036. MANUFACTURED HOMES.

01. Construction and Safety Standards. Effective June 15, 1976, the latest published edition of the Federal Manufactured Home Construction and Safety Standards and Manufactured Home Procedural and Enforcement Regulations shall be in effect for all manufactured homes manufactured within the state of Idaho, and for all new manufactured homes for sale within the state of Idaho. All new manufactured homes offered for sale within Idaho after the effective date of this section shall bear the Housing and Urban Development (H.U.D.) label as authorized in the Federal Manufactured Home procedural and enforcement regulations. Mobile homes manufactured between March 8, 1971 and June 15, 1976 offered for rent, lease, or sale within Idaho shall bear an Idaho insignia of approval.) ()

02. Inspections. ()

a. Special Inspection. Whenever there is a transit damage and/or any alteration made to a certified manufactured home, a special inspection shall be required of any person offering for rent, lease, or sale said manufactured home. The purpose of the inspection is to insure that the repairs and/or alteration does not result in the failure of the manufactured home to comply with the standards. ()

b. Installation Inspection. Installation inspections shall be conducted by local jurisdictions in accordance with Title 44, Chapter 22, Idaho Code and the state adopted Idaho Manufactured Home Installation Standard as incorporated by reference in IDAPA 07.03.12, "Rules Governing Manufactured Home Installations," Section 004. ()

03. Fees. ()

a. Payment of Fees. Fees shall be paid to and collected by the division. ()

b. In-Plant Inspections. The charge for routine in-plant inspections shall be equal to the latest fees approved by the Department of Housing and Urban Development-Office of Manufactured Home Standards: Twenty-six dollars (\$26) per floor. ()

c. Other Inspections. For all inspections other than routine whether they be in-plant or in the field (for models produced after June 15, 1976): Thirty-six dollars (\$36) per hour minimum for inspection and travel time, prorated to the nearest quarter hour, per diem and lodging where applicable, plus the current state rate for mileage, as approved by the State Board of Examiners and listed in the Idaho State Travel Policies and Procedures, Appendix "A", based on the round-trip distance from point of inspection and the inspector's office location.) ()

037. JURISDICTION FOR PLAN REVIEW OF STATE BUILDINGS.

Jurisdiction of the requirements for plan review for construction, additions, repairs, and occupancy of all state buildings within the state of Idaho shall remain exclusively with the division. State buildings, for the purposes of Section 037 of this rule, shall mean all buildings to be constructed for or by any agency of government at the state level for any purposes or occupancy, regardless of the source of funding for such construction, addition, repair, or occupancy. ()

038. -- 999. (RESERVED).

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.03.02 - RULES OF THE IDAHO BUILDING CODE BOARD
DOCKET NO. 07-0302-0501 (CHAPTER REPEAL)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

This docket proposes the repeal of IDAPA 07.03.02 – Rules of the Idaho Building Code Board, effective July 1, 2006. This is one of six proposed dockets, which will consolidate six existing chapters into one chapter (IDAPA 07.03.01) by repealing the existing chapters and eliminating redundant language. The resulting consolidated chapter will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars (\$25) to one-hundred dollars (\$100).

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

The proposed rule does not increase or impose a fee.

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

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100/Fax: 208-855-2164

IDAPA 07.03.02 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.03.03 - RULES GOVERNING MODULAR BUILDINGS
DOCKET NO. 07-0303-0501 (CHAPTER REPEAL)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

This docket proposes the repeal of IDAPA 07.03.03 - Rules Governing Modular Buildings, effective July 1, 2006. This is one of six proposed dockets, which will consolidate six existing chapters into one chapter (IDAPA 07.03.01) by repealing the existing chapters and eliminating redundant language. The resulting consolidated chapter will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars (\$25) to one-hundred dollars (\$100).

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

The proposed rule does not increase or impose a fee.

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

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100/Fax: 208-855-2164

IDAPA 07.03.03 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.03.05 - RULES GOVERNING MANUFACTURED HOMES
DOCKET NO. 07-0305-0501 (CHAPTER REPEAL)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

This docket proposes the repeal of IDAPA 07.03.05 - Rules Governing Manufactured Homes, effective July 1, 2006. This is one of six proposed dockets, which will consolidate six existing chapters into one chapter (IDAPA 07.03.01) by repealing the existing chapters and eliminating redundant language. The resulting consolidated chapter will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars (\$25) to one-hundred dollars (\$100).

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

The proposed rule does not increase or impose a fee.

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

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100/Fax: 208-855-2164

IDAPA 07.03.05 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.06 - RULES GOVERNING THE USE OF THE INTERNATIONAL BUILDING CODE

DOCKET NO. 07-0306-0501 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

This docket proposes the repeal of IDAPA 07.03.06 – Rules Governing the Use of the International Building Code, effective July 1, 2006. This is one of six proposed dockets, which will consolidate six existing chapters into one chapter (IDAPA 07.03.01) by repealing the existing chapters and eliminating redundant language. The resulting consolidated chapter will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars (\$25) to one-hundred dollars (\$100).

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

The proposed rule does not increase or impose a fee.

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

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100/Fax: 208-855-2164

IDAPA 07.03.06 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.03.08 - RULES GOVERNING COMMERCIAL COACHES
DOCKET NO. 07-0308-0501 (CHAPTER REPEAL)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

This docket proposes the repeal of IDAPA 07.03.08 – Rules Governing Commercial Coaches, effective July 1, 2006. This is one of six proposed dockets, which will consolidate six existing chapters into one chapter (IDAPA 07.03.01) by repealing the existing chapters and eliminating redundant language. The resulting consolidated chapter will include an increase in the fees charged for processing and issuance of modular building insignia tags to out-of-state manufacturers, who are not otherwise required to pay Idaho building permit fees, from twenty-five dollars (\$25) to one-hundred dollars (\$100).

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

The proposed rule does not increase or impose a fee.

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

The proposed rule will have no fiscal impact on the general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the proposal is relatively simple and clerical in nature and because, with respect to the increase in fees, it was unlikely that there would be a consensus reached by the affected out-of-state parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jack Rayne, Building Bureau Chief, 208-332-7151.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100/Fax: 208-855-2164

IDAPA 07.03.08 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 07 – DIVISION OF BUILDING SAFETY

07.05.01 - RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD

DOCKET NO. 07-0501-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1907, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

In order to accommodate the demands of contractors, the proposed rule will permit public works contractors seeking licensing class upgrades to qualify by demonstrating (satisfactory) recent work experience in the upper range of their current license bid limit. The rule change will also eliminate existing provisions for allowing applicants for public works licensing to use indemnification as a means to satisfy minimum financial requirements for licensure.

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

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change was discussed at publicly held Idaho Public Works Contractors License Board meetings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Steve Keys, Bureau Chief, 208-332-8986.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100 / Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0501-0501

110. APPLICATION FOR LICENSURE - DOCUMENTATION; APPRAISALS; REFERENCES; BONDING; AND FINANCIAL STATEMENTS.

01. Application Documentation. To obtain a license, the applicant shall submit to the administrator,

on such forms as the administrator shall prescribe, accompanied by the required fee for the class of license applied for, a written, notarized application for such license. All of the information submitted by the applicant shall specifically pertain to work that is similar in scope and value to that for which licensure is being requested or which is being requested in a petition to change or add types of construction. The information contained in such application forms shall include: (3-20-04)

a. A complete statement of the general nature of applicant's contracting business, including a concise description of the applicant's experience and qualifications as a contractor and a list of clients for whom work has been performed; (3-20-04)

b. A description of the value and character of contract work completed and for whom performed during the three (3) year period prior to filing the application; (3-20-04)

c. A general description of applicant's machinery and equipment; (3-20-04)

d. An annual financial statement, as herein defined, that was issued no more than twelve (12) months prior to the date of submission of the application, indicating compliance with such financial requirements as the board may prescribe by rule and which may include a letter from applicant's bonding company stating the amount of the applicant's bonding capability per project and in the aggregate; (3-20-04)

e. For class A, AA, and AAA license applications, financial statements shall be accompanied by an independent auditor's report or be reviewed. For class B license applications, financial statements must be accompanied by an independent audit report or be reviewed or compiled by a certified public accountant. For class C and D license applications, financial statements must be accompanied by an independent audit report or be reviewed, compiled, or on the form provided by the administrator, and include such additional information as may be required by the administrator to determine the applicant's fitness for a license. (3-20-04)

f. The name, social security number, and business address of an individual applicant or, if the applicant is a partnership, its tax identification number, business address, and the names and addresses of all general partners; and if the applicant is a corporation, association, limited liability company, limited liability partnership, or other organization, its tax identification number, business address, and the names and addresses of the president, vice president, secretary, treasurer, and chief construction managing officers, or responsible managing employee. (3-20-04)

g. Applicants requesting a licensing class higher than that for which the applicant is currently licensed shall provide documentation, satisfactory to the administrator, of having performed projects, similar in scope and character to those for which license is requested. The monetary value of those jobs must fall within a range not less than thirty percent (30%) below that for which the applicant is currently licensed. ()

02. Application for Change in Licensing Class. Requests for a licensing class higher than that for which the applicant qualifies is currently licensed shall be accompanied by the information in Subsections 110.01-a, 110.01-b, 110.01-d, and 110.01-e, and the applicable fee. Licenses granted under Subsection 110.02 shall be valid for a period of twelve (12) months from the date of issuance. (~~3-20-04~~)()

03. Extension of Time to File Financial Statement. The administrator may grant an extension of time to file the annual financial statement if the licensee provides an interim compiled balance sheet and income statement for the applicant's fiscal year-to-date, duly certified as true by the applicant, and if a partnership, limited liability company, or limited liability partnership by a member thereof, and if a corporation, by its executive or financial officer. Such renewal application shall be filed prior to the first day of such renewal licensing period. In the event an extension is granted, the renewal license shall be valid for a period of twelve (12) months from the date of the issuance of the renewal license. (3-20-04)

04. Appraisals. The administrator may require submission of an independent appraisal of any real or chattel property reported by an applicant or licensee. Such appraisals shall be conducted by a disinterested person or firm established and qualified to perform such services. (3-20-04)

05. References. The administrator may require an applicant for an original or renewal license to

furnish such personal, business, character, financial, or other written references as deemed necessary and advisable in determining the applicant's qualifications. (3-20-04)

06. Bonding. Applicants may submit letters from a bonding company, not an insurance agent, stating the amount of the applicant's bonding capability per project and in the aggregate, together with supporting information. (3-20-04)

Former Section 111 has been moved and renumbered to Section 202

202111. GUIDELINES FINANCIAL REQUIREMENTS.

The financial ~~guidelines~~ requirements for obtaining and maintaining a license under this Act shall be as follows:

~~(7-1-93)~~(____)

01. Heavy, Highway, Building, and Specialty Construction Class AAA License. An applicant requesting a Class AAA license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of six hundred thousand dollars (\$600,000) with two hundred thousand dollars (\$200,000) in working capital. (3-19-99)

02. Heavy, Highway, Building, and Specialty Construction Class AA License. An applicant requesting a Class AA license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of four hundred fifty thousand dollars (\$450,000) with one hundred fifty thousand dollars (\$150,000) in working capital. (3-19-99)

03. Heavy, Highway, Building, and Specialty Construction Class A License. An applicant requesting a Class A license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of three hundred thousand dollars (\$300,000) with one hundred thousand dollars (\$100,000) in working capital. (3-19-99)

04. Heavy, Highway, Building, and Specialty Construction Class B License. An applicant requesting a Class B license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of one hundred fifty thousand dollars (\$150,000) with fifty thousand dollars (\$50,000) in working capital. (3-19-99)

05. Heavy, Highway, Building, and Specialty Construction Class C License. An applicant requesting a Class C license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of twenty five thousand dollars (\$25,000) with seven thousand five hundred dollars (\$7,500) in working capital. (3-19-99)

06. Heavy, Highway, Building, and Specialty Construction Class D License. An applicant requesting a Class D license in Heavy, Highway, Specialty or Building Construction shall have a minimum net worth of ten thousand dollars (\$10,000) with three thousand dollars (\$3,000) in working capital. (3-19-99)

~~**07. Indemnification.** If the applicant's financial resources do not meet the Board requirements, an applicant may seek to indemnify its net worth and working capital by using a third party's assets to meet the minimum requirements for licensure. This must be done prior to licensure in writing in a form and manner approved by the Board. (3-19-99)~~

(BREAK IN CONTINUITY OF SECTIONS)

Former Section 202 has been moved and renumbered to Section 111

~~111~~202. COMPLAINTS.

Complaints alleging a violation of the License Act or these rules shall be in writing and filed with the administrator as provided in these rules. All complaints must be verified and submitted on forms provided by the board. (3-20-04)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS

DOCKET NO. 07-0701-0502

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-5004, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

The rule change will establish criteria for issuance of a specialty journeyman certificate of competency to include approved educational programs and on the job experience.

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

The temporary rule is necessary to protect the public health, safety and welfare by ensuring the proper education and licensing of specialty journeymen.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the change is being proposed at the request of industry and has been reviewed and discussed at publicly held Idaho Heating, Ventilation, and Air Conditioning Board meetings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Keys, Bureau Chief, 208-332-8968.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Dave Munroe, Administrator
Division of Building Safety
1090 E. Watertower St.
Meridian, Idaho 83642
Phone: 208-332-7100 / Fax: 208-855-2164

THE FOLLOWING IS THE TEXT OF DOCKET NO. 07-0701-0502

021. HVAC CONTRACTOR CERTIFICATE OF COMPETENCY - REQUIREMENTS.

~~01- Requirements for HVAC Contractor. (3-16-04)~~

~~a01. Bond. Applicants shall provide a performance bond in the amount of two thousand dollars (\$2,000). (3-16-04)~~

~~b02. Qualification. Applicants shall provide proof, satisfactory to the board, of having legally acted as an HVAC journeyman for a period of not less than twenty-four (24) months. (3-16-04)~~

~~e03. Examination. Applicants for certification as HVAC contractors must successfully complete the examination designated by the board. (3-16-04)~~

~~02- Alternate Requirements for HVAC Contractor. (Applies only until April 1, 2005). (3-16-04)~~

~~a. Bond. Applicants shall provide a performance bond in the amount of two thousand dollars (\$2,000). (3-16-04)~~

~~b. Qualification. Proof, satisfactory to the board, of having engaged in the business of HVAC contracting prior to July 1, 2004. Forms of proof include, but are not limited to: (3-16-04)~~

~~i. Copies of business licenses or registrations; (3-16-04)~~

~~ii. Tax returns; (3-16-04)~~

~~iii. Business advertisements; (3-16-04)~~

~~iv. Client affidavits; or (3-16-04)~~

~~v. Descriptions of work done to date. (3-16-04)~~

~~e. Examination. Copies of the HVAC statute and rules, along with an examination regarding the statute and rules will be included in each application package. The examination must be completed using the statute and rules and a written verification of completion of the examination must be submitted at the same time as the completed application for a certificate of competency. (3-16-04)~~

022. HVAC SPECIALTY CONTRACTOR CERTIFICATE OF COMPETENCY - REQUIREMENTS.

~~01- Requirements for HVAC Specialty Contractor. (3-16-04)~~

~~a01. Bond. Applicants shall provide a performance bond in the amount of two thousand dollars (\$2,000). (3-16-04)~~

~~b02. Qualification. Applicants shall provide proof, satisfactory to the board, of having legally acted as an HVAC specialty journeyman for a period of not less than twenty four (24) months. (3-16-04)~~

~~e03. Examination. Applicants for certification as HVAC specialty contractors must successfully complete the examination designated by the board. (3-16-04)~~

~~02- Alternative Requirements for HVAC Specialty Contractor. (Applies only until April 1, 2005). (3-16-04)~~

- ~~a. Bond. Applicants shall provide a performance bond in the amount of two thousand dollars (\$2,000). (3-16-04)~~
- ~~b. Qualification. Proof, satisfactory to the board, of having engaged in the business of HVAC specialty contracting prior to July 1, 2004. Forms of proof include, but are not limited to: (3-16-04)~~
- ~~i. Copies of business licenses or registrations; (3-16-04)~~
 - ~~ii. Tax returns; (3-16-04)~~
 - ~~iii. Business advertisements; (3-16-04)~~
 - ~~iv. Client affidavits; or (3-16-04)~~
 - ~~v. Descriptions of work done to date. (3-16-04)~~
- ~~e. Examination. Copies of the HVAC statute and rules, along with an examination regarding the statute and rules will be included in each application package. The examination must be completed using the statute and rules and a written verification of completion of the examination must be submitted at the same time as the completed application for a certificate of competency. (3-16-04)~~

023. HVAC JOURNEYMAN CERTIFICATES OF COMPETENCY - REQUIREMENTS.

- ~~01. Requirements for HVAC Journeyman. (3-16-04)~~
- ~~a01. Experience. Demonstrate, to the satisfaction of the board, a minimum of four (4) years experience working in the trade, in compliance with the requirements of the state in which the applicant received his supervision, or as a registered HVAC apprentice making HVAC installations on the job under the supervision of a qualified HVAC journeyman. (1-1-05)T~~
- ~~b02. Education. Successfully complete any required apprenticeship training courses. (3-16-04)~~
- ~~e03. Examination. Applicants for certification as HVAC journeymen must successfully complete the examination designated by the board. (3-16-04)~~
- ~~02. Alternate Requirements for HVAC Journeyman (Applies Only Until April 1, 2005). (3-16-04)~~
- ~~a. Qualification. Proof, satisfactory to the board, of having been engaged or being qualified to be engaged in the installation, improvement, extension, alteration, or repair of HVAC systems as a journeyman prior to July 1, 2004. Forms of proof include, but are not limited to: (3-16-04)~~
- ~~i. Copies of journeyman certification; (3-16-04)~~
 - ~~ii. Licensure or registration; (3-16-04)~~
 - ~~iii. Signed notarized affidavits from employers or labor organizations; or (3-16-04)~~
 - ~~iv. Certificates of completion from journeyman educational or training programs. (3-16-04)~~
- ~~b. Examination. Copies of the HVAC statute and rules, along with an examination regarding the statute and rules will be included in each application package. The examination is to be completed using the statute and rules and a written verification of completion of the examination must be submitted at the same time as the completed application for a certificate of competency. (3-16-04)~~

024. HVAC HEARTH SPECIALTY JOURNEYMAN CERTIFICATES OF COMPETENCY LIMITATIONS – REQUIREMENTS.

Certification as a hearth specialty journeyman entitles the holder to install hearth appliances and the associated gas lines. Requirements for HVAC Hearth Specialty Journeyman- are: ~~(1-1-05)T~~(9-1-05)T

01. Experience. Demonstrate, to the satisfaction of the board, a minimum of ~~two~~ one (21) years experience working in the trade, in compliance with the requirements of the state in which the applicant received his supervision, or as a registered HVAC apprentice or registered HVAC specialty apprentice making HVAC installations on the job under the supervision of a qualified HVAC journeyman or qualified HVAC specialty journeyman. ~~(1-1-05)T~~(9-1-05)T

02. Education. Successfully complete ~~any required apprenticeship~~ a board approved training course(s), such as the National Fireplace Institute program and a minimum of sixty (60) hours of education in gas piping. ~~(1-1-05)T~~(9-1-05)T

03. Examination. Applicants for certification as HVAC specialty journeymen must successfully complete an examination designated by the board. (1-1-05)T

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0502

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 33-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. This rule is being amended to clarify the Board's intent to allow currently certified teachers to add additional certificates and endorsements through the computer based alternative route. Previously, this provision was limited to individuals seeking initial certification. The Board had intended, from the inception of the rule, to allow teachers who were already certified to use this provision. The proposed rule change more clearly defines Board intent. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the May 5, 2005 Idaho Administrative Bulletin, Vol. 05-5, pages 59 and 60.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Marilyn Davis at (208) 332-1563.

DATED this 11th day of August, 2005.

Karen L. Echeverria
Policy and Governmental Affairs Officer
State Board of Education
650 West State Street, 3rd Floor
PO Box 83720, Boise, ID 83720-0037
(208) 332-1567 phone / (208) 334-2632 fax

IDAPA 08, TITLE 02, CHAPTER 02

RULES GOVERNING UNIFORMITY

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-5, May 5, 2005, pages 59 and 60.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2006 Idaho State Legislature as a final rule.

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0506

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-105, 33-616, 33-618, 33-1612, Idaho Code.

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

All hearings will begin at 6:30 p.m.

October 5
Eastern Idaho Technical College
1600 South 25th East Creek Building
Room 558
Idaho Falls

October 6
Idaho State University
1065 S. Cesar Chavez
Pond Student Union
Little Wood River Room
Pocatello

October 12
Boise State University
Student Union Building
Jordan ABC
1910 University Drive
Boise

October 13
College of Southern Idaho
315 Falls Avenue
Taylor Building
Room 277
Twin Falls

October 18
Lewis-Clark State College
Williams Conference Center
500 8th Avenue
Lewiston
Coeur d'Alene

October 19
North Idaho College
Edminster Student Union
Driftwood Bay Room
1000 West Garden Avenue

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

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

Currently 42 credits are required for graduation. That is significantly fewer than most other states. Idaho's math and science requirements have been minimal and as a result, Idaho is one of the lowest ranking states in postsecondary enrollment. The new graduation requirements are aligned with research on the best practices in high school reform. They are also aligned with Idaho's postsecondary admission requirements. Increasing the graduation requirement will better prepare Idaho's high school students for postsecondary education and entrance into the workforce.

Establishing middle school requirements is necessary to make sure that students are making progress in middle school grades. Currently, students must attend middle school but can fail all of their classes and still move on to high school. The state ISAT data show a decrease in proficiency in the middle school grades. National data also show that students are not making progress in these grades. By requiring students to maintain a C average (2.0 on a 4.0 scale) and requiring all students to complete pre-algebra or algebra I, Idaho will ensure that middle school students make academic progress and are prepared for high school.

The new high school graduation requirements will include 46 credits (rather than 42) for high school graduation and will increase the requirements from 4 credits of math and 4 of science to 8 math (including algebra 1, algebra 2 and geometry) and 6 science. The new rules will also require the parent approved learning plan be completed at the end of 6th grade rather than 8th, will require all students to take a college entrance examination, will require students to take 8 elective credits in a career focus area, and finally, will require all students to complete a senior project.

The rules will also require all middle school students to maintain a C average in language arts, math, science and social studies courses and to require middle school students to complete pre-algebra or algebra 1 by the end of the 8th grade with at least a grade of C.

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

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

There will be an initial impact on school districts that do not have enough highly qualified teachers in math and science. Districts may have to consider hiring additional teachers or hiring math or science teachers to replace teachers that currently teach elective courses. There will be a cost to the state in increasing the minimum high school credit requirement. Seniors in most districts currently have the option of taking 2 or 3 courses during their senior years. With the proposed rule, seniors would need to be in school full days until graduation. The increase in senior attendance would require additional staff.

There may also be an impact on both districts and the state in preparing highly qualified teachers in math and science. The fiscal impact would be minimal if current state and federal funds that are used for statewide and local district professional development are spent focused on these new requirements.

One positive fiscal impacts is that state funds distributed to local districts would be spent on instructional staff and materials needed to meet graduation requirements that will better prepare students for postsecondary education or the workforce. Better prepared college students and employees will lead to increasing income levels and will generate more money in the State of Idaho.

Another positive fiscal impact is that there will be a decreased need for remedial course in high schools and colleges. There may also be a dramatic increase in the number of students entering college with credits from AP and dual credit courses. This would result in a decreased cost for students completing degrees and may result in decreased cost at postsecondary institutions as well.

The following calculations are based on the estimated maximum cost to hire additional teachers to teach all six credits. Estimates are a class size of 25 students per class. Each additional class (2 credits each), 2 math classes and 1 science, will cost approximately \$5.4 million dollars per class. The total cost will be approximately \$16 million. This cost may be minimized if districts utilize existing staff and revise their course schedules and offerings to reflect the new graduation requirements. The requirements become effect with the graduating class of 2012 so the cost will be phased in over a 4 year period. The cost each year will be approximately \$4 million per year. Even though students in the 8th grade will be required to take pre-algebra or algebra I, there should be no increased costs to the districts because these students are currently required to take math.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Accelerated Learning and Preparation for Postsecondary Education Task Force met in Boise on February 9, March 9, April 14, May 26, June 10, and July 15, 2005. The meetings were open to the public and the rules were discussed in detail at these meetings.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marilyn Davis at (208) 332-1563 or Christine Ivie at (208) 332-1577.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 11th day of August, 2005.

Karen L. Echeverria
Policy and Governmental Affairs Officer
State Board of Education
650 West State Street
PO Box 83720
Boise, Idaho 83720-0037
Phone (208) 332-1567, FAX 332-2632

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0203-0506

007. DEFINITIONS A - G.

01. **Advanced Placement® (AP)** - <http://www.collegeboard.com>. The Advanced Placement Program is administered by the College Board. AP students may take one (1) or more college level courses in a variety of subjects. AP courses are not tied to a specific college curriculum, but rather follow national College Board curricula. While taking the AP exam is optional, students can earn college credit by scoring well on the national exams. It is up to the discretion of the receiving college to accept the scores from the AP exams to award college credit or advanced standing. ()

042. **All Students.** All students means all public school students, grades K-12, ~~not just non-college bound.~~ (3-15-02)()

023. **Alternative Assessment (Other Ways of Testing).** Any type of assessment in which students create a response to a question rather than choose a response from a given list, as with multiple-choice or true/false. Alternative assessments can include short-answer questions, essays, oral presentations, exhibitions, and portfolios. (4-5-00)

034. **Assessment.** The process of quantifying, describing, or gathering information about skills, knowledge or performance. (4-5-00)

045. **Assessment Standards.** (4-5-00)

a. Statements setting forth guidelines for evaluating student work, as in the “Standards for the Assessment of Reading and Writing”;

b. Measures of student performance. (4-5-00)

056. **Authentic.** Something that is meaningful because it reflects or engages the real world. An “authentic task” asks students to do something they might really have to do in the course of their lives, or to apply certain knowledge or skills to situations they might really encounter. (4-5-00)

067. **Basic Educational Skills Training.** Instruction in basic skills toward the completion/attainment of a certificate of mastery, high school diploma, or GED. (4-5-00)

078. **Classic Texts.** Literary or other works (e.g., films, speeches) that have been canonized, either continuously or intermittently, over a period of time beyond that of their initial publication and reception. (4-5-00)

089. **Context (Of a Performance Assessment).** The surrounding circumstances within which the performance is embedded. For example, problem solving can be assessed in the context of a specific subject (such as mathematics) or in the context of a real-life laboratory problem requiring the use of mathematics, scientific, and communication skills. (4-5-00)

0910. **Cooperative Work Experience.** Classroom learning is integrated with a productive, structured work experience directly related to the goals and objectives of the educational program. Schools and participating businesses cooperatively develop training and evaluation plans to guide and measure the progress of the student. School credit is earned for successful completion, and the work may be paid or unpaid. Cooperative work experiences are also known as co-operative education or co-op. (4-5-00)

101. **Criteria.** Guidelines, rules or principles by which student responses, products, or performances, are judged. What is valued and expected in the student performance, when written down and used in assessment, become rubrics or scoring guides. (4-5-00)

~~12.~~ **Cues.** Various sources of information used by readers to construct meaning. The language cueing systems include the graphophonic (also referred to as graphophonemic) system, which is the relationship between oral and written language (phonics); the syntactic system, which is the relationship among linguistic units such as prefixes, suffixes, words, phrases, and clauses (grammar); and semantic system, which is the study of meaning in language. Reading strategies and language cueing systems are also influenced by pragmatics-the knowledge readers have about the ways in which language is understood by others in their culture. (4-5-00)

~~13.~~ **“C” Average.** A combined average of courses taken on a four (4) point scale with “C” equal to two (2) points. ()

~~14.~~ **Decode.** (4-5-00)

a. To analyze spoken or graphic symbols of a familiar language to ascertain their intended meaning. (4-5-00)

b. To change communication signals into messages, as to decode body language. (4-5-00)

~~15.~~ **Dual Credit.** Dual credit allows high school students to simultaneously earn credit toward a high school diploma and a postsecondary degree or certificate. Postsecondary institutions work closely with high schools to deliver college courses that are identical to those offered on the college campus. Credits earned in a dual credit class become part of the student’s permanent college record. Students may enroll in dual credit programs taught at the high school or on the college campus. ()

~~16.~~ **Emergent Literacy.** Development of the association of print with meaning that begins early in a child’s life and continues until the child reaches the stage of conventional reading and writing. (4-5-00)

~~17.~~ **Employability Skills.** Work habits and social skills desirable to employers, such as responsibility, communication, cooperation, timeliness, organization, and flexibility. (4-5-00)

~~18.~~ **Entry-Level Skills.** The minimum education and skill qualifications necessary for obtaining and keeping a specific job; the starting point in a particular occupation or with a certain employer. (4-5-00)

~~19.~~ **Evaluation (Student).** Judgment regarding the quality, value, or worth of a response, product, or performance based on established criteria, derived from multiple sources of information. Student evaluation and student assessment are often used interchangeably. (4-5-00)

~~20.~~ **Experiential Education (Application).** Experiential education is a process through which a learner constructs knowledge, skill, and value from direct experiences. (4-5-00)

~~21.~~ **Exploratory Experience (Similar to a Job Shadow).** An opportunity for a student to observe and participate in a variety of worksite activities to assist in defining career goals. An in-school exploratory experience is a school-based activity that simulates the workplace. (4-5-00)

~~22.~~ **Fluency.** The clear, rapid, and easy expression of ideas in writing or speaking; movements that flow smoothly, easily, and readily. (4-5-00)

~~23.~~ **Genre (Types of Literature).** A category used to classify literary and other works, usually by form, technique, or content. Categories of fiction such as mystery, science fiction, romance, or adventure are considered genres. (4-5-00)

~~24.~~ **Graphophonic/Graphophonemic.** One (1) of three (3) cueing systems readers use to construct texts; the relationships between oral and written language (phonics). (4-5-00)

008. DEFINITIONS H - S.

01. Interdisciplinary or Integrated Assessment. Assessment based on tasks that measures a student’s ability to apply concepts, principles, and processes from two (2) or more subject disciplines to a project, issue, or

problem. (4-5-00)

02. **International Baccalaureate (IB)** - <http://www.ibo.org/ibo/index.cfm>. Administered by the International Baccalaureate Organization, the IB program provides a comprehensive liberal arts course of study for students in their junior and senior years of high school. IB students take end-of-course exams that may qualify for college-credit. Successful completion of the full course of study leads to an IB diploma. ()

023. **Narrative.** Text in any form (print, oral, or visual) that recounts events or tells a story. (4-5-00)

034. **Norm-Referenced Assessment.** Comparing a student's performance or test result to performance of other similar groups of students; (e.g., he typed better than eighty percent (80%) of his classmates.) (4-5-00)

045. **On-Demand Assessment.** Assessment that takes place at a predetermined time and place. Quizzes, state tests, SATs, and most final exams are examples of on-demand assessment. (4-5-00)

056. **Performance Assessment.** Direct observation of student performance or student work and professional judgment of the quality of that performance. Good quality performance assessment has pre-established performance criteria. (4-5-00)

067. **Performance-Based Assessment.** The measurement of educational achievement by tasks that are similar or identical to those that are required in the instructional environment, as in performance assessment tasks, exhibitions, or projects, or in work that is assembled over time into portfolio collections. (4-5-00)

078. **Performance Criteria.** A description of the characteristics that will be judged for a task. Performance criteria may be holistic, analytic trait, general or specific. Performance criteria are expressed as a rubric or scoring guide. Anchor points or benchmark performances may be used to identify each level of competency in the rubric or scoring guide. (4-5-00)

089. **Phonics.** Generally used to refer to the system of sound-letter relationships used in reading and writing. Phonics begins with the understanding that each letter (or grapheme) of the English alphabet stands for one (1) or more sounds (or phonemes). (4-5-00)

0910. **Portfolio.** A collection of materials that documents and demonstrates a student's academic and work-based learning. Although there is no standard format for a portfolio, it typically includes many forms of information that exhibit the student's knowledge, skills, and interests. By building a portfolio, students can recognize their own growth and learn to take increased responsibility for their education. Teachers, mentors, and employers can use portfolios for assessment purposes and to record educational outcomes. (4-5-00)

101. **Print Awareness.** In emergent literacy, a learner's growing awareness of print as a system of meaning, distinct from speech and visual modes of representation. (4-5-00)

12. **Professional-Technical Education.** Formal preparation for semi-skilled, skilled, technical, or paraprofessional occupations, usually below the BA level. ()

143. **Proficiency.** Having or demonstrating a high degree of knowledge or skill in a particular area. (4-5-00)

124. **School-to-Work Transition.** A restructuring effort that provides multiple learning options and seamless integrated pathways to increase all students' opportunities to pursue their career and educational interests. (4-5-00)

135. **Service Learning.** Combining service with learning activities to allow students to participate in experiences in the community that meet actual human needs. Service learning activities are integrated into the academic curriculum and provide structured time for a student to think, talk, or write about what was done or seen during the actual service activity. Service learning provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their communities, and helps foster the development of a sense of caring for others. (4-5-00)

146. Skill Certificate. Portable, industry-recognized credential that certifies the holder has demonstrated competency on a core set of performance standards related to an occupational cluster area. Serving as a signal of skill mastery at benchmark levels, skill certificates may assist students in finding work within their community, state, or elsewhere. A National Skills Standards Board is presently charged with issuing skill voluntary standards in selected occupations based on the result of research and development work completed by twenty-two (2) contractors. (4-5-00)

157. Standards. Statements about what is valued in a given field, such as English language arts, and/or descriptions of what is considered quality work. See content standards, assessment standards, and performance standards. (4-5-00)

168. Standardization. A set of consistent procedures for constructing, administering and scoring an assessment. The goal of standardization is to ensure that all students are assessed under uniform conditions so the interpretation of performance is comparable and not influenced by differing conditions. Standardization is an important consideration if comparisons are to be made between scores of different individuals or groups. (4-5-00)

179. Standards-Based Education. Schooling based on defined knowledge and skills that students must attain in different subjects, coupled with an assessment system that measures their progress. (4-5-00)

1820. Structured Work Experience. A competency-based educational experience that occurs at the worksite but is tied to the classroom by curriculum through the integration of school-based instruction with worksite experiences. Structured work experience involves written training agreements between school and the worksite, and individual learning plans that link the student's worksite learning with classroom course work. Student progress is supervised and evaluated collaboratively by school and worksite personnel. Structured work experience may be paid or unpaid; may occur in a public, private, or non-profit organization; and may or may not result in academic credit and/or outcome verification. It involves no obligation on the part of the worksite employer to offer regular employment to the student subsequent to the experience. (4-5-00)

1921. Student Learning Goals (Outcomes). Statements describing the general areas in which students will learn and achieve. Student learning goals typically reflect what students are expected to know by the time they leave high school, such as to read and communicate effectively; think critically and solve problems; develop positive self-concept, respect for others and healthy patterns of behavior; work effectively in groups as well as individually; show appreciation for the arts and creativity; demonstrate civic, global and environmental responsibility; recognize and celebrate multicultural diversity; exhibit technological literacy; have a well developed knowledge base which enhances understanding and decision making, and demonstrate positive problem solving and thinking skills. (4-5-00)

009. DEFINITIONS T - Z.

01. ~~Tech Prep/Associate Degree (TPAD) Program.~~ ~~A program with a planned sequence of competency-based studies articulated between secondary and postsecondary institutions, leading to an apprenticeship, certificate, associate degree, or four-year college degree. It provides technical preparation in at least one (1) field and builds student competence in the application of mathematics, science, communications, and workplace skills. Tech Prep is a sequenced program of study that combines at least two (2) years of secondary and two (2) years of postsecondary education. It is designed to help students gain academic knowledge and technical skills, and often earn college credit for their secondary coursework. Programs are intended to lead to an associate's degree or a certificate in a specific career field, and ultimately, to high wage, high skill employment or advanced postsecondary training.~~ (4-5-00)()

02. Technology Education. A curriculum for elementary, middle, and senior high schools that integrates learning about technology (e.g., transportation, materials, communication, manufacturing, power and energy, and biotechnology) with problem-solving projects that require students to work in teams. Many technology education classrooms and laboratories are well equipped with computers, basic hand tools, simple robots, electronic devices, and other resources found in most communities today. (4-5-00)

03. Total Quality Management. A systematic approach to standardizing and increasing the efficiency of internal systems and processes, whether in a business or a school, using statistical and management tools for

continuous improvement. Emphasis is on documenting effective processes, committing to meet customers' needs and sharing decision making. (3-15-02)

04. Transferable Skills. Skills that are inter-changeable among different jobs and workplaces. For example, the ability to handle cash is a skill one could use as both a restaurant cashier and a bank teller, the ability to problem solve or work as a team member is transferable among most jobs and workplaces. (4-5-00)

05. 2+2 or 4+2. A planned, streamlined sequence of academic and vocational technical courses which eliminates redundancies between high school and community college curricula; 2+2 is high school years eleven (11) and twelve (12) and community college years thirteen (13) and fourteen (14); 4+2 is high school years nine (9), ten (10), eleven (11), and twelve (12) and community college years thirteen (13) and fourteen (14). (4-5-00)

~~**06. Professional Technical Education.** "Formal preparation for semi-skilled, skilled, technical, or paraprofessional occupations, usually below the BA level." (Thesaurus of ERIC Descriptors). There are several variations on this term. Idaho uses "professional technical education," Oregon "professional technical education," and Washington "vocational technical."~~ (3-15-02)

076. Writing Process. The many aspects of the complex act of producing written communication; specifically, planning, drafting, revising, editing, and publishing. (4-5-00)

087. Word Recognition. (4-5-00)

a. The quick and easy identification of the form, pronunciation, and appropriate meaning of a word previously met in print or writing; (4-5-00)

b. The process of determining the pronunciation and some degree of meaning of a word in written or printed form. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

103. ~~CORE OF~~ INSTRUCTION GRADES 1-12.

01. Instruction. Instruction is inclusive of subject matter, content and course offerings. Patterns of instructional organization are a local school district option. Schools will assure students meet locally developed standards with the state standards as a minimum.* (*This includes special instruction that allows limited English proficient students to participate successfully in all aspects of the school's curriculum and keep up with other students in the regular education program. It also includes special learning opportunities for accelerated, learning disabled students and students with other disabilities.) (4-5-00)

02. Instructional Courses. At appropriate grade levels, instruction will include but not be limited to the following: (4-5-00)(____)

a. Language Arts and Communication will include instruction in reading, writing, English, literature, technological applications, spelling, speech and listening. (4-1-97)

b. Mathematics will include instruction in addition, subtraction, multiplication, division, percentages, mathematical reasoning and probability. (4-1-97)

c. Science will include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. (4-1-97)

d. Social Studies will include instruction in history, government, geography, economics, current world affairs, citizenship, and sociology. (4-1-97)

104. OTHER REQUIRED INSTRUCTION.

Other required instruction for all students and other required offerings of the school are: (4-1-97)

01. Elementary Schools (Grades 1-~~5~~). (~~4-1-97~~)()

a. The following section outlines other information required for all elementary students (grades 1-5), as well as other required offerings of the school:

- Fine Arts (art and music)
- Health (wellness)
- Physical Education (fitness) (~~4-1-97~~)()

b. Additional instructional options as determined by the local school district. For example:
Languages other than English
Career Awareness (4-1-97)

02. Middle Schools/Junior High Schools (Grades 6-8). ()

a. (Effective for all students that entered the sixth grade in the fall of 2005 or earlier). No later than the end of Grade eight (8) all students will develop parent-approved student learning plans for their high school and post-high school options. The learning plan will be developed by students and parents or guardians with advice and recommendation from school personnel. It will be reviewed annually and may be revised at any time. The purpose of a parent-approved student learning plan is to outline a course of study and learning activities for students to become contributing members of society. A student learning plan describes, at a minimum, the list of courses and learning activities in which the student will engage while working toward meeting the district's graduation standards. The school district will have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the learning plan. A learning plan will not be required if the parent or guardian requests, in writing, that no learning plan be developed. (~~4-1-97~~)()

b. Postsecondary Readiness Plan (Grades 6-12) (Effective for all students that enter the sixth grade in the fall of 2006 or later.) No later than the end of grade six (6), all students shall complete parent-approved postsecondary readiness plans for their high school and post-high school options. Students and parents or guardians, with counseling and recommendation from school personnel, shall complete the postsecondary readiness plan. It shall be reviewed annually and may be revised at any time. The purpose of a parent-approved postsecondary readiness plan is to outline a course of study and learning activities for students to become contributing members of society. A postsecondary readiness plan, must include, at a minimum, the list of courses and learning activities in which the student will engage while working toward meeting the state and district graduation standards, the courses the student will take in a career focus area, a postsecondary educational activities plan, COMPASS, ACT or SAT scores, and advanced opportunities courses. The school district or Local Education Agency shall have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility of the parent and child for the development and approval of the postsecondary readiness plan. A postsecondary readiness plan shall not be required if the parent or guardian requests, in writing, that no postsecondary readiness plan be developed. ()

c. (Effective for all students that enter the sixth grade in the fall of 2006 or later.) All students in grades six through eight (6-8) shall achieve a cumulative C average in the courses outlined in Subsection 103.02 before entering grade nine (9). All students must receive a passing grade in algebra 1 or pre-algebra before entering grade nine (9). ()

d. Other required instruction for all middle school students (grades 6-8):
Health (wellness)
Physical Education (fitness) (~~4-1-97~~)()

e. Other required offerings of the school:
Family and Consumer Science
Fine & Performing Arts
~~Vocational~~- Professional Technical Education
Advisory Period (middle school only, encouraged in junior high school)

Exploratory (middle school only) (4-1-97)()

*e. Additional instructional options as determined by the local school district. For example:
Languages other than English* (4-1-97)

03. High Schools (Grades 9-12) (Effective for all students that graduate prior to January 1, 2012).
Students will maintain a parent-approved student learning plan for their high school and post-high school options. The learning plan will be developed by students and parents or guardians with advice and recommendation from school personnel. It will be reviewed annually and may be revised at any time. The purpose of a parent-approved student learning plan is to outline a course of study and learning activities for students to become contributing members of society. A student learning plan describes, at a minimum, the list of courses and learning activities in which the student will engage while working toward meeting the district's graduation standards. The school district will have met its obligation for parental involvement if it makes a good faith effort to notify the parent or guardian of the responsibility for the development and approval of the learning plan. A learning plan will not be required if the parent or guardian requests, in writing, that no learning plan be developed. (4-1-97)()

a. Other required instructional offerings of the high school. Each student must complete credit and achievement standards in at least two (2) of the following areas of instructional offerings:
Physical Education (fitness)
Humanities
~~Vocational~~ Professional Technical Education (including work-based learning)
Family and Consumer Science
Fine and Performing Arts
Languages other than English (may include indigenous languages or sign language) (3-30-01)()

*b. Additional instructional options as determined by the local school district. For example:
Journalism* (4-1-97)

105. GRADUATION FROM HIGH SCHOOL.
Graduation from an Idaho high school requires that: (4-1-97)

01. Credit Requirements.

a. (Effective for all students that graduate prior to January 1, 2012.) All students will demonstrate achievement in the CORE and other required subjects to include forty-two (42) semester credits, one (1) semester equaling one-half (1/2) year. (4-5-00)()

b. (Effective for all students that enter the ninth grade in the fall of 2008 or later.) All students shall complete the requirements found in Section 107 and other subjects to include forty-six (46) semester credits. ()

02. Achievement Standards. All students will meet locally established subject area achievement standards (using state standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (3-30-01)

03. Proficiency (Effective January 1, 2006). All students must achieve a proficient or advanced score on the High School Idaho Standards Achievement Test (ISAT) in order to graduate. A student who does not attain at least a proficient score prior to graduation may appeal to the local school board, and, at the discretion of the local school board, may be given an opportunity to demonstrate proficiency of the achievement standards through some other locally established mechanism. All locally established mechanisms used to demonstrate proficiency shall be forwarded to the State Board of Education for review and information. (3-20-04)

a. Before appealing to the local school board for an alternate measure, the student must be: (3-20-04)

i. Enrolled in a special education program and have an Individual Education Plan (IEP), or (3-20-04)

ii. Enrolled in an Limited English Proficient (LEP) program for three (3) academic years or less, or

- (3-20-04)
- iii. Enrolled in the fall semester of the senior year. (3-20-04)
 - b. The measure must be aligned at a minimum to tenth grade state content standards; (3-20-04)
 - c. The measure must be aligned to the state content standards for the subject matter in question; (3-20-04)
 - d. The measure must be valid and reliable; and (3-20-04)
 - e. Ninety percent (90%) of the criteria of the measure, or combination of measures, must be based on academic proficiency and performance. (3-20-04)

04. Foreign Exchange Students. Foreign exchange students may be eligible for graduation by completing a comparable program as approved by the local school board. (3-20-04)

106. ~~(RESERVED)~~ ADVANCED OPPORTUNITIES (EFFECTIVE JULY 1, 2007).
All high schools in Idaho will be required to offer advanced opportunities at the high school campus or provide opportunities for students to take courses at the postsecondary campus. Advanced opportunities are defined as Advanced Placement courses, Dual Credit courses, Tech Prep, or International Baccalaureate programs. ()

107. HIGH SCHOOL GRADUATION ~~STANDARDS (EFFECTIVE JULY 1, 2000)~~ REQUIREMENTS.

01. Requirements. (Effective for all students that graduate prior to January 1, 2012.) The State minimum graduation requirement for all Idaho public high schools is forty-two (42) semester credits and a proficient or advanced score on the ISAT (effective January 1, 2006). The core of instruction required by the State Board of Education is twenty-five (25) semester credits. Local school districts may establish graduation requirements beyond the state minimum. The local school district has the responsibility to provide education opportunities that meet the needs of students in both academic and vocational areas. It is the intent of the State Board of Education to give local school districts the flexibility to provide rigorous and challenging curriculum that is consistent with the needs of students and the desire of their local patrons. ~~(3-20-04)~~()

02. Requirements. (Effective for all students that enter the ninth grade in the fall of 2008 or later.) The State minimum graduation requirement for all Idaho public high schools is forty-six (46) semester credits and a proficient or advanced score on the ISAT. Thirty-nine (39) semester credits are required as listed in Subsections 107.01 through 107.07, plus a minimum of seven (7) elective credits. All credit-bearing classes must be aligned with state high school standards in the content areas for which standards exist. Local school districts or Local Education Agencies may establish graduation requirements beyond the state minimum. The local school district or Local Education Agency has the responsibility to provide education opportunities that meet the needs of students in both academic and professional technical areas. It is the intent of the State Board of Education to give local school districts the flexibility to provide rigorous and challenging curriculum that is consistent with the needs of students and the desire of their local patrons. ()

043. Secondary Language Arts and Communication. (Nine (9) credits required with instruction in communications including oral communication and technological applications). Includes four (4) years of instruction in English, each year will consist of language study, composition, and literature. A course in speech or a course in debate will fulfill one (1) credit of the nine (9) credit requirement. (7-1-00)

024. Mathematics ~~and Science.~~ ()

a. (Effective for all students that graduate prior to January 1, 2012.) ~~(Eight (8) credits required),~~ a minimum of four (4) credits in math and four (4) credits in science, two (2) of which will be laboratory ~~sciences.~~ Secondary mathematics includes Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and reasoning. Secondary sciences will include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. ~~(7-1-00)~~()

b. (Effective for all students that enter the ninth grade in the fall of 2008 or later.) (Eight (8) credits required beginning with a minimum of algebra I. Secondary mathematics must include two (2) semesters from each of the following: algebra I, geometry and algebra II (unless an algebra II waiver is granted allowing the student to substitute another course for the two (2) credits of algebra II). If a student completes any of these courses with a grade of C or higher before entering grade nine (9), the student has met the high school content area requirement. However the student must take eight (8) credits of high school math in addition to the courses completed in middle school. In order to apply for an algebra II waiver, a parent or guardian must apply for his child no earlier than fourth quarter of the tenth grade. The parent or guardian must meet with designated school personnel and complete the requirements of the local district or local education agency for petitioning the governing school board to grant the waiver. Local school districts or local education agencies must establish waiver criteria for algebra II. The criteria must include a meeting with school personnel, parents, and student. In order to meet state graduation requirements, students who are granted algebra II waivers must complete eight (8) credits of math, including two (2) credits of algebra I and two (2) credits of geometry. (____)

05. Science. (Effective for all students that enter the ninth grade in the fall of 2008 or later.) (Six (6) credits required). Secondary sciences shall include instruction in the following areas: biology, physical science or chemistry, and earth, space, environment or approved applied science. All of these courses must be laboratory based. If a student completes any required high school course with a grade of C or higher before entering grade nine (9), and if that course meets the same standards that are required in high school, then the student has met the high school content area requirement. However, the student must complete six (6) credits of high school science in addition to the courses completed in middle school. (____)

036. Social Studies. (Five (5) credits required), including government (two (2) credits), ~~U.S.~~ United States history (two (2) credits), and economics (one (1) credit). Current world affairs and geography will be integrated into all social studies instruction. Courses such as geography, sociology, world affairs, and world history may be offered as electives, not to be counted as a social studies requirement. (~~7-1-00~~)(____)

047. Humanities. (Two (2) credits required). A course in interdisciplinary humanities, visual and performing arts, or ~~foreign~~ world language. Other courses such as literature, history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if the course syllabus is approved by the State Department of Education as being aligned with the Humanities Standards. (~~5-3-03~~)(____)

058. Health/Wellness. (One (1) credit required). A course focusing on positive health habits. (7-1-00)

09. Career Focus. (Effective for all students that enter the ninth grade in the fall of 2008 or later.) (Eight (8) credits required). Students must take a minimum of eight (8) credits in a career focus area aligned with their postsecondary readiness plans. (____)

10. College Entrance Examination. (Effective for all students that enter the ninth grade in the fall of 2008 or later.) Students must take one (1) of the following college entrance examinations before the end of their eleventh grade year: COMPASS, ACT or SAT. Scores must be included in the Postsecondary Readiness Plan. (____)

11. Senior Project. (Effective for all students that enter the ninth grade in the fall of 2008 or later.) Students must complete a senior project that will include a research paper and oral presentation by the end of grade twelve (12). (____)

0612. Assessment. A proficient or advanced score on the ISAT. The requirement will be phased in providing the following exemptions for the ~~classes~~ calendar year of 2006 and 2007. (~~3-20-04~~)(____)

a. Class Calendar year of 2006. (~~3-20-04~~)(____)

i. The student took the ISAT and was within six (6) Rasch Units (RIT points) of proficiency; (3-20-04)

ii. The student has a score of seventeen (17) on the ACT or two hundred (200) on the SAT in English

and a score of nineteen (19) on the ACT or four hundred sixty (460) on the SAT in Math; (3-20-04)

iii. The student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test; (3-20-04)

iv. The student is considered an LEP student through a score determined on the state language proficiency test and has been in an LEP program for three (3) academic years or less; (3-20-04)

v. The student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state exit exams must be approved by the State Board of Education, measure skills at the tenth grade level or above and be in comparable subject areas to the ISAT; or (3-20-04)

vi. The student may appeal for another measure approved by the local school board as outlined in Subsection 105.03. (3-20-04)

b. ~~Class~~ Calendar year of 2007. (~~3-20-04~~)()

i. The student took the ISAT and was within three (3) RIT points of proficiency; (3-20-04)

ii. The student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test; (3-20-04)

iii. The student is considered an LEP student through a score determined on a language proficiency test and has been in an LEP program for three (3) academic years or less; (3-20-04)

iv. The student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state exit exams must be approved by the State Board of Education, measure skills at the tenth grade level or above and be in comparable subject areas to the ISAT; or (3-20-04)

v. The student may appeal for another measure approved by the local school board as outlined in Subsection 105.03. (3-20-04)

c. ~~Class~~ Calendar year of 2008 and Subsequent Classes. (~~3-20-04~~)()

i. The student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state exit exams must be approved by the State Board of Education, measure skills at the tenth grade level or above and be in comparable subject areas to the ISAT; or (3-20-04)

ii. The student may appeal for another measure approved by the local school board as outlined in Subsection 105.03. (3-20-04)

iii. The student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test. ()

IDAPA 08 - STATE BOARD OF EDUCATION
08.02.04 - RULES GOVERNING CHARTER SCHOOLS
DOCKET NO. 08-0204-0501 (CHAPTER REPEAL)
NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 33-105, 33-5203, and 33-5213, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. This rule is being repealed in its entirety. It is being replaced by the rules adopted in Docket No. 08-0204-0502. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the The original text of the proposed rule was published in the May 4, 2005, Idaho Administrative Bulletin, Vol. 05-05, page 63.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Karen Echeverria at (208) 332-1567.

DATED this 11th day of August, 2005.

Karen L. Echeverria
Policy and Governmental Affairs Officer
State Board of Education
650 West State Street
PO Box 83720, Boise, Idaho 83720-0037
Phone (208) 332-1567, FAX 332-2632

IDAPA 08, TITLE 02, CHAPTER 04

RULES GOVERNING CHARTER SCHOOLS

This rule is being repealed in its entirety.

There are no substantive changes from the proposed rule.

The notice of proposed rulemaking repealing this rule was published in the Idaho Administrative Bulletin, [Volume 05-5, May 5, 2005, page 63.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2006 Idaho State Legislature as a final rule.

IDAPA 08 - STATE BOARD OF EDUCATION
08.02.04 - RULES GOVERNING PUBLIC CHARTER SCHOOLS
DOCKET NO. 08-0204-0502 (CHAPTER REWRITE)

NOTICE OF RULEMAKING
ADOPTION OF PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is August 11, 2005. This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section(s) 33-105, 33-5203, and 33-5213, Idaho Code.

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

The legislature approved significant amendments to the state's charter school act during the 2004 legislative session. On April 1, 2004, the Governor signed the bill and the law became immediately effective. The new law requires the State Board of Education to adopt rules, subject to law, to establish a consistent application and review process for the approval and maintenance of all public charter schools. Subsequent to the publication of the rules, several written comments were received and a statewide public video conference hearing was held at seven (7) locations around the state. Verbal comments were received. Rather than adopting the pending rules, State Board of Education President Lewis appointed a Charter Rule Committee to work with Board staff in drafting a new set of rules to be approved at the March 2005 meeting.

These rules clarify the limitations on new public charter schools and the procedures the Office of the State Board of Education will utilize to track the number of charters being filed. The rules further clarify the assistance that will be provided by the Department of Education and the requirement for charter petitioners to receive a completed sufficiency review from the Department prior to filing their petition with an authorized chartering entity. The rules also permit the Board to set out petition requirements and model admission procedures. The rules also clearly set out appeal and revocation procedures. Finally, the rules discuss the authority of the Executive Director to designate public charter schools as a Local Education Agency (LEA).

Subsequent to the publication of the rules, several written comments were received and a public hearing was held at which verbal comments were received. Many of the comments involved subjects covered by the charter school statute, and could not be incorporated into the charter school rules. However, some modifications have been made to the original temporary and proposed rule based on written and oral comments that were received. Those modifications are shown in the copy of the rules that are attached.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Board amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes different from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the May 4, 2005, Idaho Administrative Bulletin, Vol. 05-05, page(s) 64 through 81.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Karen Echeverria at (208) 332-1567.

DATED this 11th day of August, 2005.

Karen L. Echeverria
Policy and Governmental Affairs Officer
State Board of Education
650 West State Street
PO Box 83720, Boise, Idaho 83720-0037
Phone (208) 332-1567, FAX 332-2632

IDAPA 08, TITLE 02, CHAPTER 04

RULES GOVERNING PUBLIC CHARTER SCHOOLS

There are substantive changes from the proposed rule text.

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

The text of the temporary and proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-5, May 4, 2005, pages 64 through 81.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2006 Idaho State Legislature as a final rule.

FOLLOWING IS THE AMENDED TEXT OF DOCKET NO. 08-0204-0502

000. LEGAL AUTHORITY.

In accordance with Sections 33-105, 33-5203, and 33-~~5213~~5210(4)(e), Idaho Code, the Board shall promulgate rules implementing the provisions of Title 33, Chapter 52, Idaho Code. ~~(3-10-05)T~~(8-11-05)T

(BREAK IN CONTINUITY OF SECTIONS)

Subsection 010.10

010. DEFINITIONS.

10. Public Virtual School. Is defined in Section 33-5202A(6), Idaho Code, and means a public charter school that may serve students in more than one (1) school district and ~~that provides~~ through which the primary method for the delivery of instruction to all of its pupils primarily is through virtual distance learning or online technologies. ~~(3-10-05)T~~(8-11-05)T

(BREAK IN CONTINUITY OF SECTIONS)

Subsections 100.01 and 100.02

100. LIMITATIONS ON NEW PUBLIC CHARTER SCHOOLS.

01. Number of New Public Charter Schools Approved for a School Year. Section 33-5203(2), Idaho Code, limits the number of new public charter schools that may be approved to begin instruction for a school year to not more than six (6), and further limits the number of new public charter schools that may be approved for a single school district for a school year to not more than one (1). The Board shall use the procedure described in Section 100 of these rules for implementing this limitation on the approval of new public charter schools.

~~(3-10-05)F~~(8-11-05)T

02. Responsibilities of Petitioners on Grant Approval of Charter. Upon the approval of a new public charter school by an authorized chartering entity, the petitioners shall be responsible for providing the Board with written notice of such approval, and shall promptly submit a copy of the final approved petition to the Board, as required by Section 33-5206(6), Idaho Code. In addition, in the event the ~~final approved petition~~ charter is revised at any time, as permitted by Section 33-5209(1), Idaho Code, and pursuant to the procedures described in Section 302 of these rules, the governing board of the public charter school shall also be responsible for submitting copies of any such charter revisions to the Board.

~~(3-10-05)F~~(8-11-05)T

(BREAK IN CONTINUITY OF SECTIONS)

Subsection 200.02

200. PROCEDURE FOR FORMATION OF A NEW PUBLIC CHARTER SCHOOL.

02. Public Charter School Workshops. The purpose of the public charter school workshops shall be to provide public charter school petitioners with a brief overview of a variety of educational and operational issues relating to public charter schools, as well as to answer questions and to provide technical assistance, as may be necessary, to aid petitioners in the preparation of public charter school petitions. ~~Petitioners, or a representative on behalf of petitioners, must attend a public charter school workshop prior to submitting a petition to form a proposed new public charter school with an authorized chartering entity.~~

~~(3-10-05)F~~(8-11-05)T

Subsection 201.02

201. POLICIES AND PROCEDURES ADOPTED BY AN AUTHORIZED CHARTERING ENTITY.

02. Application Deadline. ~~The date by which a petition~~ Petitioners must ~~be submitted~~ a new petition to an authorized chartering entity by September 1 in order ~~for a proposed new charter school~~ to be eligible to begin ~~operations during a given school year shall be not later than the first of February preceding such~~ educational instruction for the following school year as required by Section 33-5203, Idaho Code. A petition filed after such date may not be rejected by an authorized chartering entity as untimely, but if the petition is approved and the charter is granted, the proposed public charter school will not be eligible to begin operations until the next succeeding school year at the earliest, and only if authorized to begin operations during such school year in accordance with the approval procedure described in Subsection 100.04 of these rules.

~~(3-10-05)F~~(8-11-05)T

(BREAK IN CONTINUITY OF SECTIONS)

Entire Section

203. ADMISSION PROCEDURES.

01. Model Admission Procedures. In accordance with Section 33-5205(3)(i), Idaho Code, a petition to establish a new public charter school must describe the admission procedures to be utilized by the public charter school. In order to ensure that public charter schools utilize a fair and equitable selection process for initial admission to and enrollment in a public charter school, as well as admission to and enrollment in a public charter school during subsequent school years, the Board has approved model admission procedures that may be utilized and adopted by petitioners. The approved model admission procedures are described in Subsections 203.03 through 203.12 of these rules. Petitioners are not required to adopt the Board's model admission procedures, but must demonstrate a reason for varying from the Board's approved procedures. (3-10-05)T

02. Enrollment Opportunities. Section 33-5205(3)(s), Idaho Code, requires petitioners to describe the process by which the citizens in the area of attendance shall be made aware of the enrollment opportunities of the public charter school. Petitioners shall ensure that such process includes the dissemination of enrollment information, ~~printed in both English and Spanish~~ taking into consideration the language demographics of the attendance area, at least three (3) months in advance of the enrollment deadline established by the public charter school each year, to be posted in highly visible and prominent locations within the area of attendance of the public charter school. In addition, petitioners shall ensure that such process includes the dissemination of press release or public service announcements, to media outlets that broadcast within, or disseminate printed publications within, the area of attendance of the public charter school; petitioners must ensure that such announcements are broadcast or published by such media outlets on not less than three (3) occasions, beginning not later than fourteen (14) days prior to the enrollment deadline each year. Finally, such enrollment information shall advise that all prospective students will be given the opportunity to enroll in the public charter school, regardless of race, color, national or ethnic origin, religion, gender, social or economic status, or special needs. (~~3-10-05~~)F(8-11-05)T

03. Enrollment Deadline. Each year a public charter school shall establish an enrollment admissions deadline, which shall be the date by which all written requests for admission to attend the public charter school for the next school year must be received. The enrollment deadline cannot be changed once the enrollment information is disseminated as required by Subsection 203.02. (~~3-10-05~~)F(8-11-05)T

04. Requests for Admission. A parent, guardian, or other person with legal authority to make decisions regarding school attendance on behalf of a child in this state, may make a request in writing for such child to attend a public charter school. In the case of a family with more than one (1) child seeking to attend a public charter school, a single written request for admission must be submitted on behalf of all siblings. The written request for admission must be submitted to, and received by, the public charter school at which admission is sought on or before the enrollment deadline established by the public charter school. The written request for admission shall contain the name, grade level, address, and telephone number of each prospective student in a family. If the initial capacity of the public charter school is insufficient to enroll all prospective students, then an equitable selection process, such as a lottery or other random method, shall be utilized to determine which prospective students will be admitted to the public charter school, as described in Subsection 203.09 of this rule. Only those written requests for admission submitted on behalf of prospective students that are received prior to the enrollment deadline established by the public charter school shall be permitted in the equitable selection process. Only written requests for admission shall be considered by the public charter school. Written requests for admission received after the established enrollment deadline will be added to the bottom of the waiting list for the appropriate grade. If there is an opening in one grade, a sibling, if any, from a late submitted application must go to the bottom of the sibling list. (~~3-10-05~~)F(8-11-05)T

05. Admission Preferences. A public charter school shall establish an admission preference for students residing in the attendance area of the public charter school, as provided in Section 33-5206, Idaho Code. In addition, a public charter school may establish admission preferences, as authorized by Section 33-5205(3)(i), Idaho Code, for students returning to the public charter school, for children of founders, and for siblings of students already selected to attend the public charter school. Such admission preferences must be approved by the authorized chartering entity and described in the final approved petition. (3-10-05)T

06. Priority of Preferences for Initial Enrollment. If a public charter school determines to establish admission preferences for initial enrollment of students in a public charter school, then the selection hierarchy with respect to such preferences shall be as follows: (3-10-05)T

a. First, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the initial capacity of the public charter school. (3-10-05)T

b. Second, to siblings of pupils already selected by the lottery or other random method. (3-10-05)T

c. Third, to prospective students residing in the attendance area of the public charter school. (3-10-05)T

d. Fourth, an equitable selection process, such as by lottery or other random method. (3-10-05)T

07. Priority of Preferences for Subsequent Enrollment Periods. If a public charter school determines to establish admission preferences for enrollment of students in a public charter school in subsequent school years, then the selection hierarchy with respect to such preferences shall be as follows: (3-10-05)T

a. First, to pupils returning to the public charter school in the second or any subsequent year of operation. Returning students are automatically enrolled in the appropriate grade and do not need to be selected by a random selection method. (~~3-10-05~~)T(8-11-05)T

b. Second, to children of founders, provided that this admission preference shall be limited to not more than ten percent (10%) of the capacity of the public charter school. (3-10-05)T

c. Third, to siblings of pupils already enrolled in the public charter school. (3-10-05)T

d. Fourth, to prospective students residing in the attendance area of the public charter school. (3-10-05)T

e. Fifth, an equitable selection process, such as by lottery or other random method. (3-10-05)T

08. Proposed Attendance List for Lottery. Each year the public charter school shall ~~maintain~~ create an ~~proposed~~ attendance list containing the names of all prospective students on whose behalf a written request for admission was timely received by the public charter school, separated by grade level. In addition, the proposed attendance list shall contain columns next to the name of each student, in which the public charter school will designate admission preferences applicable to each prospective student. The columns shall be designated "A" for returning student preference; "B" for founders preference; "C" for sibling preference, with a corresponding cross-reference to each of the siblings of the prospective student; and "D" for attendance area preference. (~~3-10-05~~)T(8-11-05)T

09. Equitable Selection Process. If the initial capacity of a public charter school is insufficient to enroll all prospective students, or if capacity is insufficient to enroll all prospective students in subsequent school years, then the public charter school shall determine the students who will be offered admission to the public charter school by conducting a fair and equitable selection process. The selection procedure shall be conducted as follows: (3-10-05)T

a. The name of each prospective student on the proposed attendance list shall be individually affixed to or written on a three by five (3 x 5) inch index card. The index cards shall be separated by grade. The selection procedure shall be conducted one (1) grade level at a time, beginning with the highest grade with the order for each grade level selected randomly. The index cards containing the names of the prospective students for the grade level being selected shall be placed into a single container. (~~3-10-05~~)T(8-11-05)T

b. A neutral, third party shall draw the grade level to be completed first and then draw each index card from the container for that grade level, and such person shall write the selection number on each index card as drawn, beginning with the numeral "1" and continuing sequentially thereafter. In addition, after selecting each index card, the name of the person selected will be compared to the proposed attendance list to determine whether any preferences are applicable to such person. (~~3-10-05~~)T(8-11-05)T

c. If the name of the person selected is a returning student, then the letter "A" shall be written on such

index card. If the name of the person selected is the child of a founder, the letter "B" shall be written on such index card. If the name of the person selected is the sibling of another student that has already been selected for admission to the public charter school, then the letter "C" shall be written on such index card. If the name of the person selected resides in the attendance area of the public charter school, then the letter "D" shall be written on such index card.

(3-10-05)T

d. With regard to the sibling preference, if the name of the person selected has a sibling in a higher grade who has already been selected, but the person previously selected did not have the letter "C" written on his or her index card (because a sibling had not been selected for admission prior to the selection of the index card of that person), then the letter "C" shall now be written on that person's index card at this time.

(3-10-05)T

e. With regard to the founder's preference, a running tally shall be kept during the course of the selection procedure of the number of index cards, in the aggregate, that have been marked with the letter "B." When the number of index cards marked with the letter "B" equals ten percent (10%) of the proposed capacity of the public charter school for the school year at issue, then no additional index cards shall be marked with the letter "B," even if such person selected would otherwise be eligible for the founders preference.

(3-10-05)T

f. After all index cards have been selected for each grade, then the index cards shall be sorted for each grade level in accordance with the following procedure. All index cards with the letter "A" shall be sorted first, based on the chronological order of the selection number written on each index card; followed by all index cards with the letter "B," based on the chronological order of the selection number written on each index card; followed by all index cards with the letter "C," based on the chronological order of the selection number written on each index card; followed by all index cards with the letter "D," based on the chronological order of the selection number written on each index card; followed, finally, by all index cards containing no letters, based on the chronological order of the selection number written on each index card.

(3-10-05)T

g. After the index cards have been drawn and sorted for ~~each~~ all grade levels, the names shall be transferred by grade level, and in such order as preferences apply, to the final selection list. ~~(3-10-05)T~~(8-11-05)T

10. Final Selection List. The names of the persons in highest order on the final selection list shall have the highest priority for admission to the public charter school in that grade, and shall be offered admission to the public charter school in such grade until all seats for that grade are filled.

(3-10-05)T

11. Notification and Acceptance Process.

(3-10-05)T

a. With respect to students selected for admission to the public charter school, within seven (7) days after conducting the selection process, the public charter school shall send an offer letter to the parent, guardian, or other person who submitted a written request for admission on behalf of a student, advising such person that the student has been selected for admission to the public charter school. The offer letter must be signed by such student's parent, or guardian, and returned to the public charter school by the date designated in such offer letter by the public charter school.

~~(3-10-05)T~~(8-11-05)T

b. With respect to a prospective student not eligible for admission to the public charter school, within seven (7) days after conducting the selection process, the public charter school shall send a letter to the parent, guardian, or other person who submitted a request for admission on behalf of such student, advising such person that the prospective student is not eligible for admission, but will be placed on a waiting list and may be eligible for admission at a later date if a seat becomes available.

(3-10-05)T

c. If a parent, guardian, or other person receives an offer letter on behalf of a student and declines admission, or fails to timely sign and return such offer by the date designated in such offer letter by the public charter school, then the name of such student will be stricken from the final selection list, and the seat that opens in that grade will be made available to the next eligible student on the final selection list.

(3-10-05)T

d. If a student withdraws from the public charter school during the school year for any reason, then the seat that opens in that grade will be made available to the next eligible student on the final selection list.

(3-10-05)T

12. Subsequent School Years. The final selection list for a given school year shall not roll over to the next subsequent school year. If the capacity of the public charter school is insufficient to enroll all prospective students during the next subsequent school year, then a new equitable selection process shall be conducted by the public charter school for such school year. (3-10-05)T

13. Admission Procedures for Approved Charter Schools. All public charter schools must have an admission procedure approved by their authorized chartering entity, which complies with Section 203 of this rule. (8-11-05)T

Entire Section

204. SUBMISSION OF PETITION.

01. New Public Charter School. To institute the approval process for the formation of a new public charter school, the petitioners must submit the petition to the local board of trustees of the school district in which the proposed new public charter school will be located, as required by Section 33-5205(1)(a), Idaho Code. (~~3-10-05~~)T(8-11-05)T

02. New Public Virtual School. The petitioners for a new public virtual school ~~that will serve students in more than one (1) school district in the state may choose to~~ must submit the petition for approval with the Commission, ~~as an authorized chartering entity, as permitted~~ required by Section 33-~~5203(5)~~5205(1)(b), Idaho Code; ~~instead of with the local board of trustees of the school district in which the proposed new public virtual school will be located.~~ (~~3-10-05~~)T(8-11-05)T

03. Notification to the Board. Petitioners shall promptly notify the Board that a petition has been submitted to an authorized chartering entity. (3-10-05)T

Subsections 205.05, 205.06, and 205.07

205. REVIEW OF PETITIONS.

05. Timeframe for Substantive Review. An authorized chartering entity must comply with the procedural requirements described in Section 33-5205, Idaho Code. (3-10-05)T

a. Unless a petition is referred to the Commission as authorized by Section 33-5205(1)(~~ac~~)(iii), Idaho Code, and as discussed in Subsection 206.01 of these rules, an authorized chartering entity must hold a ~~meeting open to the public; hearing~~ not later than ~~thirty sixty (360)~~ days after receipt of the petition, for the purpose of considering the merits of the petition, as well as the level of employee and parental support for the proposed public charter school. In the case of a petition being reviewed by the Commission, the ~~meeting~~ public hearing must also include any oral or written comments, if any, from an authorized representative of the school district in which the proposed public charter school would be physically located regarding the merits of the petition and any potential impacts on the school district. (~~3-10-05~~)T(8-11-05)T

b. An authorized chartering entity must make a decision on whether to approve the petition ~~and grant the charter~~ within sixty (60) days after ~~receipt of the petition~~ the date of the public hearing on the merits of the petition. (~~3-10-05~~)T(8-11-05)T

c. ~~An authorized chartering entity and the petitioners may mutually agree to extend the date by which a decision is required to be made on the merits of the petition up to an additional sixty (60) days. In addition,~~ the authorized chartering entity may unilaterally determine to extend the date by which a decision is required to be made up to an additional sixty (60) days if it determines the petition is incomplete ~~or fails to contain the requisite signatures.~~ (~~3-10-05~~)T(8-11-05)T

d. The Commission and the petitioners may mutually agree to extend the date by which a decision is required to be made on the merits of the petition up to an additional ninety (90) days. (8-11-05)T

06. If Approved, Charter Is ~~Granted~~, Subject to Limitations on Number of New Charters.

(3-10-05)F(8-11-05)T

a. If a petition is approved, then the authorized chartering entity must promptly prepare for petitioners a written notice of its decision to approve the charter. It shall be the responsibility of the petitioners to provide the Board with this written notice of approval, and with a copy of the final approved petition, in accordance with the procedure described in Section 100 of these rules. (3-10-05)T

b. The ~~grant~~ approval of a charter by an authorized chartering entity does not provide the petitioners with any right to begin educational instruction at the public charter school during a particular school year, or in accordance with the terms and conditions of the charter, as such approval is conditioned upon the limitations on the number of new public charter schools that may be approved to begin educational instruction for a school year, as described in Section 100 of these rules. (3-10-05)F(8-11-05)T

07. If Denied, Petitioners May Appeal.

(3-10-05)T

a. If a petition is denied, then the authorized chartering entity must promptly prepare for petitioners a written notice of its decision to deny the charter. The written decision shall include all of the reasons for the denial, and shall also include a reasoned statement that states or explains the criteria and standards considered relevant by the authorized chartering entity, the relevant contested facts relied upon, and the rationale for the decision based on the applicable statutory provisions and factual information presented to the authorized chartering entity. ~~If an authorized chartering entity fails to reach a decision on a petition before the time period by which a decision must be made, then this shall be considered a denial of the petition.~~ (3-10-05)F(8-11-05)T

b. The petitioners may appeal the decision of the authorized chartering entity, in accordance with the procedures described in Sections 401 through 402 of these rules. (3-10-05)T

Entire Section

206. WITHDRAWAL OF PETITION; REFERRAL OF PETITION TO THE COMMISSION.

01. Referral of Petition by Local Board of Trustees. A board of trustees of a local school district may refer the petition for consideration to the Commission, as authorized by Section 33-5205(1)(~~cc~~)(iii), Idaho Code. If a board of trustees of a local school district determines to refer a petition to the Commission, then it shall provide prompt notice of such decision to the petitioners. In addition, the board of trustees of a local school district must promptly forward the petition and verification that there are thirty (30) signatures from qualified electors from the attendance area to the Commission. (3-10-05)F(8-11-05)T

02. Withdrawal by Charter Petitioners. Notwithstanding, if a board of trustees of a local school district does not refer a petition to the Commission, the charter petitioners may withdraw the petition from the local board of trustees and submit the petition to the Commission for consideration if, within ~~thirty~~ sixty (360) days after the submission of the petition with the authorized chartering entity, the parties have not reached mutual agreement on the provisions of the ~~charter~~ petition, after a reasonable and good faith effort. (3-10-05)F(8-11-05)T

03. Reasonable and Good Faith Effort. For purposes of Subsection ~~205~~206.02 of these rules, the parties shall be considered to have established a reasonable and good faith effort to reach mutual agreement on the provisions of the ~~charter~~ petition if representatives of the parties take at least all of the following actions: (3-10-05)F(8-11-05)T

a. The authorized chartering entity must send written notice to petitioners acknowledging receipt of the charter petition and the date of receipt. (3-10-05)T

b. The authorized chartering entity posts public notice of ~~an open meeting~~ a public hearing for the purpose of considering the petition, and such meeting is scheduled to occur not later than ~~thirty~~ sixty (360) days after receipt of the ~~charter~~ petition ~~by the authorized chartering entity~~ and verification that there are thirty (30) signatures

from qualified electors of the attendance area.

~~(3-10-05)~~F(8-11-05)T

c. Prior to the date the posted ~~open meeting~~ public hearing is scheduled, representatives of the authorized chartering entity must conduct a review of the ~~charter~~ petition and the State Department of Education sufficiency review of the ~~charter~~ petition, and if immediate concerns with the ~~charter~~ petition are identified, then written notice must be sent to petitioners identifying the concerns and requesting that said identified concerns be addressed. In the event correspondence is sent to petitioners identifying concerns with the ~~charter~~ petition, then petitioners must respond in writing to the authorized chartering entity addressing the identified concerns.

~~(3-10-05)~~F(8-11-05)T

d. Either prior to or at the posted ~~open meeting~~ public hearing, representatives from both the authorized chartering entity and petitioners must meet and engage in face-to-face discussions regarding the charter petition.

~~(3-10-05)~~F(8-11-05)T

(BREAK IN CONTINUITY OF SECTIONS)

Subsection 300.01

300. PUBLIC CHARTER SCHOOL RESPONSIBILITIES.

01. **General.** The governing board of a public charter school shall be responsible for ensuring that the public charter school is adequately staffed, and that such staff provides sufficient oversight over all public charter school operational and educational activities. In addition, the governing board of a public charter school shall be responsible for ensuring compliance with ~~Section 33-5204(1)~~ Title 33, Chapter 52, Idaho Code.

~~(3-10-05)~~F(8-11-05)T

Subsection 301.02

301. AUTHORIZED CHARTERING ENTITY RESPONSIBILITIES.

02. **Written Notice of Defect.** If an authorized chartering entity has reason to believe that a public charter school has committed any defect identified in Subsections 33-5209(2)(a) through (e), Idaho Code, then the authorized chartering entity shall provide the public charter school with prompt written notice of such defect, and shall provide the public charter school a reasonable opportunity to cure such defect.

~~(3-10-05)~~F(8-11-05)T

Entire Section

302. CHARTER REVISIONS.

The governing board of a public charter school may reasonably request that its authorized chartering entity revise its charter, as authorized by Section 33-5209(1), Idaho Code.

(3-10-05)T

01. **Request for Revision.** The governing board of a public charter school that desires to revise its charter must submit a written request describing the proposed revisions with the public charter school's authorized chartering entity. In addition, the governing board of the public charter school shall also submit six (6) copies of the proposed revisions to the Department, which shall review the proposed revisions in the same manner that it reviews a proposed draft petition, as described in Section 204 of these rules. The Department shall complete its review of the proposed charter revisions not later than thirty (30) days after receipt, and shall notify the governing board of the public charter school and the authorized chartering entity promptly in writing describing the results of such review. ~~If the Department does not complete the review within thirty (30) days after receipt, then the proposed revisions shall be deemed sufficient.~~

~~(3-10-05)~~F(8-11-05)T

02. **Limited Review.** The authorized chartering entity shall only be permitted to review and consider the proposed revisions to the charter, and shall not have authority to make other charter revisions that are not

requested by the public charter school.

(3-10-05)T

03. Procedure for Reviewing Request for Charter Revision. The authorized chartering entity shall have thirty (30) days from the date of receipt of the written notice from the Department, ~~or the date the revisions are deemed sufficient, whichever is earlier,~~ in which to issue its decision on the request for charter revision. If permitted by applicable policies and procedures adopted by the authorized chartering entity, the review of a request for a charter revision may be delegated to appropriate staff employed by the authorized chartering entity. An authorized chartering entity may, but is not required to, conduct a public hearing to consider the request for charter revision.

~~(3-10-05)T~~(8-11-05)T

04. Approval of Proposed Charter Revision. If the authorized chartering entity approves the proposed charter revision, a copy of such revision shall be executed by each of the parties to the charter contract and shall be treated as either a supplement to, or amendment of, the final approved petition, whatever the case may be. The governing board of the public charter school shall be responsible for sending a copy of the charter revision to the Board, as required by Subsection 100.02 of these rules.

(3-10-05)T

05. Denial of Proposed Charter Revision. If the proposed revision is denied, then the authorized chartering entity must prepare a written notice of its decision denying the request for charter revision. The decision to deny a request for a charter revision shall contain all of the reasons for the decision. The public charter school may appeal the decision denying the request for charter revision to the Board. The provisions of Section 403 of these rules shall govern the appeal. ~~If an authorized chartering entity fails to reach a decision on a request before the time period by which a decision must be made, then this shall be considered a denial of the request.~~

~~(3-10-05)T~~(8-11-05)T

(BREAK IN CONTINUITY OF SECTIONS)

Subsection 400.02

400. APPEALS.

The following actions relating to public charter schools may be appealed to the Department or to the Board, as applicable, in accordance with the procedures described in Sections 401 through 403 of these rules:

(3-10-05)T

02. Grant Approval of Conversion Petition. The ~~granting~~ approval of a petition by an authorized chartering entity ~~of a petition~~ to convert a traditional public school to a public charter school over the objection of thirty (30) or more persons or employees of the local school district, as authorized by Section 33-5207, Idaho Code.

~~(3-10-05)T~~(8-11-05)T

Subsections 401.02, 401.03, and 401.07

401. APPEAL TO THE DEPARTMENT OF A DECISION RELATING TO THE FORMATION OF A NEW OR CONVERSION PUBLIC CHARTER SCHOOL.

The denial of a petition to form a new public charter school, or the granting of a petition to form a conversion public charter school over the objection of thirty (30) or more persons or employees of the local school district, may be appealed to the Department, as provided by Section 33-5207(1), Idaho Code. The following procedures shall govern such appeals.

(3-10-05)T

02. Hearing Officer. The Department shall hire a hearing officer to review the action of the authorized chartering entity and to conduct a public hearing, pursuant to Section 67-5242, Idaho Code. The Department shall forward to the hearing officer one (1) copy of the record provided by petitioners/appellants and attached to the notice of appeal within ten (10) business days of receipt.

~~(3-10-05)T~~(8-11-05)T

03. Public Hearing. A public hearing to review the decision of the authorized chartering entity shall be conducted ~~by the hearing officer~~ within thirty (30) days after ~~the date of the submission of the hearing officer receives~~ the notice of appeal and request for a public hearing ~~with~~ submitted to the Department.

~~(3-10-05)T~~(8-11-05)T

07. Hearing Officer's Recommendation. The hearing officer shall issue a recommendation within ten (10) days after the date of the hearing. The recommendation shall include specific findings on all major facts at issue; a reasoned statement in support of the ~~decision~~ recommendation; all other findings and recommendations of the hearing officer; and a recommendation affirming or reversing the decision of the authorized chartering entity. The hearing officer shall mail or deliver a copy of the recommendation to the Department, the petitioners/appellants, and the authorized chartering entity. ~~(3-10-05)F(8-11-05)T~~

Subsection 402.05

402. APPEAL TO THE BOARD RELATING TO THE DENIAL OF A REQUEST TO FORM A NEW PUBLIC CHARTER SCHOOL.

The following procedures shall govern an appeal to the Board of the final decision of an authorized chartering entity relating to the denial of a petition to form a new public charter school. (3-10-05)T

05. Recommended Findings. If the public hearing is conducted by a charter appeal committee or appointed public hearing officer, then such committee or appointed public hearing officer shall forward to the Board all materials relating to the hearing as soon as reasonably practicable after the date of the public hearing. If so requested by the Board, the entity conducting the public hearing may prepare recommended findings for the Board to consider. The recommended findings shall include specific findings on all major facts at issue; a reasoned statement in support of the ~~decision~~ recommendation; all other findings and recommendations of the charter appeal committee or public hearing officer; and a recommended decision affirming or reversing the decision of the authorized chartering entity, or such other action recommended by the charter appeal committee or public hearing officer, such as remanding the matter back to the authorized chartering entity, or redirecting the petition to another authorized chartering entity. A copy of the recommended findings shall be mailed or delivered to all the parties. ~~(3-10-05)F(8-11-05)T~~

Subsection 403.07

403. APPEAL RELATING TO THE DENIAL OF A REQUEST TO REVISE A CHARTER OR A CHARTER REVOCATION DECISION.

The following procedures shall govern an appeal relating to the denial of a request to revise a charter or a charter revocation decision. (3-10-05)T

07. Recommended Findings. If the public hearing is conducted by a charter appeal committee or appointed public hearing officer, then such committee or public hearing officer shall forward to the Board all materials relating to the hearing as soon as reasonably practicable after the date of the public hearing. If so requested by the Board, the entity conducting the public hearing may prepare recommended findings for the Board to consider. The recommended findings shall include specific findings on all major facts at issue; a reasoned statement in support of the ~~decision~~ recommendation; all other findings and recommendations of the charter appeal committee or public hearing officer; and a recommended decision affirming, or reversing, ~~or modifying~~ the action or decision of the authorized chartering entity. A copy of the recommended findings shall be mailed or delivered to all the parties. ~~(3-10-05)F(8-11-05)T~~

(BREAK IN CONTINUITY OF SECTIONS)

Entire Section

500. MISCELLANEOUS.

01. Definition of LEA. As used in Section 500 of these rules, the term “local education agency” or “LEA” shall mean a public authority legally constituted within the state for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in the state, as such term is defined in the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, and as such term is further defined in 34 CFR 300.18. (3-10-05)T

02. LEA Designations. Section 33-5203(7), Idaho Code, provides that the Board shall be responsible to designate those public charter schools that will be identified as an LEA; however, only public charter schools chartered by the board of trustees of a school district may be included in that district’s LEA. A public charter school may request to be designated as an LEA. Such request shall be in writing and must be submitted to the executive director of the Board. In addition, such request shall state the reasons why the public charter school is requesting LEA status, and must ~~be submitted to the executive director of the Board.~~ include, at a minimum, the following: (8-11-05)T

a. Verification that the public charter school is a public virtual school under Idaho law (if applicable). (8-11-05)T

b. A description of the federal programs for which the public charter school will seek funding, and a detailed discussion of the projected financial impact (positive or negative) to the public charter school if it is designated an LEA. (8-11-05)T

c. A discussion of how the public charter school will administer the ISAT tests to its students. (8-11-05)T

03. Criteria. The executive director of the Board shall have the ~~responsibility of designating those authority to designate a public charter schools that will be identified~~ as an LEA, in accordance with the following criteria: (8-11-05)T

a. A public charter school that is chartered by the board of trustees of a school district shall be included in that district’s LEA, and the executive director of the Board shall not be permitted to designate such a school as an LEA, except ~~that the executive director of the Board may designate~~ as discussed in Subsection 500.03 of these rules. (8-11-05)T

b. A public virtual school that is chartered by the board of trustees of a school district may be designated as an LEA, if the executive director determines, in his reasonable discretion, that the public virtual school has demonstrated a compelling reason for such designation in its written request and any supporting materials. (8-11-05)T

c. A public charter school that is chartered by the Commission must be designated by the executive director as an LEA, but will still be required to submit a written request pursuant to Subsection 500.02 of these rules. (8-11-05)T

04. Referral to the Board. ~~If the executive director determines, in his reasonable discretion, that a public charter school has demonstrated a compelling reason to be designated an LEA, but such~~ The executive director may determine to refer any request for LEA designation described in Section 500 of these rules to the Board for consideration, including any request submitted by a public charter school that is not eligible under the criteria contained herein, then the executive director may refer such request to the Board for consideration. (3-10-05)T(8-11-05)T

05. Review. A public charter school may appeal to the Board a decision made by the executive director of the Board to deny a request to be designated an LEA. (8-11-05)T

06. Timeframe for LEA Request. A request for LEA status must be received no later than February 1 in order for any such designation to be effective for the following school year. (8-11-05)T

IDAPA 11 - IDAHO STATE POLICE

11.02.01 - RULES OF THE IDAHO STATE BRAND BOARD

DOCKET NO. 11-0201-0501

NOTICE OF RULEMAKING - PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 25-1160(a), Idaho Code.

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

The rule change raises the brand inspection fee from \$.75 to \$.84, and the livestock pasture fee from \$.38 to \$.42. The Idaho Brand Board has not had a fee increase since FY92 (Fiscal Year 1992). Our cost of doing business has increased. For example: Comparing FY92 to FY05, we have had a 214% increase in employee benefits. Estimated increase for FY06 is 244%. Fuel costs for FY04 were up 59% compared to FY99. Our head count is a little lower, however, but still not enough to reduce our work force more than we already have and maintain adequate service to the livestock industry.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the January 5, 2005 Bulletin, Vol. 05-1, Page 68 and 69.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. This fee or charge is being imposed pursuant to Section 25-1160(a) Idaho Code. Increase cattle brand inspection fee \$.09, and cattle pasture fee \$.04

Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: Not applicable. Fee increase for Dedicated Fund 0229-15.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Larry A. Hayhurst at 208-884-7070.

DATED this 9th day of August, 2005.

Larry A. Hayhurst
State Brand Inspector
Idaho Brand Board
700 S Stratford
P. O. Box 1177
Meridian, ID 83680-1177
208-884-7070 Fax 208-884-7097

IDAPA 11
TITLE 02
CHAPTER 01

RULES OF THE IDAHO STATE BRAND BOARD

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-1, January 5, 2005, pages 68 and 69.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2006 Idaho State Legislature as a final rule.

IDAPA 11 - IDAHO STATE POLICE

11.10.03 - RULES GOVERNING THE SEX OFFENDER REGISTRY

DOCKET NO. 11-1003-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 67-3003(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: The changes in rule provide clear authorization for the link from the state's Sex Offender Registry Internet site to the National Sex Offender Registry Internet site. It also updates the rules to reflect changes in registration forms used to register sex offenders in the state.

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

Compliance with deadlines in amendments to governing law or federal programs.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: NA

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this temporary rulemaking is necessary to conform within necessary timelines to changes in law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dawn Peck at (208) 884-7136. Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 18th day of August, 2005.

Colonel R. Dan Charboneau, Director
Idaho State Police
700 S. Stratford Drive
P.O. Box 700, Meridian, ID 83680-0700
208-884-7000, 208-884-7090

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1003-0501

004. INCORPORATION BY REFERENCE.

There are no incorporation documents in these rules. (8-1-05)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (8-1-05)T

02. Mailing Address. The mailing address for the business office is Sex Offender Registry, Idaho State Police, Bureau of Criminal Identification, P.O. Box 700, Meridian, Idaho 83680-0700. (8-1-05)T

03. Street Address. The business office for the Sex Offender Registry is located at 700 S. Stratford Dr., Meridian Idaho 83642. (8-1-05)T

04. Telephone. The telephone number for the Sex Offender Registry is 208-884-7305. (8-1-05)T

05. Internet Websites. (8-1-05)T

a. The Department's internet website is found at <http://www.isp.state.id.us>. (8-1-05)T

b. The Central Sex Offender Registry internet website is found at http://www.isp.state.id.us/identification/sex_offender/index.html. (8-1-05)T

006. PUBLIC RECORDS ACT COMPLIANCE.

All rules contained in this chapter are subject to and in compliance with the Idaho Public Records Act (Title 9, Chapter 3, Idaho Code). (8-1-05)T

~~004~~006. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

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)(8-1-05)T

a. "Idaho Sex Offender Registry Notification and Initial Registration Form." (SOR-1) This two (2) page form notifies an offender of the duty to register and obtains information for initial registration with the central registry and collects from an offender information required for first-time registration in a county, annual re-registration in a county, or any change of address or status within the county of residence. 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. This form is also used for change of name. The court, correctional agency, or the sheriff shall forward the original copy, along with the offender's photograph and fingerprints, when taken at the sheriff's department, to the bureau within three (3) working days of completing the form. (3-18-99)(8-1-05)T

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.~~ (5-3-03)

~~e. "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 "Idaho Sex Offender Registry Notification and Initial Registration Form" (~~SOR-1~~) shall collect the following information: (3-18-99)(8-1-05)T

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~~ the Idaho Sex Offender Registry Notification and Registration Form is used to register an offender who moves into a county or within a county, 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. (5-3-03)(8-1-05)T

a. An offender's photograph shall be in color. The sheriff shall forward one (1) photograph of the offender with each registration ~~Form SOR-2~~. Photographs submitted to the central registry shall be a copy of the 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. (5-3-03)(8-1-05)T

b. The sheriff shall submit the required fingerprints on the federal bureau of investigation form FD-249. For each ~~first time~~ registrant, the sheriff shall forward ~~two~~ one (21) 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.~~ (5-3-03)(8-1-05)T

05. Change of Address or Status Notification. (5-3-03)

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~~ Idaho Sex Offender Registry Notification and Registration Form to provide the required notification. (5-3-03)(8-1-05)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. (5-3-03)

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. (5-3-03)

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~~ the Idaho Sex Offender Registry Notification and Registration Form to provide the required notification. ~~(5-3-03)~~(8-1-05)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~~ the Idaho Sex Offender Registry Notification and Registration Form to provide the required notification. ~~(5-3-03)~~(8-1-05)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~~ the Idaho Sex Offender Registry Notification and Registration Form to provide required notification. ~~(5-3-03)~~(8-1-05)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. (5-3-03)

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. Methods of Access. (8-1-05)T

a. 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)~~(8-1-05)T

b. Any person can access registration information via an authorized web site. (8-1-05)T

02. Geographic Lists. Any person using a Form SOR-4 may request a list of offenders by county or zip code or any person may obtain a list of offenders by county or zip code from the bureau web site. ~~(3-18-99)~~(8-1-05)T

~~**03. Electronic Access.** Schools, state agencies, and organizations working with youth, women or other vulnerable populations may request electronic access to the database of registered offenders 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.~~ (5-3-03)

043. 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 or as a response to a query of the web site. 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)~~(8-1-05)T

054. 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. Any person can access registration information without charge on the bureau's web site. ~~(5-3-03)~~(8-1-05)T

065. 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. Any person can access registration photos via the bureau's or an authorized web site. ~~(3-18-99)~~(8-1-05)T

076. 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. Any person can access registration photos without charge on the bureau's web site. ~~(3-18-99)~~(8-1-05)T

087. 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 12 - DEPARTMENT OF FINANCE

12.01.08 - RULES PURSUANT TO THE UNIFORM SECURITIES ACT

DOCKET NO.12-0108-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 30-14-605(a), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 26, 2005.

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:

12.01.08.020.02.a: Adds language to allow issuers with less than one year of operations to file reviewed financial statements until the end of the first fiscal year.

12.01.08.052: This is a new rule requiring individuals to register as an issuer agent if not exempted by Sections 30-14-402(b)(3), (4), or (5), Idaho Code, if the individual receives compensation for certain activities.

12.01.08.053.02.d: Adds language from the prior Idaho Securities Act requiring that a broker-dealer or salesman who is registered elsewhere also must register in Idaho in connection with Regulation D, Rule 506 offerings.

12.01.08.059.02: Brings the Idaho Rules in line with the disqualifications put forth by federal law in 17 C.F.R. Section 230.262.

12.01.08.059.10: Adds language from the prior Idaho Securities Act requiring that a broker-dealer or salesman who is registered elsewhere also must register in Idaho in connection with Regulation D, Rule 505 offerings.

12.01.08.080.07: Removes "by order."

12.01.08.083.07: Removes "by order."

12.01.08.089.07: Adds language allowing the administrator to defer the effective date of registration of an investment adviser until the forty-fifth day after the filing of an amendment completing the application.

12.01.08.090.07: Adds language allowing the administrator to defer the effective date of registration of an investment adviser representative until the forty-fifth day after the filing of an amendment completing the application.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes are simple in nature and were made to bring the Idaho rules into alignment with Securities and Exchange Commission regulations.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marilyn Chastain, Securities Bureau Chief, (208) 334-4004.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to

the undersigned and must be delivered on or before October 19, 2005.

DATED this 24th day of August, 2005.

Marilyn Chastain
Securities Bureau Chief
Department of Finance
700 W. State Street
P.O. Box 83720, Boise, ID 83720-0031
(208) 332-8004 office / (208) 332-8099

THE FOLLOWING IS THE TEXT OF DOCKET NO. 12-0108-0501

020. APPLICATION FOR REGISTRATION OF SECURITIES (RULE 20).

01. Registration by Coordination. A registration statement to register securities by coordination shall contain the following: (3-24-05)

- a.** The Form U-1 and accompanying documents (including subscription agreement); (3-24-05)
- b.** A consent to service of process (Form U-2) in compliance with Section 30-14-611, Idaho Code; (3-24-05)
- c.** A copy of the prospectus, including financial statements where: (3-24-05)
 - i.** The prospectus for a securities registration by coordination under Section 30-14-303, Idaho Code, shall be prepared using the forms required under the Securities Act of 1933, and (3-24-05)
 - ii.** All historical financial statements in the registration statement shall be in conformity with generally accepted accounting principles (GAAP) and financial statements filed with a registration statement by coordination shall comply with the requirements of the United States Securities and Exchange Commission. (3-24-05)
- d.** All exhibits filed with the United States Securities and Exchange Commission in connection with the registration statement; (3-24-05)
- e.** The filing fee specified in Section 30-14-305(b), Idaho Code; and (3-24-05)
- f.** Any additional information or documents requested by the Department. (3-24-05)

02. Registration by Qualification. A registration statement to register securities by qualification shall contain the following in addition to the requirements of Section 30-14-304, Idaho Code: (3-24-05)

a. Financial Statements. Except for SCOR applications, registration statements filed pursuant to Section 30-14-304, Idaho Code, shall contain audited financial statements of the issuer for its last two (2) fiscal years. An issuer with less than one (1) year of operations may file reviewed financial statements until the end of its first fiscal year. Registration statements filed with SCOR applications on the Form U-7 shall contain the financial statements specified in the instructions to the Form U-7. (~~3-24-05~~)(____)

b. Unaudited Interim Financial Statements. If the audited financial statements or unaudited financial statements required in Subsection 020.02.a. of this rule are not current to within four (4) months of the date of filing of the registration statement, additional unaudited financial statements as of the issuer's last fiscal quarter or any later

- date designated by the Administrator shall be included. (3-24-05)
- c.** Small Company Offering Registration (SCOR). A SCOR registration statement shall contain the following: (3-24-05)
- i. The Form U-1 and accompanying documents (including subscription agreement); (3-24-05)
 - ii. An executed Form D; (3-24-05)
 - iii. A consent to service of process (Form U-2) in compliance with Section 30-14-611, Idaho Code; (3-24-05)
 - iv. For SCOR offerings, the prospectus to be used shall be the Form U-7, as adopted and revised by NASAA in September 1999. (3-24-05)
 - v. The filing fee specified in Section 30-14-305(b), Idaho Code; and (3-24-05)
 - vi. Any additional information or documents requested by the Department. (3-24-05)
- d.** Registration statements by qualification shall contain the following: (3-24-05)
- i. The Form U-1 and accompanying documents (including subscription agreement); (3-24-05)
 - ii. A consent to service of process (Form U-2) in compliance with Section 30-14-611, Idaho Code; (3-24-05)
 - iii. Financial statements prepared in accordance with Subsection 020.02.a. of this rule. (3-24-05)
 - iv. A copy of the prospectus containing the information or records specified in Sections 30-14-304(b)(1) through 304(b)(18), Idaho Code; (3-24-05)
 - v. The prospectus shall be prepared using one of the following forms: Part II of Form 1-A of Regulation A of the Securities Act of 1933; Parts I and II of Form SB-2 of the Securities Act of 1933; Form U-7; or any other applicable form used to prepare a prospectus under the Securities Act of 1933, if approved by the department. (3-24-05)
- 03. Other Forms.** Any other applicable form used to prepare a prospectus under the Securities Act of 1933, if approved by the Department, containing: (3-24-05)
- a. The filing fee specified in Section 30-14-305(b), Idaho Code; and (3-24-05)
 - b. Any additional information or documents requested by the Department. (3-24-05)

(BREAK IN CONTINUITY OF SECTIONS)

049. -- 0521. (RESERVED).

052. INVESTMENT AGENT REGISTRATION.

Any individual not exempted pursuant to Sections 30-14-402(b)(3), (4) or (5), Idaho Code, must be registered as an issuer agent or comply with the registration requirement of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. ()

053. FEDERAL COVERED SECURITIES (RULE 53).

- 01. Investment Company Notices.** (3-24-05)
- a.** Notice Requirement. Pursuant to Section 30-14-302, Idaho Code, prior to the offer in this state of a series or portfolio of securities of an investment company that is registered, or that has filed a registration statement, under the Investment Company Act of 1940, that is not otherwise exempt under Sections 30-14-201 through 30-14-203, Idaho Code, the issuer must file a notice with the Administrator relating to such series or portfolio of securities. (3-24-05)
- b.** Content of Notice. Each required notice shall include the following; (3-24-05)
- i.** A properly completed Form NF; (3-24-05)
- ii.** A consent to service of process (Form U-2); (3-24-05)
- iii.** A filing fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts; (3-24-05)
- iv.** Notification of SEC effectiveness (3-24-05)
- c.** Renewal of Notice. The effectiveness of a notice required pursuant to Subsection 053.01.a. of this rule may be renewed each year for an additional one (1) year period of effectiveness by filing on or before the expiration of the effectiveness of such notice: (3-24-05)
- i.** A properly completed Form NF clearly indicating the state file number of the Notice to be renewed; (3-24-05)
- ii.** A consent to service of process (Form U-2) in accordance with Section 30-14-611, Idaho Code; and (3-24-05)
- iii.** A renewal fee of three hundred dollars (\$300) for mutual funds and one hundred dollars (\$100) for unit investment trusts. (3-24-05)
- d.** Amendments. Amendment filings are required for the following: (3-24-05)
- i.** Issuer name change; (3-24-05)
- ii.** Address change for contact person; and (3-24-05)
- iii.** Notification of termination or completion. (3-24-05)
- e.** Other Documents. Documents other than those required in Subsections 053.01.b., 053.01.c., and 053.01.d. of this rule, unless specifically requested by the Department, should not be filed with the Department. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature. Documents that should be filed with the Department only if specifically requested include, but are not limited to, registration statements, prospectuses, amendments, statements of additional information, quarterly reports, annual reports, and sales literature. (3-24-05)
- 02. Regulation D Rule 506 Notice Filing.** (3-24-05)
- a.** Notice Requirement. Issuers offering a security in this state in reliance upon Section 30-14-301, Idaho Code, by reason of compliance with Regulation D, Rule 506, adopted by the United States Securities and Exchange Commission, shall be required to file a notice with the Department pursuant to the authority of Section 30-14-302(c), Idaho Code, if a sale of a security in this state occurs as a result of such offering. (3-24-05)
- b.** Terms of Notice Filing. The issuer shall file with the Department no later than fifteen (15) days

after the first sale of a security in this state for which a notice is required under Subsection 053.02.a. of this rule: (3-24-05)

- i. One (1) copy of the Form D currently updated, and the Appendix thereto; (3-24-05)
- ii. A consent to service of process (Form U-2); and (3-24-05)
- iii. The notice filing fee of fifty dollars (\$50). (3-24-05)
- iv. A cover letter should be included in the notice filing which states the date in which the first sale of securities occurred in Idaho. (3-24-05)

c. Terms of Late Notice Filing. An issuer failing to file with the Administrator as required by Subsection 053.02.b. of this rule may submit its notice filing as required in Subsection 053.02.b. of this rule with an additional fifty dollars (\$50) late filing payment within thirty (30) days after the first sale of a security in this state. Failure to file a notice on or before the thirtieth day after the first sale of a securities in Idaho will result in the inability of the issuer to rely on Section 30-14-302(c), Idaho Code, for qualification of the offering in Idaho. (3-24-05)

d. Issuer Agent Registration. Pursuant to Section 30-14-402(b)(5), Idaho Code, an individual who represents an issuer who effects transactions in a federal covered security under Section 18(b)(4)(d) of the Securities Act of 1933 (15 U.S.C. 77r(b)(4)(D)) is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. In addition, if such person is registered as a broker-dealer or agent in another state or with the NASD, or affiliated with a broker-dealer registered in another state, with the SEC or NASD, then such person must also be similarly registered in Idaho. (3-24-05)(____)

(BREAK IN CONTINUITY OF SECTIONS)

059. NOTICE FILINGS FOR TRANSACTIONS UNDER REGULATION D, RULE 505 (RULE 59).

01. Exempt Securities. Pursuant to Section 30-14-203(1), Idaho Code, transactions that are exempt securities under 17 CFR 230.505 are exempt from Section 30-14-301, Idaho Code. As a condition of this exemption, the issuer shall comply with the requirements in Subsection 059.02 of this rule. (3-24-05)

02. Disqualification. ~~The exemption under Subsection 059.01 of this rule, is not available to an issuer if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter~~ Unless upon a showing of good cause and without prejudice to any other action by the Administrator, the Administrator determines that it is not necessary under the circumstances that the exemption provided by Subsection 059.01 be denied, the exemption shall not be available for the offer or sale of securities if the issuer, any of the issuer's predecessors, any affiliated issuer, any of the issuer's directors, officers, general partners, beneficial owners of ten percent (10%) or more of any class of its equity securities, any of the issuer's promoters presently connected with the issuer in any capacity, any underwriter of the securities to be offered, or any partner, director or officer of such underwriter: (3-24-05)(____)

a. ~~Within the last five (5) years, has filed a registration statement which is the subject of a currently effective registration stop order entered by any state securities administrator or the U.S. Securities and Exchange Commission~~ Is subject to any of the disqualifications in 17 C.F.R. Section 230.262, as in effect on August 24, 2005; (3-24-05)(____)

b. ~~Within the last five (5) years, has been convicted of any criminal offense in connection with the~~

~~offer, purchase or sale of any security, or involving fraud or deceit; Is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor act, a state, the securities and exchange commission, or the United States from engaging in or continuing an act, practice, or course of business involved an aspect of a business involving securities, commodities, investments, franchises, insurance, banking or finance.~~ (3-24-05)()

c. Is currently subject to any state or federal administrative enforcement order or judgment, entered within the last five (5) years, finding fraud or deceit in connection with the purchase or sale of any security; or (3-24-05)

d. Is currently subject to any order, judgment or decree of any court of competent jurisdiction, entered within the last five (5) years, temporarily, preliminary or permanently restraining or enjoining such party from engaging in or continuing to engage in any conduct or practice involving fraud or deceit in connection with the purchase or sale of any security. (3-24-05)

03. Exceptions. Subsection 059.02 of this rule shall not apply if: (3-24-05)

a. The party subject to the disqualification is licensed or registered to conduct securities related business in the state in which the order, judgment or decree creating the disqualification was entered against such party; (3-24-05)

b. Before the first offer under this exemption, the state securities administrator, or the court or regulatory authority that entered the order, judgment, or decree, waives the disqualification; or (3-24-05)

c. The issuer establishes that it did not know and in the exercise of reasonable care, based on a factual inquiry, could not have known that a disqualification existed under Subsection 059.03 of this rule. (3-24-05)

04. Notice Filings for Rule 505. The notice filing required for transactions in Idaho under 17 CFR 230.505, shall consist of the following: (3-24-05)

a. One (1) manually signed copy of the Form D (including the Appendix); (3-24-05)

b. Consent to service of process (Form U-2); (3-24-05)

c. Copy of the private placement memorandum, and (3-24-05)

d. Each notice shall be filed with the Department no later than ten (10) business days prior to effecting a sale in Idaho. (3-24-05)

05. Amendments. During the period of the offering, the issuer shall take steps necessary to insure that all material information contained in the notice filing remains current and accurate. (3-24-05)

06. Nonaccredited Investors. In all sales to nonaccredited investors in this state, one (1) of the following conditions must be satisfied or the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry, shall believe that one (1) of the following conditions is satisfied: (3-24-05)

a. The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to the purchaser's other security holdings, financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed ten percent (10%) of the investor's net worth, it is suitable. (3-24-05)

b. The purchaser either alone or with her purchaser representative(s) has such knowledge and experience in financial and business matters that she is or they are capable of evaluating the merits and risks of the prospective investment. (3-24-05)

07. Due Diligence. Nothing in this rule is intended to relieve registered securities broker-dealers or

agents from the due diligence, suitability, or know your customer standards or any other requirements of law otherwise applicable to such registered person. (3-24-05)

08. Disclosure. Nothing in this exemption is intended to or should be construed as in any way relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act. (3-24-05)

09. Denial, Suspension, Revocation, Condition or Limitation of Exemption. Any issuer relying on the exemption under Regulation D, Rule 505 may be subject to the enforcement remedies provided in Section 30-14-204, Idaho Code, if it fails to satisfactorily address issues raised by the Department in comment letters or otherwise. (3-24-05)

10. Issuer Agent Registration. Pursuant to Section 30-14-402(9), Idaho Code, an individual who represents an issuer who effects transactions that are exempt securities under 17 CFR 230.505 and exempt from Section 30-14-301, Idaho Code, is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities. In addition, if such person is registered as a broker-dealer or agent in another state or with the NASD, or affiliated with a broker-dealer registered in another state, with the SEC or NASD, then such person must also be similarly registered in Idaho. (3-24-05)()

(BREAK IN CONTINUITY OF SECTIONS)

080. BROKER-DEALER REGISTRATION -- APPLICATION/RENEWAL (RULE 80).

01. Initial Application - NASD Member Firms. Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are contemporaneously applying for NASD membership or who are an NASD member, shall file: (3-24-05)

- a. With CRD, a completed Form BD, including Schedules A-E; (3-24-05)
- b. With CRD, a filing fee as specified in Section 30-14-410, Idaho Code. (3-24-05)

02. Initial Application - Non-NASD Member Firms. Broker-dealers applying for initial registration pursuant to Section 30-14-406, Idaho Code, and who are not contemporaneously applying for NASD membership or are not an NASD member, shall file with the Department: (3-24-05)

- a. A completed Form BD, including Schedules A-E; (3-24-05)
- b. The filing fee specified in Section 30-14-410, Idaho Code; (3-24-05)
- c. Audited financial statements; (3-24-05)
- d. Documentation of compliance with the minimum capital requirements of Section 087 of these rules; (3-24-05)
- e. Designation and qualification of a principal officer; (3-24-05)
- f. A list of the addresses, telephone numbers and resident agents of all office locations within the state of Idaho, to be provided within sixty (60) days of becoming registered; (3-24-05)
- g. A copy of the written supervisory procedures of the broker-dealer; (3-24-05)
- h. Any additional documentation, supplemental forms and information as the Administrator may

deem necessary. (3-24-05)

03. Incomplete Applications. After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (3-24-05)

04. Annual Renewal. (3-24-05)

a. An NASD member shall renew its registration by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD according to their policies and procedures. A non-NASD member shall renew its registration by submitting to the Department current information required for initial registration, and the renewal fee specified in Section 30-14-410, Idaho Code. (3-24-05)

b. It is required that an application for the renewal of the registration of a broker-dealer must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the broker-dealer to reapply for registration with the Department in accordance with the requirements of the Act. (3-24-05)

05. Updates and Amendments. (3-24-05)

a. A broker-dealer must file with CRD, in accordance with the instructions in Form BD, any amendments to the broker-dealer's Form BD. All broker-dealers must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form BD or by direct notice to the Department. (3-24-05)

b. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment; and (3-24-05)

c. Litigation Notice. Any broker-dealer shall notify the Administrator in writing or through the CRD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer. (3-24-05)

d. Notice of Address. Every broker-dealer shall provide the Department, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (3-24-05)

e. Change of Name. If a registered broker-dealer desires to change its name, notice of such an intent must be submitted to the CRD or this Department for non-NASD members, either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. (3-24-05)

06. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. (3-24-05)

07. Deferral of Effectiveness. The Administrator may, ~~by order,~~ defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. (3-24-05)(_____)

(BREAK IN CONTINUITY OF SECTIONS)

083. BROKER-DEALER AGENT/ISSUER AGENT REGISTRATION (RULE 83).

01. Broker-Dealer Agents. Agents of broker-dealers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following: (3-24-05)

a. With CRD, a completed Form U-4; (3-24-05)

b. With CRD, the filing fee specified in Section 30-14-410, Idaho Code; (3-24-05)

c. With CRD, proof of successful completion of the applicable examinations specified in Section 103 of these rules; (3-24-05)

d. With the Department, any additional documentation, supplemental forms and information as the Administrator may deem necessary. (3-24-05)

e. With the Department, Subsections 083.01.a. through 083.01.d. of this rule, for any agent of a non-NASD member. (3-24-05)

02. Agents of Issuer. (3-24-05)

a. Agents of issuers applying for initial registration in the state of Idaho pursuant to Section 30-14-406, Idaho Code, shall file the following with the Department: (3-24-05)

i. A completed Form U-4; (3-24-05)

ii. The fee specified in Section 30-14-410, Idaho Code; (3-24-05)

iii. Proof of successful completion of the applicable examination(s) specified in Section 103 of these rules; (3-24-05)

iv. Proof of a bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of ten thousand dollars (\$10,000) and conditioned upon faithful compliance with the provisions of the Act by the agent, such that upon failure to so comply by the agent, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Provided, however, that the obligation of the surety bond must be maintained at all times in the amount therein provided; and provided further, that a certificate of deposit issued by any bank in the state of Idaho and assigned to the Administrator in an amount equal to the bond which would otherwise be required may be accepted by the administrator in lieu of a bond, if the certificate of deposit is maintained at all times in the amount and manner herein provided during the term for which the registration is effective and for three (3) years thereafter. (3-24-05)

v. Any additional documentation, supplemental forms and information as the Administrator may deem necessary. (3-24-05)

b. An individual who represents an issuer that effects transactions in a federal covered security under Section 18(b)(3) (transactions relating to “qualified purchasers” as that term may be defined by the SEC) or 18(b)(4)(D) (commonly known as Regulation D, Rule 506) of the Securities Act of 1933 is not exempt from the registration requirements of Section 30-14-402(a), Idaho Code, if the individual is compensated, directly or indirectly, for participation in the specified securities transactions. (3-24-05)

c. Exceptions for officers. If there are not more than two (2) officers of an issuer, such officers may be registered as agents for a particular original offering of the issuer’s securities without being required to pass such written examination or file a agent’s bond as required by Subsection 083.02.a.iii. and 083.02.a.iv. of this rule, unless such person has registered under this rule within the prior five (5) years. (3-24-05)

03. Incomplete Applications. After a period of six (6) months from date of receipt, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (3-24-05)

04. Annual Renewal. (3-24-05)

a. Broker-Dealer Agent. Agents of NASD members shall renew their registrations by submitting the renewal fee specified in Section 30-14-410, Idaho Code, to the CRD. Agents of non-NASD members shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. (3-24-05)

b. Issuer Agent. Issuer agents shall renew their registrations by submitting a completed renewal application and a renewal fee as specified in Section 30-14-410, Idaho Code. (3-24-05)

05. Updates and Amendments. (3-24-05)

a. A broker-dealer agent or agent of issuer must file with CRD, or with this Department, in accordance with the instructions in Form U-4, any amendments to the broker-dealer agent's or issuer agent's Form U-4. It is the responsibility of each broker-dealer agent or issuer agent to assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4 or by direct notice to the Department. (3-24-05)

b. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment; and (3-24-05)

c. Litigation Notice. Any broker-dealer agent or issuer agent shall notify the Administrator in writing or through the CRD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as a broker-dealer. (3-24-05)

d. Notice of Address. Every broker-dealer agent and issuer agent shall provide the Department with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (3-24-05)

e. Change of Name. If a registered broker-dealer agent or issuer agent changes his or her name, notice of such must be submitted to the CRD or this Department within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. (3-24-05)

06. Completion of Filing. An application for initial or renewal registration is not considered complete for purposes of Section 30-14-406(c), Idaho Code, until the required fee and all required amendments, including submissions requested by the Department, have been received by the Department. (3-24-05)

07. Deferral of Effectiveness. The Administrator may, ~~by order,~~ defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. (3-24-05)(____)

(BREAK IN CONTINUITY OF SECTIONS)

089. INVESTMENT ADVISER REGISTRATION -- APPLICATION/RENEWAL (RULE 89).

01. Initial Application. The application for initial registration as an investment adviser, pursuant to Section 30-14-406, Idaho Code, shall be made by completing Form ADV which can be found at 17 C.F.R. 279.1 in accordance with the form instructions and by filing the form with IARD. The application for initial registration shall also include the following: (3-24-05)

a. Proof of compliance by the investment adviser with the examination requirements of Section 103 of these rules; (3-24-05)

b. A bond of a surety company duly authorized to transact business in this state, said bond to be in the sum of twenty-five thousand (\$25,000) and conditioned upon faithful compliance with the provisions of the Act by the investment adviser such that upon failure to so comply by the investment adviser, the surety company shall be liable to any and all persons who may suffer loss by reason thereof. Except that an investment adviser that has its principal place of business in a state other than this state shall be excluded from these bonding requirements provided that such investment adviser is registered as an investment adviser in the state where it maintains its principal place of business and is in compliance with such state's bonding requirements; (3-24-05)

c. A hard copy of the completed Form ADV Part II, only until such time as this form can be electronically submitted via IARD; (3-24-05)

d. A copy of the investment advisory contract to be executed by Idaho clients; (3-24-05)

e. A balance sheet dated as of the investment adviser's prior fiscal year-end; however, if the investment adviser has not been in operation for an entire year, a balance sheet dated within ninety (90) days of filing shall be submitted; (3-24-05)

f. The fee required by Section 30-14-410, Idaho Code; and; (3-24-05)

g. Any other information the Department may reasonably require. (3-24-05)

02. Incomplete Applications. After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (3-24-05)

03. Annual Renewal. The application for annual renewal registration as an investment adviser shall be filed with IARD according to their policies and procedures. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. (3-24-05)

04. Applications Prior to Expiration. An application for the renewal of the registration of an investment adviser must be filed with the Department before the registration expires, which is the thirty-first day of December next following such registration, per the provisions of Section 30-14-406(d), Idaho Code. Any registration that is not renewed within that time limit will be deemed to have lapsed, thus requiring the investment adviser to reapply for registration with the Department in accordance with the requirements of the Act. (3-24-05)

05. Updates and Amendments. (3-24-05)

a. An investment adviser must file with IARD, in accordance with the instructions in Form ADV, any amendments to the investment adviser's Form ADV. All investment advisers must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form ADV or by direct notice to the Department. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. (3-24-05)

b. Within ninety (90) days of the end of the investment adviser's fiscal year, an investment adviser must file a copy of the investment adviser's balance sheet as of the prior fiscal year-end. (3-24-05)

c. Litigation Notice. Any investment adviser shall notify the Administrator in writing or through the IARD of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser. (3-24-05)

d. Notice of Address. Every investment adviser representative shall provide the Department, through

IARD, with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (3-24-05)

06. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by the Administrator. (3-24-05)

07. Deferral of Effectiveness. The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ()

090. INVESTMENT ADVISER REPRESENTATIVE REGISTRATION - APPLICATION/RENEWAL (RULE 90).

01. Initial Application. The application for initial registration as an investment adviser representative pursuant to Section 30-14-406, Idaho Code, shall be made by completing Form U-4 in accordance with the form instructions and by filing Form U-4 with CRD. The application for initial registration also shall include the following: (3-24-05)

- a.** Proof of compliance by the investment adviser representative with the examination requirements of Section 103 of these rules; and (3-24-05)
- b.** The fee required by Section 30-14-410, Idaho Code. (3-24-05)

02. Incomplete Applications. After a period of six (6) months from the date of receipt by the Department, an incomplete application will automatically be considered abandoned and withdrawn if the requirements have not been fulfilled. (3-24-05)

03. Annual Renewal. The application for annual renewal registration as an investment adviser representative shall be filed with CRD. The application for annual renewal registration shall include the fee required by Section 30-14-410, Idaho Code. (3-24-05)

04. Updates and Amendments. (3-24-05)

a. The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur. All investment adviser representatives must assure that current and accurate information is on file with the Department at all times. If information in an application for registration becomes inaccurate or incomplete, additional information must be submitted through updates on the Form U-4. (3-24-05)

b. An investment adviser representative and the investment adviser must file promptly with CRD any amendments to the representative's Form U-4. An amendment will be considered to be filed promptly if the amendment is filed within thirty (30) days of the event that requires the filing of the amendment. (3-24-05)

c. **Litigation Notice.** Any investment adviser representative shall notify the Administrator in writing, through CRD, of any civil, administrative, or criminal complaint, petition, or pleading issued or filed against him and of any bankruptcy proceeding filed by or against him within thirty (30) days of his receipt of the initial pleading. This requirement shall not include minor traffic violations or minor civil actions unrelated to the registrant's business as an investment adviser representative. (3-24-05)

d. **Change of Name.** If a registered investment adviser representative changes his or her name, notice of such must be submitted to the CRD or this Department either before or within a reasonable time after the effective date of the change. The name change will not be effective in this state until the notice is received. (3-24-05)

e. **Notice of Address.** Every investment adviser representative shall provide the Department with an address sufficiently descriptive to allow service of process pursuant to the Idaho Rules of Civil Procedure. (3-24-05)

05. Completion of Filing. An application for initial or renewal registration is not considered filed for purposes of Section 30-14-406, Idaho Code, until the required fee and all required submissions have been received by

the Administrator. (3-24-05)

06. Dual Registration Exemption. A person may transact business in this state as an investment adviser representative if he is registered as an agent pursuant to Section 30-14-402, Idaho Code, and is employed by a broker-dealer registered pursuant to Section 30-14-401, Idaho Code, and (3-24-05)

a. The person's investment advisory activities are limited to recommending the investment advisory services of an investment adviser registered under Section 30-14-403, Idaho Code, or a federal covered adviser that has made a notice filing pursuant to Section 30-14-405, Idaho Code, and all such recommendations are made on behalf of the employing broker-dealer; (3-24-05)

b. The person is not compensated directly for making such recommendations; and (3-24-05)

c. The person provides written notice to the administrator that he is relying on this exemption from the requirement to be registered as an investment adviser representative. (3-24-05)

07. Deferral of Effectiveness. The Administrator may defer the effective date of any registration until noon on the forty-fifth day after the filing of any amendment completing the application. ()

IDAPA 12 - DEPARTMENT OF FINANCE

12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-0501

NOTICE OF RULEMAKING - PENDING FEE RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. Pursuant to Section 67-5224(5)(c), Idaho Code, this pending rule will not become final and effective until it has been approved, amended, or modified by concurrent resolution of the legislature because of the fee being imposed or increased through this rulemaking. The rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 26-3105(5) and 26-3110(4)(a), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons given that this agency has adopted the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 3, 2005 Idaho Administrative Bulletin, Vol. 05-8 pages 186 through 197.

FEE SUMMARY: The following is a specific description of the fees or charges imposed or increased: These fees or charges are being imposed pursuant to Sections 26-3110(4)(c) and 26-3112(1), Idaho Code. The pending rule will impose a fee of \$250, per course, for the review of applications submitted by prospective continuing education providers for the accreditation of course material. The pending rule will also impose a fee of \$25 for the examination of records which evidence the completion of continuing professional education courses provided by presumptively accredited continuing education providers.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: The pending rule will have no negative impact on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions or for further information regarding this negotiated rulemaking, contact Anthony Polidori at (208)-332-8084.

DATED this 24th day of August, 2005.

Michael Larsen
Consumer Finance Bureau Chief
Idaho Department of Finance
700 West State Street, 2nd Floor
P.O. Box 83720
Boise, ID 83720-0031
(208)-332-8000 Phone
(208)-332-8099 Fax

IDAPA 12, TITLE 01, CHAPTER 10

RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-8, August 3, 2005, pages 186 through 197.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2006 Idaho State Legislature as a final rule.

IDAPA 13 - DEPARTMENT OF FISH AND GAME

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 23, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 36-104(b), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

The current military rain check and refund rule is specific to Special Operation Iraqi Freedom and has been amended previously to extend its applicability to subsequent calendar years. An amendment to the rule is necessary to broaden the scope to include members of the military who have been deployed to other war zones or in armed conflict, and to remove the reference to a specific year.

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

The temporary rule confers a benefit to military personnel who do not have an opportunity to hunt or fish due to deployment to a combat zone.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to continue the rain check or refund rule beyond the 2004 calendar year and the military personnel who are most interested in the rule are deployed to combat zones.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Steve Barton (208) 287-2798.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25, Boise, Idaho 83707
(208) 334-3715, Fax (208) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0104-0501

602. SPECIAL ~~OPERATION IRAQI FREEDOM~~ MILITARY DEPLOYMENT REFUND AND RAIN CHECK.

01. **2004 Special Refund and Rain Check Rule.** This special refund and rain check rule applies ~~only~~ to the ~~2004~~ appropriate calendar hunting season. Because of military deployment to ~~Operation Iraqi Freedom~~ areas of armed conflict, some hunters will be unable to hunt big game animals for which they purchased tags in the state of Idaho. ~~(4-6-05)(5-23-05)T~~

02. **2005 Special Refund and Rain Check Eligibility.** Hunters who have purchased tags and who can show in good faith they could not participate in hunting activities due to military deployment ~~for Operation Iraqi Freedom~~ to areas of armed conflict will be eligible for a refund or rain check for license and tags for the ~~2005~~ next calendar year hunting season as outlined in this rule. ~~(4-6-05)(5-23-05)T~~

03. **General Season Tag.** Holders of a general season tag for deer or elk may request: (3-20-04)

a. A refund of the hunting license and tag fee; (3-20-04)

b. A rain check for a hunting license and same tag for the ~~2005~~ next calendar year hunting season; or ~~(4-6-05)(5-23-05)T~~

c. An exchange in ~~2004~~ the calendar year for a tag in another zone or area so long as tags are available in that area or zone. ~~(4-6-05)(5-23-05)T~~

04. **Controlled Hunt Permit and Tag.** Holders of a controlled hunt permit and tag for deer, elk, or antelope may request: (3-20-04)

a. A refund of the hunting license, controlled hunt permit, and tag fee; (3-20-04)

b. A rain check for a hunting license, controlled hunt permit, and tag for the same controlled hunt in the ~~2005~~ next calendar year hunting season; or ~~(4-6-05)(5-23-05)T~~

c. An exchange in ~~2004~~ the calendar year for a hunting license and a general season tag in another zone or area so long as tags are available in that area or zone. ~~(4-6-05)(5-23-05)T~~

05. **Nonresident Bear or Mountain Lion Tags.** Holders of nonresident bear or mountain lion tags may request: (3-20-04)

a. A refund of the hunting license and tag fee; or (3-20-04)

b. A rain check for a hunting license and tag for the ~~2005~~ next calendar year hunting season. ~~(4-6-05)(5-23-05)T~~

06. **Moose, Bighorn Sheep, or Mountain Goat Controlled Hunt Permits.** Holders of moose, bighorn sheep, or mountain goat controlled hunt permits may request: (3-20-04)

a. A refund of the hunting license, controlled hunt permit, and controlled hunting tag fee; or (3-20-04)

b. A rain check for a hunting license, controlled hunt permit, and controlled hunt tag for the ~~2005~~ next calendar year hunting season. ~~(4-6-05)(5-23-05)T~~

07. **Ineligible to Request Tag or Permit Refund or Rain Check.** If the person hunts a species of

wildlife before requesting a refund or rain check, then the tag or permit fee for that species will not be refunded or eligible for a rain check for the ~~2005~~ next calendar year season. (~~4-6-05~~)(5-23-05)T

08. Ineligible to Request License Fee Refund or Rain Check. If the person hunts for any species during the ~~2004~~ applicable year hunting season before requesting a refund or rain check, then the hunting license fee will not be refunded or eligible for a rain check for the ~~2005~~ next calendar year season. (~~4-6-05~~)(5-23-05)T

09. Rain Check Requests Must be for Same Species. All rain check requests must be made for the same species. For example, a deer tag will not be eligible for a rain check of an elk tag in the ~~2005~~ next calendar year season. (~~4-6-05~~)(5-23-05)T

10. Refunds Will be for the Amount Paid. All refunds will be for the amount the person paid for the hunting license or tag. (3-20-04)

11. Use of Department-Approved Form for Rain Check or Refund Request. Resident and nonresident military personnel who have purchased general season tags or controlled hunt tags and are unable to participate in any hunting activities due to military deployment must submit a request for a refund or rain check on the department-approved form (found on Idaho Fish and Game website ~~www2.state.id.us/fishgame~~ <http://fishandgame.idaho.gov/>) by January 1, ~~2005~~ next calendar year, along with a copy of their deployment papers, or a letter from their commanding officers stating the dates the individual was deployed for duty in *Operation Iraqi Freedom* areas of armed conflict. Those requests received after this date will not be eligible for the special refund or rain check. (~~4-6-05~~)(5-23-05)T

IDAPA 13 - DEPARTMENT OF FISH AND GAME
13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME
ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is January 24, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking: Season setting for Big Game. A proposed rule amendment to increase eligibility for left-over Moose permits, allow the use of round ball or conical lead bullets in traditional muzzleloader hunts, and require applicants for outfitter allocated controlled hunts to have a written agreement with an outfitter before submitting a controlled hunt application. The development of application criteria, drawing criteria and marketing procedures for certain controlled hunt tags to support the Department's Access Yes program. Grant priority to military personnel returning from active duty for emergency depredation hunts.

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

The temporary rule confers a benefit to hunters and outfitters.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to continue the controlled hunt applications and drawings without interruption and to publish the Big Game Seasons Proclamation Brochures.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brad Compton (208) 287-2756.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25, Boise, Idaho 83707
(208) 334-3715, Fax (208) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0108-0501

260. PERMITS FOR CONTROLLED HUNTS.

01. Use of Controlled Hunt Permits. No person may hunt in any controlled hunt without having a valid controlled hunt permit in possession. (7-1-93)

a. A controlled hunt area with an "X" suffix is an extra tag hunt. (10-26-94)

b. In the event a permit is issued based on erroneous information, the permit will be invalidated by the Department and may NOT be used. The Department will notify the permittee of the invalidation of the permit. The person will remain on the drawn list, and if there is a waiting period in a succeeding year, the person will be required to wait the specified time period. (7-1-93)

c. Any person who receives a controlled hunt permit and tag for deer is prohibited from hunting in any other deer hunt--archery, muzzleloader, or general; EXCEPT the holder of a deer controlled hunt permit and tag may purchase a tag for and hunt in an extra tag hunt, or controlled hunt permit/extra tag hunt for deer. (3-20-97)

d. Any person who receives a combination controlled hunt permit/extra tag for deer may hunt in any other deer hunt--archery, muzzleloader, general or controlled hunt. (7-1-93)

e. Any person who receives a controlled hunt permit for elk is prohibited from hunting in any other elk hunt--archery, muzzleloader, or general; EXCEPT a controlled hunt permit holder may purchase a tag for and hunt in an extra tag hunt for elk. (7-1-93)

f. Any person who receives a combination controlled hunt permit/tag for antelope is prohibited from hunting in any archery antelope hunt. The holder of an antelope combination controlled hunt permit/extra tag may apply for a combination controlled hunt permit/tag for antelope or may purchase a tag for an archery antelope hunt. (7-1-93)

g. Any person who receives a spring controlled hunt permit for black bear is prohibited from hunting in any other spring bear hunt - April 15 to June 30. (7-1-99)

h. Any person who receives a fall controlled hunt permit for black bear is prohibited from hunting in any other fall bear hunts--September 15 to October 31. (10-26-94)

02. Nonresident Permit Limitations. (3-20-04)

a. In controlled hunts with ten (10) or fewer permits, not more than one (1) nonresident permit will be issued. In controlled hunts, EXCEPT unlimited controlled hunts, with more than ten (10) permits, not more than ten percent (10%) of the permits will be issued to nonresidents. This rule shall be applied to each uniquely numbered controlled hunt and to the controlled hunts for each species. (4-6-05)

b. Outfitter allocated hunts are exempt from the limitation of Subsection 260.02.a. (3-20-04)

c. For each species, the total number of outfitter allocated controlled hunt permits shall be subtracted from the result of ten percent (10%) of the sum of all controlled hunt permits; including outfitter allocated controlled hunts, but excluding all unlimited controlled hunts. In addition to the limitations of Subsection 260.02.a., the resulting net number shall be the maximum number of controlled hunt permits that may be issued to nonresidents for all controlled hunts except outfitter allocated and unlimited controlled hunts. (3-20-04)

03. Eligibility. Any person possessing a valid Idaho hunting license is eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

- a. Holders of a Nongame Hunting License (Type 208) may not apply for any controlled hunt. (4-6-05)
- b. Any person whose name was drawn on a controlled hunt for either sub-species of bighorn sheep may not apply for any bighorn permit for two (2) years. Any person whose name was drawn on a controlled hunt for mountain goat may not apply for a mountain goat permit for two (2) years. Any person whose name was drawn on a controlled hunt for moose may not apply for a moose permit for two (2) years. Any person whose name was drawn on a controlled antlered-only deer hunt may NOT apply for any other controlled antlered-only deer hunt for one (1) year. Any person whose name was drawn on a controlled antlered-only elk hunt may NOT apply for any other controlled antlered-only elk hunt for one (1) year. The one (1) year waiting period does NOT apply to controlled hunts with an unlimited number of permits nor Landowner Preference Permits. EXCEPT all successful and unsuccessful antelope, deer and elk hunters that comply with all Mandatory Report requirements will be eligible to be randomly drawn for one (1) of ten (10) "Super" controlled antelope/deer/elk tags to hunt in any open general and/or controlled antelope, deer or elk hunt in the following hunting season. (3-15-02)
- c. Any person applying for a bighorn sheep, mountain goat, or moose controlled hunt may NOT apply for any other controlled hunt in the same year EXCEPT Unlimited Controlled Hunts, a controlled black bear hunt, or a designated depredation or extra tag hunt for deer, elk or antelope. In addition, unsuccessful applicants for bighorn sheep, mountain goat or moose controlled hunts are eligible to participate in first-come, first-served deer, elk and antelope controlled hunt permit sales. (10-26-94)
- d. Any person who has killed a California bighorn ram, Rocky Mountain bighorn ram or a moose on any controlled hunt may not apply for a permit for the same subspecies, EXCEPT any person who has killed a California bighorn ram south of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a Rocky Mountain bighorn ram permit for any hunt north of Interstate Highway 84. Any person who has killed a Rocky Mountain bighorn ram north of Interstate Highway 84 since 1974 and is otherwise eligible, may apply for a California bighorn ram permit for any hunt south of Interstate Highway 84. Auction tag and lottery tag winners are exempt from the once-in-a-lifetime restrictions on killing bighorn sheep of either subspecies. (4-5-00)
- e. No person applying for a Rocky Mountain bighorn sheep controlled hunt as a first choice shall apply for a California bighorn sheep controlled hunt as a second choice. No person applying for a California bighorn sheep controlled hunt as a first choice shall apply for a Rocky Mountain bighorn sheep controlled hunt as a second choice. No person shall apply for both a Rocky Mountain and a California bighorn the same year. (7-1-93)
- f. Any person who kills a bighorn ewe may not apply for another bighorn ewe controlled hunt permit for five (5) years. The harvest of a bighorn ewe does not make the permittee ineligible to apply for a permit to take a California bighorn ram or a Rocky Mountain bighorn ram. Any person who applies for a bighorn ewe may not apply for any bighorn ram the same year. (7-1-93)
- g. Any person who has killed a mountain goat since 1977 may not apply for a mountain goat permit. (7-1-93)
- h. Any person who has killed an antlered moose in Idaho may not apply for a moose permit for antlered moose, and any person who has killed an antlerless moose in Idaho may not apply for a permit for antlerless moose EXCEPT that any person may apply for permits remaining unfilled after the controlled hunt draw. ~~(4-5-00)~~(1-24-05)T
- i. Any person applying for a landowner permission hunt must have a signed permission slip from a landowner who owns more than one hundred fifty-nine (159) acres in the hunt area. The permission slip must have the landowner's name and address on it along with the landowner's signature. (7-1-98)
- j. Any person may apply for both a controlled hunt permit/tag and a controlled hunt permit/extra tag. (7-1-93)
- k. Nonresident hound hunters applying for controlled black bear hunts must first obtain a Hound Hunter Permit pursuant to IDAPA 13.01.15.200.04, "Rules Governing the Use of Dogs". (7-1-99)

L. Any person applying for an outfitter allocated controlled hunt must have a written agreement with the outfitter before submitting the controlled hunt application. (1-24-05)T

04. Applications. Individual applications or group applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than the annual dates shown below. Any individual application or group application which is unreadable, has incomplete or incorrect hunt or license numbers, or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; they may not be resubmitted after correction. (10-26-94)

- a.** Spring black bear - Application period - January 15 - February 15. (4-6-05)
- b.** Moose, bighorn sheep, and mountain goat - Application period for first drawing - April 1 - 30. (4-6-05)
- c.** Deer, elk, antelope and fall black bear - Application period for first drawing - May 1 - 31. (4-6-05)
- d.** Moose, bighorn sheep, and mountain goat - Application period for second drawing, if applicable - June 15 - 25. (4-6-05)
- e.** Deer, elk, antelope, and fall black bear - Application period for second drawing - August 5 - 15. (4-6-05)

05. Applicant Requirements. Applicants must comply with the following requirements: (7-1-93)

a. Only one (1) application, per person or group, will be accepted for the same species, EXCEPT a person or group may submit one additional application for a controlled hunt permit/extra tag for the same species. Additional applications for the same person or group for the same species will result in all applicants being declared ineligible. (10-26-94)

b. Only one (1) controlled hunt permit/extra tag will be issued for each person on any application submitted. (10-26-94)

c. Several applications may be submitted in a single envelope so long as each application is for a single species, a single applicant or group, and both hunts on an application must be controlled hunt permit/tag hunts or controlled hunt permit/extra tag hunts. (10-26-94)

d. Fees must be submitted with each application. A single payment (either cashier's check, money order, certified check, or a personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. The application fee is set by Section 36-416, Idaho Code, per person per hunt, for deer, elk, antelope, moose, bighorn sheep, mountain goat, black bear, and lion, applied for and is NOT refundable. The tag fees are not to be submitted with either the telephone or mail-in-application for deer, elk, antelope, black bear, or mountain lion. Persons applying for moose, bighorn sheep, or mountain goat controlled hunts must submit the tag fee and application fee with their application. Applicants successful in drawing for a moose, bighorn sheep, or mountain goat will receive a permit tag in the mail. (4-6-05)

e. Any controlled hunt permits, EXCEPT unlimited controlled hunts that remain unsold after the controlled hunt drawings may be sold forty five (45) days following the close of each respective controlled hunt drawing by any Point-of-Sale vendor on a first-come, first-served basis UNLESS such day is a Sunday, in which case the permits will go on sale the next legal business day. A controlled hunt permit and tag will be issued to successful applicants. The ten percent (10%) nonresident limitation shall not apply. Applicants with a tag already in possession must return their tag to a Department office to be exchanged for the appropriate controlled hunt tag. The fee for the exchanged tag is the fee for a duplicate tag. (3-15-02)

f. A "group application" for deer, elk, and antelope is defined as two, three, or four (2, 3, or 4) hunters applying for the same controlled hunt on the same application. All hunters must comply with all rules and complete

applications properly. All applicants must abide by the same first and second hunt choices. (10-26-94)

g. A “group application” for moose, bighorn sheep, mountain goat, and black bear is defined as two (2) hunters applying for the same controlled hunt on the same application. Both hunters must comply with all rules and complete applications properly. Both applicants must abide by the same first and second hunt choices. (10-26-94)

h. If a group application exceeds the number of permits available in a hunt that group application will not be selected for that hunt. (7-1-98)

i. Landowner permission hunt permits will be sold first-come, first-served basis at the Nampa, McCall and Headquarters offices of the Idaho Department of Fish and Game after July 15. (7-1-98)

06. Refunds of Controlled Hunt Fees. (7-1-93)

a. Controlled hunt tag fees will be refunded to the unsuccessful or ineligible applicants for moose, sheep, and mountain goat. Unsuccessful applicants may donate all or a portion of their tag fee for moose, bighorn sheep, and mountain goat to Citizens Against Poaching by checking the appropriate box on the application. One dollar (\$1) of the non-refundable application fee will go to Citizens Against Poaching unless the applicant instructs otherwise. (3-20-97)

b. Fees for hunting licenses will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

c. Fees for deer or elk tags purchased prior to the drawing will NOT be refunded to unsuccessful or ineligible applicants. (10-26-94)

d. Overpayment of fees of more than five dollars (\$5) will be refunded. Overpayment of five dollars (\$5) or less will NOT be refunded and will be retained by the Department. (7-1-93)

07. Controlled Hunt Drawing. Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing, provided the second choice hunt applied for has not been filled. (7-1-93)

08. Unclaimed Permits. Successful applicants for the first deer, elk, black bear, or antelope controlled hunt drawing must purchase and pick up their controlled hunt permit and tag by August 1. All controlled hunt tags and permits not purchased and picked up will be entered into a second controlled hunt drawing. Any controlled hunt tags and permits left over or unclaimed after the second controlled hunt drawing will be sold on a first-come, first-served basis. (4-6-05)

261. SPECIAL CONTROLLED HUNTS.

01. Special Controlled Hunt Program. The Special Controlled Hunt Permit Program is a program to partially fund a sportsman access program adopted by the Fish and Game Commission. This program will offer forty (40) tags valid for the current year hunting seasons: including, twelve (12) tags each for elk, deer, and antelope, and four (4) tags for moose. (1-24-05)T

a. The rules for controlled hunts set forth in Section 260, of these rules, do not apply to the Special Controlled Hunt Program. (1-24-05)T

b. The Special Controlled Hunt application will be marketed by the Department of Fish and Game. The Department will issue these tags to eligible persons selected by an impartial random lottery draw process. The successful applicants will receive the tag and controlled hunt permit necessary to hunt the appropriate species. The Department’s various license issuing systems and other methods may be used to market the applications. (1-24-05)T

02. Moneys. The Department shall deposit all moneys received from the sale of Special Controlled Hunt Applications in accordance with state law. The Department shall specifically use funds for the sportsman access program. (1-24-05)T

- 03. General Rules.** (1-24-05)T
- a.** Any individual, resident or nonresident, may purchase and submit applications without limit. (1-24-05)T
- b.** Blank special controlled hunt applications may be given or transferred to other individuals, or entered in the name of individuals other than the purchaser. (1-24-05)T
- c.** Each successful applicant must have or be eligible to obtain a valid Idaho hunting license. (1-24-05)T
- d.** Each tag will be issued to the individual named on the drawn application that meets license eligibility requirements and cannot be transferred. (1-24-05)T
- e.** An individual may be drawn for only one (1) special controlled hunt tag for each species. (1-24-05)T
- f.** Each special controlled hunt tag is valid for the designated species and allows the hunter to hunt in any open hunt, general or controlled, for the designated species in the applicable year's season. (1-24-05)T
- g.** The special controlled hunt tag shall be in addition to any other tag the hunter is eligible to obtain. (1-24-05)T
- h.** Any applicant, including those who harvest an animal on a special controlled hunt tag, shall be eligible to apply for any controlled hunt for the same species in the same year or subsequent years. (1-24-05)T
- i.** Prior to the Department issuing any license, tag or permit to a successful applicant, the individual must complete and sign a statement certifying his eligibility to obtain and possess an Idaho hunting license and the required permits and tags. In the event a license, tag or permit is issued based on erroneous information, all documents issued based on the erroneous information will be invalidated by the Department and may not be used. The Department will notify the individual at his last known place of residence of the invalidation of the license, tag or permit. (1-24-05)T
- 04. Application Fees.** The Commission intent for this special controlled hunt program is to provide some of the funding for a statewide sportsman access program. Applications may be sold for individual species (Super Hunt) or grouped for combined species (Super Hunt Combo). The application fees will be set by Commission Order under Section 36-415, Idaho Code, or will be the same as the controlled hunt fee set in Section 36-416, Idaho Code. (1-24-05)T
- 05. Drawing Dates.** There will be two (2) drawings. All drawings shall be held at 10 a.m. at the Department of Fish and Game offices in Boise, Idaho. The first drawing will be on or about June 15, and the second drawing will be on or about August 15 each year. The Commission may order a different drawing day in case of business emergency, holiday, or non-business days. (1-24-05)T
- 06. Department Marketed Applications.** (1-24-05)T
- a.** Individual applications for special controlled hunts shall be made on a form prescribed by the Department. (1-24-05)T
- b.** All applications must be received at the Licenses Section, Headquarters Office, Idaho Department of Fish and Game, 1075 Park Blvd., PO Box 25, Boise, Idaho 83707-0025, no later than 5 p.m. (MST), May 31 of the current calendar year for the first drawing and no later than 5 p.m. (MST), July 31, of the current calendar year for the second drawing. Applications received after July 31 shall be ineligible for any drawing. If either drawing date is a Saturday, Sunday or other legal holiday, then the applications must be received on the next legal business day. (1-24-05)T

c. All applications entered into the first drawing are not eligible for and will not be entered into the second drawing. (1-24-05)T

d. Any individual application that is unreadable, has multiple or no species box checked, has incomplete or which lacks the required information or fee will be declared void and will not be entered in the drawing. All applications will be considered final; they may not be resubmitted after correction. (1-24-05)T

e. The Department shall sell applications through its electronic licensing system from July 28 through November 30. (1-24-05)T

f. For each tag available, the Department shall draw one (1) winner and two (2) alternates. All alternates will be drawn after all winners have been drawn. Should the winner be ineligible, deceased or incapacitated to hunt, the first alternate drawn will be declared the winner. Should the first alternate be ineligible, deceased or incapacitated to hunt, the second alternate drawn will be declared the winner. Should the second alternate be ineligible, deceased or incapacitated to hunt, that special controlled hunt permit shall be null and void and shall not be issued to any other person. The names and addresses of the alternates shall be confidential until the winner is issued all required licenses, tags or permits. (1-24-05)T

07. Refunds of Special Controlled Hunt Fees. (1-24-05)T

a. The application fee is not refundable. (1-24-05)T

b. The special controlled hunt tag, permit and related hunting license are not refundable for any reason. (1-24-05)T

~~261~~262. -- 269. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

410. UNLAWFUL METHODS OF TAKE.

No person shall take big game animals as outlined in this section. (7-1-93)

01. Firearms. (7-1-93)

a. With any firearm that, in combination with a scope, sling, and/or any other attachments, weighs more than sixteen (16) pounds. (7-1-93)

b. With any shotgun using any shot smaller than double-aught (#00) buck. (7-1-93)

c. With any rimfire rifle, rimfire handgun or any muzzleloading handgun, EXCEPT for mountain lion. (7-1-93)

d. With a fully automatic firearm. (10-26-94)

e. With any electronic device attached to, or incorporated in, the firearm (including handguns and shotguns) or scope. (3-30-01)

02. Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives. (3-20-97)

a. With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteenth-thousandths (0.015) inch thick. (7-1-93)

b. With any bow having a peak draw weight of less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds.

- (3-20-97)
- c.** With any chemicals or explosives attached to the arrow or bolt. (7-1-93)
 - d.** With arrows or bolts having expanding broadheads. (7-1-93)
 - e.** With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)
 - f.** With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt, crossbow, or bow. (3-30-01)
 - g.** With any bow capable of shooting more than one (1) arrow at a time. (7-1-93)
 - h.** With any compound bow with more than sixty-five percent (65%) let-off. (7-1-93)
 - i.** With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than four hundred (400) grains. (3-20-97)
 - j.** With an arrow less than twelve (12) inches from the broadhead to the nock inclusive. (3-30-01)
 - k.** With an arrow wherein the broadhead does not proceed the shaft and nock. (3-30-01)
 - l.** During an ARCHERY ONLY season, with any firearm, crossbow (except disabled archers), or other implement other than a longbow, compound bow, or recurve bow, or: (3-20-97)

 - i. With any device attached that holds a bow at partial or full draw. (7-1-93)
 - ii. With any bow or crossbow equipped with magnifying sights. (3-20-97)
 - m.** During a TRADITIONAL ARCHERY ONLY season, with any firearm, crossbow, or other implement other than a longbow or recurve bow, or: (3-15-02)

 - i. With an arrow not constructed of wood or fletched with non-natural material. (3-15-02)
 - ii. With any bow equipped with sights. (3-15-02)
 - n.** With any crossbow pistol. (3-20-97)
 - 03. Muzzleloaders.** (7-1-93)

 - a.** With a muzzleloading rifle or musket which is less than forty-five (.45) caliber for deer, antelope, or mountain lion, or which is less than fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (7-1-93)
 - b.** With any electronic device attached to, or incorporated in, the muzzleloader. (3-30-01)
 - c.** During a MUZZLELOADER ONLY season, with any firearm, muzzleloading pistol or other implement other than a muzzleloading rifle or musket which: (7-1-93)

 - i. Is at least forty-five (.45) caliber for deer, antelope or mountain lion or at least fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat or black bear. (7-1-93)
 - ii. Is capable of being loaded only from the muzzle. (7-1-93)
 - iii. Is equipped only with open or peep sights. (7-1-93)

- iv. Is loaded only with black powder or, Pyrodex or other synthetic black powder. (3-20-97)
- v. Is equipped with no more than two (2) barrels. (7-1-93)
- vi. Is loaded only with a projectile of at least four hundred twenty-eight (.428) caliber. (3-20-97)
- vii. Is equipped only with flint, musket cap, or percussion cap. (4-6-05)
- d.** During a TRADITIONAL MUZZLELOADER ONLY season, with any firearm other than a muzzleloader rifle or musket with an exposed hammer that pivots: (3-15-02)
 - i. Is loaded only with loose black powder or Pyrodex. (3-15-02)
 - ii. Is loaded only with a patched round ball or conical non-jacketed projectile comprised wholly of lead or lead alloy. Sabots are not allowed. (~~3-15-02~~)(1-24-05)T
- 04. Short-Range Weapon.** During Short-Range Weapon ONLY seasons ONLY the following weapons may be used: (7-1-99)
 - a.** With any shotgun using any slug or double-aught (#00) or larger buckshot. (7-1-99)
 - b.** With any muzzleloader that is at least forty-five (0.45) caliber for deer, antelope, or mountain lion or at least fifty (0.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (7-1-99)
 - c.** With any bow having a peak draw weight of not less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of not less than one hundred fifty (150) pounds. (7-1-99)
- 05. Other.** (7-1-93)
 - a.** With electronic calls EXCEPT for the hunting of mountain lions in Units 41, 42 and that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486. (3-15-02)
 - b.** With any bait including grain, salt in any form (liquid or solid), or any other substance (not to include liquid scent) to constitute an attraction or enticement, with the exception of applicable rules for the black bear baiting permit. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.17, "Rules Governing the Use of Bait for Taking Big Game Animals". (3-30-01)
 - c.** With dogs, EXCEPT for mountain lion or black bear. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.15, "Rules Governing the Use of Dogs". (7-1-93)
 - d.** With any net, snare, trap, chemical, deadfall or device other than legal firearm, archery or muzzleloader equipment. (7-1-93)
 - e.** Within an enclosure designed to prevent ingress or egress of big game animals, including fenced facilities defined as Domestic Cervidae Farms under Section 25-3501, Idaho Code, unless authorized by the director. This rule shall not apply to domestic cervidae which are lawfully privately owned elk, fallow deer, or reindeer. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

412. MOTORIZED VEHICLE USE RESTRICTION UNITS.

The motorized vehicle use restriction applies to areas and hunts in units 29, 30, 30A, 32, 32A, 36A, 37, 37A, 45, 47, 48, 50, 51, 52, 53, 56, 58, 59A, 66, 70, 72 (late season), 73, 75, 77, and 78. The specific hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation, which is published in a brochure available at department offices and license vendors. (1-24-05)T

4123. -- 419. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

800. EMERGENCY DEPREDATION HUNTS.

01. Eligibility. (7-1-93)

a. Only Idaho residents with a valid Idaho hunting or combination license are eligible to apply to participate in emergency depredation hunts. (7-1-93)

b. Persons submitting applications for emergency depredation hunts are eligible to apply for controlled hunts or may hunt in the general season. (7-1-93)

02. Applications. (7-1-93)

a. Applicants must submit a depredation hunt application and mail it to the regional office of the Idaho Department of Fish and Game in the area(s) they are willing to hunt. Applicants may apply to different areas for deer, elk and antelope. (7-1-93)

b. Applicants may submit only one (1) application per year for each species. An individual or a group may apply on an application. A group is defined as two (2) hunters applying for the same depredation hunt on the same application. On a group application both hunters must comply with all regulations, complete the application properly, and abide by the same depredation hunt choice. If an individual submits application for more than one (1) species, he does not have to be in the same group for each application. Separate applications may be submitted for deer, elk and antelope. (7-1-93)

c. Application can be made in only one (1) region for deer, one (1) for elk, and one (1) for antelope. (7-1-93)

d. Any form not properly completed will be ineligible for selection. (7-1-93)

e. Any holder of an antlerless or doe/fawn controlled hunt permit/tag will be considered an applicant for any depredation hunt for that species which is: (7-1-93)

i. Held prior to the antlerless or doe/fawn controlled hunt; and (7-1-93)

ii. Is in the same area as the depredation. (7-1-93)

f. Any holder of an antlerless or doe/fawn controlled hunt permit/tag may also apply for a depredation hunt in any region. (7-1-93)

g. A list of depredation hunt applications received will be maintained for the time period July 1 to June 30. Applications are valid only for the time period for which they are submitted. (7-1-93)

h. Military personnel returning from active duty after June 30 may apply at any time and will be given priority in the selection process. (1-24-05)T

03. Selection Of Participants. The Department shall place all applications (individual or group) for

each depredation hunt received by June 30 in random order. All applications received after June 30 shall be placed at the end of the list in the order received, except that military personnel returning from active duty will be given priority. The Department shall select participants for a hunt in the order in which applicants appear on the list EXCEPT for those hunts which precede, or at the discretion of the Regional Supervisor, follow a controlled hunt for doe/fawn or antlerless animals. If a depredation hunt is scheduled before or at the discretion of the Regional Supervisor a doe/fawn or antlerless hunt in the same unit, the holders of the doe/fawn or antlerless permit/tags will be given the option to hunt in the depredation hunt. If no doe/fawn or antlerless hunts are scheduled in that unit, or if some depredation hunt permits are not taken by controlled hunt permittees, participants will be selected from applicants for that depredation hunt. If a group application is selected, both hunters will be offered depredation hunt permits.

~~(7-1-98)~~(1-24-05)T

IDAPA 13 - DEPARTMENT OF FISH AND GAME
13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME
ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-0501P

NOTICE OF PROPOSED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2005 Big Game Seasons establishing seasons and limits for big game hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

November 16, 2005 at 7 p.m.
Magic Valley Region Office
Idaho Department of Fish and Game
319 South 417 East, Jerome, Idaho

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at 208-287-2766 or through the Idaho Relay Service at 1-800-377-2529 (TDD).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at 208-334-3715.

DATED this 17th day of August, 2005.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25, Boise, Idaho 83707
(208) 334-3715
Fax (208) 334-2148

IDAPA 13 - DEPARTMENT OF FISH AND GAME

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-0501P

NOTICE OF PROPOSED PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2005 Turkey Seasons establishing seasons and limits for turkey hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on:

**November 16 at 7 p.m.
Magic Valley Region Office
Idaho Department of Fish and Game
319 South 417 East, Jerome, Idaho**

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at 208-287-2766 or through the Idaho Relay Service at 1-800-377-2529 (TDD).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at 208-334-3715.

DATED this 17th day of August, 2005.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25, Boise, Idaho 83707
(208) 334-3715
Fax (208) 334-2148

IDAPA 13 - DEPARTMENT OF FISH AND GAME

13.01.10 - RULES GOVERNING THE IMPORTATION, POSSESSION, RELEASE, SALE OR SALVAGE OF WILDLIFE

DOCKET NO. 13-0110-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 23, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-2205(c) Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Address the requirements and specifications for possessing or raising wildlife for medical research. Correct terminology throughout the chapter. Clarify the requirement for an importation permit. Clarify and update the allowed species importation list. Set bird disease standards and bird marking standards for shooting preserves.

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

The temporary rule confers a benefit to commercial wildlife farms and wildlife research facilities, and other persons who possess wildlife.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to address the immediate concerns of a proposed wildlife research facility and the lack of a unified source to represent the divergent interests and types of wildlife possession.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Dr. Mark Drew (208) 454-7646.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25, Boise, Idaho 83707
(208) 334-3715, Fax (208) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0110-0501

010. DEFINITIONS.

01. Commercial Wildlife Farm. Any facility where the operator obtains or possesses ~~big game animals~~ or breeds ~~big game animals~~ wildlife to produce young for any commercial purpose. Such facilities require a license, ~~and/or~~ Additional permits may be required from the Idaho Department of Agriculture, United States Department of Agriculture Animal and Plant Health Inspection Service (USDA APHIS) where applicable.

~~(7-1-99)~~(5-23-05)T

02. Private Wildlife Park. Any facility where the operator obtains, possesses or, propagates ~~big game animals~~ wildlife for his own personal pleasure but not for any commercial purpose. Such facilities require a license.

~~(7-1-99)~~(5-23-05)T

03. Wildlife. As defined in Section 36-202, Idaho Code. (3-23-94)

04. Bona Fide Pet Store. A legitimate retail store with a set location and regular business hours. (7-1-99)

05. Big Game Animal. As classified in IDAPA 13.01.06, "Classification and Protection of Wildlife". (3-23-94)

06. Agriculture or Domestic Fish. Shall include only rainbow trout (all color phases), coho salmon and blue or channel catfish. (3-23-94)

07. Agriculture or Domestic Animals. Shall not include any species of wildlife as defined by Idaho Code 36-202. (3-23-94)

08. Game Bird. As defined by IDAPA 13.01.06, "Classification and Protection of Wildlife". (3-23-94)

09. Commercial Wildlife Facility. Any facility where the operator obtains, possesses, or propagates wildlife for any commercial purpose, including exhibition, education, entertainment, or sale. A commercial wildlife farm is included in this definition. Such facilities require a facility license. (7-1-99)

10. Not Permanently Located Within the State of Idaho. A traveling circus, menagerie, or trained act of wild animals which shall not be located within the state of Idaho more than two (2) months out of any calendar year. (7-1-99)

11. Traveling Circus, Menagerie, or Trained Act of Wild Animals. Any mobile display or exhibit of wildlife maintained for instructional, educational, entertainment, or other commercial purposes. (7-1-99)

12. Publicly Owned Zoo or Wildlife Exhibit. Any facility owned by any municipal, county, state, or federal agency. (7-1-99)

13. Captive Wildlife Facility. Any facility where the owner obtains or possess up to three (3) individual captive wildlife, except wolves and wolf hybrids, for his own pleasure but with no breeding or any commercial purpose. Such facilities require a license. (5-23-05)T

14. Commercial Wildlife Research Facility. Any facility where the operator obtains, possesses, or propagates wildlife for commercial research purposes. Such facilities require a license. (5-23-05)T

(BREAK IN CONTINUITY OF SECTIONS)

101. IMPORT PROCEDURE.

01. Importation of Live Wildlife. Persons wishing to import any live wildlife, except those species exempt by Section 100 of this rule, into Idaho must obtain a license from the Idaho Fish and Game Department and must comply with the following requirements prior to importation. (7-1-99)

02. Obtain an Import Permit. Obtain a Wildlife Importation Permit from the Bureau of Wildlife, Idaho Department of Fish and Game covering each animal or group of animals from the same source. ~~An Import Permit~~ ~~when may also be~~ required from the Division of Animal Industries, Idaho Department of Agriculture, Boise, Idaho covering each animal or group of animals from the same source. ~~(7-1-99)(5-23-05)T~~

03. Possession of Valid License. Possess a valid, appropriate commercial wildlife facility license or possession permit from the Department of Fish and Game for all species of wildlife they possess ~~classified as big game animals.~~ ~~(7-1-99)(5-23-05)T~~

04. Inspection and Examination Requirements. Obtain an examination of each animal by a licensed veterinarian, and a valid Certificate of Veterinary Inspection on animal(s). For fish, obtain (a) Certificate of Veterinary Inspection by a licensed veterinarian, or (b) CFR Title 50 certification, or (c) American Fisheries Society certified fish health inspector's certification, or (d) other certification by an individual designated by the Director of the Department of Agriculture. The Director of the Department of Fish and Game and the Director of the Department of Agriculture (or their designees which should include the Wildlife Veterinarian and the Administrator of the Division of Animal Industries) shall mutually determine the diseases, parasites and genetic characteristics of concern and the testing/certification procedures and statements necessary to prevent introduction of diseases, parasites and genetically-related problems into the state of Idaho. Such testing and certification shall be implemented by the Division of Animal Industries of the Department of Agriculture and verified by the approved Certificate for the imported animal(s). Copies of the approved certificate must be sent to the Idaho Department of Fish and Game veterinarian by the importer within ten (10) days prior to arrival into Idaho. (7-1-99)

05. Wildlife in Transit. All required licenses and certificates must accompany said wildlife while in transit. (7-1-99)

06. Issuance of Licenses. Licenses will not be issued after the fact for wildlife imported without necessary health certificates. (7-1-99)

07. Permits, Licenses, and Invoices Required. (7-1-99)

a. Each facility must have appropriate licenses. License application forms are available from the Idaho Department of Fish and Game. (7-1-99)

b. Animals may only be imported or possessed after a license is issued. (7-1-99)

c. In addition to any criminal penalties assessed by a court, licenses may be revoked by the Director of the Idaho Fish and Game Department for failure to comply with Chapter 7, Title 36, Idaho Code or rules promulgated pursuant thereto. (7-1-99)

102. -- 199. (RESERVED).

200. NON-COMMERCIAL POSSESSION AND CONFINEMENT OF WILDLIFE REQUIREMENTS FOR CAPTIVE WILDLIFE FACILITIES, PRIVATE WILDLIFE PARKS AND COMMERCIAL WILDLIFE FARMS.

01. General. No person shall possess, hold in captivity, or propagate any ~~big game animals~~ wildlife without obtaining the proper permit from the Idaho Department of Fish and Game. All licensees shall comply with the following rules. ~~(7-1-99)(5-23-05)T~~

02. Compliance With City and County Ordinances and Federal Law. No person shall possess, hold in captivity, or propagate any ~~big game animals~~ wildlife without obtaining certification from the relevant city or county zoning and planning commissions that such facility is in compliance with all county ordinances. In addition, all such persons must obtain certification from the U.S. Department of Agriculture that they are in compliance with federal laws. ~~(7-1-99)~~(5-23-05)T

03. Marking ~~Big Game~~ Wildlife. All ~~big game animals~~ wildlife shall be uniquely marked with U.S. Department of Agriculture official, valid eartags or other Department of Fish and Game approved marking system. ~~(3-23-94)~~(5-23-05)T

04. Wildlife in Transit. All required licenses and certificates must accompany said wildlife while in transit. (7-1-99)

05. Issuance of Licenses. Licenses will not be issued after the fact for wildlife imported without necessary licenses and health certificates. (7-1-99)

06. License Required. (7-1-99)

a. Each facility must have an appropriate license. Licenses are available from Idaho Department of Fish and Game. (7-1-99)

b. In addition to any criminal penalties assessed by a court, permits and licenses may be revoked by the Director of the Idaho Fish and Game Department for failure to comply with Chapter 7, Title 36, Idaho Code or regulations promulgated pursuant thereto. (3-23-94)

07. Applications. Application for licenses shall be on a form prescribed by the Department of Fish and Game. A separate application shall be made for each facility. (7-1-99)

08. Inspections. The licensee or anyone holding wildlife in captivity shall make available for inspection all records, all wildlife, and the facilities where the wildlife are kept at any reasonable time upon request of the Idaho Department of Fish and Game. (7-1-99)

09. Records Requirements. Records of all captive wildlife shall be kept current and up to date and made available as specified in Section 36-709(c) Idaho Code. (3-23-94)

10. Cages or Enclosures. (7-1-93)

a. It shall be required of each owner of ~~big game animals~~ wildlife to pen such animals in suitable pens and restrain them for inspection at any reasonable time when requested to do so by the Director or his representative. ~~(3-23-94)~~(5-23-05)T

b. ~~Big game animals, including b~~Bear and mountain lion shall be confined in enclosures that meet the following minimum requirements: ~~(7-1-99)~~(5-23-05)T

i. Has a floor made of cement or concrete at least three (3) inches thick into which metal fence stakes are permanently placed or a floor that consists of chain link or other material that will preclude the animal digging through the floor to escape; (7-1-93)

ii. Has a chain link fence of at least eight (8) feet in height; (3-23-94)

iii. Has a chainlink cage top, or has any other Department approved configuration such as a pit that will preclude escape. (3-23-94)

iv. Cages, fencing and guard rails shall be kept in good repair at all times and gates or doors shall be securely fastened and locked. (3-23-94)

c. All such cages and/or enclosures for ~~big game animals~~ wildlife shall be of sufficient size to give the animal confined ample space for exercise and to avoid being overcrowded. ~~(3-23-94)~~(5-23-05)T

i. The length of the cage or enclosure shall be a minimum of four (4) times the body length (tip of nose to base of tail) of the animal being kept. (3-23-94)

ii. The width shall be at least three-fourths (3/4) of the minimum cage length. (3-23-94)

iii. For the second animal housed in cage, floor space shall be increased twenty-five percent (25%) and for each additional animal housed in the cage, floor space shall be increased fifteen percent (15%). Cages with tops shall be of reasonable height to accommodate the animals contained therein. No nails or other sharp protrusions which might injure or impair the animal shall be allowed within the cages. (3-23-94)

d. A suitable shelter or shield shall be provided for ~~big game animals~~ wildlife for protection from inclement weather and from the sun. ~~(3-23-94)~~(5-23-05)T

e. Cages or enclosures for ~~big game animals~~ wildlife shall be kept in a clean and sanitary condition consistent with good animal husbandry. ~~(3-23-94)~~(5-23-05)T

f. All venomous reptiles in captivity shall be kept in a cage or in a safety glass enclosure sufficiently strong, and in the case of a cage, of small enough mesh to prevent the animal's escape and with double walls sufficient to prevent penetration of fangs to the outside. All cages and glass enclosures must be locked. (3-23-94)

11. Humane Treatment. (7-1-93)

a. All native wildlife that may be legally taken from the wild and held in captivity under the provisions of Title 36, Idaho Code and these rules and all captive ~~big game animals~~ wildlife shall be handled in a humane manner and kept free from parasites, sickness or disease, and if they become infected, injured or unsightly shall be removed from public display by the permit holder. ~~(3-23-94)~~(5-23-05)T

b. Any ~~big game animal~~ wildlife afflicted with a disease shall immediately be given medical attention consistent with good animal husbandry. A complete record of illness, treatment and disposition must be maintained by the permit holder. (3-23-94)

c. A certificate from a licensed veterinarian shall be supplied to the Idaho Department of Fish and Game upon demand stating the physical condition or health of all ~~big game animals~~ wildlife confined under the permit. ~~(3-23-94)~~(5-23-05)T

d. Daily feeding schedules shall be maintained for all ~~big game animals~~ wildlife. Food must be adequate and varied and so far as possible consistent with food ordinarily eaten by such animals. ~~(3-23-94)~~(5-23-05)T

e. Fresh or running water for drinking purposes shall be available in cages or enclosures at all times and shall be kept clean and in a sanitary condition. (3-23-94)

f. Any animals with a propensity to fight or which are otherwise incompatible shall be kept segregated. (7-1-93)

g. At no time shall any wildlife held in captivity be chained or otherwise tethered. Except raptors, see falconery rules. (3-23-94)

12. Intrastate Movement. Intrastate movement will be allowed for nonquarantined ~~big game animals~~ wildlife, from one licensed facility to another which possesses a license for that subspecies, provided that: ~~(3-23-94)~~(5-23-05)T

a. Such ~~big game animals~~ wildlife shall be individually identified by an accredited veterinarian on a Certificate of Veterinary Inspection that shall accompany the animal while in transit, and shall be marked with U. S.

Department of Agriculture official, valid eartags or other Department of Fish and Game approved marking system.
(~~7-1-99~~)(5-23-05)T

b. A wildlife invoice and bill of sale, properly filled out and signed by the licensee or his agent shall accompany each such animal while being transported. (3-23-94)

i. The invoice shall state the name of the wildlife facility from which the animal is being transported and the facility it is being transported to, and shall state the date of disposition, the species and the number disposed of. (3-23-94)

ii. The invoice shall be in triplicate with one (1) copy being retained by the transferrer, one (1) copy delivered to the transferee with the animal and one (1) copy to be mailed to the Department of Fish and Game by the transferrer within ten (10) days of the date of disposition. (3-23-94)

c. An intrastate transport license is obtained from the Director or his designee. (7-1-99)

13. Release of Wildlife Without a Permit. Any wildlife, except fish, that is released without a permit or escapes from an owner or operator shall be captured or destroyed by the owner, or by the Idaho Department of Fish and Game at the owner's expense. (3-23-94)

14. Unpermitted Fish Species. Any fish species unpermitted for import, possession, transport or release that is released by or escapes from an owner or operator shall be captured or destroyed by the owner, or by the Department of Fish and Game at the owner's expense. (3-23-94)

15. Diseases of Captive Wildlife. The Director of the Department of Fish and Game and the Director of the Department of Agriculture (or their designees which should include the Wildlife Veterinarian and the Administrator of the Division of Animal Industries) shall mutually determine the diseases and parasites of concern and the mechanisms and procedures for control of diseases and parasites in captive wildlife within the state of Idaho. Such mechanisms and procedures shall include but not be limited to examination, testing, quarantine and slaughter or destruction of individual animals and/or herds that are infected with or affected by diseases and/or parasites that may have significant detrimental effect on native wildlife, other captive wildlife, livestock or the public health of the citizens of the state of Idaho. Such disease and parasite control measures shall be included in and enforced by regulations of the Division of Animal Industries of the Department of Agriculture. Such examinations, testing, quarantine and slaughter of animals or herds shall be conducted at the expense of the owner of said animals or herds. (3-23-94)

201. -- 299. (RESERVED).

300. RECOVERY, POSSESSION AND SALE OF WILDLIFE PARTS.

01. Wildlife Legally Killed. (3-23-94)

a. The possession, sale and purchase of wildlife or parts of wildlife that have been legally killed is lawful except as provided below and as provided in Chapter 5, Title 36, Idaho Code. (3-23-94)

i. The edible flesh of wildlife classified as big game animals, upland game animals, game birds or migratory birds taken from the wild may not be purchased, bartered or sold. (3-23-94)

ii. The edible flesh of wildlife classified as game fish or crustacea that are taken from the wild may not be purchased, bartered or sold except as provided in Idaho Code Sections 36-501 and 36-801 through 36-805 and rules promulgated pursuant thereto. (3-23-94)

b. A written statement showing the taker's name, address, license and tag numbers, date and location of kill, signed by the taker, must be provided to the buyer of any black bear or mountain lion head, hide or parts (except tanned hides finished into rugs or mounts). A copy of the sales statement must be forwarded by the buyer to the Idaho Department of Fish and Game within ten (10) days after such sale. (3-23-94)

02. Animals Found Dead. Protected species of wildlife that have died naturally or accidentally remain in public trust to be disposed of by the Department of Fish and Game. However, a person may recover, possess, sell or purchase the wildlife parts as specified below, but ONLY under the conditions specified and ONLY if the wildlife has NOT been unlawfully killed. Natural causes shall not include any man-caused mortality. (7-1-98)

a. Horns of Bighorn Sheep. (7-1-93)

i. Bighorn sheep horns of animals that have died of natural causes may be recovered and possessed but may not be sold, bartered or purchased and may not be transferred to another person without a permit issued by the Director. All such pickup horns must be presented to an Idaho Department of Fish and Game regional or subregional office for marking by placement of a permanent metal pin in the horn within thirty (30) days of recovery. The insertion of a pin does not in itself certify that the animal was legally taken or possessed. The pin only identifies the horn(s) and indicates that mandatory check and report requirements were complied with. (3-23-94)

ii. No person shall alter, deface or remove a pin placed in a bighorn sheep horn by the Idaho Department of Fish and Game. No person shall possess the horn(s) of a bighorn sheep that bears an altered, defaced or counterfeit Idaho pin or from which the Idaho pin has been removed. (3-23-94)

b. Antlers and horns of deer, elk, moose, pronghorn antelope and mountain goat, ~~and~~ parts of bear and mountain lion, and elk teeth of animals that have died of natural causes may be recovered, possessed, purchased, bartered or sold. (~~3-23-94~~)(5-23-05)T

c. Antlers of deer, elk and moose that have been naturally shed in Idaho may be recovered, possessed, purchased or sold year around, EXCEPT in units 60, 60A, 66, 66A, 67, 68, 68A, 69, 70, 71, 72, 73, 73A, 74, 75, 76, 77 and 78 antlers may be picked up in the field only from May 1 through December 31. (7-1-99)

03. Wildlife Taken in Other States. Wildlife or parts thereof that have been legally taken outside of Idaho, may be possessed or sold in Idaho if such sale is not prohibited in Idaho or the state, province or country where taken, or by federal law or regulation; (3-23-94)

301. -- 399. (RESERVED).

400. COMMERCIAL WILDLIFE FACILITIES.

01. General. No person shall operate or maintain a commercial wildlife facility without obtaining the proper facility licenses from the Idaho Department of Fish and Game. All permittees and licensees shall comply with the following rules. (7-1-99)

02. Compliance With City and County Ordinances and Federal Law. No person shall maintain a wildlife facility without first obtaining certification from the relevant city or county zoning and planning commissions that such establishment is in compliance with all existing county ordinances. In addition, all such persons must obtain certification from the U.S. Department of Agriculture that they are in compliance with federal laws. (7-1-99)

03. Licenses. (7-1-99)

a. Each facility must have an appropriate facility license. Licenses are available from Idaho Department of Fish and Game. Cost of the license shall be determined in Section 36-703(a)(6), Idaho Code. (7-1-99)

b. Licenses shall be displayed at the licensed facility in plain view at all times. (7-1-99)

c. Licenses may be revoked by the Director of the Idaho Fish and Game Department for failure to comply with Chapter 7, Title 36, Idaho Code or rules promulgated pursuant thereto or for violating any license or permit conditions. In case of revocation, all animals shall be removed by owner or by the Idaho Department of Fish and Game at owner's expense. (7-1-99)

d. Permits and licenses may be revoked by the Director of the Idaho Fish and Game Department for

failure to comply with Chapter 7, Title 36, Idaho Code or rules promulgated pursuant thereto. (7-1-93)

e. Persons in violation of Chapter 7 of Title 36, Idaho Code and/or these rules shall be notified in writing and shall have ten (10) days to correct the violation. If at the end of that time the violation is not corrected, the Director may revoke any existing permit or license and may refuse to issue any future permit. Such revocation or refusal to issue a future permit shall be in addition to any criminal charges that may be filed. (7-1-93)

04. Applications. Application for permits or licenses to import and/or possess wildlife shall be on a form prescribed by the Department of Fish and Game. A separate application shall be made for each facility and for any animal(s) imported after a facility is licensed. The application shall include: (7-1-99)

- a.** The name and address of the applicant. (7-1-93)
- b.** Proof of compliance with existing city/county zoning and/or ordinance. (7-1-99)
- c.** The name and address of the owner(s) of the wildlife if not the applicant. (7-1-93)
- d.** The location of the proposed facility, including a legal description of the land and the approximate space devoted to the facility. (7-1-93)
- e.** The name and address of the owner of the property if not the applicant. (7-1-93)
- f.** The number and kinds of wildlife being or to be kept. (7-1-93)
- g.** The date upon which each animal is to be obtained. (7-1-99)
- h.** The source, including address and telephone number, from which each animal was, or is to be, obtained, and health certificate for all animals (see Rule 101) addressing diseases of concern. If already in possession, the type of permit or license under which each animal is possessed. (7-1-99)
- i.** Specifications of pens and shelters furnished for each kind of animal. (7-1-93)
- j.** Specifications of the guard fence or other security measures to prevent escape or protect the public from injury by the animals. (7-1-99)

05. Inspections. The licensee shall make available for inspection all records, all wildlife, and the facilities covered by the license at any reasonable time upon request of the Idaho Department of Fish and Game. (7-1-99)

06. Evidence of Legal Possession. Records shall include evidence of legal possession of all wildlife kept at the facility or under the licenses, including licenses, permits, receipts, invoices, bills of lading, or other satisfactory evidence of ownership. The records shall also identify all animals born at the facility, exported from the facility, or transported within the state. (7-1-99)

07. Dead Wildlife. Record of inspection by a licensed veterinarian shall be kept for all wildlife which die on the premises, and a copy shall be forwarded to the Department of Fish and Game Wildlife Laboratory within ten (10) days of the death of the animal. (7-1-99)

08. Cages or Enclosures. (7-1-93)

a. All wildlife held in captivity in a wildlife facility shall be confined at all times in cages or pens of such structure or type of construction that it will be impossible for such animals to escape. (7-1-93)

b. ~~Big game animals, including b~~Bear and mountain lion, shall be confined in enclosures that meet the following minimum requirements: (7-1-99)(5-23-05)T

- i.** Has a floor made of cement or concrete at least three (3) inches thick into which metal fence stakes

are permanently placed on a floor that consists of chain link or other material that will preclude the animal digging through the floor to escape; (7-1-93)

- ii. Has a chain link fence of at least eight (8) feet in height with barbed wire overhang; (7-1-93)
- iii. Has a cage top; (7-1-93)
- iv. Has any other configuration such as a pit that will preclude escape. (7-1-93)

c. All such cages and/or enclosures shall be of sufficient size to give the animal or bird confined ample space for exercise and to avoid being overcrowded. (7-1-93)

i. The length of the cage or enclosure shall be a minimum of four (4) times the body length (tip of nose to base of tail) of the animal being kept, reptiles excepted. (7-1-93)

ii. The width shall be at least three-fourths (3/4) of the cage length. (7-1-93)

iii. For the second animal housed in cage, floor space shall be increased twenty-five percent (25%) and for each additional animal housed in the cage, floor space shall be increased fifteen percent (15%). Cages with tops shall be of reasonable height to accommodate the animals contained therein. No nails or other sharp protrusions which might injure or impair the animal shall be allowed within the cages. (7-1-93)

d. All cages or enclosures shall be constructed to prevent entrance by other animals and prevent harm to or by the general public. Cages, fencing, and guardrails shall be kept in good repair at all times; and gates shall be securely fastened with latches or locks. (7-1-99)

e. Each cage or enclosure for birds and smaller animals shall be provided with a den, nest box or other suitable housing containing adequate bedding material as may be required for the comfort of the species held. A suitable shelter or shield shall be provided for larger animals for protection from inclement weather and from the sun. At least one (1) wall of the enclosure shall be constructed so as to provide a windbreak for the animal confined. (7-1-93)

f. Cages or enclosures shall be kept dry if containing terrestrial animals and with adequate water if containing aquatic animals. Where natural climate of the species being held differs from the climate of the area where the wildlife facility is located, provisions shall be made to adjust holding conditions, as nearly as possible, to natural habitat. (7-1-93)

g. Cages or enclosures shall be kept free of offensive odors and/or other unhealthy conditions. All cages or enclosures shall be properly disinfected and cleaned at least once each day. (7-1-93)

09. Large Commercial Wildlife Facilities. Commercial wildlife facilities which are of a size large enough or with a large number of animals which are incompatible with the cage or enclosure requirements of Subsection 400.07 may, in the director's discretion, be addressed on a case-by-case basis. It is intended that such facilities would house three (3) or more species or encompass display or exhibit areas larger than one (1) acre to qualify for consideration. (7-1-99)

a. Animals that are exhibited will be displayed in such a way as to preserve their dignity and in a natural appearing environment. The displays should enhance appreciation for the species and its natural history. ~~(7-1-99)~~(5-23-05)T

b. The cages and/or enclosures shall be of such structure or type of construction to prevent escape of the captive wildlife, or damage to native wildlife through habitat degradation, genetic contamination, competition, or disease. (7-1-99)

c. Applications for a commercial wildlife facility license shall generally meet the requirements of Subsection 400.04. Additionally, the application shall identify the veterinarian of record for the facility. (7-1-99)

d. The department will refer to the standards such as those set by the American Zoological Association or the United States Department of Agriculture, Animal and Plant Health Inspection Service Animal Care to develop cage, open space, shelter, and enclosure requirements. Such requirements may include, but not limited to, fence specifications, electric fence specifications, pits or moats, or buried fencing. ~~(7-1-99)~~(5-23-05)T

e. All applications shall be accompanied by a bond to the state of Idaho, Department of Fish and Game in the amount of fifty thousand dollars (\$50,000) or an amount equal to ten percent (10%) of the total facility construction cost plus two thousand dollars (\$2,000) per animal, which ever is greater, executed by a qualified surety duly authorized to do business in the state of Idaho, to guarantee performance of license conditions and to reimburse the Department for any costs incurred for clean-up of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. With prior approval, the applicant may submit a cash bond to the Department including, but not limited to, certificates of deposit, registered checks, certified funds, and money orders. (7-1-99)

f. The specific requirements shall be set forth as license conditions. Violation of a license condition shall be a violation of these rules. (7-1-99)

10. Humane Treatment. (7-1-93)

a. All wildlife being held in captivity under the provisions of Title 36, Idaho Code and these rules shall be handled in a humane manner and kept free from parasites, sickness or disease, and if they become infected, injured or unsightly shall be removed from public display by the permit holder. (7-1-93)

b. Any animal afflicted with parasites or disease shall immediately be given professional medical attention or be destroyed in a humane manner. A complete record of illness, treatment and disposition must be maintained by the permit holder. (7-1-93)

c. A certificate from a licensed veterinarian shall be supplied to the Idaho Department of Fish and Game at least once each year or upon demand stating the physical condition or health of animals confined under the permit. Certificates shall be upon forms furnished by the Department. (7-1-93)

d. Regular feeding schedules shall be maintained for all animals. Food must be adequate and varied and so far as possible consistent with food ordinarily eaten by such animals. Food must be of good quality and stores of same shall be kept in suitable containers with tight fitting covers so as to render it inaccessible to rats, flies, or other vermin. (7-1-99)

i. Food must be of good quality and stores of same shall be kept in suitable containers with tight fitting covers so as to render it inaccessible to rats, flies, or other vermin. (7-1-93)

ii. The public shall not be permitted to feed any animals ~~other than monkeys~~. Proper signs shall be conspicuously posted on cages or enclosures advising the public to refrain from feeding or annoying the birds or animals. ~~(7-1-93)~~(5-23-05)T

e. Fresh or running water for drinking purposes shall be available in cages or enclosures at all times. Drinking fountains or other receptacles shall be available in cages or enclosures at all times and shall be kept clean and in a sanitary condition. (7-1-93)

f. Any animals with a propensity to fight or which are otherwise incompatible shall be kept segregated. (7-1-93)

g. At no time shall any wildlife held for public display or exhibition be chained or otherwise tethered to any stake, post, tree, building, or other anchorage. (7-1-93)

11. Sale of Animal Meat or Parts. (7-1-99)

a. A commercial wildlife facility licensee may sell or otherwise dispose of the carcass, parts, or by-products of a properly identified ~~big game animal~~ wildlife taken from a commercial wildlife facility only upon

preparing an invoice or bill of sale as specified by the Idaho Department of Fish and Game and attaching a copy of it to the lot shipment, carcass, or container and keeping a copy for his records. Upon the attaching of the invoice or bill of sale to the carcass, parts, or by-products of the animal, the same may be transported to the transferee named on the invoice or bill of sale. ~~(7-1-99)~~(5-23-05)T

b. The licensee may sell commercial wildlife facility animals for meat upon compliance with all applicable health laws, USDA, and Idaho Department of Agriculture regulations. (7-1-99)

12. Responsibility of License Holder. The license holder shall be responsible for the care of the wildlife in possession and the protection of the public. The license holder shall be liable for the expense of capture or destruction of any escaped wildlife, including any costs incurred by the Department. The Department is concerned only with the protection of wildlife and makes no representation concerning public safety of the licensed animals or facilities. (7-1-99)

13. Commercial Wildlife Research Facilities. Commercial wildlife research facilities are facilities in which wildlife are used for commercial research purposes and will be addressed on a case-by-case basis. It is intended that such facilities would house wildlife for research purposes that benefit wildlife or human health and comply with USDA research facility requirements. (5-23-05)T

a. Animals will be housed in such a way as to preserve their dignity and in compliance with USDA research facility requirements. (5-23-05)T

b. The cages and/or enclosures shall be of such structure or type of construction to prevent escape of the captive wildlife, or damage to native wildlife through habitat degradation, genetic contamination, competition, or disease and to prevent the egress of native wildlife. (5-23-05)T

c. Applications for a commercial wildlife research facility license shall generally meet the requirements of Subsection 400.04. Additionally, the application shall identify the veterinarian of record for the facility. (5-23-05)T

d. The Department will refer to the standards such as those set by the American Zoological Association or USDA to develop cage, open space, shelter, and enclosure requirements. Such requirements may include, but are not limited to, fence specifications, electric fence specifications, pits or moats, or buried fencing. (5-23-05)T

e. All applications shall be accompanied by a bond to the state of Idaho, Department of Fish and Game in the amount of fifty thousand dollars (\$50,000) or an amount equal to ten percent (10%) of the total facility construction cost, which ever is greater, executed by a qualified surety duly authorized to do business in the state of Idaho, to guarantee performance of license conditions and to reimburse the Department for any costs incurred for clean-up of abandoned or closed facilities, removal of animals from abandoned or closed facilities, capture or termination of escaped animals, or disease control. With prior approval, the applicant may submit a cash bond to the Department including, but not limited to, certificates of deposit, registered checks, certified funds, and money orders. (5-23-05)T

f. The specific requirements shall be set forth as license conditions. Violation of a license condition shall be a violation of these rules. (5-23-05)T

14. Captive Wildlife Facility. Captive Wildlife Facilities are facilities in which small numbers, up to three (3) individual animals, may be possessed by a private person, but with no breeding or commercial use allowed. Captive Wildlife Facilities must comply with the appropriate sections of these rules concerning importation, possession, housing and other requirements. (5-23-05)T

401. -- 499. (RESERVED).

500. SHOOTING PRESERVE RULES.

01. Shooting Preserves. Shooting preserves in the state of Idaho may be operated only under a permit

from the Director of the Department of Fish and Game. (7-1-93)

02. Applications. Application for a shooting preserve license shall be on a form prescribed by the Department of Fish and Game. (7-1-93)

03. Licenses. The operator of each shooting preserve shall execute and maintain a vendorship contract with the Department and shall maintain a supply of shooting preserve hunting licenses on hand for issuance to clients of the preserve. (7-1-93)

04. Species Permitted. Only those species of upland game birds approved by the Director or his designee as specified on the shooting preserve permit may be held and/or released on such shooting preserve facility. All birds released must be certified as disease free under the standards set forth by the National Poultry Improvement Program (NPIP). (~~7-1-93~~)(5-23-05)T

05. Disease Free Birds. All upland game birds shipped into Idaho for release on an authorized shooting preserve shall be certified free from disease as evidenced by a statement to that effect executed in writing by a licensed veterinarian. (7-1-93)

06. Holding Facilities. All rearing pens, holding pens and other rearing or holding facilities shall be maintained in accordance with Subsection 400.01 et seq. (7-1-93)

07. Habitat Requirements. No shooting preserve permit shall be issued except upon verification by the Department that the proposed area has suitable habitat to provide food and cover for birds released for hunting purposes. The Department shall provide technical advice to the applicant in developing proper habitat needs for the various species permitted under the shooting preserve license. (7-1-93)

08. Inspection. The Director or his designee shall be allowed reasonable access to the premises of any authorized shooting preserve for the purpose of inspecting rearing and holding facilities for upland game birds and to inspect licenses, hunters' bag limits, storage facilities and records pertaining to the operation of said shooting preserve. (7-1-93)

09. Marking. In addition to the methods set by Section 36-2205(c), Idaho Code, artificially propagated upland game birds released on a shooting preserve may be marked by a nasal scar, a permanent deformity caused by a blinder or device that partially obstructs the bird's vision. (5-23-05)T

(BREAK IN CONTINUITY OF SECTIONS)

700. LIST OF SPECIES APPROVED FOR IMPORTATION INTO IDAHO.

The following species are generally approved to be possessed, imported into or transported, sold, bartered or traded within Idaho. (7-1-99)

01. Approved License Required. No person shall import any species of live wildlife without a license approved by the director or his designee. (7-1-99)

02. Species Allowed For Importation. The following species have been approved for importation into Idaho by private citizens for purposes consistent with these rules (a license is still required): (~~7-1-99~~)(5-23-05)T

a- *Rocky Mountain Elk. Cervus elaphus canadensis.* (7-1-93)

b- *Roosevelt Elk. Cervus elaphus roosevelti.* (7-1-93)

c- *Manitoba Elk. Cervus elaphus manitobensis.* (7-1-93)

d- *Reindeer/Caribou. Rangifer tarandus spp. Only allowed south of the Salmon River.* (7-1-93)

e.	Rocky Mountain Mule Deer. <i>Odocoileus hemionus hemionus</i>.	(7-1-93)
fa.	Pronghorn/Antelope. <i>Antilocapra americana americana</i>.	(7-1-93)
g.	Bison/Buffalo. <i>Bison bison</i>.	(7-1-93)
h.	Fallow Deer. <i>Dama dama</i> spp.	(7-1-93)
ih.	Muntjac Deer. <i>Muntiacus muntjak</i> spp.	(7-1-93)
j.	Wild Turkey (Merriams, Rio Grande And Eastern). <i>Melagris gallapavo</i> spp.	(7-1-93)
kc.	Pheasants. All species.	(7-1-93)
ld.	Columbian Sharp-Tailed Grouse. <i>Pedioecetes phasianellus</i>.	(7-1-93)
me.	Gray/Hungarian Partridge. <i>Perdix perdix</i>.	(7-1-93)
nf.	Chukar Partridge. <i>Alectoris graeca</i>.	(7-1-93)
og.	Blue Grouse. <i>Dendrogapus obscurus</i>.	(7-1-93)
ph.	Spruce Grouse. <i>Canochites canadensis</i>.	(7-1-93)
qi.	Ruffed Grouse. <i>Bonasa umbellus</i>.	(7-1-93)
rj.	Wild Quail (Northern Bobwhite, California, Mountain And Gambel's). <i>Colinus virginianus</i>, <i>Callipepla californica</i>, <i>Oreortyx pictus</i> and <i>Callipepla gambelii</i>.	(7-1-93)

03. Fur Farms, Fish Farms, Domestic Cervidae, and Bona Fide Pet Stores. Fur farms, fish farms, domestic cervidae, and bona fide pet stores are regulated by the Idaho Department of Agriculture. ~~However, a license to import those animals into the state shall be obtained from the Idaho Department of Fish and Game prior to importation.~~ (7-1-99)(5-23-05)T

04. All Other Species. All species of live wildlife not listed above for importation will be considered on a case-by-case basis. Application shall be made on a department-prepared form and comply with the procedures of Section 101 of these rules. The decision on whether import and possession will be allowed shall be in the director's discretion, based on the protection of Idaho's wildlife from habitat degradation, genetic contamination, competition, or disease. (7-1-99)

IDAPA 13 - DEPARTMENT OF FISH AND GAME

13.01.17 - RULES GOVERNING THE USE OF BAIT FOR TAKING BIG GAME ANIMALS

DOCKET NO. 13-0117-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 4, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Allow bear baiting one week prior to the opening of bear season in several wilderness areas; including Units 17, 19, 20, 20A, 26 and 27. This will encourage bear hunting in these backcountry areas and was requested by several hunters and outfitters.

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

The temporary rule confers a benefit to hunters and outfitters.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to continue the hunting seasons without interruption and to publish the Big Game Hunting Seasons Proclamation Brochure.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jim Unsworth (208) 287-2738.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 17th day of August, 2005.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25, Boise, Idaho 83707
(208) 334-3715, Fax (208) 334-2148

THE FOLLOWING IS THE TEXT OF DOCKET NO. 13-0117-0501

100. USE OF BAIT.

Bait is defined as any substance placed to attract big game animals, except liquid scent for deer and elk. Bait may be used to hunt ONLY black bear and ONLY under the following conditions. (7-9-93)

01. Time. (7-1-93)

a. No bait may be placed for the purpose of attracting or taking black bear prior to the opening of black bear take season EXCEPT in that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486, and bait may be placed one (1) week prior to the opening of bear season in Units 17, 19, 20, 20A, 26 and 27. (~~3-15-02~~)(4-4-05)T

b. All bait containers and materials must be removed and all excavations refilled no later than seven (7) days after the close of the spring and fall black bear seasons. (3-20-97)

02. Location. (7-1-93)

a. No bait site may be located within two hundred (200) feet of any water (lake, pond, reservoir, year round free flowing spring and year round free flowing stream), or within two hundred (200) yards from any maintained trail or any road. (3-30-01)

b. No bait site may be located within one-half (1/2) mile of any designated campground or picnic area, administrative site, or dwelling. (7-1-93)

03. Types. (7-1-93)

a. No parts of or whole game animals, game birds, or game fish may be used as bait. (7-1-93)

b. The skin must be removed from any mammal parts or carcasses used as bait. (7-1-93)

04. Containers. (7-1-93)

a. No bait may be contained within paper, plastic, glass, metal, wood or other nonbiodegradable materials, except that a single, metal container with a maximum size of fifty-five (55) gallons may be used if securely attached at the bait site. (7-1-93)

b. No bait may be contained in any excavated hole greater than four (4) feet in diameter. (7-1-93)

05. Establishment of Bait Sites. (7-1-93)

a. Any structures constructed at bait sites using nails, spikes, ropes, screws, or other materials must be removed by the permit holder within seven (7) days of the close of the spring and fall black bear seasons. (3-20-97)

b. All bait sites must be visibly marked at the nearest tree or on the bait container using a tag supplied by the Department. (7-1-93)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.02.24 - CLANDESTINE DRUG LABORATORY CLEANUP

DOCKET NO. 16-0224-0501 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 6-2604, Idaho Code.

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

Date:	Tuesday, October 11, 2005	Wednesday, October 12, 2005	Thursday, October 13, 2005
Time:	7:00 - 9:00 p.m.	7:00 - 9:00 p.m.	7:00 - 9:00 p.m.
Place:	Ameritel Spectrum 7499 W. Overland Rd. Boise, ID	Red Lion Hotel 621 21st Street Lewiston, ID	Ameritel 333 Ironwood Ave. Coeur d'Alene, ID
Date:	Monday, October 17, 2005	Tuesday, October 18, 2005	Wednesday, October 19, 2005
Time:	7:00 - 9:00 p.m.	7:00 - 9:00 p.m.	7:00 - 9:00 p.m.
Place:	Ameritel 1377 Blue Lakes Blvd. N. Twin Falls, ID	Ameritel 1440 Bench Rd. Pocatello, ID	Ameritel 645 Lindsey Blvd. Idaho Falls, ID
Date:	Monday, October 24, 2005		
Time:	7:00 - 9:00 p.m.		
Place:	Best Western 908 Specht Rd. Caldwell, ID		

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

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

This new chapter of rules will help protect people from inadvertent exposure to hazardous chemicals left over from the production of methamphetamine ("meth") or other illegal drugs on residential properties. Innocent members of the public may be harmed when they are exposed to chemical residues if the residential properties are not decontaminated prior to any subsequent rental, sale, or use of the properties. The purpose of this new chapter of rules is to protect the public health, safety and welfare by establishing acceptable processes and standards for the cleanup of clandestine drug laboratories. It was developed as mandated under Senate Bill 1122, (2005), the "Clandestine Drug Laboratory Cleanup Act".

These rules define who is responsible for cleaning up properties where clandestine drug laboratories have operated and establish the acceptable standard to which a property must be cleaned. The rules also establish a program that creates and maintains a list of residential properties that housed a clandestine drug laboratory and provides a process for removing a property from the list, once it has met the criteria specified in the rule.

FEE SUMMARY: There is no fee or charge being imposed or increased in this docket.

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

General Fund = \$50,760 Salary + \$20,573 Benefits + \$6,667 Operating (Total = \$78,000)
Idaho State Police federal COPS Grant = \$27,000 (for startup/rules/public hearings - one time cost)

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted July 12, 19, and 26 in Boise. The stakeholders who participated included representatives from: US Department of Agriculture,

Office of the Governor, Legislators, Office of Attorney General, Idaho State Police, Idaho Association of Realtors, Boise Police Department, Bureau of Homeland Security, Central District Health Department and Southwest District Health Department (representing local district health departments), Sheriff's Association (Payette County Sheriffs), Ada County Prosecuting Attorneys Association, cleanup contractors, Meridian Police Department (representing the Idaho Chiefs of Police Association), IDHW Rules Unit, Idaho Department of Environmental Quality, IDHW Division of Health Administration, IDHW Division of Health's Bureau of Community and Environmental Health, US Environmental Protection Agency, Ada County Association of Realtors, Idaho Building Contractors Association.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Elke Shaw-Tulloch at (208) 334-5950.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2005.

DATED this 5th day of August, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0224-0501

**IDAPA 16
TITLE 02
CHAPTER 24**

16.02.24 - CLANDESTINE DRUG LABORATORY CLEANUP

000. LEGAL AUTHORITY.

The Department is authorized to adopt rules under the "Clandestine Drug Laboratory Cleanup Act," Section 6-2604, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.02.24, "Clandestine Drug Laboratory Cleanup". ()

02. Scope. ()

a. These rules establish the acceptable processes and technology-based standards for the cleanup of clandestine drug laboratories in Idaho. ()

b. The rules also establish a program to add and remove residential properties that housed a clandestine drug laboratory from a list maintained by the Department. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter of rules. ()

003. ADMINISTRATIVE APPEALS AND THE RIGHT TO APPEAL PROPERTY LISTING.

01. Administrative Appeals. Administrative appeals are governed by provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". ()

02. Appeal of Property Listing. The certification by the reporting law enforcement agency that it is more likely than not that the property has been contaminated through use as a clandestine drug laboratory is prima facie evidence for listing the property on the Clandestine Drug Laboratory Site Property List. ()

a. Property Owner's Right to Appeal. The property owner listed on the Clandestine Drug Laboratory Site Property List may appeal the listing by filing a written request for hearing with the Administrative Procedures Section, 10th Floor, 450 West State Street, P.O. Box 83720, Boise, ID 83720-0036, within twenty-eight (28) days of the mailing of the notification by the law enforcement agency. ()

b. Burden of Proof. The burden is on the property owner to show, by a preponderance of evidence, that the property has not been contaminated through use as a clandestine drug laboratory. ()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this chapter of rules. ()

005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ()

05. Internet Website. The Department's internet website is found at "http://www.healthandwelfare.idaho.gov". ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records". ()

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

007. -- 009. (RESERVED).

010. DEFINITIONS.

For the purposes of these rules, the following terms are used as defined below: ()

01. Certificate of Delisting. A document issued by the Department certifying that a property has met the cleanup standard. ()

- 02. Certify.** To guarantee as meeting a standard. ()
- 03. Chain of Custody.** A procedure used to document each person that has had custody or control of an environmental sample from its source to the analytical laboratory, and the date and length of time of possession by each person. ()
- 04. Clandestine Drug Laboratory.** The area(s) where controlled substances or their immediate precursors, as those terms are defined in Section 37-2701, Idaho Code, have been, or were attempted to be, manufactured, processed, cooked, disposed of, or stored, and all proximate areas that are likely to be contaminated as a result of such manufacturing, processing, cooking, disposing or storing. ()
- 05. Clandestine Drug Laboratory Site Property List.** The list, maintained by the Department, of properties that have been identified as clandestine drug laboratories. ()
- 06. Cleanup Contractor.** One (1) or more individuals or commercial entities hired to conduct cleanup in accordance with the requirements of this rule. ()
- 07. Cleanup Standard.** The technology-based numerical value, established in Section 500 of these rules. ()
- 08. Clearance Sampling.** Testing conducted by a qualified industrial hygienist to verify that cleanup standards have been met. ()
- 09. Contamination or Contaminated.** The presence of chemical residues that exceed the cleanup standard established in Section 500 of these rules. ()
- 10. Delisted.** Removal of a property from the Clandestine Drug Laboratory Site Property List. ()
- 11. Demolish.** To completely tear down and dispose of a structure in compliance with local, state, and federal laws and regulations. ()
- 12. Department.** The Idaho Department of Health and Welfare. ()
- 13. Discrete Sample.** A single sample taken. ()
- 14. Documentation.** Preserving a record of an observation through writings, drawings, photographs, or other appropriate means. ()
- 15. Listed.** Addition of a property to the Clandestine Drug Laboratory Site Property List. ()
- 16. Methamphetamine.** Dextro-methamphetamine, levo-methamphetamine, and any racemic mixture of dextro/levo methamphetamine. ()
- 17. Non-Porous.** Resistant to penetration of chemical substances or materials. ()
- 18. Porous.** Easily penetrated or permeated by chemical substances or materials. ()
- 19. Qualified Industrial Hygienist.** Must be one (1) of the following: ()
- a.** Certified Industrial Hygienist. An individual who is certified in comprehensive practice by the American Board of Industrial Hygiene. ()
- b.** Registered Professional Industrial Hygienist™. An individual who is a registered member of the Association of Professional Industrial Hygienists and possesses a baccalaureate degree, issued by an accredited college or university, in industrial hygiene, engineering, chemistry, physics, biology, medicine, or related physical and biological sciences who has a minimum of three (3) years full-time industrial hygiene experience. A completed master's degree in a related physical or biological science, or in a related engineering discipline, may be substituted

for one (1) year of the experience requirement; and a similar doctoral degree may be substituted for an additional year of the experience requirement. ()

20. Sampling. A surface sample collected by wiping or blotting a sample media on the surface being sampled. ()

21. Technology-Based Standard. A cleanup level based on what is believed to be conservative and protective, while at the same time achievable by currently available technologies. ()

22. Vacant. Being without an occupant for the purposes of habitation or occupancy. ()

011. -- 099. (RESERVED).

100. POSTING THE CLANDESTINE DRUG LABORATORY SITE.

In accordance with Section 6-2605, Idaho Code, the law enforcement agency having jurisdiction is responsible for posting a property with a sign stating that it has been identified as a clandestine drug laboratory. ()

101. -- 109. (RESERVED).

110. NOTIFICATION PROCESS.

Once a property has been identified as a clandestine drug laboratory, the law enforcement agency having jurisdiction is responsible for initiating notification to the property owner within seventy-two (72) hours using the Department-approved form available to law enforcement. ()

111. -- 119. (RESERVED).

120. RECORD-KEEPING, LISTING, AND DELISTING A PROPERTY.

01. Listing a Property. Upon notification by a law enforcement agency, using the Department approved form, the Department will place the property on a Clandestine Drug Laboratory Site Property List. No property may be listed unless the reporting law enforcement agency certifies, on the approved form, that it is more likely than not that the property has been contaminated through use as a clandestine drug laboratory. The list will be publicly available online at: <http://www.healthy.idaho.gov>. ()

02. Delisting a Property. When a property is determined by a qualified industrial hygienist to meet the cleanup standard set forth by the Department in these rules, or the property owner submits documentation establishing that the property has been fully and lawfully demolished, the Department will issue the property owner a certificate of delisting. The certificate will include the date the property was listed as a clandestine drug laboratory site and the date the property was delisted. ()

03. Voluntary Compliance. When a property owner voluntarily reports his property as a clandestine drug laboratory, the property will be placed on the Clandestine Drug Laboratory Site Property List and will be delisted when the requirements of these rules are met. This action will afford the property owner immunity from civil actions as provided in Section 6-2608, Idaho Code. ()

121. -- 199. (RESERVED).

200. RESPONSIBILITIES OF THE PROPERTY OWNER.

The owner of a listed property must: ()

01. Ensure the Vacancy of the Listed Property. Ensure the property remains vacant until the property is delisted in accordance with Section 120 of these rules. ()

02. Ensure That Cleanup Standards Are Met. ()

a. Ensure that the property is cleaned up to meet the cleanup standards in Section 500 of these rules

and have the analytical results certified by a qualified industrial hygienist; or ()

b. Ensure that the property is demolished, in lieu of clean up, as provided for in Section 6-2606, Idaho Code. Demolition and removal of materials must be conducted in compliance with applicable local, state, and federal laws and regulations. ()

03. Provide the Department With a Written Report. The property owner must provide the Department with a written report in accordance with Section 600 of these rule. ()

201. RESPONSIBILITIES OF THE QUALIFIED INDUSTRIAL HYGIENIST.

01. Qualified Industrial Hygienist Must Conduct Sampling. A qualified industrial hygienist must conduct sampling in accordance with Section 400 of these rules and meet the reporting requirements under Section 600 of these rules. ()

02. Qualified Industrial Hygienist Must Be Independent. To prevent any real or potential conflicts of interest, qualified industrial hygienists conducting the sampling must be independent of the company or entity conducting the cleanup or analysis or both. ()

202. DEPARTMENT LIST OF QUALIFIED INDUSTRIAL HYGIENISTS.

The Department will maintain a list of qualified industrial hygienists on their website at: <http://www.healthy.idaho.gov>. ()

203. -- 299. (RESERVED).

300. CLEANUP PROCESS.

01. Cleanup Options for the Property Owner. The property owner may choose to hire a cleanup contractor or conduct the cleanup himself. Cleanup must be conducted to reduce the concentration of methamphetamine to the standard specified in Section 500 of these rules. ()

02. Porous Materials Must Be Removed From The Property. Porous materials must be removed from the property unless a qualified industrial hygienist certifies that the porous materials may remain on the property. ()

301. DISPOSAL OF CLEANUP WASTE.

Waste disposal must be conducted in compliance with applicable local, state, and federal laws and regulations. ()

302. -- 399. (RESERVED).

400. CLEARANCE SAMPLING REQUIREMENTS.

01. Qualified Industrial Hygienist Required. Sampling must be conducted by a qualified industrial hygienist to verify that cleanup standards have been met. ()

02. General Sampling Procedures. Sample collection must be conducted according to the following minimum requirements: ()

a. All sample locations must be photographed, and the photographs must be included in the final report required under Section 600 of these rules. ()

b. All sample locations must be shown on a floor plan of the property, and the floor plan must be included in the final report required under Section 600 of these rules. ()

c. All samples must be obtained, preserved, and handled in accordance with professional standards for the types of samples and analytical testing to be conducted under the chain of custody protocol. ()

d. Samples must be analyzed by a laboratory certified by the U.S. Environmental Protection Agency or accredited by the American Industrial Hygiene Association. ()

e. All sampling locations must be numerically identified and the numbered sampling locations must be delineated on the floor plan, visible in photographs, and linked to samples. ()

f. Whatman 40 ashless filter paper or equivalent must be used for all sampling. The filter paper must be wetted with analytical grade methanol, ethanol or distilled/deionized water. The filter paper must be blotted or wiped at least five (5) times in two (2) perpendicular directions within each sampling area. ()

g. After sampling, the sample must be placed in a new, clean sample jar and sealed with a Teflon-lined lid. The sample jar must be properly labeled with at least the site or project identification number, date, time, and actual sample location. The sample jar must be handled according to professional standards. ()

h. Discrete sampling must be used in areas expected to have the highest levels of contamination, as identified on the Department approved form. A ten (10) centimeter by ten (10) centimeter area (one hundred square centimeters (100 cm²), or approximately four (4) square inches) must be sampled from non-porous surfaces such as floors, walls, appliances, sinks, or countertops in each room. The sample area must be composed of no fewer than three (3) discrete samples. ()

i. All other rooms of the property with lowest levels of contamination must be sampled using one (1) discrete sample per room. ()

j. A ten (10) centimeter by ten (10) centimeter area (one hundred square centimeters (100 cm²), or approximately four (4) square inches) must be sampled from the ventilation system in a location to be determined by the qualified industrial hygienist. ()

401. -- 499. (RESERVED).

500. CLEANUP STANDARDS.

01. Cleanup Standard for Methamphetamine. A level of methamphetamine that does not exceed a concentration of point one (1) micrograms per one hundred (100) square centimeters (0.1 µg/100 cm²) as demonstrated by clearance sampling conducted by a qualified industrial hygienist. ()

02. Other Cleanup Standards. Standards may be established for the cleanup of other controlled substances found in clandestine drug laboratories on a case by case basis, based on an inventory of chemicals found, and after consultation with the Department, the property owner, law enforcement, and a qualified industrial hygienist. ()

501. -- 599. (RESERVED).

600. REPORTING REQUIREMENTS.

In order for the property to be delisted, the property owner must provide the Department with an original or certified copy of the final report from the qualified industrial hygienist. The final report must include at least the following information: ()

01. Property Description. The property description including physical street address (apartment or motel number, if applicable), city, zip code, legal description, ownership, and number and type of structures present. ()

02. Documentation of Clearance Sampling Procedures. Documentation of sampling procedures in accordance with the requirements under Section 400 of these rules. ()

03. Laboratory Results. Analytical results from a laboratory as specified in Section 400 of these rules. ()

04. Qualifications of the Qualified Industrial Hygienist. Qualified industrial hygienist statement of qualifications, including professional certification or documentation. ()

05. Signed Certification Statement. A signed certification statement as stating: "I certify that the cleanup standard established by the Idaho Department of Health and Welfare has been met as evidenced by testing I conducted". ()

06. Demolition Documentation. If the property owner chooses to demolish the property, documentation must be provided to the Department showing that the structure was completely and lawfully demolished and disposed of in compliance with local, state, and federal laws and regulations. ()

601. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, and 56-1004, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

Some crucial language currently used to guide program eligibility determination lives only in the Medicaid State Plan and in federal regulations. Putting this guidance language into rule makes the rules consistent with the Medicaid State Plan and with federal program requirements, clarifies language in rule so as to better support the Department's eligibility decisions in the Family Medicaid Programs, and improves the accuracy and consistency of rule application by Department staff.

The proposed language states:

1. That there is no asset transfer penalty for any Family Medicaid Program;
2. How self-employment income is calculated as required by federal law;
3. That Idaho Tribal TANF is excluded for Family Medicaid Program eligibility; and
4. The period of time a participant has to request a hearing as required by federal law.

In addition, the Idaho Legislature's Health Care Task Force Committee has recommended that the asset requirement and the minimum income requirement for CHIP B and the Children's Access Card be removed from the rule.

This proposed rule change allows more uninsured children to be eligible for CHIP B and the Children's Access Card, including children who were denied health coverage because their countable assets exceeded \$5,000 while still being below 150% of the federal poverty guidelines.

FEE SUMMARY: There is no fee or charge being imposed or increased in this docket.

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

There are no anticipated impacts to State of Idaho general funds as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change is being made only to make the rule consistent with current practice.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5815.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0301-0501

100. PARTICIPANT RIGHTS.

The participant has rights protected by federal and state laws and Department rules. The Department must inform participants of their rights during the application process and eligibility reviews as listed in Subsections 100.01 through 100.034. (7-1-98)(____)

01. Right to Apply. Any person has the right to apply for Health Care Assistance programs. Applications must be in writing on forms provided by the Department. (4-6-05)

02. Right to Hearing. Any participant can request a hearing to contest a Department decision in accordance with IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings". (4-6-05)(____)

03. Right to Request Reinstatement of Benefits. Any participant has the right to request reinstatement of benefits until a hearing decision is made if the requests for the hearing and for the reinstatement are made within ten (10) days of the mailing of the notice of action. (____)

034. Civil Rights. Participants have civil rights under the U.S. and Idaho Constitutions, the Social Security Act, Title IV of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and all other relevant parts of Federal and State laws. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

300. FINANCIAL ELIGIBILITY.

To be eligible for Health Care Assistance, a participant must meet the income and resource limits for at least one (1) coverage group. (4-6-05)

01. Income and Resources. Sections 300 through 706, of these rules, describe the types of income and resources considered in the eligibility determination process and how they are considered for all family medical coverage groups. (4-6-05)

02. Income Disregards. The income disregards described in Sections 357 through 367 and Section 388, of these rules, do not apply to CHIP A, CHIP B or the Children's Access Card program. (4-6-05)(____)

(BREAK IN CONTINUITY OF SECTIONS)

331. PROPERTY TRANSFER.

When determining Medicaid eligibility for any family medical coverage group, there is no asset transfer penalty. (____)

~~332.~~ -- 344. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

352. SELF-EMPLOYMENT EARNED INCOME.

Income from self-employment is treated as earned income. Compute self-employment income using Table 352.06. (3-30-01)

01. Annualize Self-Employment Income. Annualize the income if the participant has been self employed for more than one (1) year. (4-5-00)

02. Average Self-Employment Income. Average the income over the period of time the business has been operating if the participant has been self employed for less than one (1) year. (4-5-00)

03. Annualized or Averaged Income Not Accurate. If the annualized or averaged income does not reflect the participant's current or projected income from his business, anticipate self employment income and expenses. (4-5-00)

04. Allowable Costs of Producing the Self-Employment Income. Allowable costs of producing the self-employment income include: (4-5-00)

a. The cost of labor paid to persons not in the home. (4-5-00)

b. The cost of stock. (4-5-00)

c. The cost of material. (4-5-00)

d. The cost for rent and utilities, advertising, shipping and legal fees. (4-5-00)

e. The cost of seed and fertilizer. (4-5-00)

f. Interest paid to purchase income-producing property, including real estate. (4-5-00)

g. Insurance premiums. (4-5-00)

h. Taxes paid on income-producing property. (4-5-00)

i. Transportation, when a vehicle is an integral part of business activity. (4-5-00)

j. Expenses directly related to producing the goods or services and, without which, the goods or services could not be produced. ()

05. Non-Allowable Costs of Producing the Self-Employment Income. The non-allowable costs of producing the self-employment income are: (4-5-00)

a. Payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods. (4-5-00)

b. Net losses from previous periods. (4-5-00)

c. Federal, State, and local income taxes. (4-5-00)

d. Money set aside for retirement. (4-5-00)

e. ~~Work-related~~ Personal expenses such as lunches and transportation to and from work. (4-5-00)()

- f.** Personal business and entertainment expenses, and personal transportation costs. ()
- fg.** Depreciation. (4-5-00)
- 06.** **Computing Self-Employment Income.**

TABLE 352.06 - COMPUTING SELF-EMPLOYMENT INCOME	
STEP	DESCRIPTION
Step 1.	Add all self-employment income.
Step 2.	Add all capital gains to the self-employment income. The result is gross self-employment income.
Step 3.	Use the method of determining net self-employment income that most benefits the participant. Either subtract fifty percent of total gross self-employment income or subtract allowable costs of producing the self-employment income. Allowable costs are listed in Subsection 352.04. Do not subtract the non-allowable costs listed in Subsection 352.05. The result is available self-employment income.

(3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

353. OFFSETTING FARM SELF-EMPLOYMENT LOSSES.

If a farmer's cost of producing self-employment income results in a loss, the loss must be subtracted from other countable income in the household. The losses from non-farm self-employment income must be subtracted first. If any loss remains, the remaining loss must be subtracted from the total of earned income. If any loss still remains, the remaining loss must be subtracted from the total of unearned income. Net losses from the self-employment income of a farmer are prorated over the year and do not carry over from year to year. ()

3534. INCOME PAID UNDER CONTRACT.

The earned income of an employee paid on a contractual basis is prorated over the period of the contract. (7-1-98)

3545. JOB TRAINING PARTNERSHIP ACT (JTPA) INCOME.

Incentive income from the JTPA program is earned income. JTPA allowances are excluded if provided for specific goods and services. JTPA income, earned and unearned, paid to a minor child, is excluded with no time limits. (3-30-01)

3556. CHILD'S INCOME.

A child's earned income is excluded for AFDC-related and FPG-related Medicaid coverage groups other than the Children's Health Insurance Program (CHIP) coverage group. Earned income of a child eligible under CHIP between the ages of eighteen (18) and nineteen (19) is counted. (3-30-01)

3567. IN-KIND INCOME.

An individual receiving a service, benefit, or durable goods, instead of wages, is earning in-kind income. In-kind income is excluded. (3-30-01)

3578. EARNED INCOME DISREGARDS.

Earned income disregards are subtracted from earnings after they are converted to a monthly amount, if the participant is not eligible without the disregards. The earned income disregards are the standard disregard, thirty dollars (\$30) plus one-third (1/3) disregard, and the dependent care disregard. Disregards are subtracted in that order. (3-30-01)

3589. STANDARD EARNED INCOME DISREGARD.

The first ninety dollars (\$90) of earned income is disregarded. (3-30-01)

~~359~~60. THIRTY PLUS ONE-THIRD DISREGARD.

Thirty dollars (\$30) plus one-third (1/3) is disregarded when the earned income belongs to a child, a single parent, a relative caretaker receiving Medicaid, a pregnant woman, or a parent in a two (2) parent family receiving Medicaid because of unemployment or incapacity. The disregard is allowed only if earned income, minus ninety (\$90) and allowable child care, is below the AFDC need standard for the family size. The disregard is not allowed after four (4) consecutive months. (7-1-98)

~~360~~1. THIRTY ONLY DISREGARD.

Thirty dollars (\$30) are disregarded for eight (8) months following the expiration of the thirty dollars (\$30) plus one-third (1/3) disregard. (7-1-98)

~~361~~2. DEPENDENT CARE DISREGARD.

A dependent care disregard is subtracted from earnings for dependents requiring care because of employment related reasons. Dependents can be either children or an incapacitated spouse. The amount disregarded is the anticipated cost of care or the maximum care allowance, whichever is less. Maximum dependent care allowances are listed in Subsections ~~361~~2.01 and ~~361~~2.02 of this rule. (~~3-20-04~~)(____)

01. Dependents Two Years of Age or Older. Dependents, two (2) years of age or older, have up to one hundred seventy-five dollars (\$175) disregarded when the caretaker relative works full-time, eighty (80) or more hours in a month. When the caretaker relative works part-time, less than eighty (80) hours in a month, up to one hundred fifteen dollars (\$115) is disregarded. (3-20-04)

02. Dependents Under Two Years of Age. Dependents under two (2) years of age have up to two hundred dollars (\$200) disregarded when the caretaker relative works full-time, eighty (80) or more hours per month. When the caretaker relative works part-time, less than eighty (80) hours in a month, up to one hundred thirty-five dollars (\$135) is disregarded. (7-1-98)

~~362~~3. -- 369. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

386. COUNTING TEMPORARY ASSISTANCE TO FAMILIES IN IDAHO (TAFI) INCOME.

Individuals and families are eligible for Medicaid coverage under the Low Income Families With Children group (MA or MU) as described in Section 413 of these rules, if: (3-20-04)

01. TAFI and Idaho Tribal TANF Income. Their only income is Idaho TAFI or Idaho Tribal TANF. (~~3-20-04~~)(____)

02. TAFI, Income Idaho Tribal TANF, and Other Unearned Income. Their only income is a combination of Idaho TAFI, Idaho Tribal TANF, and other unearned income, but whose total income is equal to or less than the current Idaho TAFI maximum grant amount. (~~3-20-04~~)(____)

03. TAFI or Idaho Tribal TANF Income and Medicaid Eligible. Their income includes Idaho TAFI or Idaho Tribal TANF and they meet the Medicaid financial eligibility criteria described in Sections 346 through 388 of these rules. (~~3-20-04~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

506. CHIP B.

The CHIP B coverage group provides a limited benefit package as described in IDAPA 16.03.18, "CHIP B and

Children's Access Card Rules," to children who apply and are found eligible during an open enrollment period. Children applying during closed enrollment periods are denied. A child may be eligible for the CHIP B coverage group if all non-financial and financial criteria are met. The child must also meet all the conditions listed in Subsections 506.01 through 506.12 of this rule. (4-6-05)

01. Child's Income Eligibility. The child's countable income must ~~exceed one hundred fifty percent (150%) of the FPG for his budget unit size and must~~ be less than or equal to one hundred eighty-five percent (185%) of the FPG for his budget unit size. There are no earned or unearned income disregards for CHIP B. ~~(4-6-05)(____)~~

02. Asset Limit for a Child's Resource Eligibility. ~~The child's countable resources must not exceed five thousand dollars (\$5000).~~ There is no asset test or resource limit for a child applying for CHIP B or the Children's Access Card. ~~(4-6-05)(____)~~

03. No Creditable Health Insurance. The child must not have creditable health insurance coverage. (4-6-05)

04. Child Disenrolled to Qualify for CHIP B. To be enrolled in CHIP B, a child must not have disenrolled from creditable insurance in the six (6) months prior to his application with the intent to qualify for CHIP B. (4-6-05)

05. Not Eligible for Other Coverage. The child must not be eligible for any Title XIX Medicaid coverage group or the CHIP A coverage group. (4-6-05)

06. Dependents of State Employees Not Eligible. The dependent child of a State employee is not eligible to enroll in CHIP B if the State employee is eligible to participate in state-sponsored health insurance. (4-6-05)

07. Choice Agreement Signed. A child who is eligible to participate in CHIP B and chooses Children's Access Card coverage must have a Choice Agreement signed and on file. If a Choice Agreement is not signed and on file, the child will be enrolled in the CHIP B program. The Choice Agreement will describe the differences between the CHIP B program and the Children's Access Card. (4-6-05)

08. Choice Agreement Change Requested. A CHIP B participant can move from CHIP B to the Children's Access Card at any time if the request is made in writing at least forty-five (45) days in advance of the change. A Children's Access Card participant who is income eligible for CHIP B can move to CHIP B at any time if the request is made in writing at least forty-five (45) days in advance of the change. The forty-five day (45) advance notice requirement will be waived if the child is moving from Children's Access Card to CHIP B for one (1) of the reasons listed in Subsection 505.07 of this rule. (4-6-05)

09. CHIP B Participants Have Required Cost-Sharing Responsibilities. The parent of a CHIP B participant must comply with any cost-sharing requirements described in IDAPA 16.03.18, "CHIP B and Children's Access Card Rules". Native American and Alaskan Eskimo children are not subject to cost-sharing requirements. (4-6-05)

10. Other Eligibility Criteria. All other eligibility requirements in this chapter are applicable to this coverage group unless the rule specifically excludes the CHIP B coverage group. (4-6-05)

11. Enrollment Cap. The number of individuals who can be enrolled in this program is subject to an enrollment cap specified by the Department. Individuals who meet all eligibility criteria for this program will be denied if there are no enrollment openings. (4-6-05)

12. Child Entering the Home. A child entering the home during a closed enrollment period will not be automatically enrolled in the CHIP B program. They may apply during open enrollment. (4-6-05)

507. CHILDREN'S ACCESS CARD.

The Children's Access Card coverage group provides insurance premium assistance to children who apply and are found eligible during an open enrollment period. A child receiving Children's Access card can change to CHIP A or B

with a forty-five (45) day written notice, subject to the provisions in Subsections 505.07 and 506.08 of these rules. (4-6-05)

01. Children's Access Card Eligibility. A child is eligible for the Children's Access Card if all eligibility requirements for ~~either~~ Low Income Child, CHIP A, or CHIP B listed in Sections 501, 505, and 506 of these rules are met and if the person meets all of the conditions specified in Subsections 507.02 through 507.06 of these rules. (~~4-6-05~~)()

02. Co-Pays and Deductibles. The family is responsible for the co-pays and deductibles required by their private insurance. (4-6-05)

03. Choice Agreement. The family must have a signed Choice Agreement on file requesting Children's Access Card. If the family does not sign a Choice Agreement they will be enrolled in the CHIP coverage group they are eligible for. The Choice Agreement form will describe the differences between the CHIP B program and the Children's Access Card. (4-6-05)

04. Enrollment Cap. The number of individuals who can be enrolled in this program is subject to an enrollment cap specified by the Department. Individual's who meet all eligibility criteria for this program will be denied if there are no enrollment openings. (4-6-05)

05. CHIP Coverage Within Sixty Days of Application Date. A person applying for the Children's Access Card program, who did not indicate on the Choice Agreement Form that he wanted CHIP coverage until his private insurance began, may receive coverage if he requests CHIP within sixty (60) days following the date of his application. (4-6-05)

06. Eligibility Outside the Open Enrollment Period. If the insurance carrier will add the child to the health insurance plan, an eligible child may be added to the Children's Access Card program outside of an open enrollment period when one or both of the following conditions exist: (4-6-05)

a. The child is living in or entering the home of a family who currently has a child enrolled in the Children's Access Card program; or (4-6-05)

b. The enrollment cap has been met. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

603. MINOR PARENT (MP) LIVING WITH PARENTS.

A minor parent (MP) who lives with her parents may be eligible for Medicaid for herself and her child. A MP is a child under the age of eighteen (18) who is pregnant or has a child. The MP's parent(s) are not required to apply. The MP's parent(s) income is deemed to the MP. The MP must meet financial and non-financial criteria. The MP's parental income is deemed as shown in Subsections 603.01 through 603.04. (7-1-98)

01. Standard Disregard. From earned income, subtract the standard work disregard of ninety dollars (\$90). (7-1-98)

02. Child Care Costs. From earned income subtract child care costs up to the maximums in Section ~~36+2~~. (~~7-1-98~~)()

03. Unearned Income. To earned income, add the amount of unearned income. (7-1-98)

04. Parental Family Deduction. From the total income, subtract an amount equal to the AFDC Need Standard or the FPG for the MP's parent's family size. This deduction is determined by the MP's coverage group. In calculating the family size, exclude the MP and her children. (7-1-98)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO

DOCKET NO. 16-0304-0501

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2005.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202, Idaho Code, and 7 CFR.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

These changes will reduce the federal Quality Control Food Stamp error rate and comply with federal law. These changes will benefit those eligible for food stamps by providing administrative consistency throughout the state and uninterrupted benefits. The changes to these rules include: 1) Extend the Food Stamp certification period for families with no income from three to six months. 2) To appropriately exclude grants from the Housing and Urban Development's (HUD) Family Self Sufficiency Initiative to comply with federal law. 3) Modification and compliance with federal regulations, make definitions clearer, and reduce confusion and inconsistencies in the rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) (b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: These rule changes are necessary for compliance with deadlines in governing law for this federal program, and confers a benefit.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no anticipated fiscal impact to the state general fund as a result of these rule changes.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were due to federal law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Chris Werner at (208) 334-5746.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-0501

000. LEGAL AUTHORITY.

The Idaho Legislature has granted the Department of Health and Welfare authority to enter into contracts and agreements with the Federal government to carry out the purposes of any Federal acts pertaining to public assistance or welfare services. The Department of Health and Welfare has authority to make rules governing the administration and management of the Department's business, pursuant to Sections 56-203 ~~and 39-106(1)(a)~~, Idaho Code. (6-1-94)(10-1-05)T

001. TITLE, SCOPE, AND PURPOSE.

~~These rules contain the requirements for application and eligibility for the Food Stamp Program, administered in Idaho by the Department of Health and Welfare for the United States Department of Agriculture. The purpose of the Food Stamp Program is to raise the nutritional level among low-income households whose limited food purchasing power contributes to hunger and malnutrition among members of such households. The process of determining the need for and the level of assistance is the certification procedure. The purpose of these rules is to provide the regulatory basis for that procedure. These rules are to be cited, in full, as Idaho Department of Health and Welfare Rules, IDAPA 16.03.04, "Rules Governing the Food Stamp Program in Idaho".~~ (6-1-94)

01. Title. These rules are cited as IDAPA16.03.04 "Rules Governing the Food Stamp Program in Idaho". (10-1-05)T

02. Scope. These rules contain the requirements for application and the eligibility criteria to receive benefits in the Food Stamp Program. These rules are administered by the Department of Health and Welfare for the United States Department of Agriculture. (10-1-05)T

03. Purpose. The purpose of these rules is to raise the nutritional level among low-income households whose limited food purchasing power contributes to hunger and malnutrition among members of such households. These rules also provide the regulatory basis for that procedure. (10-1-05)T

Section 002 has been renumbered to and moved Section 010

002. WRITTEN INTERPRETATIONS.

There are no written interpretations associated with this chapter of rules. (10-1-05)T

Section 003 has been renumbered and moved to Section 013

003. ADMINISTRATIVE APPEALS.

Appeals and proceedings are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (10-1-05)T

004. INCORPORATION BY REFERENCE.

No documents have been incorporated into this chapter of rules. (10-1-05)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (10-1-05)T

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-05)T

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at

450 West State Street, Boise, Idaho 83702. (10-1-05)T

04. Telephone. (208) 334-5500. (10-1-05)T

05. Internet Website Address. Department Internet address is: www.healthandwelfare.idaho.gov. (10-1-05)T

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," and federal Public Law 103-209 and 92-544. (10-1-05)T

02. Public Records. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Public records in the custody of the Department of Health and Welfare are subject to disclosure, unless otherwise exempted by state and federal law. (10-1-05)T

0047. -- 008. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~002~~010. DEFINITIONS A THROUGH D.

For the Food Stamp Program, the following definitions apply: (~~6-1-94~~)(10-1-05)T

01. Adequate Notice. Notice a household must receive on or before the first day of the month an action by the Department is effective. (4-6-05)

02. Administrative Error Claim. A claim resulting from an overissuance caused by the Department's action or failure to act. (6-1-94)

03. Aid to the Aged, Blind and Disabled (AABD). Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. (10-1-05)T

034. Applicant. A person applying for Food Stamps. (6-1-94)

045. Application For Participation. The application form filed by the head of the household or authorized representative. (6-1-94)

06. Application for Recertification. When a household applies for recertification within thirty (30) days of the end of the certification period, it is considered an application for recertification even if a partial month of benefits is received. (10-1-05)T

057. Authorized Representative. A person designated by the household to act on behalf of the household to apply for or ~~get~~ receive and use Food Stamps. Authorized representatives include private nonprofit organizations or institutions conducting a drug addiction or alcoholic treatment and rehabilitation center acting for center residents. Authorized representatives include group living arrangement centers acting for center residents. Authorized representatives include battered women's and children's shelters acting for the shelters' residents. Homeless meal providers may not be authorized representatives for homeless Food Stamp recipients. (~~6-1-94~~)(10-1-05)T

068. Battered Women And Children's Shelter. A shelter for battered women and children which is a public or private nonprofit residential facility. If the facility serves others, a portion of the facility must be set aside on a long-term basis to serve only battered women and children. (6-1-94)

~~079.~~ **Boarder.** Any person or group to whom a household, other than a commercial boarding house, furnishes meals and lodging in exchange for an amount equal to or greater than the thrifty food plan. Children, parents and spouses in a household must not be treated as boarders. (6-1-94)

~~0810.~~ **Boarding House.** A licensed commercial enterprise offering meals and lodging for payment to make a profit. (6-1-94)

~~0911.~~ **Categorical Eligibility.** If all household members receive or are authorized to ~~get~~ receive monthly cash payment through TAFI, AABD ~~and/or~~ SSI, the household is categorically eligible. Categorically eligible households are exempt from resource, gross and net income eligibility standards. (~~7-1-98~~)(10-1-05)T

~~102.~~ **Certification Determination.** Actions necessary to determine household eligibility including interviews, verification, approval, denial, field investigation, analysis and corrective action necessary to insure prompt, efficient and correct certifications. (6-1-94)

~~13.~~ **Certification Period.** The period of time a household is certified to receive Food Stamp benefits. The month of application counts as the first month of certification. (10-1-05)T

~~144.~~ **Claim Determination.** The action taken by the Department establishing the household's liability for repayment when an overissuance of Food Stamps occurs. (6-1-94)

~~125.~~ **Change Reporting Household (CR).** A household *that meets one (1) of the following conditions:* in which all members are elderly or disabled. (~~4-6-05~~)(10-1-05)T

~~a.~~ *No member of the household has income;* (4-6-05)

~~b.~~ *Income cannot reasonably be anticipated the month after approval of Food Stamp benefits; or* (4-6-05)

~~c.~~ *All adult household members are elderly or disabled.* (4-6-05)

~~136.~~ **Client.** A person entitled to or receiving Food Stamps. (6-1-94)

~~147.~~ **Coupon.** Any coupon, stamp, access device, or certificate issued under the Food Stamp Program for the purchase of food. (4-6-05)

~~158.~~ **Coupon Allotment.** The total dollar amount of Food Stamps allowed the household during the full or prorated month. (6-1-94)

~~169.~~ **Department.** The Idaho Department of Health and Welfare. (6-1-94)

~~20.~~ **Desk Review.** A desk review is a recertification that may or may not include talking to the participant. (10-1-05)T

~~1721.~~ **Disqualified Household Members.** Individuals required to be excluded from participation in the Food Stamp Program are Disqualified Household Members. These include: (6-1-94)

~~a.~~ Ineligible legal non-citizen who do not meet the citizenship or eligible legal non-citizen requirements. (7-1-98)

~~b.~~ Individuals awaiting proof of citizenship when citizenship is questionable. (6-1-94)

~~c.~~ Individuals disqualified for failure or refusal to provide a Social Security Number (SSN). (6-1-94)

~~d.~~ Individuals disqualified for Intentional Program Violation (IPV). (6-1-94)

- e.** Individuals disqualified for receiving three (3) months of Food Stamps in a three (3) year period in which they did not meet the work requirement for able-bodied adults without dependent children. (7-1-98)
- f.** Individuals disqualified as a fugitive felon or probation or parole violator. (7-1-98)
- g.** Individuals disqualified for a voluntary quit or reduction of hours of work to less than thirty (30) hours per week. (7-1-98)
- h.** Individuals disqualified for failure to cooperate in establishing paternity and obtaining support for a child under eighteen (18). (7-1-98)
- i.** Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use, or distribution of a controlled substance when they do not comply with the terms of a withheld judgment, probation, or parole. The felony must have occurred after August 22, 1996. (3-30-01)

1822. Documentation. The method used to record information establishing eligibility. The information must sufficiently explain the action taken and the proof and how it was used. (6-1-94)

1923. Drug Addiction Or Alcoholic Treatment Program. Any drug addiction or alcoholic treatment rehabilitation program conducted by a private nonprofit organization or institution or a publicly operated community mental health center under Part B of Title XIX of the Public Health Service Act (42 USC 300x, et seq.). Indian reservation based centers may qualify if FCS requirements are met and the program is funded by the National Institute on Alcohol Abuse under Public Law 91-616 or was transferred to Indian Health Service funding. (4-6-05)

011. DEFINITIONS E THROUGH L.

For the Food Stamp Program, the following definitions apply: (10-1-05)T

201. EBT Handbook. Idaho Department of Health and Welfare Rules, IDAPA 16.03.20, "Rules Governing Electronic Benefit Transfer (EBT) of Public Assistance, Food Stamps, and Child Support". (7-1-98)

2102. Electronic Benefit Transfer. A method of issuing Food Stamps to an eligible household. (7-1-98)

2203. Eligible Foods. Any food or food product for human consumption excluding alcohol, tobacco, and hot foods and hot food products ready for immediate consumption. Eligible foods include: (6-1-94)

- a.** Garden seeds and plants to grow food for human consumption. (6-1-94)
- b.** Meals prepared for the elderly at a communal dining facility. (6-1-94)
- c.** Meals prepared and delivered by an authorized meal delivery service. (6-1-94)
- d.** Meals served to a narcotics addict or alcoholic who participate and reside in a rehabilitation center program. (6-1-94)
- e.** Meals prepared and served by an authorized group living center to blind or disabled residents who receive benefits under Titles I, II or X, XIV, XVI of the Social Security Act. (6-1-94)
- f.** Meals prepared and served at a shelter for battered women and children to eligible residents. (6-1-94)
- g.** Meals prepared and served by an authorized public or private nonprofit establishment to homeless Food Stamp participants. (6-1-94)

2304. Eligible Household. A household living in a *project area* Idaho and meeting the eligibility criteria in these rules. (~~6-1-94~~)(10-1-05)T

2405. Emancipated Minor. A person, age fourteen (14) but under age eighteen (18), who has been

married or whose circumstances show the parent and child relationship has been renounced such as a child in the military service. (6-1-94)

2506. Enumeration. The requirement that each household member provide the Department either their Social Security Number (SSN) or proof that they have applied. (6-1-94)

2607. Exempt. A household member who is not required to register for or participate in the JSAP program is exempt. A household member who is not required to register for work is exempt. (6-1-94)

~~**27. Extended Certification Household (EC).** A household in which all adult members are elderly or disabled. (4-6-05)~~

208. Farm Bill. Public Law 107-171, "Farm Security and Rural Investment Act of 2002". (4-6-05)

09. Fair Hearing. A fair hearing in an appeal of a Department decision. See Section 003 of these rules for appeals. (10-1-05)T

2910. Federal Fiscal Year. The federal fiscal year (FFY) is from October 1 to September 30. (6-1-94)

3011. Field Office. A Department of Health and Welfare service delivery site. (4-6-05)

312. Food Assistance. The Department's Food Stamp Program or Food Distribution Program. (6-1-94)

~~**32. General Assistance.** Cash or other aid, excluding in-kind assistance, financed by Federal, state or local government and provided to cover living expenses or other basic needs. This cash or other aid is intended to promote the health and well-being of recipients. (6-1-94)~~

13. Food and Nutrition Service (FNS). The Food and Nutrition Service of the U.S. Department of Agriculture. This is the federal entity that administers the Food Stamp program. (10-1-05)T

3314. Group Living Arrangement. A public or private nonprofit residential setting serving no more than sixteen (16) residents. The residents are blind or disabled and receiving benefits under Title II or XVI of the Social Security Act, certified by the Department under regulations issued under Section 1616(e) of the Social Security Act, or under standards determined by the Secretary of USDA to be comparable to Section 1616(e) of the Social Security Act. (6-1-94)

3415. Homeless Person. A person: (6-1-94)

a. Who has no fixed or regular nighttime residence. (6-1-94)

b. Whose primary nighttime residence is a temporary accommodation for not more than ninety (90) days in the home of another individual or household. (7-1-98)

c. Whose primary nighttime residence is a temporary residence in a supervised public or private shelter providing temporary residence for homeless persons. (6-1-94)

d. Whose primary nighttime residence is a temporary residence in an institution which provides temporary residence for people who are being transferred to another institution. (6-1-94)

e. Whose primary nighttime residence is a temporary residence in a public or private place which is not designed or customarily used as sleeping quarters for people. (6-1-94)

3516. Homeless Meal Provider. A public or private nonprofit establishment or a profit making restaurant which provides meals to homeless people. The establishment or restaurant must be approved by the Department and authorized as a retail food store by FCS. (7-1-98)

3617. Identification Card. The card identifying the bearer as eligible to ~~get~~ receive and use Food

Stamps.

~~(6-1-94)~~(10-1-05)T

3718. Inadvertent Household Error Claim (IHE). A claim resulting from an overissuance, caused by the household's misunderstanding or unintended error. A household error claim pending an intentional program violation decision. (6-1-94)

3819. Income And Eligibility Verification System (IEVS). A system of information acquisition and exchange for income and eligibility verification which meets Section 1137 of the Social Security Act requirements. (6-1-94)

3920. Indian General Assistance. The general assistance program administered by the Bureau of Indian Affairs. (6-1-94)

4021. Institution of Higher Education. Any institution which normally requires a high school diploma or equivalency certificate for enrollment. These institutions include colleges, universities, and business, vocational, technical, or trade schools at the post-high school level. (7-1-97)

4122. Institution of Post Secondary Education. Educational institutions normally requiring a high school diploma or equivalency certificate for enrollment, or admits persons beyond the age of compulsory school attendance. The institution must be legally authorized by the state and provide a program of training to prepare students for gainful employment. ~~(6-1-94)~~(10-1-05)T

423. Legal Noncitizen. A qualified alien under 8 USC Section 1641(b). (4-6-05)

24. Limited Utility Allowance (LUA). Utility deduction given to a food stamp household that has a cost for more than one (1) utility. This includes electricity and fuel for purposes other than heating or cooling, water, sewage, well and septic tank installation and maintenance, telephone, and garbage or trash collection. (10-1-05)T

012. DEFINITIONS M THROUGH Z.

For the Food Stamp Program, the following definitions apply: (10-1-05)T

4301. Migrant Farmworker Household. A migrant farmworker household has a member who travels from community to community to do agricultural work. (4-6-05)

02. Minimum Utility Allowance (MUA). Utility deduction given to a food stamp household that has a cost for one (1) utility. (10-1-05)T

4403. Nonexempt. A household member who must register for and participate in the JSAP program. A household member who must register for work. (6-1-94)

4504. Nonprofit Meal Delivery Service. A political subdivision or a private nonprofit organization, which prepares and delivers meals, authorized to accept Food Stamps. (6-1-94)

4605. Overissuance. The amount Food Stamps issued exceeds the Food Stamps a household was eligible to receive. (6-1-94)

4706. Parental Control. Parental control means that an adult household member has a minor in the household who is dependent financially or otherwise on the adult. Minors, emancipated through marriage, are not under parental control. Minors living with children of their own are not under parental control. (4-6-05)

4807. Participant. A person who receives Food Stamp benefits. (4-6-05)

4908. Program. The Food Stamp Program created under the Food Stamp Act and administered in Idaho by the Department. (6-1-94)

50. Project Area. *The state of Idaho has been approved as one (1) project area by the Department of Agriculture.* (6-1-94)

~~5109.~~ **Public Assistance.** Public assistance means Temporary Assistance for Families in Idaho (TAFI), and Aid to the Aged, Blind, and Disabled (AABD). (4-6-05)

10. Recertification. A recertification is a process for determining ongoing eligibility for Food Stamps. (10-1-05)T

~~5211.~~ **Retail Food Store.** A retail food store, for Food Stamp purposes means: (6-1-94)

a. An establishment, or recognized department of an establishment, or a house-to-house food trade route, whose food sales volume is more than fifty percent (50%) staple food items for home preparation and consumption. (6-1-94)

b. Public or private communal dining facilities and meal delivery services. (6-1-94)

c. Private nonprofit drug addict or alcohol treatment and rehabilitation programs. (6-1-94)

d. Public or private nonprofit group living arrangements. (6-1-94)

e. Public or private nonprofit shelters for battered women and children. (6-1-94)

f. Private nonprofit cooperative food purchasing ventures, including those whose members pay for food prior to the receipt of the food. (6-1-94)

g. A farmers' market. (6-1-94)

h. An approved public or private nonprofit establishment which feeds homeless persons. The establishment must be approved by FCS. (7-1-98)

~~5312.~~ **Seasonal Farmworker Household.** A seasonal farmworker household has a member who does agricultural work of a seasonal or other temporary nature. (4-6-05)

~~5413.~~ **Simplified Reporting Household (SR).** All households *expected to have earned or unearned income during the month following the month in which the household was approved to receive Food Stamp benefits* except those in which all members are elderly or disabled. (~~4-6-05~~)(10-1-05)T

~~5514.~~ **Spouse.** Persons who are living together, married or free to marry, and are holding themselves out as man and wife. (4-6-05)

15. Standard Utility Allowance (SUA). Utility deduction given to a food stamp household that has a cost for heating or cooling. (10-1-05)T

~~516.~~ **State.** Any of the fifty (50) States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands and the Virgin Islands of the United States. (6-1-94)

~~517.~~ **State Agency.** The Idaho Department of Health and Welfare. (6-1-94)

~~518.~~ **Student.** An individual between the ages of eighteen (18) and fifty (50), physically and mentally fit, and enrolled at least half-time in an institution of higher education. (6-1-94)

~~519.~~ **Supplemental Security Income (SSI).** Monthly cash payments under Title XVI of the Social Security Act. Payments include state or ~~F~~federally administered supplements, *such as AABD payments in Idaho.* (~~6-1-94~~)(10-1-05)T

20. Systematic Alien Verification for Entitlements (SAVE). The federal automated system that provides immigration status needed to determine an applicant's eligibility for many public benefits, including Food Stamps. (10-1-05)T

~~6021.~~ **Timely Notice.** Notice that is mailed at least ten (10) days before the effective date of an action taken by the Department. (4-6-05)

~~6122.~~ **Twelve Month Contact.** For households that have a twenty-four (24) month certification period, Department staff contact the household during the twelfth month of the certification period for the purpose of determining continued eligibility. (4-6-05)

~~23.~~ **Tribal General Assistance.** Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. This cash is intended to promote the health and well-being of recipients. (10-1-05)T

~~624.~~ **Verification.** The proof obtained to establish the accuracy of information and the household's eligibility. (6-1-94)

~~6325.~~ **Verified Upon Receipt.** Food stamp benefits are adjusted on open food stamp cases when information is received from "verified upon receipt" sources. Information "verified upon receipt" is received from a manual query or automated system match with the Social Security Administration, the Idaho Department of ~~Labor and Commerce~~ and Labor for unemployment benefits, or Homeland Security query for citizenship status. (~~4-6-05~~)(10-1-05)T

~~003013.~~ **ABBREVIATIONS A THROUGH G.**

For the purposes of the Food Stamp Program, the following abbreviations are used. (~~6-1-94~~)(10-1-05)T

01. **AABD.** Aid to the Aged, Blind and Disabled. (9-1-94)
02. **ABAWD.** Able bodied adults without dependents. (7-1-98)
03. **AE.** Administrative Error. (3-15-02)
04. **AFA.** Application for Assistance. (7-1-98)
05. **ASVI.** Alien Status Verification Index. (6-1-94)
06. **A/R.** The applicant or recipient. (6-1-94)
07. **BEER.** Beneficiary Earnings Exchange Report. (6-1-94)
08. **BENDEX.** Beneficiary Data Exchange. (6-1-94)
09. **BIA.** Bureau of Indian Affairs. (6-1-94)
10. **BIA GA.** Bureau of Indian Affairs-general assistance. (6-1-94)
11. **CIP.** The Crisis Intervention Program administered by the Community Services Administration (CSA). (6-1-94)
12. **COLA.** Cost of Living Allowance. COLA data comes from SSA. (4-6-05)
13. **CSA.** The Community Services Administration of the U.S. Department of Housing and Urban Development. (6-1-94)
14. **CSS.** Bureau of Child Support Services. (7-1-98)
15. **DHW.** The Department of Health and Welfare in Idaho. (6-1-94)
16. **DMV.** Department of Motor Vehicles in Idaho. (10-1-05)T

- ~~167.~~ **EBT.** Electronic Benefit Transfer. (7-1-98)
- ~~17.~~ ~~*EE. Eligibility Examiner.*~~ (~~6-1-94~~)
18. **EFNEP.** Expanded Food and Nutrition Education Program. (6-1-94)
19. **EWS.** Enhanced Work Services. (4-6-05)
20. **FNS.** The Food and Nutrition Service of the U.S. Department of Agriculture. *This is the federal entity that administers the Food Stamp program.* (~~4-6-05~~)(10-1-05)T
21. **FFY.** Federal fiscal year. (6-1-94)
22. **FmHA.** Farm Home Administration. (8-1-94)
23. **FMV.** Fair market value. (6-1-94)
24. **FPG.** Federal Poverty Guideline(s). (4-6-05)
25. **FQC.** Federal Quality Control. (6-1-94)
- ~~26.~~ ~~*GA. General assistance.*~~ (~~6-1-94~~)
- ~~276.~~ **HUD.** The U.S. Department of Housing and Urban Development. (6-1-94)
- 014. ABBREVIATIONS I THROUGH Z.**
For the purposes of the Food Stamp Program, the following abbreviations are used. (10-1-05)T
- 01. ICCP.** Idaho Child Care Program. (10-1-05)T
- 02. ICESES.** Idaho Child Support Enforcement System. (10-1-05)T
- ~~2803.~~ **IEVS.** Income and Eligibility Verification Systems. (6-1-94)
- ~~2904.~~ **IHE.** Inadvertent household error. (6-1-94)
- ~~305.~~ **INS.** Immigration and Naturalization Service, in 2003, became the United States Citizenship and Immigration Service (USCIS), a Division of Homeland Security. (~~6-1-94~~)(10-1-05)T
- ~~3106.~~ **INA.** Immigration and Nationality Act. (4-6-05)
- ~~3207.~~ **IPV.** Intentional program violation. (6-1-94)
- ~~3308.~~ **IRS.** Internal Revenue Service. (6-1-94)
- ~~3409.~~ **JSAP.** Job Search Assistance Program. (6-1-94)
- ~~3510.~~ **LUA.** Limited utility allowance. *Household has a cost for more than one (1) utility. This includes electricity and fuel for purposes other than heating or cooling, water, sewage, well and septic tank installation and maintenance, telephone, and garbage or trash collection.* (~~4-6-05~~)(10-1-05)T
- ~~3611.~~ **MUA.** Minimum utility allowance. *Household has a cost for one (1) utility.* (~~4-6-05~~)(10-1-05)T
- 12. NADA.** National Automobile Dealer's Association. (10-1-05)T
- ~~3713.~~ **PA.** Public Assistance. (6-1-94)

- ~~3814.~~ **RSDI.** Retirement, Survivors, Disability Insurance received from SSA. (6-1-94)
- ~~3915.~~ **SAVE.** Systematic Alien Verification for Entitlements. *The SAVE program enables federal, state, and local government agencies to obtain immigration status information they need in order to determine an applicant's eligibility for many public benefits, including Food Stamps.* (~~4-6-05~~)(10-1-05)T
- ~~4016.~~ **SAW.** Special Agricultural Worker. (6-1-94)
- ~~417.~~ **SDX.** State Data Exchange. (6-1-94)
- ~~4218.~~ **SQC.** State Quality Control. (6-1-94)
- ~~4319.~~ **SRS.** Self Reliance Specialist. (7-1-98)
- ~~4420.~~ **SUA.** Standard utility allowance. *Household has a cost for heating or cooling.* (~~4-6-05~~)(10-1-05)T
- ~~4521.~~ **SSA.** Social Security Administration. (6-1-94)
- ~~4622.~~ **SSI.** The Federal Supplemental Security Income Program for the aged, blind or disabled. (6-1-94)
- ~~4723.~~ **SSN.** Social Security number. (6-1-94)
- ~~4824.~~ **SWICA.** State Wage Information Collection Agency. (6-1-94)
- ~~4925.~~ **TAFI.** Temporary Assistance for Families in Idaho. (7-1-98)
- ~~5026.~~ **TOP.** Treasury Offset Program. (3-15-02)
- ~~5127.~~ **TPQY.** Third Party Query. (6-1-94)
- ~~528.~~ **UI.** Unemployment Insurance. (6-1-94)
- ~~5329.~~ **USDA.** United States Department of Agriculture. (6-1-94)
- ~~5430.~~ **VA.** The Veterans Administration. (6-1-94)
- ~~5531.~~ **WIA.** The Workforce Investment Act. (3-15-02)
- ~~5632.~~ **WIC.** The special supplemental Food Program for Women, Infants, and Children. (6-1-94)
- ~~0105.~~ -- 099. **(RESERVED).**

(BREAK IN CONTINUITY OF SECTIONS)

110. APPLICANTS WHO MOVE.

When a Food Stamp applicant moves within Idaho, the sending and receiving Field Offices must act to transfer the case and change the address. (~~6-1-94~~)(10-1-05)T

01. Duties of Sending Field Office. If an applicant household is moving and submits its application to a Field Office other than the one serving the area where it is moving, the sending office must transfer the case. Duties of the sending Field Office are: (6-1-94)

- a.** Give household new field office information. The sending Field Office must give the household the

address and telephone number of the correct Field Office. (6-1-94)

b. Forward application. The sending Field Office must offer to forward the application and case record to the proper Field Office. The application and case record must be sent the same day the contact is made with the wrong Field Office. (6-1-94)

c. Inform applicant. The sending Field Office must tell the household its application has been filed and will be forwarded to the proper Field Office. (6-1-94)

d. Mail application same day as received. If the application was mailed to the wrong Field Office, it must be mailed to the proper Field Office the same day it is received. (6-1-94)

02. Duties of Receiving Field Office. The receiving Field Office must schedule an interview with the applicant household. The interview may be face-to-face, by telephone or by home visit. The application must be approved or denied within the specified time limits. (6-1-94)

03. Duties When Applicant Moves Out of Idaho. If all members of a Food Stamp applicant household move outside of Idaho, determine eligibility for the month(s) in which they resided in Idaho, as long as duplicate participation in another state does not occur. Close the case effective the end of the month in which the household moves out of Idaho. A closure notice is not required. (10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

115. AUTHORIZED REPRESENTATIVE.

The household can choose a nonhousehold member to act as an authorized representative. The household can designate in writing another responsible household member or a responsible adult outside the household as ~~the~~ an authorized representative. An adult employee_s of an authorized drug addiction or alcoholic treatment and rehabilitation center ~~may act as an authorized representative for the household. An adult employee of~~ or an authorized group living arrangement center_s may act as an authorized representative for the household. Conditions for an authorized representative are: ~~(4-5-00)~~(10-1-05)T

01. Designating Authorized Representative. When household members cannot apply for, ~~get~~ receive or use Food Stamps, the household can choose an authorized representative. The household must appoint the authorized representative in writing. The authorized representative should be aware of household circumstances. The household should prepare or review the AFA when the authorized representative will be interviewed. ~~(4-5-00)~~(10-1-05)T

02. Persons Who Cannot be an Authorized Representative. Persons with a conflict of interest may not act as an authorized representative without the Department's written approval. The Field Office supervisor must determine if no one else is available and give written approval. Persons with a conflict of interest are listed below: (6-1-94)

a. Retailers allowed to accept Food Stamps. (6-1-94)

b. Department employees involved in the certification or issuance process. (6-1-94)

c. A person disqualified for IPV during the penalty period, unless he is the only adult household member and no one else is available. (6-1-94)

d. Homeless meal providers. (6-1-94)

03. Department Responsibilities. The Department will: (6-1-94)

a. Make sure authorized representatives are properly selected. (6-1-94)

- b. Record the representative's name in the case record. (6-1-94)
- c. Not place limits on the number of households a representative may represent. (6-1-94)
- d. Inform the household it will be liable for any overissuance resulting from wrong information given by the representative. (6-1-94)
- e. Make sure the household freely requested the representative. (6-1-94)
- f. Make sure the household is getting the correct amount of benefits. (6-1-94)
- g. Make sure the representative is properly using the Food Stamps. (6-1-94)

04. Authorized Representative Removed. The Department may remove an authorized representative for up to one (1) year if the person knowingly distorts a household's circumstances, gives false information, or improperly uses the Food Stamps. This provision does not apply to drug and alcohol centers and group homes. Written notice must be sent to the household and the authorized representative thirty (30) days before the penalty begins. The notice must list: (6-1-94)

- a. The proposed action. (6-1-94)
- b. The reason for the action. (6-1-94)
- c. The right to a fair hearing. (6-1-94)
- d. The name and telephone number to contact for more information. (6-1-94)

~~05. **Named on ID Card.** The name of the authorized representative must be on the ID card. (6-1-94)~~

~~06. **Contingency Designation.** A household member able to apply for and get Food Stamps can name an authorized representative, in writing, in case the household becomes unable to use Food Stamps. (6-1-94)~~

~~07. **Emergency Designation.** The household may choose an emergency authorized representative if unforeseen circumstances arise. The household must complete a statement appointing the person as the authorized representative. The authorized representative must sign the statement. *The client listed on the ID card must sign the statement. The emergency authorized representative can present the ID card and signed statement to act on the household's behalf and to obtain the Food Stamp allotment.* The household cannot be required to go to the Field Office to complete this statement. (6-1-94)(10-1-05)T~~

116. -- 119. (RESERVED).

120. HOUSEHOLD INTERVIEWS.

The Department must conduct an interview with the applicant, a member of the household, or ~~the~~ the authorized representative ~~at least once every twelve (12) months~~. Interviews must be conducted either face-to-face or via telephone, based on hardship criteria evident in the case record. ~~A household member or an authorized representative can be interviewed.~~ The applicant may bring any other person to the interview. The Department does not require households to report for an in-office interview during their certification period. The frequency of the interview must be as follows: (4-6-05)(10-1-05)T

01. Twenty-Four Months. The interview must be at least once every twenty-four (24) months for households certified for twenty-four (24) months. (10-1-05)T

02. Twelve Months. The interview must be every twelve (12) months for all other households. (10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

126. SPECIAL INTERVIEW SCHEDULING.

In offices with more than two (2) ~~Examiners~~ interview staff, interviews must be available during the lunch period. Available interview times ~~to reduce the household's absence from work~~ must be posted. ~~(6-1-94)~~(10-1-05)T

127. -- 132. (RESERVED).

133. VERIFICATION.

The Department must have verification to support the benefit determination. Verification is third party data or documents used to prove the accuracy of AFA information. The Department must give the applicant household a clear written statement of the proof to bring to the interview. The statement will indicate the Department will help the household get proof if needed. The Department must give the ~~applicant~~ household ten (10) calendar days from the request date to provide proof. Proof can be provided in person, by mail or by an authorized representative. If the proof supplied is faulty, not complete or not consistent, the Department can require further proof. The Department must notify the household of any other steps necessary to complete the application process. ~~(6-1-94)~~(10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

135. SOURCES OF VERIFICATION.

The following sources of verification must be considered: (6-1-94)

01. Written Confirmation. ~~The~~ A primary source of proof is written confirmation of circumstances. Written proof includes driver's licenses, work or school identification, birth certificates, wage stubs, award letters, court orders, divorce decrees, separation agreements, insurance policies, rent receipts and utility bills. Acceptable proof is not limited to a single document. Proof can be obtained from the household or other sources. Secondary sources of proof must be used to verify a household's circumstances if the primary source cannot be obtained or does not prove eligibility or benefit level. ~~(7-1-97)~~(10-1-05)T

02. Collateral Contacts. A collateral contact is an oral confirmation of a household's circumstances by a person outside of the household. The collateral contact may be made either in person or over the telephone. Acceptable collateral contacts include employers, landlords, migrant service agencies, friends, neighbors and relatives not living in the household. The collateral contact must accurately confirm the household's statement. The Department is responsible for getting proof from the collateral contact. The household usually names the collateral contact. The household may request help in selecting a collateral contact. (6-1-94)

~~**03. Verified Upon Receipt.** Information verified upon receipt is data from BENDEX and SDX issued by the SSA, data from SAVE issued by INS, and data regarding Unemployment Compensation issued by the Department of Commerce and Labor. Quarterly wage match data, new hire matches, and unearned income matches from the SSA are not considered verified upon receipt.~~ ~~(4-6-05)~~

~~**043. Automated System Records Data.** System records include ICCP and ICSES system information, quarterly wage match data, new hire matches, unearned income matches from the SSA, and Department of Commerce and Labor records. Information that is obtained through interfacing with other government agency computer systems.~~ ~~(4-6-05)~~(10-1-05)T

054. Home Visits. Home visits may be used to get proof needed for Food Stamp eligibility only when the proof cannot be obtained otherwise. Home visits will be used on a case-by-case basis only when proof supplied by the household is not sufficient. Home visits must be scheduled in advance with the client. (3-15-02)

136. REQUIRED PROOF.

The Department must ~~receive proof for items listed below~~ have verification to support the benefit determination. The Department will inform the household what proof is required in accordance with 7 CFR Part 273.2(f). ~~(4-6-05)~~(10-1-05)T

~~01. **Idaho Residency.** Proof of Idaho residency includes rent and mortgage payments, utility expenses and documents used to establish identity as described in Subsection 136.02 of this rule. Proof of Idaho residency is not required for unusual cases such as homeless households, migrant farmworkers or new arrivals to a service delivery area. (4-6-05)~~

~~02. **Identity.** Proof includes a driver's license, school identification or a birth certificate. The Department can accept other proof of identity. (4-6-05)~~

~~03. **SSN.** SSNs are verified by submitting the SSNs reported by the households to the SSA. Certification cannot be delayed to an otherwise eligible household solely to verify an SSN. If a person is unable to provide an SSN or does not have an SSN, the Department must require proof of application for an SSN prior to certifying the person. A newborn may participate when the household cannot provide proof of application for an SSN for the newborn. Proof of application for an SSN for that child must be provided at the next recertification or six (6) months after the month the child was born, whichever is later. (4-6-05)~~

~~04. **Immigration Status.** Proof includes legal non-citizen registration cards, passports, and information from Systematic Alien Verification for Entitlements (SAVE) from the Alien Status Verification Index (ASVI). (4-6-05)~~

~~05. **Resources.** Proof includes bank books, bank statements or documents verifying the resource value. (4-6-05)~~

~~06. **Vehicles.** Proof includes NADA values and statements from car dealers. (4-6-05)~~

~~07. **Loans.** A statement signed by both parties is proof of a loan. A legally binding agreement is not required. The provider of the loan must sign a statement that loan payments received on a regular basis are being made or will be made under a fixed schedule. (4-6-05)~~

~~08. **Income.** Proof includes wage stubs, statements from employers, income interfaces and award letters. (4-6-05)~~

~~09. **Shelter Costs.** The household must be informed that benefits will be computed, without a deduction for the shelter costs, if proof is not provided. Proof of shelter costs includes mortgage statements, home equity loans, rent receipts, space rent receipts, lease agreements, tax notices (including irrigation), and insurance premium notices. (4-6-05)~~

~~10. **Homeless Deduction.** Homeless households will receive a standard homeless shelter deduction. Proof of shelter costs is not required to obtain the homeless shelter deduction. (4-6-05)~~

~~11. **Heating or Cooling Costs for Standard Utility Allowance (SUA).** The SUA must include an expense for heating or cooling. The Department will inform the household that benefits will be computed without a deduction for the utility costs if proof is not provided. Proof includes utility bills, statements from utility companies, receipts from the purchase of wood, and landlords. (4-6-05)~~

~~12. **Limited Utility Allowance (LUA).** The Department will inform the household that benefits will be computed without a deduction for the utility costs if proof is not provided. Proof of two (2) or more utility costs is required. Proof includes utility bills, statements from utility companies and landlords. Water, sewer, and trash are considered one (1) utility cost regardless of how they are billed. (4-6-05)~~

~~13. **Minimum Utility Allowance.** The Department will inform the household that benefits will be computed without a deduction for the utility costs if proof is not provided. Proof of one (1) utility cost is required. Proof includes utility bills, statements from utility companies and landlords. Water, sewer, and trash are considered one (1) utility cost regardless of how they are billed. (4-6-05)~~

~~14. **Dependent Care Costs.** The Department will inform the household that benefits will be computed without a deduction for the dependent care costs if proof is not provided. Proof includes child care bills or statements~~

~~and ICCP payment information.~~

~~(4-6-05)~~

~~15. **Medical Costs.** Proof of incurred medical expenses is required for households claiming a medical deduction. Proof includes medical bills, Medicare reimbursement statements, and prescription receipts. Proof of anticipated medical expenses is not required provided the participant has informed the Department of the expense and the expense is not questionable. Verification of other factors, such as those listed in Subsections 136.15.a. through 136.15.c. of this rule are required if the expense is questionable.~~

~~(4-6-05)~~

~~a. The allowability of the medical services provided;~~

~~(6-1-94)~~

~~b. The provider qualifications;~~

~~(6-1-94)~~

~~c. The individual's eligibility to claim a deduction.~~

~~(6-1-94)~~

~~16. **Disability.** Proof of disability includes receipt of permanent or temporary disability benefits, or a statement from a physician or a licensed or certified psychologist.~~

~~(4-6-05)~~

~~17. **Child Support Deduction.** The Department will inform the household that benefits will be computed without a deduction for the Child Support costs if proof is not provided. The parent must be legally obligated to make the child support payments. Both the legal obligation to pay child support and the actual amount paid must be verified. Proof of the legal obligation includes: a court order, divorce decree, administrative order, or legally enforceable separation agreement. Proof of child support paid includes: CSS records, cancelled checks, wage withholding statements, UI withholding statements, or statements from the custodial parent. Proof of legally obligated health insurance coverage on behalf of a child is required. Proof includes: insurance policy, insurance company statement, or employer statement. If the household fails or refuses to submit required proof, the household's eligibility and food stamp allotment must be determined without the child support expense. If there is a discrepancy between information provided by the household and CSS, the household must be given an opportunity to resolve the discrepancy. Proof of child support payment is required at each certification. Proof of changes in the amount of legally obligated child support ordered or the amount of child support paid must be obtained at recertification.~~

~~(4-6-05)~~

(BREAK IN CONTINUITY OF SECTIONS)

147. CASE ACTION AFTER DELAY CAUSED BY HOUSEHOLD.

The Department will send notice and deny an application if the household caused the delay by filing an incomplete application, failing to attend an interview, or not providing required verification. If the household takes required action within sixty (60) days after the application date, the Department will reopen the case without a new application. (10-1-05)T

01. First Thirty Day Period. If the household caused the delay during the first thirty (30) day period and provides proof by the thirtieth day, reopen the case and prorate benefits from the date of application. (10-1-05)T

02. Second Thirty Day Period. If the household caused the delay during the first thirty (30) day period and is eligible during the second thirty (30) day period, the Department will approve Food Stamps for the month after the application month. Food Stamps for the month after the application month must be prorated from the date the household provides requested proof. The Department will not issue ~~benefits~~ food stamps for the application month. ~~(6-1-94)~~(10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

202. RESIDENCY.

A household must live in ~~the project area where~~ Idaho when it applies for Food Stamps. A person can get Food

Stamps as a member of only one (1) household a month. An exception is made for a person moving to a shelter for battered women and children. ~~(6-1-94)~~(10-1-05)T

01. Place of Residency. Households must live in the project area in which they make application. An eligible Food Stamp household is not required to live in a permanent dwelling or have a fixed mailing address. There is no residence duration requirement. (6-1-94)

02. Vacationing Persons Not Residents. Persons in Idaho for vacation only are not residents for Food Stamp eligibility. Vacation is the period a household spends away from their usual activity, work, or home. Vacation is taken for travel, rest, or recreation. (6-1-94)

03. Physical and Mailing Address Different. The physical address and the mailing address of a Food Stamp household can be different. If the mailing address is not the household's physical address, the household must provide proof of the physical address. (6-1-94)

04. Proof of Residence. Residence can be proven with a driver's license, lease agreement, rent receipt, tax bill, telephone directory or city directory. Residence can be proven by contact with the landlord, neighbor, or by a home visit. Proof is not required for unusual cases, such as homeless households, migrant farm workers, or households new to the project area. A household is new to the project area if it arrives in the same calendar month as the date of application. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

219. CIRCUMSTANCES UNDER WHICH FOOD STAMP PARTICIPATION IS PROHIBITED.

An individual is prohibited from receiving Food Stamp benefits in the same month as he: (4-6-05)

- a. Receives tribal commodities; (4-6-05)
- b. Is incarcerated; (4-6-05)
- c. Is in an institution; (4-6-05)
- d. Is in foster care and the foster parents are receiving a cash benefit for providing care and maintenance for the child; or ~~(4-6-05)~~(10-1-05)T
- e. Receives Food Stamp benefits in another household. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

222. DETERMINATION OF HOUSEHOLD COMPOSITION FOR SIMPLIFIED REPORTING HOUSEHOLDS.

Household composition must be determined at application, ~~and~~ recertification, and when a reported change would result in an increase in the food stamp benefits. ~~(4-6-05)~~(10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

227. EXEMPTIONS FROM JSAP.

Exemptions from JSAP are listed in Subsections 227.01 through 227.12 of these rules. (5-3-03)

01. Parents or Caretakers of a Child Under Six Years of Age. A parent or caretaker responsible for the care of a dependent child under age six (6) is exempt from JSAP. If the child becomes six (6) during the certification period, the parent or caretaker must register for JSAP at the next scheduled recertification, unless exempt for another reason. (5-3-03)

02. Parents and Caretakers of an Incapacitated Person. A parent or caretaker responsible for the care of a person incapacitated due to illness or disability is exempt from JSAP. (5-3-03)

03. Persons Who are Incapacitated. A person who is physically or mentally unfit for employment is exempt from JSAP. If a disability is claimed which is not evident, proof to support the disability can be required. Acceptable proof includes receipt of permanent or temporary disability benefits, or a statement from a physician or licensed or certified psychologist. (5-3-03)

04. Students Enrolled Half Time. A ~~person~~ student who is eighteen (18) years or older is exempt from JSAP if: ~~(5-3-03)~~(10-1-05)T

a. He is enrolled at least half-time in any institution of higher learning and if he meets the definition of an eligible student in Section 282 of these rules; or (5-3-03)

b. He is enrolled at least half-time in any other recognized school or training program. (5-3-03)

c. He remains enrolled during normal periods of class attendance, vacation, and recess. If he graduates, enrolls less than half-time, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer), he must register for work ~~unless exempt for another reason at the next scheduled recertification.~~ ~~(5-3-03)~~(10-1-05)T

05. SSI Applicants. A person who is applying for SSI is exempt from JSAP until SSI eligibility is determined. (5-3-03)

06. Persons Who are Employed. A person who is employed is exempt from JSAP if: (5-3-03)

a. He is working at least thirty (30) hours per week; or (5-3-03)

b. He is receiving earnings equal to the Federal minimum wage multiplied by thirty (30) hours; or (5-3-03)

c. He is a migrant or seasonal farm worker under contract or agreement to begin employment within thirty (30) days. (5-3-03)

07. Persons Who are Self-Employed. A person who is self-employed is exempt from JSAP if he is working a minimum of thirty (30) hours per week or is receiving earnings equal to or greater than the Federal minimum wage multiplied by thirty (30) hours. (5-3-03)

08. Addicts or Alcoholics. A regular participant in a drug or alcohol treatment and rehabilitation program is exempt from JSAP. (6-1-94)

09. Unemployment Insurance (UI) Applicant/Recipient. A person receiving UI is exempt from JSAP. A person applying for, but not receiving UI, is exempt from JSAP if he is required to register for work with the Department of Commerce and Labor as part of the UI application process. (5-3-03)

10. Children Under Age Sixteen. A child under age sixteen (16) is exempt from JSAP. A child who turns sixteen (16) within a certification period must register for JSAP at recertification, unless exempt for another reason. (5-3-03)

11. Persons Age Sixteen or Seventeen. A household member age sixteen (16) or seventeen (17) is exempt from JSAP if he is attending school at least half-time, or is enrolled in an employment and training program, including GED, at least half-time. (5-3-03)

12. **Participants Age Sixty or Older.** A participant age sixty (60) or older is exempt from JSAP. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

249. ENDING SANCTIONS FOR FAILURE TO COMPLY WITH UI REQUIREMENTS.

Households or household members sanctioned for not complying with UI requirements are ineligible until one (1) of the conditions listed in Subsections 249.01 through 249.05 is met. (7-1-99)

01. **Fair Hearing Reversal.** Sanction ends if a fair hearing reverses the sanction. (6-1-94)
02. **Sanctioned Member Becomes Exempt.** Sanction ends if the sanctioned member becomes exempt from JSAP. (7-1-99)
03. **Sanctioned Member Leaves Household.** Sanction ends if the sanctioned member leaves the Household. (6-1-94)
04. **Six Months Elapse for Sanctioned Household Member.** The household's member's sanction ends ~~if~~ six (6) months ~~elapse~~ after it is imposed. ~~(7-1-98)~~(10-1-05)T
05. **Member Complies With UI.** Sanction ends if the member, who refused to comply with a UI requirement, complies. The member must complete or resume the assignment and serves the minimum sanction period. This must be proved by UI staff. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

302. CATEGORICALLY ELIGIBLE HOUSEHOLD.

~~A household~~ households are exempt from the resource limit if all household members receive or are authorized to receive monthly cash payments through TAFI, AABD, or SSI. ~~(7-1-98)~~(10-1-05)T

303. COUNTING RESOURCES FOR APPLICANTS.

At the time of application, a household must report all countable resources it has or expects to ~~get~~ receive. Resources are identified and evaluated, as of the Food Stamp interview date, to determine if they are counted or excluded. ~~Applicant households with a resource change, after the interview date, must report the change within ten (10) days after the approval notice. After the household gets notice of Food Stamp approval, it must report any change in resources within ten (10) days.~~ ~~(6-1-94)~~(10-1-05)T

304. COUNTING RESOURCES FOR RECIPIENTS.

Determine resources for recipients throughout the certification period as described in Section 601 of these rules. ~~(6-1-94)~~(10-1-05)T

01. **Anticipated Resources.** If resources are anticipated at any time during an upcoming month or months, a resource determination must be made. Anticipated resources affect the entire month's eligibility for the month of receipt. (6-1-94)
02. **Unanticipated Newly Acquired Resources.** Consider unanticipated newly acquired resources available as of the first day of the month following the receipt of the new resource. If the client spends or uses up the resource before the first day of the next month, the resource will not be counted the next month. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

321. RESOURCES OF DISQUALIFIED HOUSEHOLD MEMBERS.

The household must report the resources of members disqualified for Food Stamps. The household must verify any questionable information. The resources of the disqualified person are included in determining the resource limit. Disqualified household members with resources counted toward the household limit are listed below: (6-1-94)

01. Member Disqualified for IPV. Resources of a household member disqualified for an intentional program violation are counted. (6-1-94)

02. Member Disqualified for Failure to Comply With Work Requirements. Resources of a household member disqualified for failing to comply with a work requirement are counted. ~~(6-1-94)~~(10-1-05)T

03. Member Ineligible Due to SSN. Resources of a household member ineligible for refusing to get an SSN are counted. (6-1-94)

04. Ineligible Legal Non-Citizen. Resources of an ineligible legal non-citizen household member are counted. (7-1-98)

05. Member Disqualified for Failure to Meet the ABAWD Work Requirement. Resources of a household member disqualified for failure to meet the ABAWD work requirement are counted. (7-1-98)

06. Member Disqualified for a Voluntary Quit or Reduction in Hours of Work. Resources of a member disqualified for a voluntary quit or reduction of work are counted. (4-5-00)

07. Member Disqualified as a Fugitive Felon or Probation or Parole Violator. Resources of a member disqualified as a fugitive felon or probation or parole violator are counted. (7-1-98)

08. Member Disqualified for Failure to Cooperate in Establishing Paternity and Obtaining Support. Resources of a member disqualified for failure to cooperate in establishing paternity and obtaining support are counted. (7-1-98)

09. Member Disqualified for Conviction of a Controlled Substance Felony. Resources of individuals convicted under federal or state law of any offense classified as a felony involving the possession, distribution, or use of a controlled substance when they do not comply with the terms of a withheld judgment, probation, or parole are counted. The felony must have occurred after August 22, 1996. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

323. LUMP SUM RESOURCES.

Nonrecurring lump sum payments are counted as a resource in the month received, unless excluded under these rules. The household must report the lump sum payment to the Department within ten (10) days of ~~getting~~ receiving the payment. If the lump sum along with other resources exceeds the resource limit, the household is not eligible for Food Stamps. If resources exceed the limit, the Department will end Food Stamps after timely notice. The household may spend resources down under the limit in the month the lump ~~some~~ sum was received. If the resource is spent below the limit, the household continues to be eligible for Food Stamps. The household must still report receipt of the lump sum payment within ten (10) days. Some lump sum payments are listed below: ~~(6-1-94)~~(10-1-05)T

01. Retroactive Payments. Retroactive payments from: (6-1-94)

a. Social Security. (6-1-94)

b. SSI. (6-1-94)

- c. Public Assistance. (6-1-94)
- d. Railroad Retirement Benefits. (6-1-94)
- e. Unemployment Compensation Benefits. (6-1-94)
- 02. Insurance.** Insurance settlements. (6-1-94)
- 03. Refunds.** Income tax refunds, rebates, or credits. (6-1-94)
- 04. Earned Income Tax Credit (EITC).** Single earned income tax credit payments received at the end of the tax year. (6-1-94)
- ~~05. Child Support.~~ ~~Child support pass-through payments to cover previous months.~~ (~~6-1-94~~)
- ~~065.~~ **Property Payments.** Lump sum payment from sale of property. Contract payments from the sale of property are counted as income. (6-1-94)
- ~~076.~~ **Security Deposits.** Refunds of security deposits on rental property or utilities. (6-1-94)
- ~~087.~~ **Disability Pension.** Annual adjustment payments in VA disability pensions. (6-1-94)
- ~~098.~~ **Vacation Pay.** Vacation pay, withdrawn in one lump sum by a terminated employee. (6-1-94)
- ~~409.~~ **Military Bonus.** Military re-enlistment bonuses. (6-1-94)
- ~~140.~~ **Readjustment Pay.** Job Corps readjustment pay. (6-1-94)
- ~~121.~~ **Severance Pay.** Severance pay, paid in one (1) lump sum to a former employee. (6-1-94)
- ~~132.~~ **TAFI One-Time Cash Payment.** The one-time TAFI cash diversion payment. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

363. HUD FAMILY SELF-SUFFICIENCY (FSS) ESCROW ACCOUNT.

Escrow accounts and the interest earned on an escrow account established by HUD for families participating in the Family Self-Sufficiency (FSS) Program established by Section 544 of the National Affordable Housing Act, are excluded as a resource when determining eligibility for food stamps. The federal exclusion for the funds in this program and other similar type escrow funds are only excluded while the funds are still in the escrow account or being used for a HUD approved purpose. Participants in the FSS program may withdraw funds from the escrow account before completing the program, with permission from the public housing authority, but only for purposes related to the goal of the Family Self-Sufficiency contract, such as completion of higher education, job training, or to meet start-up expenses involved in creation of a small business. (10-1-05)T

~~3634.~~ -- 372. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

389. REPORTING RESOURCES.

Recipient households must report resource changes at each recertification. Change reporting households must also report changes within ten (10) days after ~~getting~~ receiving a new resource. A household must report when cash on hand, stocks, bonds, or money in a financial institution reaches or exceeds the resource limit. A household must

report if it ~~gets~~ obtains a vehicle.

~~(6-1-94)~~(10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

405. EXCLUDED INCOME.

Income excluded when computing Food Stamp eligibility is listed below: (6-1-94)

01. Money Withheld. Money withheld voluntarily or involuntarily, from an assistance payment, earned income, or other income source, to repay an overpayment from that income source, is excluded. If an intentional noncompliance penalty results in a decrease of benefits under a means tested program such as SSI or GA, count that portion of the benefit decrease attributed to the repayment as income. (7-1-98)

02. Child Support Payments. Child support payments received by TAFI recipients which must be given to CSS are excluded as income. (7-1-98)

03. Earnings of Child Under Age Eighteen Attending School. Earned income of a household member under age eighteen (18) is excluded. The member must be under parental control of another household member and attending elementary or secondary school. For the purposes of this provision, an elementary or secondary student is someone who attends elementary or secondary school or who attends GED or home-school classes that are recognized, operated, or supervised by the school district. This exclusion applies during semester and summer vacations if enrollment will resume after the break. If the earnings of the child and other household members cannot be differentiated, prorate equally among the working members and exclude the child's share. (7-1-98)

04. Retirement Benefits Paid to Former Spouse or Third Party. Social Security retirement benefits based on the household member's former employment, but paid directly to an ex-spouse, are excluded as the household member's income. Military retirement pay diverted by court order to a household member's former spouse is excluded as the household member's income. Any retirement paid directly to a third party from a household member's income by a court order is excluded as the household member's income. (6-1-94)

05. Infrequent or Irregular Income. Income received occasionally is excluded as income if it does not exceed thirty dollars (\$30) total in a three (3) month period. (6-1-94)

06. Cash Donations. Cash donations based on need and received from one (1) or more private nonprofit charitable organizations are excluded as income. The donations must not exceed three hundred dollars (\$300) in a calendar quarter of a federal fiscal year (FFY). (6-1-94)

07. Income in Kind. Any gain or benefit, such as meals, garden produce, clothing, or shelter, not paid in money, is excluded as income. (6-1-94)

08. Vendor Payments. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. (3-20-04)

09. Third Party Payments. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. (3-20-04)

10. Loans. Loans are money received which is to be repaid. Loans are excluded as income. (6-1-94)

11. Money for Third Party Care. Money received and used for the care and maintenance of a third party who is not in the household. If a single payment is for both household members and nonhousehold members the identifiable portion of the payment for nonhousehold members is excluded. If a single payment is for both household members and nonhousehold members, exclude the lesser of: (6-1-94)

a. The prorated share of the nonhousehold members if the portion cannot be identified. (6-1-94)

- b. The amount actually used for the care and maintenance of the nonhousehold members. (6-1-94)
- 12. Reimbursements.** Reimbursements for past or future expenses not exceeding actual costs. Payments must not represent a gain or benefit. Payments must be used for the purpose intended and for other than normal living expenses. Excluded reimbursements are not limited to: (6-1-94)
- a. Travel, per diem, and uniforms for job or training. (6-1-94)
- b. Out-of-pocket expenses of volunteer workers. (6-1-94)
- c. Medical and dependent care expenses. (6-1-94)
- d. Pay for services provided by Title XX of the Social Security Act. (6-1-94)
- e. Repayment of loans made by the household from their personal property limit. The repayment must not exceed the amount of the loan. (6-1-94)
- f. Work-related and dependent care expenses paid by the JSAP program. (6-1-94)
- g. Transitional child care payments. (6-1-94)
- h. Child care payments under the Child Care and Dependent Block Grant Act of 1990. (6-1-94)
- 13. Federal Earned Income Tax Credit (EITC).** Federal EITC payments are excluded as income. (9-1-94)
- 14. Work Study.** Work Study income received while attending post-secondary school is excluded as income. (3-20-04)
- 15. HUD Family Self-Sufficiency (FSS) Escrow Account.** The federal exclusion for these funds are only excluded while the funds are in the escrow account or being used for a HUD approved purpose. See Section 363 of these rules for further clarification. (10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

502. EARNED INCOME WHEN A HOUSEHOLD MEMBER TURNS AGE EIGHTEEN.

When a child attending elementary or secondary school turns age eighteen (18), do not count earned income received or expected by that person ~~the month after he turns eighteen (18)~~ until the next recertification. (~~7-1-98~~)(10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

503. -- 507. (RESERVED).

508. PROJECTING MONTHLY INCOME.

Income is projected for each month. Past income may be used to project future income. Changes expected during the certification period must be considered. Criteria for projecting monthly income is listed below: (6-1-94)

01. Income Already Received. Count income already received by the household during the month. If the actual amount of income from any pay period is known, use the actual pay period amounts to determine the total month's income. Convert the actual income to a monthly amount if a full month's income has been received or is expected to be received. If no changes are expected, use the known actual pay period amounts for the past thirty (30)

days to project future income. (6-1-94)

02. Anticipated Income. Count income the household and the Department believe the household will get during the remainder of the certification period. If the exact income amount is uncertain or unknown, that portion must not be counted. If the date of receipt of income cannot be anticipated for the month of the eligibility determination, that portion must not be counted. If the income has not changed and no changes are anticipated, use the income received in the past thirty (30) days as one indicator of anticipated income. If changes in income have occurred or are anticipated, past income cannot be used as an indicator of anticipated income. If income changes and income received in the past thirty (30) days does not reflect anticipated income, the Department can use the household income received over a longer period to anticipate income. If income changes seasonally, the Department can use the household income from the last season, comparable to the certification period, to anticipate income.

(6-1-94)

03. Full Month's Income Not Expected. (10-1-94)

a. Ongoing income is income from an ongoing source. Ongoing income has been received in the past and is expected to be received in the future. If a full month's income is not expected from an ongoing source, count the amount of income expected for the month: (10-1-94)

i. If the actual amount of income is known, use the actual income. (10-1-94)

ii. If the actual amount of income is unknown, project the expected income. (10-1-94)

iii. Convert the income to a monthly amount. (10-1-94)

b. If income is from a new source and a full month's income is not expected, count the actual amount of income expected for the month. Do not convert the new source of income to a monthly amount. (10-1-94)

c. If income is from a terminated source and no additional income is expected in a future month from this source, count the actual income received during the month. Do not convert the terminated source of income. (10-1-94)

(10-1-94)

d. If a full month's income is not expected from a new ~~or terminated~~ source of income, count the amount of income expected for the month: ~~(10-1-94)~~(10-1-05)T

i. If the actual amount of income is known, use the actual known income. (10-1-94)

ii. If the actual amount of income is unknown, project the income. (10-1-94)

iii. Do not convert the income to a monthly amount if a full month's income from a new ~~or terminated~~ source is not expected. ~~(10-1-94)~~(10-1-05)T

(10-1-05)T

04. Income Paid on Salary. Income received on salary, rather than an hourly wage, is counted at the expected monthly salary rate. (6-1-94)

(6-1-94)

05. Income Paid At Hourly Rate. Compute anticipated income paid on an hourly basis by multiplying the hourly pay by the expected number of hours the client will work in the pay period. Convert the pay period amount to a monthly amount. (6-1-94)

(6-1-94)

06. Fluctuating Income. When income fluctuates each pay period and the rate of pay remains the same, average the income from the past thirty (30) days to determine the average pay period amount. Convert the average pay period amount to a monthly amount. (6-1-94)

(6-1-94)

07. Converting Income to a Monthly Amount. If a full month's income is expected, but is received on other than a monthly basis, convert the income to a monthly amount using one of the formulas below: (6-1-94)

a. Multiply weekly amounts by four point three (4.3). (6-1-94)

(6-1-94)

- b. Multiplying bi-weekly amounts by two point one five (2.15). (6-1-94)
- c. Multiplying semi-monthly amounts by two (2). (6-1-94)
- d. Use the exact monthly income if it is expected for each month of the certification period. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

532. GROSS INCOME LIMIT.

Households exceeding the gross income limit for the household size are not eligible, unless they are categorically eligible or have an elderly or disabled member. ~~Categorically eligible households are exempt from gross and net income limits.~~ A household with an elderly or disabled household members is exempt from the gross income limit. If ~~All household members of categorically eligible households must be approved for~~ receive or are authorized to receive monthly payments through TAFI, AABD, or SSI, the household is categorically eligible. ~~Households with elderly or disabled household members are exempt from the gross income limit.~~ The gross income limit is raised each federal fiscal year by FNS, based on the federal cost of living (COLA) adjustment. Gross income limits are listed under <http://www.fns.usda.gov/fsp/government/cola.htm>. ~~(4-6-05)(10-1-05)T~~

533. HOUSEHOLD ELIGIBILITY AND BENEFIT LEVEL.

A household's eligibility and benefit level ~~will be~~ is calculated in accordance with 7 CFR 273.10, except as indicated below in Subsections 533.01 through 533.07. of this rule. ~~The deductions in Subsections 533.01 through 533.07 of these rules are subtracted from non-excluded income.~~ ~~(4-6-05)(10-1-05)T~~

01. Standard Deductions. The standard deductions are controlled by Federal law. The monthly amounts are specified in Title 7 United States Code Section 2014. Current deductions may be found under <http://www.fns.usda.gov/fsp/government/cola.htm>. (4-6-05)

02. Earned Income Deduction. The earned income deduction is twenty percent (20%) of gross earned income. (6-1-94)

03. Homeless Shelter Deduction. The homeless shelter deduction is established by FNS and may be found under <http://www.fns.usda.gov/fsp/government/cola.htm>. (4-6-05)

04. Excess Medical ~~Expense~~ Deduction. Excess medical expense is nonreimbursed medical expense of more than thirty-five dollars (\$35) per household per month. The household member must be either age sixty (60) or older or disabled to get this expense deduction. Special diets are not deductible. For allowable medical expenses, see Section 535 of these rules. ~~(4-6-05)(10-1-05)T~~

05. Dependent Care ~~Expense~~ Deduction. The dependent care expense deduction is for monthly dependent care expenses up to a maximum of two hundred dollars (\$200) per dependent child under age two (2) and one hundred seventy-five dollars (\$175) for any other dependent. The care must be needed for a household member to accept, continue, or seek employment, or attend school or training for employment. ~~(4-6-05)(10-1-05)T~~

06. Child Support ~~Expense~~ Deduction. The child support expense deduction is the legally obligated child support and arrearage the household pays, or expects to pay, ~~on behalf of~~ to or for a non-household member. ~~(4-6-05)(10-1-05)T~~

07. Excess Shelter ~~Expense~~ Deduction. Excess shelter expense is the monthly shelter cost over fifty percent (50%) of the household's income after all other deductions. The excess shelter expense is not deducted if the household has received the homeless shelter deduction. For allowable shelter expenses, see Section 542 of these rules. ~~(4-6-05)(10-1-05)T~~

534. AVERAGING INFREQUENT, FLUCTUATING, OR ONE-TIME ONLY EXPENSES.

Infrequent, fluctuating, or one-time only expenses for medical, child support, shelter or child care ~~that can be anticipated for the month after approval of the application for Food Stamp benefits, recertification, or the twelve (12) month contact~~ are averaged. ~~(4-6-05)~~(10-1-05)T

01. Averaging Infrequent Expenses. Households can have infrequent expenses averaged forward over the interval between scheduled billings, if there are scheduled billings. If there are no scheduled billings, expenses are averaged over the intended coverage period. (4-6-05)

02. Averaging Fluctuating Expenses. Households can have fluctuating expenses averaged over the certification period in which they are billed. (6-1-94)

03. Averaging One-Time Only Expenses. One-time only expenses can be averaged over the certification period in which they are billed. (4-6-05)

04. Predicting Future Expenses. Predicted expenses must be based on the most recent month's bills, unless changes are expected to occur. (6-1-94)

05. Converting Expenses To Monthly Figures. Whenever an expense is billed on other than a monthly basis, the expense is converted to a monthly amount. The method used to compute monthly expenses must be documented. (4-6-05)

06. Averaging One-Time Medical Expenses For Households Certified For Twenty-Four Months. Households with one-time medical expenses that are certified for twenty-four (24) months have the option of: (4-6-05)

a. Deducting the expense for one (1) month. (3-15-02)

b. Averaging the expense over the first twelve (12) months of the certification period. (4-6-05)

c. Averaging the expense over the twenty-four (24) month certification period. (4-6-05)

535. MEDICAL EXPENSES.

~~Medical expenses over thirty five dollars (\$35), for elderly or disabled household members, must be deducted from the household income. Allowable medical expense deductions are listed below in Subsection 535.01 through 535.14 of these rules. If an agreement, either oral or written, is made between the medical provider and the client to pay a bill in monthly amounts, the monthly agreement amount specified is considered the medical expense. The agreement must be made before the initial bill becomes due. The agreement must indicate a specific amount due each month. If there is no agreement, amounts from past billing periods are not deductible. The amounts are not deductible, even if the past debt is in the current bill and actually paid by the household. The household must provide proof of the incurred or anticipated cost before a deduction is allowed.~~ ~~(4-6-05)~~(10-1-05)T

01. Medical and Dental Services. Services must be performed by licensed practitioners, physicians, dentists, podiatrists, or other qualified health professionals. Other qualified health professionals include registered nurses, nurse practitioners, licensed physical therapists and licensed chiropractors. (6-1-94)

02. Psychotherapy and Rehabilitation Services. Services must be performed by licensed psychiatrists, licensed clinical psychologists, licensed practitioners, physicians or other qualified health professionals. (6-1-94)

03. Hospital or Outpatient Treatment. Hospital or outpatient treatment includes expenses for hospital, nursing care, State licensed nursing home care, and care to a person immediately before entering a hospital or nursing home. (4-6-05)

04. Prescription Drugs. Prescription drugs and prescribed over-the-counter medication including insulin. (6-1-94)

05. Medical Supplies and Sickroom Equipment. Medical supplies and sickroom equipment

including rental or other equipment. (6-1-94)

06. Health Insurance. Health and hospitalization insurance premiums. These do not include health and accident policies payable in a lump sum for death or dismemberment. These do not include income maintenance policies to make mortgage or loan payments while a beneficiary is disabled. (6-1-94)

07. Medicare Premiums. Medicare premiums related to coverage under Title XVIII of the Social Security Act. (6-1-94)

08. Cost-Sharing or Spend-Down Expenses. Cost-sharing or spend-down expenses incurred by Medicaid recipients. (6-1-94)

09. Artificial Devices. Dentures, hearing aids, and prostheses. (6-1-94)

10. Guide Dog. Expenses incurred buying and caring for any animal trained and routinely used to help a disabled person. Expenses include costs for dog food, training, and veterinarian services. (4-6-05)

11. Eyeglasses. Expenses for eye examinations and prescribed eyeglasses. (4-6-05)

12. Transportation and Lodging. Reasonable transportation and lodging expenses incurred to get medical services. (4-6-05)

13. Attendant Care. Attendant care costs necessary due to age, disability, or illness. If attendant care costs qualify for both the excess medical and dependent care expense deductions, the cost is treated as a medical expense. (4-6-05)

14. Attendant Meals. One hundred nineteen dollars (\$119) per month are deducted if the household provides most of the attendant's meals. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

542. COSTS ALLOWED FOR SHELTER DEDUCTION.

Shelter costs are current charges for the shelter occupied by the household. Shelter costs include costs for the home temporarily not occupied because of employment or training away from home or illness. The costs allowed for the shelter deduction are listed below: (6-1-94)

01. House Payments. Mortgages, second mortgages, mortgage fees, home equity loans, and land payments. (4-6-05)

02. Rent. Rent and space rent. (6-1-94)

03. Homeless Shelter Deduction. The homeless shelter deduction is allowed for homeless households with some shelter expenses. It is established by FNS and may be found under <http://www.fns.usda.gov/fsp/government/cola.htm>. This deduction must not be used in combination with other costs allowed for shelter deduction. ~~(4-6-05)~~(10-1-05)T

04. Condominium Fees. The entire condominium fee, including fees for maintenance of the structure and the grounds. (3-30-01)

05. Loan Payments. Loan repayments for the purchase of a mobile or motor home, including interest. (6-1-94)

06. Taxes And Insurance. Property taxes, state and local assessments, and insurance on the structure. This also includes insurance on a vehicle used as a residence. (4-6-05)

07. Utilities. Only one (1) utility allowance (SUA, LUA, or MUA) may be used for a household. The costs used to determine the utility allowance are: heating, cooling, cooking fuel, electricity, the basic service fee for one (1) telephone (including wire maintenance fees, subscriber line charges, relay center surcharges, 911 fees, and basic service for a cellular phone), water, sewer, garbage and trash collection, well installation and maintenance, septic tank system installation and maintenance, and fees for initial utility installation. One-time deposits cannot be included. (4-6-05)

08. Vehicle Payments. Payments for vehicles used as the primary residence for the household. (6-1-94)

09. Costs for Home Repairs. Nonreimbursable costs to repair a home damaged or destroyed by a natural disaster such as a fire or flood or earthquake. (6-1-94)

10. Home Temporarily Not Occupied. Shelter costs for the home temporarily not occupied because of employment, training away from home, illness, or abandonment caused by a natural disaster or casualty loss. This shelter cost may be in addition to the shelter cost for the home the household currently occupies. To receive the shelter deduction for a vacated home: (4-6-05)

- a. The household must intend to return; (4-6-05)
- b. Current occupants must not be claiming Food Stamp shelter costs; and (4-6-05)
- c. The home must not be leased or rented. (6-1-94)

543. UTILITY ALLOWANCES.

The shelter deduction is computed using one (1) of three (3) utility allowances: Standard Utility Allowance (SUA), Limited Utility Allowance (LUA), or the Minimum Utility Allowance (MUA). Utility allowances are not prorated. (4-6-05)

01. Standard Utility Allowance (SUA). (4-6-05)

a. Primary heating or cooling system. The household must have a primary heating or cooling cost to qualify for the SUA. The heating or cooling costs must be separate from rent or mortgage payments. This includes households in private rental housing, billed by their landlords for individual usage or charged a flat rate, separately from rent. If not billed regularly for heating or cooling costs, the household must be otherwise Food Stamp eligible between billing periods. (4-6-05)

b. Cooling costs. If the household claims cooling costs, the household must have either an air conditioning system or a room air conditioner to qualify for the SUA. (3-15-02)

c. Heating costs. If the household claims heating costs, the household must have expenses for heat. Households buying wood for their primary source of heat may get the SUA. Cutting their own wood for the primary source of heat does not qualify a household for the SUA. Supplemental heat sources such as space heaters, electric blankets, cook stoves and a secondary heat source such as a fireplace do not qualify households for the SUA. (4-6-05)

d. LIHEAP. If the household receives LIHEAP assistance, it is automatically eligible for the SUA. (10-1-05)T

de. Energy Assistance Excluded From Income. If the household gets direct or indirect energy assistance that is excluded from income, the household gets the SUA if the amount of the expense exceeds the amount of the assistance. (3-15-02)

ef. Energy Assistance Not Excluded From Income. If a household gets energy assistance that is not excluded from income, the household must also have out-of-pocket heating or cooling costs to get the SUA. (3-15-02)

~~fg.~~ Occupied and Unoccupied Home. A household with both an occupied home and an unoccupied home, is limited to one (1) SUA. (3-15-02)

02. Limited Utility Allowance (LUA). The household must be billed for more than one (1) utility that is not for heating or cooling. Water, sewer, and trash are considered one (1) utility cost regardless of how they are billed. If the household is billed for rural trash pickup, this can be counted as a separate utility. (4-6-05)

03. Minimum Utility Allowance (MUA). The household must be billed for one (1) utility that is not for heating or cooling. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

549. NET INCOME LIMIT TEST.

Categorically eligible households do not have ~~a~~ to meet the net income limit. ~~For a~~All other households, including those with an elderly or disabled household member, ~~if the net income of the household must not exceed~~s the net income limit, ~~the household is not to be~~ eligible for Food Stamps, ~~unless categorically eligible~~. Net income limits are established each federal fiscal year by FNS and listed under <http://www.fns.usda.gov/fsp/government/cola.htm>. (4-6-05)(10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

566. -- 5731. (RESERVED).

572. HOUSEHOLD COMPOSITION CHANGES FOR CHANGE REPORTING HOUSEHOLDS.

Changes in household composition are required to be reported for change reporting households. Changes must be reported within ten (10) days of the date the change occurs. The change is effective for the month after it is reported, allowing for timely notice. (10-1-05)T

573. HOUSEHOLD COMPOSITION CHANGES FOR SIMPLIFIED REPORTING HOUSEHOLDS.

Changes in household composition are not required to be reported for simplified reporting households. If a simplified reporting household does report a change in household composition, and the change would increase the Food Stamp benefit, proof is needed to act on the change. If proof is provided within ten (10) days, increase the Food Stamp benefits beginning the month immediately following when the change was reported. If proof is not provided within ten (10) days, increase the Food Stamp benefit beginning the month after the proof is provided. If the reported change decreases the Food Stamp benefit, the change is effective at the next recertification. (10-1-05)T

574. BENEFITS FOR ADDING PREVIOUSLY DISQUALIFIED HOUSEHOLD MEMBERS.

The resources, income, and deductions of a previously ~~ineligible~~ disqualified household member must be determined. ~~Add a~~ Change the previously disqualified household member's participation the month following the last month in the sanction or if the person becomes exempt. The disqualification must have been due to an intentional program violation (IPV), work registration or Job Search Assistance Program (JSAP) sanction, voluntary quit or reduction of work hours, failure to comply with the SSN requirement, or ineligible legal non-citizen status. The person's resources, income, and deductions that were previously prorated are counted in full the month ~~the person is added to the household~~ after the disqualification ends. Prorate benefits from the date the ABAWD becomes Food Stamp eligible by reaching eighty (80) hours by working, participating in a work program, or combining work and work programs. (3-15-02)(10-1-05)T

575. ~~ADDING PREVIOUSLY INELIGIBLE~~ HOUSEHOLD COMPOSITION CHANGES FOR STUDENT.

~~If the household member has been ineligible due to student status, add the eligible person the month following the month the household reports the change.~~ Ineligible students are defined as non-household members. When a student's status changes, the change is treated as a new person entering or leaving the Food Stamp household. (6-1-94)(10-1-05)T

01. Student Residing in a Change Reporting Household. Changes in household composition are required to be reported for change reporting households. Changes must be reported within ten (10) days of the date the change occurs. The change is effective the month after it is reported, allowing for timely notice. (10-1-05)T

02. Student Residing in a Simplified Reporting Household. Changes in household composition are not required to be reported for simplified reporting households. If a simplified reporting household does report a change in household composition, and the change would increase the Food Stamp benefit, increase the Food Stamp benefit beginning the month after the proof is provided. If the reported change decreases the Food Stamp benefit, the change is effective at the next recertification. (10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

601. REPORTING REQUIREMENTS AND RESPONSIBILITIES.

The household must report and verify changes in circumstances based on the requirements for the reporting group to which the household is assigned. Changes may be reported by phone, by mail, or directly to the Department. Households must report as follows: (4-6-05)

01. Change Reporting (CR) ~~And Extended Certification (EC)~~ Households. Change reporting ~~and extended certification~~ households must report the following: ~~(4-6-05)~~(10-1-05)T

- a. Unearned income changes of more than fifty dollars (\$50); (4-6-05)
- b. Earned income changes of more than one hundred dollars (\$100); (4-6-05)
- ~~e.~~ ~~Decrease in ABAWD hours to less than eighty (80) hours per month;~~ ~~(4-6-05)~~
- ~~d.~~ Address changes ~~and the related changes in shelter costs;~~ ~~(4-6-05)~~(10-1-05)T
- ~~e.~~ Changes in household composition; and (4-6-05)
- ~~f.~~ When resources exceed the resource limit. (4-6-05)

02. Simplified Reporting (SR) Households. Simplified reporting households must report the following: (4-6-05)

- a. When the household's total gross income exceeds one hundred thirty percent (130%) of the Federal Poverty Guideline (FPG) for the household size; (4-6-05)
- b. Any change of address ~~and the related changes in shelter costs;~~ and ~~(4-6-05)~~(10-1-05)T
- c. A decrease in ABAWD hours to less than eighty (80) hours per month. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

613. CHANGES ON WHICH THE DEPARTMENT MUST ACT.

01. General Changes On Which Department Must Act. Regardless of whether the Food Stamp Benefit will increase or decrease, the Department must act as described in Sections 617 and 618 of these rules when: ~~(4-6-05)~~(10-1-05)T

- a. The household requests closure; (4-6-05)
- b. The TAFI or AABD grant amount changes; (4-6-05)

- c. An individual is sanctioned or disqualified; (4-6-05)
- d. The change would cause ~~duplicate~~ prohibited participation, see Section 219 of these rules; ~~(4-6-05)~~(10-1-05)T
- e. Information is received from a source ~~considered~~ the Department has defined as verified upon receipt in Section 012 of these rules; ~~(4-6-05)~~(10-1-05)T
- f. The change is required to be reported and the change is expected to continue into the next month; (4-6-05)
- g. The Food Stamp benefit will increase and the change is not a change in expenses; ~~or~~ ~~(4-6-05)~~(10-1-05)T
- h. There is a change of address ~~and shelter expenses change as a result;~~ or ~~(4-6-05)~~(10-1-05)T
- i. All members of the household move out of the state of Idaho. (4-6-05)

02. Changes Resulting in an Increase in the Food Stamp Benefit. The Department must also act on changes that have been reported that would increase the household's Food Stamp amount ~~excluding the changes listed as described in Section 6157~~ of these rules. ~~(4-6-05)~~(10-1-05)T

03. Documentation. Changes must be documented in the case record, even if there is no change in the Food Stamp amount. (6-1-94)

04. Change Report Form. A new Change Report Form (HW 0594 or HW 0586) must be given or sent to the household when a change is reported. (6-1-94)

05. Receipt of Report Notice. The Department must notify the household when the report is received. A Notice of Decision meets this requirement, when notifying the household of a benefit determination. (6-1-94)

06. Proof. Give the household a written request for proof. The household must be told failure to provide the proof will result in decreased or stopped benefits. The Department must document how the request for proof was made. (3-15-02)

07. Unclear Information. If the Department is unable to readily determine the effect of a change on the household's benefit amount, the Department will issue a written request advising the household of proof it must provide or actions it must take, to clarify its circumstances. The household has ten (10) days in which to respond to the Department's request, either by telephone or correspondence. (4-6-05)

614. (RESERVED).

615. CHANGES IN SHELTER, DEPENDENT CARE, CHILD SUPPORT OR MEDICAL EXPENSES. Regardless of the reporting group to which it belongs, a household reporting a change in shelter, dependent care, child support or medical expenses will be not required to provide proof of the change until recertification or the twelve (12) month contact. The Department will not adjust the Food Stamp benefit during the certification period regardless of whether the change in expenses would cause the Food Stamp benefit to increase or decrease. ~~Only a shelter cost that is a result of the household moving will be acted upon during the certification period, regardless of whether it increases or decreases the Food Stamp benefit.~~ ~~(4-6-05)~~(10-1-05)T

616. DECREASES OR CLOSURE OF FOOD STAMPS (RESERVED).
~~If a change on which the department is required to act results in a decrease or closure of Food Stamps, the Department must provide notice. The change must be effective the first month following timely notice, unless the change does not require ten (10) day advance notice. If the household does not respond to the request for proof, or does respond but refuses to provide sufficient information or fails to provide required proof of a change affecting eligibility by the requested date, send a closure notice. The notice must explain the reason for the closure. The notice must advise the household of the need to submit a new application if it wishes to continue participating in the~~

~~program. If the household fails to provide required proof of a change affecting Food Stamp amount by the requested date, and the change would result in decreased benefits, no deduction is allowed or benefits are decreased. If the household provides the change verification after the date requested, act on the change as if it was an increase. The effective date of the change is the month after the month the change is verified. (3-20-04)~~

617. INCREASES IN FOOD STAMP BENEFITS.

If a change other than expenses results in an increase in Food Stamps and the proof cannot be obtained through interfaces or data brokers, the Department must allow the household ten (10) days to provide proof. The increase must be handled as follows: regardless of the reporting requirement. If the household fails to provide proof of a change that would increase the benefit level, the Food Stamp benefit remains at the amount already established.

~~(4-6-05)~~(10-1-05)T

~~**01. Changes Required to be Reported.** If the household fails to provide proof of a change required to be reported under Section 601 of these rules, the Food Stamp case must be closed. If the Food Stamp household moves and fails to provide proof of a change in shelter costs, but continues to reside in the state of Idaho, no shelter costs will be allowed. This may cause the Food Stamp benefits to be reduced. If the household subsequently provides proof before the first day of the month the case would close, benefits must be continued, adjusted, or ended, as appropriate. The Department must give adequate notice to the household to adjust or end benefits. (4-6-05)~~

~~**02. Changes Not Required to be Reported.** If the household fails to provide proof of a change that would increase the benefit level, the Food Stamp benefit remains at the amount already established. If the household fails to provide proof within ten (10) days of reporting the change, but shows proof later, benefits will be increased the month after the month that proof of the change was provided. (4-6-05)~~

~~**03. Proof Provided Within Ten Days.** If the household provides proof within ten (10) days of reporting the change, the Department will increase the Food Stamp benefits beginning the month immediately following the month in which the change was reported. For changes reported after the 20th of the month, a supplement is issued for the next month no later than the 10th of the next month. If the change is reported and verified after the final date to adjust Food Stamp benefits for the following month in the Department's automated eligibility system, the change to the Food Stamp benefits must be made by the second monthly issuance of Food Stamp benefits after the month the change is reported following month, even if a supplement must be issued. (4-6-05)(10-1-05)T~~

~~**02. Proof Not Provided Within Ten Days.** If the household fails to provide proof within ten (10) days of reporting the change, but shows proof later, benefits are increased the month after the proof of the change is provided. (10-1-05)T~~

618. DECREASES IN FOOD STAMP BENEFITS.

If a change that is required to be reported results in a decrease in Food Stamp benefits, and proof is required, the Department must allow the household verify and take action within ten (10) days to provide proof. The decrease must be handled as follows: of the date the change was reported.

~~(4-6-05)~~

~~**01. Changes Required to be Reported.**~~

~~(4-6-05)~~

~~**a.** If the household provides proof within ten (10) days, the Department must act on the change during the month after the change was reported. The Department must give the household timely notice to adjust or end benefits. (4-6-05)~~

~~**b.** If the household fails to provide proof of a change required to be reported within ten (10) days, the Food Stamp case must be closed with timely notice. If the Food Stamp household moves and fails to provide proof of a change in shelter costs, but continues to reside in the state of Idaho, no shelter costs will be allowed. This may cause the Food Stamp benefits to be reduced. The notice must explain the reason for the action. If the household then provides proof before the first day of the month the case would close, benefits must be continued, adjusted, or ended as appropriate. The Department must give adequate notice to adjust or end benefits. (4-6-05)(10-1-05)T~~

~~**02619. CHANGES NOT REQUIRED TO BE REPORTED.**~~

~~If the household reports a change not required to be reported that would result in a decrease in Food Stamp benefits, the Department will not request proof and will not take action until recertification. The household must be notified~~

that no action will be taken on the reported change.

~~(4-6-05)~~(10-1-05)T

~~619.~~—620. (RESERVED).

621. TAFI OR AABD HOUSEHOLD REPORTING CHANGES.

If a change in the AABD or TAFI grant results in a change in the household's Food Stamp benefits, the Department must count the new grant amount, regardless of whether the Food Stamps increase or decrease. If a change requires a reduction or ending of TAFI or AABD and Food Stamp benefits, ~~and the Department can determine Food Stamp benefits,~~ the Department will issue a Notice of Decision for both ~~AABD and Food Stamps or TAFI and Food Stamps programs.~~ If the household makes a timely request for a fair hearing and continued benefits, Food Stamp benefits continue pending the hearing. The household must reapply if certification expires before the hearing is complete. ~~If a change in the AABD or TAFI grant results in a change in the household's Food Stamp benefits, the Department must change the Food Stamp benefits, regardless of whether the Food Stamps increase or decrease. The Department must not make the change that caused the TAFI or AABD benefit to change, unless that change is also one requiring the Department to take action.~~

~~(4-6-05)~~(10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

623. FAILURE TO TAKE PROMPT REQUIRED ACTION.

If the Department is unable to make a change in Food Stamp eligibility or issuance and an overissuance results, ~~a Claim Determination (HW 0560) form must be prepared~~ collect the overpayment. If the Department fails to act on a change that increases household benefits, restore lost benefits.

~~(6-1-94)~~(10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

631. TIMELY NOTICE.

Notices must be sent within the time limits listed in these rules. ~~Advance~~ Timely notice ~~is~~ must be mailed at least ten (10) days before the effective date of the action.

~~(6-1-94)~~(10-1-05)T

632. TEN DAY ADVANCE TIMELY NOTICE NOT REQUIRED.

~~Ten (10) day advance~~ Timely notice is not required; when the conditions listed below are met. Adequate notice must be given.

~~(6-1-94)~~(10-1-05)T

01. Statement of Household. The Department gets a clear, written, signed statement from the household. Food Stamps can be ended or reduced from the facts given in the household statement. (6-1-94)

02. Food Stamps Reduced After Closure Notice. The household is sent a notice of closure because it did not provide requested proof. The household provides the proof before the first day of the month of closure. If the proof results in reduced Food Stamps, the reduced benefits are issued. ~~Ten (10) day advance~~ Timely notice of the reduction is not required. (6-1-94)(10-1-05)T

03. Food Stamps Closed or Reduced Because of Intentional Program Violation (IPV) Penalty. The Department must impose the IPV penalty the first of the month after the month it gives written notice to the client. ~~Ten (10) day advance~~ Timely notice is not required. (7-1-97)(10-1-05)T

633. NOTICE OF CHANGES NOT REQUIRED.

Notice to individual Food Stamp households is not required when the conditions listed in Subsection 633.01 below are met. Mass notice must be given in some situations, as listed in Subsection 633.02 below: (4-5-00)

01. Waiver by the Household. A household member or authorized representative provides a written statement requesting closure. The person gives information causing reduction or an end to benefits and states, in writing, they know adverse action will be taken. The person acknowledges in writing continuation of benefits is waived, if a fair hearing is requested. (4-5-00)

- 02. Mass Change.** Mass changes include: (6-1-94)
- a.** Changes in the income limit tables. (6-1-94)
 - b.** Changes in the issuance tables. (6-1-94)
 - c.** Changes in Social Security benefits. (6-1-94)
 - d.** Changes in SSI payments. (6-1-94)
 - e.** Changes in TAFI or AABD grants. (7-1-98)
 - f.** Changes caused by a reduction, suspension, or cancellation of Food Stamps ordered by the Secretary of USDA. (6-1-94)
 - g.** When it performs mass changes, the Department notifies Food Stamp households of the mass change by one of the following methods: (6-1-94)
 - i.** Media notices. (6-1-94)
 - ii.** Posters in the Food Stamp offices and issuance locations. (6-1-94)
 - iii.** A general notice mailed to households. (6-1-94)
- 03. Mass Changes in TAFI or AABD.** When a mass change to TAFI or AABD causes a Food Stamp change, use the following criteria: (7-1-98)
- a.** If the Department has thirty (30) days advance notice of the TAFI or AABD mass change, Food Stamps must be adjusted the same month as the change. (7-1-98)
 - b.** If the Department does not have advance notice, Food Stamp benefits must be changed no later than the month after the TAFI or AABD mass change. (7-1-98)
 - c.** Ten (10) day advance notice to Food Stamp households is not required. Adequate notice must be sent to Food Stamp households. (6-1-94)
 - d.** If a household requests a fair hearing because of an issue other than mass change, continue Food Stamps. (6-1-94)
- 04. Notice of Death.** Notice is not required when the Department learns of the death of all household members. (6-1-94)
- 05. Move From ~~Project Area~~ Idaho.** Notice of closure is not required when the household moves from ~~the project area~~ Idaho. (~~6-1-94~~)(10-1-05)T
- 06. Completion of Restored Benefits.** Notice is not required when an increased allotment, due to restored benefits, ends. The household must have been notified in writing when the increase would end. (6-1-94)
- 07. Joint Public Assistance and Food Stamp Applications.** Notice is not required if the household jointly applies for TAFI or AABD and Food Stamps and gets Food Stamps pending TAFI or AABD approval. The household must be notified at certification that Food Stamps will be reduced upon TAFI or AABD approval. (7-1-98)
- 08. Converting From Repayment to Benefit Reduction.** Notice is not required if a household with an IHE or IPV claim fails to repay under the repayment schedule. An allotment reduction is enforced. (6-1-94)
- 09. Households ~~Getting~~ Receiving Expedited Service.** Notice is not required if all the following conditions are met: (~~6-1-94~~)(10-1-05)T

- a. The applicant ~~is~~ not received expedited services. (~~6-1-94~~)(10-1-05)T
- b. Proof was postponed. (6-1-94)
- c. A regular certification period was assigned. (6-1-94)
- d. Written notice, stating future Food Stamps depend on postponed proof, was given at approval. (6-1-94)

10. Residents of a Drug or Alcoholic Treatment Center or a Group Living Arrangement Center.
Notice is not required when the Department ends Food Stamps to residents of a drug or alcoholic treatment center or group living arrangement center if: (6-1-94)

- a. The Department revokes the center's certification. (6-1-94)
- b. FCS disqualifies the center as a retailer. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

646. NOTICE OF DECISION FOR TIMELY RECERTIFICATION.

A Notice of Decision must be sent to households that reapply for Food Stamps. To ~~is~~ not receive Food Stamps with no break in issuance, households must apply for recertification before the fifteenth day of the last month of certification. If the household applies before the fifteenth day of the month, ~~the~~ Department will notify the household of eligibility or denial by the end of the current certification period. (~~4-6-05~~)(10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

675. IPV, IHE AND AE FOOD STAMP CLAIMS.

An overissuance exists when the amount of Food Stamps issued exceeds the Food Stamps a household is eligible to receive. The Department must establish a claim against the household, to recover the value of Food Stamps overissued or misused. A claim is an action by the Department to recover the value of Food Stamps paid. The types of Food Stamp claims are listed in Subsections 675.01 through 675.03 of these rules. (3-15-02)

01. Intentional Program Violation (IPV) Claim. An IPV claim is an overissuance caused by an intentional, knowing, and willful program violation. (3-15-02)

02. Inadvertent Household Error (IHE) Claims. An IHE is a household error, without intent to cause an overissuance, which results in a Food Stamp over-issuance. Causes of IHE claims are: (3-15-02)

a. Failure to give information. A household, without intent to cause an over-issuance, fails to give correct or complete information. (3-15-02)

b. Failure to report change that was required to be reported. A household, without intent to cause an over-issuance, fails to report changes or to report at all. (~~3-15-02~~)(10-1-05)T

c. Failure to comply. A household, without intent to cause an over-issuance, fails to comply due to language barrier, educational level, or not understanding written or verbal instructions. (3-15-02)

d. Pending hearing. A household gets continued Food Stamps pending a fair hearing decision. The hearing decision, when made, is against the household. (3-15-02)

e. Pending IPV. An IHE claim occurs between the time of an IPV referral, and the IPV decision. (3-15-02)

03. Agency Error Claim (AE). An agency error claim results from an overissuance caused by a Department action, or a failure to act. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

~~729. -- 734.~~ (RESERVED).

~~**734. TRANSFERS OF CASE RECORDS.**~~

~~Procedures for transfer of case records from one Field Office to another include time requirements and authorization.~~ (6-1-94)

~~**01. Time Requirements for Processing Transfers.** Process transfers as soon as possible, but not later than thirty (30) days after the household tells the Department it has moved.~~ (6-1-94)

~~**02. Authorization for Transfer.** When a household moves from one Field Office area to another, the receiving Field Office must authorize the case record transfer. The sending Field Office must start the automated transfer.~~ (6-1-94)

735. FOOD STAMP HOUSEHOLDS THAT MOVE.

When a Food Stamp household moves within Idaho, the sending and receiving field offices must transfer the case record and change the household's address. When all members of a Food Stamp household move outside of Idaho, close the case effective at the end of the month in which the household moves. Notice is not required.

(4-6-05)(10-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

781. PERSON DISQUALIFIED DURING CERTIFICATION PERIOD.

Benefits are reduced or ended within the certification period when a member has been disqualified for failure to meet the requirements in Subsections 781.01 through 781.07 of these rules. When a person is disqualified during a certification period, determine the eligibility of the other members based on information in the case record. Actions the Department must take to reduce or end benefits are listed below: (6-1-94)(10-1-05)T

01. SSN Standards Not Met. ~~Benefits are reduced or ended within the certification period when a member has been disqualified for failure to meet the SSN requirement.~~ The Department must send a notice of adverse action ~~to~~ if the SSN standards are not met, telling the household which member has been disqualified. The notice must tell the reason for the exclusion and the benefit level. The notice must tell the household the actions needed to end the disqualification. (6-1-94)(10-1-05)T

02. IPV Disqualification. The Department must send the household a Notice of Disqualification ~~(HW 0541)~~ if it is disqualified for IPV. The notice must indicate the Food Stamp amount. The notice must tell the household if they need to reapply. The Department does not have to provide a notice of adverse action. The household may request a fair hearing. The household may not have a second fair hearing if the household had a consolidated fair hearing on the Food Stamp amount and the disqualification. (6-1-94)(10-1-05)T

03. JSAP Requirements Not Met. The Department must send a notice of adverse action when a non-head of household fails to comply with JSAP. The notice must tell the household a member has been disqualified. The notice must tell the household the disqualification reason and Food Stamp amount. The notice must tell the household actions the household can take to end disqualification. (6-1-94)

04. Failed to Show Citizenship or Legal Non-Citizen Status. The Department must send a notice of adverse action to the household for ineligible alien status or failure to attest to citizenship or alien status. The notice must tell the household a member is disqualified. The notice must tell the household the disqualification reason and Food Stamp amount. (7-1-98)

05. Voluntary Quit or Reduction of Hours Worked. The Department must send a notice of adverse action when a non-head of household is sanctioned for a voluntary quit or reduction of hours of work. The notice must tell the household a member has been disqualified. The notice must tell the household the disqualification reason and Food Stamp amount. (7-1-98)

06. ABAWD Work Requirement Not Met. The Department must send a notice of adverse action to the household when an ABAWD has received three (3) months of Food Stamp benefits in a three (3) year period while not meeting the work requirement. The notice must tell the household the disqualification reason and Food Stamp amount. (7-1-98)

07. Failure to Cooperate in Establishing Paternity and Obtaining Support. The Department must send a notice of adverse action to the household when a parent of a minor child or individual exercising parental control over a minor child fails to cooperate in establishing paternity and obtaining support. The notice must tell the household the disqualification reason and Food Stamp amount. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

850. FOOD STAMP HOUSEHOLD RIGHTS.

The Food Stamp household has rights protected by Federal and State laws and Department rules. The Department must inform clients of their rights during the application process and eligibility reviews. Food Stamp rights are listed below: ~~(6-1-94)~~(10-1-05)T

- 01. Application.** The right to get an application on the date requested. (6-1-94)
- 02. Application Registered.** The right to have the signed application accepted right away. (6-1-94)
- 03. Representative.** The right to have an authorized representative if the applicant cannot get to the Food Stamp office. The authorized representative must have knowledge of the applicant's situation. (6-1-94)
- 04. Home Visit or Telephone Interview.** The right to have a home visit or telephone interview. The applicant must be:
 - a.** Age sixty (60) or older; or (6-1-94)
 - b.** Disabled and unable to come to the Food Stamp office. (6-1-94)
 - c.** The Department may also allow a home visit or telephone interview because of transportation difficulties or other hardships. (6-1-94)
- 05. Thirty Day Processing.** The right to have the application processed and Food Stamps issued within thirty (30) days. (6-1-94)
- 06. Expedited Service.** The right to get Food Stamps within seven (7) days if eligible for expedited service. (3-15-02)
- 07. Fair and Equal Treatment.** The right to fair and equal treatment, regardless of age, gender, race, color, handicap, religious creed, national origin, political belief. (4-5-00)
- 08. Case Record and Food Stamp Rules Available.** The right to look at the client's case file. The right to look at a copy of the Food Stamp program rules. (6-1-94)
- 09. Notification.** The right to be told in writing of:
 - a.** The reasons for the Department's action if the application is rejected. (6-1-94)

b. The reasons for the Department's action if Food Stamps are reduced or stopped. (6-1-94)

10. Fair Hearing. The right to request a fair hearing about the Department's decision. The right to request a fair hearing if the household feels discrimination has taken place in any way. Food Stamp fair hearings must be requested within ninety (90) days from the day notice is mailed. In certain situations, Food Stamps may continue if a fair hearing is requested. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

884. -- 9959. (RESERVED).

~~996. FAIR HEARING.~~

~~If the client does not agree with the actions of the Department, he can request a fair hearing under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings," Section 350. (7-1-97)~~

~~997. CONFIDENTIALITY OF RECORDS.~~

~~Any disclosure of information obtained by the Department is subject to the restrictions contained in Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records". (6-1-94)~~

~~998. INCLUSIVE GENDER.~~

~~For these rules, words used in the masculine gender include the feminine. (6-1-94)~~

~~999. SEVERABILITY.~~

~~The rules of Title 03, Chapter 04, are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance is declared invalid, that invalidity does not affect the validity of the remaining portions of this Chapter. (6-1-94)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,
BLIND, AND DISABLED (AABD)

DOCKET NO. 16-0305-0501

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: The pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending. The action is authorized pursuant to Section 56-202, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the temporary rule was published in the March 2, 2005, Idaho Administrative Bulletin, Vol. 05-3, pages 20 and 21 with an effective date of April 1, 2005. The original text of the proposed rule was published in the July 6, 2005, Idaho Administrative Bulletin, Vol. 05-7, pages 14 through 16. No changes have made to either the temporary or proposed rules.

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

This rulemaking has no fiscal impact on the state general fund. One hundred percent (100%) of the funds that will be used are federal funds provided by the Medicaid Infrastructure Grant.

Projected operational costs based on current forecasting:

First Year Costs: \$8,923

Fifth Year Costs: \$0 (NOTE: All costs for this rule change are "up front" in the first year.)

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Peggy Cook at (208) 334-5815.

DATED this 18th day of August, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
(208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16
TITLE 03
CHAPTER 05

**RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,
BLIND, AND DISABLED (AABD)**

There are no substantive changes from the proposed rule text.

**The complete text of the proposed rule was published in the Idaho Administrative
Bulletin, [Volume 05-7, July 6, 2005, pages 14 through 16.](#)**

**The complete text of the temporary rule was published in the Idaho Administrative
Bulletin, [Volume 05-3, March 2, 2005, pages 20 through 21.](#)**

**This rule has been adopted as a pending rule by the Agency and is now pending
review and approval by the 2006 Idaho State Legislature as a final rule.**

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,
BLIND, AND DISABLED (AABD)

DOCKET NO. 16-0305-0502

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202 and 56-214, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

The Department is amending the rules to remove ambiguities that have resulted in legal challenges. The present wording of the rules allows for misinterpretation regarding the use of trusts and annuities. Individuals move assets and resources in order to become eligible for Medicaid services. These rule changes will explain the use and limitations of revocable trusts as well as clarify the description of and consideration of annuities and life estates. By tightening up these rules, the Department can better assure that the state's limited resources will be available for individuals who truly need assistance.

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

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

The anticipated fiscal impact for these rule changes are case-by-case benefits and are not a direct result of these rule changes.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these changes are clarifying and aligning current rules with statute and federal law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Peggy Cook at (208) 334-5969.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 8th day of August, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0305-0502

000. LEGAL AUTHORITY.

The Idaho Department of Health and Welfare, according to Sections ~~56-2012 through 56-233~~, Idaho Code, adopts these rules for the administration of public assistance programs. ~~(7-1-99)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

007. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (____)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (____)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (____)

04. Telephone. (208) 334-5500. (____)

05. Internet Website. The Department Internet website is <http://www.healthandwelfare.idaho.gov/>. (____)

008. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. The use or disclosure of information related to Department client records covered by these rules must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," and federal Public Law 103-209. (____)

02. Public Records. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for examining and copying public records are made. Unless otherwise exempted, all public records in the custody of the Department of Health and Welfare are subject to disclosure. (____)

~~0079~~ -- 049. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

742. COMMUNITY SPOUSE RESOURCE ALLOWANCE.

The CSRA protects resources for the community spouse. The CSRA is determined by subtracting the greater of the minimum resource allowance, or the spousal share from the couple's total combined resources as of the first day of the application month. The deduction must not be more than the maximum resource allowance at the time eligibility is determined. ~~(7-1-99)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

801. INELIGIBLE NON-CITIZEN WITH EMERGENCY MEDICAL CONDITION.

~~An ineligible legal or illegal non-citizen, who is otherwise ineligible only because of his status as a non-citizen, is eligible only for medical services necessary to treat an emergency medical condition.~~ (7-1-99)(____)

01. Emergency Medical Condition. An emergency medical condition can reasonably be expected to seriously harm the patient's health, cause serious impairment to bodily functions, or cause serious dysfunction of any bodily organ or part, without immediate medical attention. The Division of Medicaid determines if the condition is an emergency and the services necessary to treat it. (7-1-99)

02. Effective Date of Eligibility. Medicaid eligibility begins no earlier than the date the participant experienced the medical emergency and ends the date the emergency condition stops. The Division of Medicaid determines the beginning and ending dates. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

831. ASSET TRANSFER RESULTING IN PENALTY.

Starting August 11, 1993, the participant is subject to a penalty if he transfers his income or resources for less than fair market value. The asset transfer penalty applies to Medicaid services received October 1, 1993 and later. Excluded resources, other than the home and associated property, are not subject to the asset transfer penalty. The asset transfer penalty applies to a Medicaid participant in long-term care or HCBS. A participant in long-term care is a patient in a nursing facility or a patient in a medical institution, requiring and receiving the level of care provided in a nursing facility. (5-3-03)

01. Rebuttable Presumption. Unless a transfer meets the requirements of Section ~~840841~~ of these rules, it is presumed that the transfer was made for the purpose of qualifying for Medicaid. The asset transfer penalty is applied unless the participant shows that the asset transfer would not have affected his eligibility for Medicaid or the transfer was made for another purpose than qualifying for Medicaid. (~~5-3-03~~)(____)

02. Contract for Services Provided by a Relative. A contract for personal services to be furnished to the participant by a relative is presumed to be made for the purpose of qualifying for Medicaid. The asset transfer penalty applies unless the participant shows that: (3-15-02)

a. A written contract for personal services was signed before services were delivered. The contract must require that payment be made after services are rendered. The contract must be dated and the signatures notarized. Either party must be able to terminate the contract; and (3-15-02)

b. The contract must be signed by the participant or a legally authorized representative through a power of attorney, legal guardianship or conservatorship. A representative who signs the contract must not be the provider of the personal care services under the contract; and (3-15-02)

c. Compensation for services rendered must be comparable to rates paid in the open market. (3-15-02)

03. Transfer of Income or Resources. Transfer of income or resources includes reducing or eliminating the participant's ownership or control of the asset. (4-5-00)

04. Transfer of Income or Resources by a Spouse. A transfer by the participant's spouse of either spouse's income or resources, before eligibility is established, subjects the participant to the asset transfer penalty. After the participant's eligibility is established, a transfer by the spouse of the spouse's own income or resources does not subject the participant to the asset transfer penalty. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

837. LIFE ESTATES AND ANNUITIES AS ASSET TRANSFERS.

~~Conditions for determining if~~ When a life estate remainder is an transferred during the look-back period for less than

~~the fair market value of the assets, the life estate is subject to the asset transfer for less than fair market value are listed in Subsection 837.01 of this rule penalty as described in Sections 831 through 836 of these rules. The purchase of an annuity is an asset transfer that is presumed to be made for the purpose of qualifying for Medicaid. The asset transfer penalty applies unless the participant shows the purchase of the annuity would not have affected his eligibility for Medicaid or, the payment from the annuity is not greater than necessary to meet the reasonable and ordinary monthly needs of the beneficiary. For the purposes of Section 837, the reasonable and ordinary monthly needs are those defined by the maximum community spouse allowance at Section 725 of these rules. The participant must also show that the annuity meets the conditions in Subsections 837.03 and 837.04 of this rule.~~ (5-3-03)

01. Life Estate. A life estate worth less than the value of the transferred real property is subject to the asset transfer penalty. To compute the value of the life estate remainder, multiply the fair market value of the real property at the time of transfer by the remainder factor for the participant's age at the time of transfer listed in the following table:

TABLE 837.04 - LIFE ESTATE REMAINDER TABLE							
Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder
0	.02812	1	.01012	2	.00983	3	.00922
4	.01019	5	.01062	6	.01116	7	.01178
8	.01252	9	.01337	10	.01435	11	.01547
12	.01671	13	.01802	14	.01934	15	.02063
16	.02185	17	.02300	18	.02410	19	.02520
20	.02635	21	.02755	22	.02880	23	.03014
24	.03159	25	.03322	26	.03505	27	.03710
28	.03938	29	.04187	30	.04457	31	.04746
32	.05.058	33	.05.392	34	.05.750	35	.06132
36	.06540	37	.06974	38	.07433	39	.07917
40	.08429	41	.08970	42	.09543	43	.10145
44	.10779	45	.11442	46	.12137	47	.12863
48	.13626	49	.14422	50	.15257	51	.16126
52	.17031	53	.17972	54	.18946	55	.19954
56	.20994	57	.22069	58	.23178	59	.24325
60	.25509	61	.26733	62	.27998	63	.29304
64	.30648	65	.32030	66	.33449	67	.34902
68	.36390	69	.37914	70	.39478	71	.41086
72	.42739	73	.44429	74	.46138	75	.47851
76	.49559	77	.51258	78	.52951	79	.54643
80	.56341	81	.58033	82	.59705	83	.61358
84	.63002	85	.64641	86	.66236	87	.67738
88	.69141	89	.70474	90	.71779	91	.73045
92	.74229	93	.75308	94	.76272	95	.77113

TABLE 837.04 - LIFE ESTATE REMAINDER TABLE							
Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder	Age	Life Estate Remainder
96	.77819	97	.78450	98	.79000	99	.79514
100	.80025	101	.80468	102	.80946	103	.81563
104	.82144	105	.83038	106	.84512	107	.86591
108	.89932	109	.95455				

(3-15-02)()

02- Irrevocable Annuity. An irrevocable annuity is an asset transfer if it does not provide fair market value to the participant. To provide fair market value, an irrevocable annuity must meet life expectancy and annual interest tests listed in Subsections 837.03 and 837.04 of this rule. The value for calculating the asset transfer penalty is the difference between the actual rate produced by the annuity and five percent (5%) per year. The sixty (60) month look-back applies. (5-3-03)

03- Irrevocable Annuity Life Expectancy Test. The participant's life expectancy, shown in the following table, must equal or exceed the term of the annuity. Using Table 837.03 compare the face value of the annuity to the participant's life expectancy at the purchase time. The annuity meets the life expectancy test if the participant's life expectancy equals or exceeds the term of the annuity. If the exact age is not in the Table, use the next lower age.

TABLE 837.03 - LIFE EXPECTANCY TABLE					
Age	Years of Life Remaining Male	Years of Life Remaining Female	Age	Years of Life Remaining Male	Years of Life Remaining Female
0	73.26	70.26	74	10.12	12.74
10	64.03	60.93	75	9.58	12.09
20	54.41	60.13	76	9.06	11.46
30	45.14	50.43	77	8.56	10.85
40	35.94	40.86	78	8.07	10.25
50	27.13	31.61	79	7.61	9.67
60	19.07	22.99	80	7.16	9.11
61	18.33	22.18	81	6.72	8.57
62	17.60	21.38	82	6.31	8.04
63	16.89	20.60	83	5.92	7.54
64	16.19	19.82	84	5.55	7.05
65	15.52	19.06	85	5.20	6.59
66	14.86	18.31	86	4.86	6.15
67	14.23	17.58	87	4.55	5.74
68	13.61	16.85	88	4.26	5.34

69	13.00	16.14
70	12.41	15.44
71	11.82	14.75
72	11.24	14.06
73	10.67	13.40

89	3.98	4.97
90	3.73	4.63
95	2.74	3.26
100	2.05	2.39
110	1.14	1.22

(3-15-02)

04. Irrevocable Annuity Annual Interest Test. *The annuity must produce annual interest of at least five percent (5%). A variable rate annuity meets the interest rate test if the average yearly rate for the most recent five (5) year period is five percent (5%) or more. The participant can rebut the five percent (5%) interest test. He must show that single premium annuities were not offered by insurers when the annuity was purchased and it would not be practical to exchange the annuity for one with a higher interest rate. Insurers must be rated excellent or superior by an insurance rating firm such as A.M. Best Co.* (5-3-03)

05. Revocable Annuity. *The surrender amount of a revocable annuity is a resource. Early surrender of a revocable annuity is not an asset transfer for less than fair market value.* (7-1-99)

838. ANNUITIES AS ASSET TRANSFERS.

When resources are used to purchase an annuity during the look-back period, it is an asset transfer presumed to be made for the purpose of qualifying for Medicaid. To rebut this presumption the participant must provide proof that clearly establishes the annuity was not purchased to make the participant eligible for Medicaid. ()

01. Revocable Annuity. The surrender amount of a revocable annuity is a countable resource. ()

02. Irrevocable Annuity. An irrevocable annuity, that is not purchased to make the participant eligible, is an asset transfer if it does not provide fair market value to the participant. The sixty (60) month look-back applies. The irrevocable annuity provides fair market value to the participant, if it passes each of the following tests. ()

a. Irrevocable Annuity Life Expectancy Test. The participant's life expectancy, shown in the following table, must equal or exceed the term of the annuity. Using Table 838.02.a. - Life Expectancy Tables compare the face value of the annuity to the participant's life expectancy at the purchase time. The annuity meets the life expectancy test if the participant's life expectancy equals or exceeds the term of the annuity. If the exact age is not in the Table, use the next lower age.

TABLE 838.02.a. - LIFE EXPECTANCY TABLE					
Age	Years of Life Remaining Male	Years of Life Remaining Female	Age	Years of Life Remaining Male	Years of Life Remaining Female
0	73.26	79.26	74	10.12	12.74
10	64.03	69.93	75	9.58	12.09
20	54.41	60.13	76	9.06	11.46
30	45.14	50.43	77	8.56	10.85
40	35.94	40.86	78	8.07	10.25
50	27.13	31.61	79	7.61	9.67
60	19.07	22.99	80	7.16	9.11
61	18.33	22.18	81	6.72	8.57

<u>62</u>	<u>17.60</u>	<u>21.38</u>
<u>63</u>	<u>16.89</u>	<u>20.60</u>
<u>64</u>	<u>16.19</u>	<u>19.82</u>
<u>65</u>	<u>15.52</u>	<u>19.06</u>
<u>66</u>	<u>14.86</u>	<u>18.31</u>
<u>67</u>	<u>14.23</u>	<u>17.58</u>
<u>68</u>	<u>13.61</u>	<u>16.85</u>
<u>69</u>	<u>13.00</u>	<u>16.14</u>
<u>70</u>	<u>12.41</u>	<u>15.44</u>
<u>71</u>	<u>11.82</u>	<u>14.75</u>
<u>72</u>	<u>11.24</u>	<u>14.06</u>
<u>73</u>	<u>10.67</u>	<u>13.40</u>

<u>82</u>	<u>6.31</u>	<u>8.04</u>
<u>83</u>	<u>5.92</u>	<u>7.54</u>
<u>84</u>	<u>5.55</u>	<u>7.05</u>
<u>85</u>	<u>5.20</u>	<u>6.59</u>
<u>86</u>	<u>4.86</u>	<u>6.15</u>
<u>87</u>	<u>4.55</u>	<u>5.74</u>
<u>88</u>	<u>4.26</u>	<u>5.34</u>
<u>89</u>	<u>3.98</u>	<u>4.97</u>
<u>90</u>	<u>3.73</u>	<u>4.63</u>
<u>95</u>	<u>2.71</u>	<u>3.26</u>
<u>100</u>	<u>2.05</u>	<u>2.39</u>
<u>110</u>	<u>1.14</u>	<u>1.22</u>

()

b. Annual Interest And Insurer Rating Test. The annuity must produce annual interest of at least five percent (5%). A variable rate annuity meets the interest rate test if the average yearly rate for the most recent five (5) year period is five percent (5%) or more. To rebut the five percent (5%) interest test, the participant must show that single premium annuities were not offered by insurers when he purchased the annuity and it is not practical to exchange the annuity for one with a higher interest rate. The insurer must be rated excellent or superior by an insurance rating firm. ()

c. Third Party Beneficiary Test. The annuity must not include a third-party beneficiary. ()

8389. TRUSTS AS ASSET TRANSFERS.

A trust established wholly or partly from the participant's assets is an asset transfer. Assets transferred to a trust on or after August 11, 1993 are subject to the asset transfer penalty, regardless of when the trust was established. If the trust includes assets of another person, the asset transfer penalty applies to the participant's share of the trust. (7-1-99)

~~839~~840. TRANSFER OF JOINTLY-OWNED ASSET.

Transfer of an asset owned jointly by the participant and another person is considered a transfer by the participant. The participant's share of the asset is used to compute the penalty. If the participant and his spouse are joint owners of the transferred asset, the couple's combined ownership is used to compute the penalty. If the spouse becomes eligible for long-term care Medicaid, the rest of the period of restricted coverage is divided between the participant and spouse. (7-1-99)

840. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

871. TREATMENT OF TRUSTS.

These trust treatment rules apply to all Medicaid participants. These rules apply to trusts established with the participant's assets on August 11, 1993 or later, and to trusts funded August 11, 1993 or later. This Section does not apply to an irrevocable trust if the participant meets the undue hardship exemption in Subsection ~~840~~841.121 of these rules. Assets transferred to a trust are subject to the asset transfer penalty except as provided in Sections 872 and 873 of these rules. Section 871 ~~does not apply~~ applies only to a trust ~~established by a will~~ created with the participant's assets. (7-1-99)()

01. Revocable Trust. Revocable trusts are treated as listed in Subsections 871.01.a. through 871.01.d.

of these rules. A revocable burial trust is not a trust for the purposes of Subsection 871.01 of these rules. (7-1-99)(____)

a. The body (corpus) of a revocable trust is a resource for Medicaid eligibility. The value of the trust is not counted in the resource assessment. (7-1-99)(____)

b. Payments from the trust to or for the participant are income. (7-1-99)

c. Any other payments from the trust are an asset transfer, triggering an asset transfer penalty period. (7-1-99)

d. The home and adjoining property loses its exclusion when transferred to a revocable trust, unless the participant or spouse is the sole beneficiary of the trust. The home is excluded again if removed from the trust. The exclusion restarts the next month. (7-1-99)

02. Irrevocable Trust. Irrevocable trusts are treated as listed in Subsections 871.02.a. through 871.02.g. of these rules. (7-1-99)(____)

a. The part of the body of an irrevocable trust, from which corpus or income payments could be made to or for the participant, is a resource. (7-1-99)

b. Payments made to or for the participant are income. (7-1-99)

c. Payments from the trust for any other reason are asset transfers, triggering the asset transfer penalty. (7-1-99)

d. Any part of the trust from which payment cannot be made to, or for the benefit of, the participant under any circumstances, is an asset transfer. (7-1-99)

e. The effective date of the transfer is the date the trust was established, or the date payments to the participant were foreclosed. (7-1-99)

f. The value of the trust, for calculating the transfer penalty, includes any payments made from that portion of the trust after the date the trust was established or payments were foreclosed. (7-1-99)

g. An irrevocable burial trust is not subject to treatment under Subsection 871.02 of these rules, unless funds in the trust can be paid for a purpose other than the participant's funeral and related expenses. The trust can provide that funds not needed for the participant's funeral expenses are available to reimburse Medicaid, or to go to the participant's estate. (7-1-99)(____)

(BREAK IN CONTINUITY OF SECTIONS)

~~916. -- 995. (RESERVED).~~

~~996. CONFIDENTIALITY.~~

~~Information received by the Department, from participants, is subject to the provisions of Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Disclosure of Department Records". (7-1-99)~~

~~997-999. (RESERVED).~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,
BLIND AND DISABLED (AABD)

DOCKET NO. 16-0305-0503

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of the temporary rule are April 1, 2005 and July 1, 2005.

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 56-202, Idaho Code, and 20 CFR Part 421.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

The rule changes in this docket will benefit those individuals needing assistance through the AABD program. Due to changes in the Social Security Act on asset definitions and criteria, these rules needed to be aligned with federal regulations. The rules for these changes are effective retroactive to April 1, 2005. Beginning July 1, 2005, federal law requires Idaho to participate in the Medicare Part D Prescription Drug Program for certain low income applicants. The guidelines for this program are effective as of July 1, 2005.

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

These rule changes are necessary for compliance with deadlines in governing law for this federal program, and confers a benefit.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

There is no anticipated fiscal impact to the state general fund as a result of these rule changes.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the changes were due to federal law and were not negotiable.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Peggy Cook at (208) 334-5969.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 5th day of August, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET 16-0305-0503

004. ~~RULE AVAILABILITY INCORPORATION BY REFERENCE.~~

~~Copies of these rules are available from the Administrative Procedures Section, 10th Floor, Pete T. Cenarrusa Building—450 West State Street, P.O. Box 83720, Boise, Idaho 83720-0036. The Department is adopting by reference the “Medicare Modernization Act - Prescription Drug Program Guidance to states for the Low Income Subsidy (LIS),” dated May 25, 2005. The guidelines may be viewed at the main office of the Department of Health and Welfare. It is also available online at: <http://www.cms.hhs.gov/medicarereform/guidance5-25-05.pdf>.~~

~~(7-1-99)(7-1-05)T~~

(BREAK IN CONTINUITY OF SECTIONS)

222. VEHICLES.

Vehicles are excluded as resources as described in Subsections 222.01 ~~through 222.02~~ of these rules. If more than one (1) vehicle is owned, the exclusion applies in the best way for the participant. ~~(7-1-99)(4-1-05)T~~

01. One Vehicle Excluded. One (1) vehicle is excluded, regardless of value ~~if the vehicle is:~~ ~~(7-1-99)(4-1-05)T~~

~~a. Necessary for employment. (7-1-99)~~

~~b. Necessary for the treatment of a specific or regular medical problem. (7-1-99)~~

~~c. Modified for operation by, or the transportation of, a handicapped person. (7-1-99)~~

~~d. Necessary, because of climate, terrain, distance or similar factors, for the performance of essential daily activities. (7-1-99)~~

~~02. Vehicle Value Excluded Up to Four Thousand Five Hundred Dollars. If no vehicle is excluded under Subsection 222.01, one (1) vehicle is excluded up to a fair market value of four thousand five hundred dollars (\$4,500). If the fair market value exceeds four thousand five hundred dollars (\$4,500), the excess value counts as a resource. (7-1-99)~~

032. Other Vehicles Not Excluded. The equity value of a vehicle not excluded under Subsection 222.01 ~~or 222.02~~, of these rules is a resource. ~~(7-1-99)(4-1-05)T~~

(BREAK IN CONTINUITY OF SECTIONS)

234. PERSONAL PROPERTY DEFINITION.

Personal property is ~~any~~ property ~~not real property~~ that an individual acquires or holds because of its value or as an

investment. Personal property is not considered household goods or personal effects. Personal property is considered a countable resource. (7-1-99)(4-1-05)T

235. FULLY EXCLUDED HOUSEHOLD GOODS AND PERSONAL EFFECTS.

One (1) wedding ring and one (1) engagement ring, per participant, are excluded regardless of value. Medical equipment and other items required by a person's physical condition are excluded Household goods and personal effects are excluded from resources, regardless of their dollar value. (7-1-99)(4-1-05)T

236. EXCLUDED HOUSEHOLD GOODS AND PERSONAL EFFECTS (RESERVED).

Two thousand dollars (\$2,000) equity value of household goods and personal effects is not counted toward the resource limit. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

268. SUPPORT AND MAINTENANCE ASSISTANCE (HOME ENERGY ASSISTANCE).

Support and Maintenance Assistance (SMA) is in-kind support and maintenance, or cash paid for food, ~~clothing~~, or shelter needs. It includes Home Energy Assistance. SMA Home Energy Assistance is aid to meet the costs of heating or cooling a home. SMA and Home Energy Assistance are excluded resources. (7-1-99)(4-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

300. INCOME DEFINITION.

Income is anything that can be used to meet needs for food, clothing, or shelter. Income is cash, wages, pensions, in-kind payments, inheritances, gifts, awards, rent, dividends, interest, or royalties the participant receives during a month. (7-1-99)

01. Cash Income. Cash income is currency, checks, money orders, or electronic funds transfers. Cash income includes Social Security checks, unemployment checks, and payroll checks. (7-1-99)

02. In-Kind Income. In-kind income is not cash. In-kind income is food, ~~clothing~~, or shelter. Wages paid as in-kind earnings, such as food, ~~clothing~~ or shelter, are counted as unearned income. Other in-kind income is not counted. (7-1-99)(4-1-05)T

03. Inheritances. An inheritance is cash, a right, or noncash items received as the result of someone's death. Cash or noncash items in an inheritance are income the month received and a resource the next month. A contested inheritance is not counted as income until the contest is settled and money is distributed. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

316. BLIND OR DISABLED STUDENT ~~CHILD~~ EARNED INCOME.

To qualify for this exclusion, the ~~child student~~ must be blind or disabled. The ~~child student~~ must be under age twenty-two (22). ~~The child must not be married or the head of a household.~~ The ~~child student~~ must be a ~~student~~ regularly attending high school, college, university or course of vocational or technical training, designed to prepare him for gainful employment. ~~Up to one thousand two hundred ninety dollars (\$1,290) per month of earned income, is excluded. The maximum exclusion is five thousand two hundred dollars (\$5,200) in a calendar year.~~ The maximum monthly and annual exclusions cannot exceed the limits set by SSI for the current year. (3-15-02)(4-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

324. GRANTS, SCHOLARSHIPS, AND FELLOWSHIPS.

Any grant, scholarship, or fellowship, not administered by the Commissioner of Education, and used for paying tuition, fees, or required educational expenses is excluded. This exclusion does not apply to any portion set aside or actually used for food, ~~clothing~~, or shelter. (7-1-99)(4-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

333. GOVERNMENT MEDICAL OR SOCIAL SERVICES.

Governmental payments authorized by Federal, State, or local law, for medical or social services, are excluded. Any cash provided by a nongovernmental medical or social services organization (including medical and liability insurers) for medical or social services already received is excluded. ~~Emergency Assistance (EA) medical and social services payments, issued by the Division of Family and Childrens Services, are excluded.~~ (7-1-99)(4-1-05)T

01. Medical Services. Medical services are diagnostic, preventive, therapeutic, or palliative treatment. Treatment must be performed, directed, or supervised by a State licensed health professional. Medical services include room and board provided during a medical confinement. Medical services include in-kind medical items such as prescription drugs, eye glasses, prosthetics, and their maintenance. In-kind medical items include devices intended to bring the physical abilities of a handicapped person to a par with an unaided person who is not handicapped. Electric wheelchairs, modified scooters, and ~~seeing eye dogs~~ service animals and their ~~dog~~ food are in-kind medical items. (7-1-99)(4-1-05)T

02. Social Service. A social service is any service, other than medical. A social service helps a handicapped or socially disadvantaged person to function in society on a level comparable to a person not handicapped or disadvantaged. Housebound and Aid and Attendance Allowances, including Unusual Medical Expense Allowances, received from the Veterans Administration are excluded. (7-1-99)

334. HOME ENERGY ASSISTANCE (HEA) AND SUPPORT AND MAINTENANCE ASSISTANCE (SMA).

SMA is in-kind support and maintenance, or cash paid for food, ~~clothing~~, or shelter needs. SMA includes HEA. HEA is aid to meet the costs of heating or cooling a home. SMA must be provided in-kind by a nonprofit organization. HEA must be provided in cash or in-kind by suppliers of home heating gas or oil or a municipal utility providing home energy. SMA and HEA are excluded. (7-1-99)(4-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

338. INFREQUENT OR IRREGULAR INCOME.

~~Infrequent or irregular income, under ten dollars (\$10) per month earned income and twenty dollars (\$20) per month unearned income, is~~ The first thirty dollars (\$30) of earned income and the first sixty dollars (\$60) of unearned income per calendar quarter are excluded, when they are infrequent or irregular payments. If the infrequent or irregular income exceeds these limits the total amount received is counted. Income is infrequent if the participant gets receives it once in a calendar quarter from a single source. Income is irregular if the participant could not reasonably expect to receive it. (7-1-99)(4-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

502. SPECIAL NEEDS ALLOWANCES.

Special needs allowances are a restaurant meals allowance and a ~~guide dog~~ service animal food allowance. (7-1-99)(4-1-05)T

01. Restaurant Meals. The restaurant meals allowance is fifty dollars (\$50) monthly. A physician must state the participant is physically unable to prepare food in his home. A participant able to prepare his food, but living in a place where cooking is not permitted, may be budgeted the restaurant meals allowance for up to three (3) months. (7-1-99)

02. ~~Guide Dog~~ Service Animal Food. The ~~guide dog~~ service animal food allowance is seventeen dollars (\$17) monthly. The allowance is budgeted for a blind or disabled participant, using a ~~guide dog~~ service animal trained by a recognized ~~guide dog~~ school. (7-1-99)(4-1-05)T

(BREAK IN CONTINUITY OF SECTIONS)

873. PAYMENTS FROM AN EXEMPT TRUST FOR DISABLED PERSON OR POOLED TRUST. Cash payments from an exempt trust for a disabled person or a pooled trust must be treated as described in Subsections 873.01 through 873.04 of these rules. (7-1-99)(4-1-05)T

01. Payments From Exempt Trust. Cash payments from an exempt trust for a disabled person are income in the month received. (7-1-99)

02. Payments From Pooled Trust. Cash payments from a pooled trust made directly to the participant are income in the month received. (7-1-99)

03. Payments for Food, ~~Clothing~~, or Shelter. Payments for the participant's food, ~~clothing~~ or shelter are income in the month paid. The payments for food, ~~clothing~~ or shelter are valued at one-third (1/3) of the AABD budgeted needs for the participant's living arrangement. (7-1-99)(4-1-05)T

04. Payments Not Made to Participant. Payments from the exempt trust not made to, or on behalf of, the participant are an asset transfer. (7-1-99)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0407

NOTICE OF VACATION OF PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency is vacating the rulemaking previously initiated under this docket. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a summary of the reasons for vacating this rulemaking:

The proposed rule amendment, under Docket 16-0309-0407 published on October 6, 2004, in the Idaho Administrative Bulletin, Vol. 04-10 on pages 365 and 366, is being vacated. The Department has decided not to go pending with this rule change because criminal history statute changes proposed before the 2005 Legislature were not adopted.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Paul Leary at (208) 364-1840.

DATED this 17th day of August, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0502

NOTICE OF RULEMAKING - PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202(b) and 56-203(g), Idaho Code and Senate Concurrent Resolution 110, 2001 Legislative Session.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the July 6, 2005, Idaho Administrative Bulletin, Vol. 05-7, pages 17 through 19.

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Chris Baylis at (208) 364-1891.

DATED this 11th day of August, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16, TITLE 03, CHAPTER 09

RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

There are no substantive changes from the proposed rule text.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-7, July 6, 2005, pages 17 through 19.](#)

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2006 Idaho State Legislature as a final rule.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.09 - RULES GOVERNING THE MEDICAL ASSISTANCE PROGRAM

DOCKET NO. 16-0309-0503

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

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 56-202(b) and 56-203(g), Idaho Code, and House Bill No. 190 passed by the 2005 Legislature now codified in Section 56-118, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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

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

House Bill No. 190 passed by the 2005 Idaho Legislature requires the Department to discuss reimbursement rates annually with Medicaid mental health and developmental disability providers. An annual report to the Legislature is also required. This rulemaking will identify: (1) how rate comparisons with other state Medicaid programs will be conducted; (2) how costs of Medicaid service providers of mental health and developmental disabilities will be obtained and evaluated; (3) current access to services; and (4) identify other methods used to compile an annual report to the Department and Legislature on reimbursement.

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

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

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

Current Medicaid staff will conduct the surveys and prepare a report for the Legislature. The cost of their time to perform this work will be no more than \$7,000. This staff time will be diverted from other projects. When the survey information is shared with the Legislature, a possible result may be an increase/decrease in Medicaid reimbursement to providers.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, June 1, 2005 - Vol. 05-6, page 31. A negotiated rule meeting was held on June 10, 2005 in Boise, Idaho attended by providers, advocates, a legislative representative and Department stakeholders.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sheila Pugatch at (208) 364-1817.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 11th day of August, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0309-0503

061. COMMUNITY-BASED PROVIDER REIMBURSEMENT REVIEW AND REPORT.

01. Annual Review of Reimbursement Rates. The annual reimbursement rate review does not apply to those providers, services, or both, whose rate adjustments are addressed in Title 56 Chapter 1 and Title 39 Chapter 56 of Idaho Code. Under Section 56-118, Idaho Code, reimbursement rates will be reviewed annually for services rendered by the following community based service providers: (7-1-05)T

- a.** Developmental Disability Agencies; (7-1-05)T
 - b.** Psychosocial Rehabilitation Agencies; (7-1-05)T
 - c.** Mental Health Clinics; (7-1-05)T
 - d.** Residential Habilitation Agencies; (7-1-05)T
 - e.** Independent Residential Habilitation Providers (Services provided in Certified Family Homes); (7-1-05)T
- and
- f.** Targeted Service Coordination/Case Management Agencies. (7-1-05)T

02. Voluntary Submission of Financial Costs. The providers identified in Subsection 061.01 of these rules may voluntarily submit financial cost information to the Department by completing a survey developed by the Department. The information submitted is self-reported and unaudited by the Department. Provider-specific information will be kept confidential consistent with Section 9-340D, Idaho Code. The annual reimbursement rate review does not apply to those providers, services, or both, whose rate adjustments are addressed in Title 56 Chapter 1 and Title 39 Chapter 56 of Idaho Code. (7-1-05)T

03. Survey Form Information Submitted by Providers. The service providers identified in Section 56-118, Idaho Code and listed in Subsection 061.01 of these rules, will submit the following information on the survey form provided to them by the Department: (7-1-05)T

- a.** Current wages paid to direct service and support service staff; (7-1-05)T
- b.** Other business operating costs; and (7-1-05)T
- c.** Recommendations regarding how to improve coordination of services, management of services, efficiency of service delivery, and quality of service delivery. (7-1-05)T

04. Information Collected by the Department. The Department will collect the following information: (7-1-05)T

- a.** Current reimbursement rates from comparable State Medicaid Programs with demographics similar to Idaho; and (7-1-05)T
- b.** Reimbursement rates paid by private or public payers, when available and comparable. (7-1-05)T
- 05.** Contents of the Department's Report. The Department will compile a report to include the following: (7-1-05)T
- a.** Survey results; (7-1-05)T
- b.** Comparison of our reimbursement rates to those paid by comparable State Medicaid programs; (7-1-05)T
- c.** Comparison of our reimbursement rates to those paid by identified private and public payers; and (7-1-05)T
- d.** Cost savings recommendations from providers. (7-1-05)T
- 06.** Rate Change Recommendations. The report will contain rate change recommendations from the Department only when one (1) or both of the following exist as specified in 42 U.S.C. Section 1396(a)(30)(A): (7-1-05)T
- a.** Participant access issues related to the attraction and retention of qualified providers; and(7-1-05)T
- b.** Quality of care issues that can be enhanced by rate changes. (7-1-05)T
- 07.** Submission Date of the Department Report. The report will be submitted by November 30th of each year to the Director, the Joint Finance-Appropriations Committee, and the Health and Welfare Committees for both the Senate and the House of Representatives. (7-1-05)T
- ~~0612.~~ -- 063. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.19 - RULES GOVERNING CERTIFIED FAMILY HOMES

DOCKET NO. 16-0319-0501 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

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 39-3505, Idaho Code.

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

Wednesday, October 12, 2005
7:00 - 9:00 p.m.
DHW - Region I Office
1120 Ironwood Dr., Suite 102
Coeur d'Alene, ID

Thursday, October 13, 2005
7:00 - 9:00 p.m.
DHW - Region IV Office
1720 Westgate Dr., Suite D
Room 119
Boise, ID

Monday, October 17, 2005
7:00 - 9:00 p.m.
DHW - Region VI
Human Development Center
421 Memorial Dr., Room 210
Pocatello, ID

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

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

This chapter of rules is being repealed to better serve Idaho's population of vulnerable adults living in certified family homes. The entire chapter of rules is being rewritten and published in this Bulletin under Docket 16-0319-0502. Legislation adopted in 2005 made this chapter of rules out of alignment with the statute changes. This chapter had requirements that were better suited for larger facilities and were not always appropriate for a certified family home serving one or two people.

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

These rules are being repealed as a temporary rule because of changes to statute taking effect on July 1, 2005.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

There is no fee or charge imposed or increased with the repeal of this chapter.

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

There is no fiscal impact to the state general fund with the repeal of this chapter.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the June Idaho Administrative Bulletin, Volume 05-06 page 32.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact David Simmitt at (208) 364-1992.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 8th day of August, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
(208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16.03.19 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.19 - RULES GOVERNING CERTIFIED FAMILY HOMES

DOCKET NO. 16-0319-0502 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2005.

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 39-3505, Idaho Code.

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

Wednesday, October 12, 2005
7:00 - 9:00 p.m.
DHW - Region I Office
1120 Ironwood Dr., Suite 102
Coeur d'Alene, ID

Thursday, October 13, 2005
7:00 - 9:00 p.m.
DHW - Region IV Office
1720 Westgate Dr., Suite D
Room 119
Boise, ID

Monday, October 17, 2005
7:00 - 9:00 p.m.
DHW - Region VI
Human Development Center
421 Memorial Dr., Room 210
Pocatello, ID

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

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

This chapter of rules is being rewritten to better serve Idaho's population of vulnerable adults living in certified family homes that provide a safe, home-like environment. The rules being repealed had requirements suited for larger facilities and were not always appropriate for a family home. The repeal of the old chapter of rules is published in this Bulletin under Docket 16-0319-0501. Legislation adopted in 2005 made statute changes for certified family homes. These rules are being adopted as temporary rules to align with the statute changes that became effective on July 1, 2005.

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

These temporary rules are necessary to align rules with statute changes effective July 1, 2005.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein:

This chapter of rules is a rewrite of existing rules, and no additional fees have been added or imposed.

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

These rules changes will not have a fiscal impact on the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the June Idaho Administrative Bulletin, Vol. 05-06 page 32.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact David Simnitt at (208) 364-1992.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 15th day of August, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0319-0502

IDAPA 16, TITLE 03, CHAPTER 19

16.03.19 - RULES GOVERNING CERTIFIED FAMILY HOMES

000. LEGAL AUTHORITY.

The State of Idaho Board of Health and Welfare is authorized under Sections 56-1005 and 39-3501, Idaho Code, to adopt and enforce rules and standards for Certified Family Homes. (7-1-05)T

001. TITLE, SCOPE AND EXCEPTIONS.

01. Title. These rules are cited as IDAPA 16.03.19, “Rules Governing Certified Family Homes”. (7-1-05)T

02. Scope. These rules set the minimum standards and administrative requirements for any home that is paid to care for an adult living in the home, when the adult is elderly or has a developmental disability, mental illness, or physical disability, and needs assistance with activities of daily living. (7-1-05)T

03. Exceptions to These Rules. These rules do not apply to the following: (7-1-05)T

a. Any home that provides only housing, meals, transportation, housekeeping or recreational and social activities. (7-1-05)T

b. Any health facility defined by Title 39, Chapter 13, Idaho Code. (7-1-05)T

c. Any residential care or assisted living facility defined by Title 39, Chapter 33, Idaho Code. (7-1-05)T

d. Any arrangement for care in a relative's home that is not compensated through a federal or state program. (7-1-05)T

04. State Certification to Supersede Local Regulation. These rules will supersede any program of any political subdivision of the state which certifies or sets standards for certified family homes. These rules do not supersede any other local regulations. (7-1-05)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for this chapter of rule. (7-1-05)T

003. ADMINISTRATIVE APPEALS.

All contested cases are governed by the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-05)T

004. INCORPORATION BY REFERENCE.

The Americans with Disabilities Act Accessibility Guidelines, 28 CFR Part 36, Appendix A to Part 36 - Standards for Accessible Design, is incorporated by reference. The internet address for these guidelines is "http://www.ada.ufl.edu/ADAc/cdpages/htm_pubs/reg3a.htm#Anchor-Appendix-52467". (7-1-05)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (7-1-05)T

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho, 83720-0036. (7-1-05)T

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho, 83702. (7-1-05)T

04. Telephone. The telephone number for the business office is (208) 334-5500. (7-1-05)T

05. Internet Website. The Department Internet Website is: <http://www.healthandwelfare.idaho.gov>. (7-1-05)T

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. The use or disclosure of information related to Department client records covered by these rules must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," and federal Public Law 103-209. (7-1-05)T

02. Public Records. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for examining and copying public records are made. Unless otherwise exempted, all public records in the custody of the Department of Health and Welfare are subject to disclosure. (7-1-05)T

007. - 008. (RESERVED).

009. MANDATORY CRIMINAL HISTORY CHECK REQUIREMENTS.

01. Compliance with Department Criminal History Check. The provider and all adults living in the home are required to comply with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". The resident is exempt from criminal history check requirements. (7-1-05)T

02. When Certification Can Be Granted. The provider must have a completed criminal history check, including clearance, prior to certification. Any other adult living in the home must complete a self-declaration form, must be fingerprinted, and must not have any designated crimes listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks". (7-1-05)T

03. New Adults in the Home After Certification Is Granted. A new adult who plans to live in the home must complete a self-declaration form, must be fingerprinted, and must not have any designated crimes listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," before moving into the home. Any adult who is a visitor in the home and leaves within thirty (30) days, is not required to have a criminal history check but must not have unsupervised contact with the resident. (7-1-05)T

04. Minor Child Turns Eighteen. A minor child turning eighteen (18) and living in the home must complete a self-declaration form, must be fingerprinted, and must not have disclosed any designated crimes listed in

IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Check," within thirty (30) days following the month of his eighteenth birthday. (7-1-05)T

05. Substitute Caregiver. A substitute caregiver must complete a self-declaration form, be fingerprinted, and must not have disclosed any designated crimes listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," prior to any unsupervised contact with the resident. (7-1-05)T

06. Additional Criminal Convictions. Once criminal history clearances have been received, the provider must immediately report to the Department any additional criminal convictions for himself, any other adult living in the home or a substitute caregiver. (7-1-05)T

07. Notice of Pending Investigations or Charges. Once criminal history clearances have been received, the provider must immediately report to the Department when he, any other adult living in the home, or a substitute caregiver is charged with or under investigation for abuse, neglect or exploitation of any vulnerable adult or child, criminal charges, or when an adult protection or child protection complaint is substantiated. (7-1-05)T

010. DEFINITIONS.

01. Abuse. A nonaccidental act of sexual, physical or mental mistreatment or injury of the resident through the action or inaction of another individual. (7-1-05)T

02. Activities of Daily Living. The performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment, including bathing, washing, dressing, toileting, grooming, eating, communicating, continence, managing money, mobility, and associated tasks. (7-1-05)T

03. Adult. A person who has attained the age of eighteen (18) years. (7-1-05)T

04. Alternate Caregiver. A certified family home provider approved by the Department to care for a resident from another certified family home for up to thirty (30) consecutive days when the original provider is temporarily absent or unable to care for the resident. (7-1-05)T

05. Assessment. The conclusion reached using uniform criteria developed by the Department and relevant councils for determining a person's need for care and services. (7-1-05)T

06. Certificate. A permit issued by the Department to operate a certified family home. (7-1-05)T

07. Certified Family Home. A home certified by the Department to provide care to one (1) or two (2) adults, who are unable to reside on their own and require help with activities of daily living, protection and security, and need encouragement toward independence. (7-1-05)T

08. Certified Family Home Care Provider. The adult member of the certified family home living in the home who is responsible for providing care to the resident. The certified family home care provider is referred to as "the provider" in this chapter of rules. (7-1-05)T

09. Chemical Restraint. The use of any medication that results or is intended to result in the modification of behavior. (7-1-05)T

10. Criminal Offense. Any crime as defined in Section 18-111, Idaho Code, in 18 U.S.C. Section 4A1.2 (o), and 18 U.S.C. Sections 1001 through 1027. (7-1-05)T

11. Department. The Idaho Department of Health and Welfare. (7-1-05)T

12. Director. The Director of the Idaho Department of Health and Welfare or his designee. (7-1-05)T

13. Exploitation. The misuse of a vulnerable adult's funds, property, or resources by another person for profit or advantage. (7-1-05)T

- 14. Immediate Jeopardy.** An immediate or substantial danger to a resident. (7-1-05)T
- 15. Incidental Supervision.** Supervision provided by an individual approved by the provider to supervise the resident, not to exceed four (4) hours per week. (7-1-05)T
- 16. Level of Care.** A categorical assessment of the resident's functional ability and the degree of care required in the areas of activities of daily living, supervision, response to emergency situation, mobility, medications and behavior management. (7-1-05)T
- 17. Neglect.** The failure to provide food, clothing, shelter or medical care to sustain the life and health of a resident. (7-1-05)T
- 18. Negotiated Service Agreement.** The agreement between the resident and his representative, if applicable, and the home based on the assessment, physician's orders, if any, admission records, if any, and desires of the resident, that outlines services to be provided and the obligations of the home and the resident. (7-1-05)T
- 19. Owner.** Any recognized legal entity, governmental unit, or person having legal ownership of the certified family home as a business operation. (7-1-05)T
- 20. Plan of Service.** The generic term used in these rules to refer to the Negotiated Service Agreement, Personal Care Plan, Plan of Care, Individual Support Plan or any other comprehensive service plan. (7-1-05)T
- 21. PRN.** A medication or treatment ordered by a medical professional to an individual allowing the medication or treatment to be given as needed. (7-1-05)T
- 22. Relative.** A person related by birth, adoption, or marriage to the first degree and grandparent and grandchild. (7-1-05)T
- 23. Resident.** An adult who lives in a Certified Family Home and requires supervision and one (1) or more of the following services: protection, assistance with decision-making and activities of daily living, or direction toward self-care skills. (7-1-05)T
- 24. Substitute Caregiver.** An individual approved by the provider to provide care and supervision to the resident in the provider's certified family home for up to thirty (30) consecutive days. (7-1-05)T
- 011. -- 099. (RESERVED).**
- 100. CERTIFICATION REQUIREMENTS.**
Certification is required in order to operate a certified family home in the State of Idaho. The Department will issue a certificate to a home when all certification requirements are met. (7-1-05)T
- 01. Certificate Issued in the Name of Provider.** The certificate is issued in the name of the provider applying for certification, and only to the address of the home stated in the application. A new certificate is required if the provider or the location of the certified family home changes. (7-1-05)T
- 02. Accessibility to the Home.** The home, physical premises, and all records required under these rules, must be accessible at all times to the Department for the purposes of inspection, with or without prior notification. (7-1-05)T
- 03. Number of Residents in the Home.** A home cannot be certified for more than two (2) residents. An exception may be granted by the Department as described in Section 140 of these rules. (7-1-05)T
- 04. Certification Limitations.** (7-1-05)T
- a.** A home cannot be certified if it also provides room or board to any person who is not a resident as defined by these rules or a family member. A waiver may be granted by the Department when the individual receiving room or board is the spouse of the resident and does not require certified family home care or any higher

level of care; (7-1-05)T

- b.** A home cannot be certified as a certified family home and a child foster home at the same time. (7-1-05)T

05. Certification Study Required. Following receipt of an acceptable application and other required documents, the Department will begin a certification study within thirty (30) days. The certification study, along with the application and other required material, will serve as the basis for issuing or denying a certificate. The study will include the following: (7-1-05)T

- a.** A review of all material submitted; (7-1-05)T
- b.** A scheduled home inspection; (7-1-05)T
- c.** An interview with the proposed provider; (7-1-05)T
- d.** An interview with provider's family, if necessary; (7-1-05)T
- e.** A review of the number, age, and sex of children or other adults in the home to evaluate the appropriateness of a placement to meet the needs of the resident; (7-1-05)T
- f.** A medical or psychological examination of the provider or family members, if the Department determines it is necessary; and (7-1-05)T
- g.** Other information necessary to verify that the home is in compliance with these rules. (7-1-05)T

06. Provider Training Requirements. As a condition of initial certification, all providers must receive training in the following areas: (7-1-05)T

- a.** Resident rights; (7-1-05)T
- b.** Certification in first aid and Cardio-Pulmonary Resuscitation (CPR) which must be kept current; (7-1-05)T
- c.** Emergency procedures; (7-1-05)T
- d.** Fire safety, fire extinguishers, and smoke alarms; (7-1-05)T
- e.** Completion of approved "Assistance with Medications" course; and (7-1-05)T
- f.** Complaint investigations and inspection procedures. (7-1-05)T

07. Effect of Previous Revocation or Denial of Certificate or License. The Department is not required to consider the application of any applicant who has had a health care certificate or license denied or revoked until five (5) years have elapsed from the date of denial or revocation according to Section 39-3525, Idaho Code. (7-1-05)T

101. APPLICATION FOR CERTIFICATION.

The applicant must apply for certification on forms provided by the Department, and must provide information required by the Department. (7-1-05)T

- 01. Completed and Signed Application.** A completed application form signed by the applicant. (7-1-05)T

02. Statement to Comply. A written statement that the applicant has thoroughly read and reviewed this chapter and is prepared to comply with all of its provisions. (7-1-05)T

03. Criminal History and Background Clearance. Satisfactory evidence that the applicant and all adults living in the home are of reputable and responsible character, including a criminal history clearance as provided in Section 009 of these rules. (7-1-05)T

04. Statement Disclosing Revocation or Disciplinary Actions. A written statement that discloses any revocation or other disciplinary action taken or in the process of being taken against the applicant as a care provider in Idaho or any other jurisdiction, or a statement from the applicant stating he has never been involved in any such action. (7-1-05)T

05. Electrical Inspection. A current statement from a licensed electrician or the local/state electrical inspector that all wiring in the home complies with applicable local code. (7-1-05)T

06. Environmental Sanitation Inspection. If the home is not on a municipal water supply or sewage disposal system, a current statement from the local environmental health agency or, if not available, a current statement from a person in the business of servicing these systems, that the water supply and sewage disposal system meet the legal standards. (7-1-05)T

07. Proof of Insurance. Proof of homeowner's or renter's insurance on the home and the resident's belongings. For continued certification, insurance must be kept current. (7-1-05)T

08. List of Individuals Living in the Home. A list of all individuals living in the home at the time of application and their relationship to the applicant. (7-1-05)T

09. Other Information as Requested. Other information that may be requested by the Department for the proper administration and enforcement of the provisions of this chapter. (7-1-05)T

10. Termination of Application Process. Failure of the applicant to cooperate with the Department in the application process will result in the termination of the application process. Failure to cooperate means that the information described in Section 101 of these rules is not provided in a timely manner, or not provided in the form requested by the Department, or both. (7-1-05)T

102. -- 109. (RESERVED).

110. ISSUANCE OF CERTIFICATE.

01. Certificate. A certificate is valid for no more than twelve (12) months from the date of approval. The certificate will expire at the end of the stated period unless it is continued in effect by the Department as provided in Subsection 110.03.c. of these rules. (7-1-05)T

a. The initial certificate requires a home inspection by the Department. (7-1-05)T

b. The certificate is valid only for the location and person named in the application and is not transferable or assignable; (7-1-05)T

c. The certificate must be available at the home on request. (7-1-05)T

02. Provisional Certificate. A provisional certificate may be issued to a home that is not in substantial compliance with these rules if the deficiencies do not adversely affect the health or safety of the resident. (7-1-05)T

a. Provisional certificates may be issued for up to six (6) months and are contingent on an approved plan to correct all deficiencies prior to expiration of the provisional certificate. (7-1-05)T

b. A provisional certificate may be replaced with a certificate when the Department has revisited the home prior to the expiration of the provisional certificate and has determined that the home qualifies for a certificate. (7-1-05)T

c. A home will not be issued more than one (1) provisional certificate in any twelve (12) month

period. (7-1-05)T

03. Renewal of Certificate. To renew the certificate, the provider must submit a written request on a form provided by the Department. The completed renewal application form and any required documentation must be returned to the Department at least thirty (30) days prior to the expiration of the existing certificate. (7-1-05)T

a. A home inspection is required the year after the initial home certification study and at least every twenty-four (24) months thereafter. (7-1-05)T

b. If the Department determines a home inspection is not required to renew the certificate, the provider must submit the renewal application and copies of the following documentation to renew the certificate: (7-1-05)T

i. Current first aid and CPR cards; (7-1-05)T

ii. Furnace, well, and fireplace inspection reports, as applicable; (7-1-05)T

iii. Annual fire extinguisher inspection reports or sales receipts for fire extinguishers less than twelve (12) months old; (7-1-05)T

iv. Fire log of smoke detector checks, fire extinguisher checks, and fire drill and evacuation summaries; (7-1-05)T

v. Training logs; (7-1-05)T

vi. List of individuals currently living in the home and individuals who moved in and out of the home during the year; (7-1-05)T

vii. Proof of home owner's or renter's insurance; (7-1-05)T

viii. Request for waiver or renewal of waiver and meets the requirements in Section 120 of these rules; and

ix. Other information as requested by the Department. (7-1-05)T

c. The existing certificate, unless suspended or revoked, remains valid until the Department has acted on the application renewal when the renewal application and supporting documentation is filed in a timely manner. (7-1-05)T

04. Change of Ownership Certification Requirements. Certificates are not transferable from one (1) individual to another or from one (1) location to another. The home must be recertified using the same procedure as a new home that has never been certified when a change of ownership, lease, or location occurs. (7-1-05)T

05. Denial of Certificate. The Department may deny the issuance of a certificate when conditions exist that endanger the health, safety, or welfare of any resident or when the home is not in substantial compliance with these rules. Additional causes for denial of a certificate include the following: (7-1-05)T

a. The applicant or provider has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a certificate; (7-1-05)T

b. The applicant or provider has been convicted of fraud, gross negligence, abuse, assault, battery or exploitation; (7-1-05)T

c. The applicant has been convicted of a criminal offense within the past five (5) years, other than a minor traffic violation or similar minor offense; (7-1-05)T

d. The applicant or provider has been denied or has had revoked any health facility, residential care or

assisted living facility license, or certified family home certificate; (7-1-05)T

e. The applicant or provider has been convicted of operating a health facility, residential care or assisted living facility, or certified family home without a license or certificate; (7-1-05)T

f. A court has ordered that the applicant or provider must not operate a health facility, residential care or assisted living facility, or certified family home; (7-1-05)T

g. The applicant or provider is listed on the statewide Child Abuse Registry, Adult Protection Registry, Sexual Offender Registry, or Medicaid exclusion lists; or (7-1-05)T

h. The applicant or provider is directly under the control or influence of any person who is described in Subsections 110.05.a. through 110.05.g. of these rules. (7-1-05)T

06. Revocation of Certificate. The Department may revoke any certificate when conditions exist which endanger the health, safety, or welfare of any resident, or when the home is not in substantial compliance with these rules as described in Section 913 of these rules. (7-1-05)T

07. Procedure for Appeal of Denial or Revocation of a Certificate. (7-1-05)T

a. Immediately upon denial of any application for a certificate, or revocation of a certificate, the Department will notify the applicant or provider in writing by certified mail or by personal service of its decision, the reason for its decision, and how to appeal the decision. (7-1-05)T

b. The appeal is subject to the hearing provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-05)T

08. Family Home Operating Without a Certificate. A person found to be operating a family home without first obtaining a certificate may be referred for criminal prosecution. Upon discovery of a family home operating without a certificate, the Department will refer residents to the appropriate placement or adult protective services agency if: (7-1-05)T

a. There is an immediate threat to any resident's health and safety; or (7-1-05)T

b. The home does not cooperate with the Department to apply for certification, meet certification standards and obtain a valid certificate. (7-1-05)T

111. -- 114. (RESERVED).

115. REQUIRED ONGOING TRAINING.

All providers must document a minimum of eight (8) hours per year of ongoing, relevant training in the provision of supervision, services, and care. The training must consist of at least four (4) hours of classroom training. The remaining four (4) hours may be independent study or classroom training. Up to two (2) hours of ongoing first aid or CPR will count toward the eight (8) hour requirement. The initial provider training required in Subsection 100.06 of these rules will count toward the first year's eight (8) hour training requirement. (7-1-05)T

116. -- 119. (RESERVED).

120. WAIVERS.

The Department may grant waivers. The decision to grant a waiver in one (1) home is not a precedent or applicable to any other home. (7-1-05)T

01. Written Request. A written request for a waiver must be submitted to the Department. The request must include the following: (7-1-05)T

a. Reference to the section of the rules for which the waiver is requested; (7-1-05)T

b. Reasons that show good cause why the waiver should be granted, including any extenuating circumstances and any compensating factors or conditions that may have bearing on the waiver, such as additional floor space or additional staffing; (7-1-05)T

c. Written documentation that assures resident health and safety will not be jeopardized if the waiver is granted. (7-1-05)T

02. Waiver Expiration. A waiver may be granted for a period of no more than twelve (12) months. (7-1-05)T

03. Waiver Renewal. If the provider wishes to renew a waiver, he must submit a written request to the Department. The appropriateness of renewing a waiver will be determined by the Department. (7-1-05)T

04. Waiver Not Transferable. A waiver granted under Section 120 is not transferable to any other provider, address, or resident. (7-1-05)T

121. -- 129. (RESERVED).

130. NURSING FACILITY LEVEL OF CARE WAIVER REQUIREMENTS.

A home may care for one (1) resident who requires nursing facility level of care without obtaining a waiver. A home seeking to provide care to two (2) residents who require nursing facility level of care must request a waiver in writing from the Department as required in Section 39-3554, Idaho Code. (7-1-05)T

01. Conditions for a Waiver. The Department will issue a written waiver permitting the arrangement when: (7-1-05)T

a. Each of the residents provides a written statement to the Department requesting the arrangement; (7-1-05)T

b. Each of the residents making the request is competent, informed, and has not been coerced; (7-1-05)T

c. The Department finds the arrangement safe and effective. (7-1-05)T

02. Revoking a Waiver. The Department will revoke the waiver when: (7-1-05)T

a. There is a threat to the life or safety of either resident; (7-1-05)T

b. One (1) of the residents leaves the home permanently; (7-1-05)T

c. One (1) of the residents notifies the Department in writing that he does not wish to live in the home with the other resident; or (7-1-05)T

d. The Department finds the arrangement is no longer safe and effective. (7-1-05)T

03. Waiver Not Transferable. A waiver granted under Section 130 is not transferable to any other provider, address, or resident. (7-1-05)T

131. -- 139. (RESERVED).

140. EXCEPTION TO THE TWO RESIDENT LIMIT.

01. Application for Exception. A home may apply to the Department for an exception to the two (2) resident limit to care for three (3) or four (4) residents. (7-1-05)T

02. Criteria for Determination. The Department will determine if safe and appropriate care can be provided based on resident needs. The Department will consider, at a minimum, the following factors in making its

- determination: (7-1-05)T
- a. Each current or prospective resident's physical, mental and behavioral status and history; (7-1-05)T
 - b. The household composition including the number of adults, children and other family members requiring care from the provider; (7-1-05)T
 - c. The training, education, and experience of the provider to meet each resident's needs; (7-1-05)T
 - d. Potential barriers that might limit resident safe access to and exit from the rooms in the home; (7-1-05)T
 - e. The number and qualifications of care givers in the home; (7-1-05)T
 - f. The desires of the prospective and current residents; (7-1-05)T
 - g. The individual and collective hours of care needed by the residents; (7-1-05)T
 - h. The physical layout of the home and the square footage available to meet the needs of all persons living in the home; and (7-1-05)T
 - i. If an exception to the two (2) resident limit would result in two (2) or more residents who require nursing facility level of care living in the home, then the application must also include the information required in Section 130 of these rules. (7-1-05)T
- 03. Other Employment.** Providers of three (3) or four (4) bed homes must not have other gainful employment unless: (7-1-05)T
- a. The total direct care time for all residents, as reflected by the plan of service and assessments, does not exceed eight (8) hours per day; (7-1-05)T
 - b. The provider is immediately available to meet resident needs as they arise; and (7-1-05)T
 - c. Each resident is supervised at all times unless the assessment or plan of service indicates the resident may be left unattended for designated periods of time. (7-1-05)T
- 04. Additional Training.** Providers of three (3) or four (4) bed homes must obtain additional training to meet the needs of the residents as determined necessary by the Department. (7-1-05)T
- 05. Guardianship.** A provider applying to care for three (3) or four (4) residents may not be the guardian of any resident unless either of the following applies: (7-1-05)T
- a. The guardianship was established prior to July 1, 2001; or (7-1-05)T
 - b. The proposed guardian is a parent, child, sibling, or grandparent of the resident. (7-1-05)T
- 06. Exception Nontransferable.** An exception to care for more than two (2) residents will not be transferable to another provider, address, or resident. (7-1-05)T
- 07. Reassessment of Exception.** An exception to care for more than two (2) residents must be reassessed at least annually and when either of the following occurs: (7-1-05)T
- a. Each time a new admission is considered; or (7-1-05)T
 - b. When there is a significant change in any of the factors specified in Subsection 140.02 of these rules. (7-1-05)T

08. Annual Home Inspection. A home with an exception to care for more than two (2) residents must have a home inspection at least annually. (7-1-05)T

09. Shared Sleeping Rooms. In addition to the requirements in Section 700 of these rules, no more than two (2) residents will be housed in any multi-bed sleeping room. (7-1-05)T

141. -- 149. (RESERVED).

150. INSPECTIONS OF HOMES.

The Department will inspect certified family homes at least every twenty-four (24) months, beginning with the first month of the most recent certification. Inspections may occur more frequently as the Department deems necessary. The Department may consider the results of previous inspections, history of compliance with rules, and complaints to determine the frequency of inspections. (7-1-05)T

01. Notice of Inspection. All inspections and investigations, except for the initial certification study, may be made unannounced and without prior notice. (7-1-05)T

02. Inspection by Department or Its Agent. The Department may use the services of any legally qualified person or organization, either public or private, to examine and inspect any home requesting certification. (7-1-05)T

03. Access by Inspector. An inspector must have full access and authority to examine quality of care and services delivery, resident records, records including any records or documents pertaining to any financial transactions between residents and the home, resident accounts, physical premises, including the condition of the home, grounds and equipment, food service, water supply, sanitation, maintenance, housekeeping practices, and any other areas necessary to determine compliance with these rules and standards. (7-1-05)T

a. An inspector has the authority to interview the provider, any adults living in the home, the resident and the resident's family. Interviews with residents will be confidential and conducted privately unless otherwise specified by the resident. (7-1-05)T

b. The inspector has full authority to inspect the entire home, accompanied by the provider, including personal living quarters of family members living in the home, to check for inappropriate storage of combustibles, faulty wiring, or other conditions that may have a direct impact on the operation of the certified family home. (7-1-05)T

04. Written Report. Following any investigation or inspection, the Department will provide a written report to the provider of the home within thirty (30) days. The report will include the findings of the investigation or inspection. (7-1-05)T

05. Plan of Correction. If deficiencies are identified during the investigation or inspection, the home will be sent a statement of deficiencies which requires a plan of correction. (7-1-05)T

a. Depending on the severity of the deficiency, the home may be given up to fourteen (14) calendar days to develop a written plan of correction and to return the plan of correction to the Department. (7-1-05)T

b. An acceptable plan of correction must include how the deficiency was corrected or how it will be corrected, what steps have been taken to assure that the deficiency does not recur, and acceptable time frames for correction of the deficiency. (7-1-05)T

c. Follow-up inspections may be conducted to determine whether corrections to deficiencies are being made according to time frames established in the plan of correction. (7-1-05)T

d. The Department may provide consulting services to a home, upon request, to assist in identifying and correcting deficiencies and upgrading the quality of care. (7-1-05)T

151. -- 159. (RESERVED).

160. COMPLAINT PROCEDURE.

Any person who believes that any rule has been violated by a home may file a complaint with the Department at the address listed in Section 005 of these rules or at the Department's Regional Office. (7-1-05)T

01. Investigation. The Department will investigate any complaint alleging a violation of these rules. Any complaint involving the abuse, neglect, or exploitation of an adult must also be referred to adult protective services in accordance with the Adult Abuse, Neglect, and Exploitation Act, Section 39-5303, Idaho Code. (7-1-05)T

02. Investigation Method. The nature of the complaint will determine the method used to investigate the complaint. On-site investigations at the home may be unannounced. (7-1-05)T

03. Statement of Deficiencies. If violations of these rules are identified, depending on the severity, the Department may send the home a statement of deficiencies. The home must prepare a plan of correction as described in Subsection 150.05 of these rules, and return it to the Department within the time frame designated by the Department. (7-1-05)T

04. Public Disclosure. Information received by the Department through filed reports, inspection, or as otherwise authorized under the law, must not be disclosed publicly in such a manner as to identify individual residents except in a proceeding involving a question of certification. (7-1-05)T

05. List of Deficiencies. A current list of deficiencies including plans of correction will be available to the public upon request in the individual homes or by written request to the Department. (7-1-05)T

161. -- 169. (RESERVED).

170. ELEMENTS OF CARE.

As a condition of certification, the home must provide each of the following to the resident without additional charge. (7-1-05)T

01. Supervision. Appropriate, adequate supervision for twenty-four (24) hours each day unless the resident's plan of service provides for alone time. (7-1-05)T

02. Daily Activities and Recreation. Daily activities, recreational activities, maintenance of self-help skills, assistance with activities of daily living and provisions for trips to social functions, special diets, and arrangements for payments. (7-1-05)T

03. Medical. Arrangements for medical and dental services and monitoring of medications. If the resident is unable to give medical consent, the provider will give the name and contact information of the person holding guardianship or power of attorney for health care to any health care provider upon request. (7-1-05)T

04. Furnishings and Equipment. Linens, towels, wash cloths, a reasonable supply of soap, shampoo, toilet paper, sanitary napkins or tampons, first aid supplies, shaving supplies, laundering of linens, housekeeping service, maintenance, and basic television in common areas. In addition, the following will apply: (7-1-05)T

a. Resident living rooms must contain reading lamps, tables, and comfortable chairs or sofas; (7-1-05)T

b. The resident must be provided with his own bed which must be at least thirty-six (36) inches wide, substantially constructed, and in good repair. Roll-away type beds, cots, folding beds, or double bunks must not be used. The bed must be provided with springs which are in good repair, a clean and comfortable mattress which is standard for the bed, and a pillow; (7-1-05)T

c. The resident sleeping room must be equipped with a chair and dresser, substantially constructed and in good repair; (7-1-05)T

d. On request, each sleeping room must be equipped with a lockable storage cabinet for personal

items for each resident, in addition to the required storage in resident sleeping rooms; (7-1-05)T

e. Adequate and satisfactory equipment and supplies must be provided to serve the residents. The amount and kind will vary according to the size of the home and type of resident; and (7-1-05)T

f. A monitoring or communication system must be provided when necessary due to the size or design of the home. (7-1-05)T

05. Plan of Service. Development and implementation of the plan of service for private-pay residents and implementation of the plan of service for state-funded residents. (7-1-05)T

06. Activity Supplies. Activity supplies in reasonable amounts, that reflect the interests of the resident. (7-1-05)T

07. Transportation. Arrangement of transportation in reasonable amounts to community, recreational and religious activities within twenty-five (25) miles of the home. The home must also arrange for emergency transportation. (7-1-05)T

171. -- 174. (RESERVED).

175. ROOM, UTILITIES AND MEALS.

The home must provide room, utilities and three (3) daily meals to the resident. The charge for room, utilities and three (3) daily meals must be established in the admission agreement. (7-1-05)T

176. -- 199. (RESERVED)

200. RESIDENT RIGHTS POLICY.

Each certified family home will develop and implement a written resident rights policy which will protect and promote the rights of each resident. The written description of legal rights must include a description of the protection of personal funds and a statement that a resident may file a complaint with the Department at the address in Section 005 of these rules, or local Regional Office regarding resident abuse and neglect and misappropriation of resident property in the home. Resident rights include the following: (7-1-05)T

01. Privacy. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits and meetings of family and resident groups, including: (7-1-05)T

a. The right to send and receive mail unopened; (7-1-05)T

b. If the resident is married, privacy for visits by his spouse. If both are residents in the home, they are permitted to share a room unless medically inadvisable, as documented by the attending physician. (7-1-05)T

02. Humane Care. Each resident has the right to humane care and a humane environment, including the following: (7-1-05)T

a. The right to a diet which is consistent with any religious or health-related restrictions; (7-1-05)T

b. The right to refuse a restricted diet; and (7-1-05)T

c. The right to a safe and sanitary living environment. (7-1-05)T

03. Respectful Treatment. Each resident has the right to be treated with dignity and respect, including: (7-1-05)T

a. The right to be treated in a courteous manner by the provider; (7-1-05)T

b. The right to receive a response from the home to any request of the resident within a reasonable

- time; (7-1-05)T
- c. Freedom from discrimination; and (7-1-05)T
 - d. Freedom from intimidation, manipulation, coercion, and exploitation. (7-1-05)T
 - e. The right to wear his own clothing. (7-1-05)T
 - f. The right to determine his own dress and hair style; (7-1-05)T
- 04. Basic Needs Allowance.** Residents whose care is paid for by public assistance must retain, for their personal use, the difference between their total income and the Certified Family Home basic allowance established by IDAPA 16.03.05. "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled," Section 513. (7-1-05)T
- 05. Resident Funds.** Residents have the right to manage their personal funds. A home must not require a resident to deposit his personal funds with the home. (7-1-05)T
- 06. Access to Resident.** Each home must permit immediate access to any resident by any representative of the Department, by the state Ombudsman for the elderly or his designees, by an adult protection investigator or by the resident's personal physician. Each home must also permit the following: (7-1-05)T
- a. Immediate access to a resident by immediate family or other relatives, subject to the resident's right to deny or withdraw consent at any time; (7-1-05)T
 - b. Immediate access to a resident by others who are visiting with the consent of the resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time; (7-1-05)T
 - c. Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time. (7-1-05)T
- 07. Freedom From Harm.** The resident has the right to be free from physical, mental, or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline. (7-1-05)T
- a. A certified family provider who has reasonable cause to believe that a vulnerable adult is being or has been abused, neglected, or exploited must immediately report this information to the Idaho Commission on Aging or its Area Agencies on Aging, according to Section 39-5303, Idaho Code. (7-1-05)T
 - b. The home must report within four (4) hours to the appropriate law enforcement agency when there is reasonable cause to believe that abuse, neglect, misappropriation of resident's property, or sexual assault has resulted in death or serious physical injury jeopardizing the life, health, or safety of a vulnerable adult resident according to Sections 39-5303 and 39-5310, Idaho Code. (7-1-05)T
- 08. Health Services.** The resident has the right to control his health-related services, including: (7-1-05)T
- a. The right to retain the services of his own personal physician and dentist; (7-1-05)T
 - b. The right to select the pharmacy or pharmacist of his choice; (7-1-05)T
 - c. The right to confidentiality and privacy concerning his medical or dental condition and treatment; (7-1-05)T
 - d. The right to participate in the formulation of his plan of service. (7-1-05)T
- 09. Grievance.** The resident has the right to voice or file a grievance with respect to care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievance and the right to prompt efforts by

the home to resolve grievances the resident may have, including those with respect to the behavior of other residents. (7-1-05)T

10. Advance Notice. The resident must receive written advance notice at least fifteen (15) calendar days prior to his non-emergency transfer or discharge unless he is transferred or discharged only for medical reasons, or for his welfare or the welfare of other residents, or for nonpayment for his stay. The written advance notice can be up to thirty (30) days if agreed to in the admission agreement. (7-1-05)T

11. Other Rights. In addition to the rights outlined in Subsections 200.01 through 200.10 of these rules, the resident has the following rights: (7-1-05)T

a. The resident has the right to refuse to perform services for the home; (7-1-05)T

b. The resident must have access to his personal records and must have the right to confidentiality of personal and clinical records; (7-1-05)T

c. The resident has the right to practice the religion of his choice or to abstain from religious practice. Residents must also be free from the imposition of the religious practices of others; (7-1-05)T

d. The resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the home; (7-1-05)T

e. The resident has the right to examine, upon reasonable request, the results of the most recent inspection of the home conducted by the Department with respect to the home and any plan of correction in effect with respect to the home; (7-1-05)T

f. The resident has a right to review a list of other certified family homes that may be available to meet his needs in case of transfer; (7-1-05)T

g. The resident has the right not to be required to receive routine care of a personal nature from a member of the opposite sex; (7-1-05)T

h. The resident has the right to be informed, in writing, regarding the formulation of advance directives as described in Title 39, Chapter 45, Idaho Code; and (7-1-05)T

i. The resident must have any other right established by law. (7-1-05)T

201. NOTICE OF LEGAL RIGHTS.

The certified family home will inform the resident, verbally and in writing, at the time of admission to the home, of his legal rights during the stay at the home. (7-1-05)T

202. ACCESS BY ADVOCATES AND REPRESENTATIVES.

A certified family home must permit advocates and representatives of community and legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the home at reasonable times. Advocates and representatives may observe all common areas of the home. Access must be permitted in order for advocates and representatives to provide the following. (7-1-05)T

01. Inform Residents of Services. Visit, talk with and make personal, social service programs and legal services available to all residents. (7-1-05)T

02. Inform Residents of Rights. Inform residents of their rights and entitlements, their corresponding obligations under state, federal, and local laws by distribution of educational materials or discussion in groups and with individuals. (7-1-05)T

03. Assist Residents to Secure Rights. Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance, and social security benefits, as well as in other matters in which residents are aggrieved. This assistance may be provided individually, or in a group basis, and may include organizational

activity, counseling, and litigation. (7-1-05)T

04. Advise and Represent. Engage in other methods of assisting, advising, and representing residents so as to extend to them the full enjoyment of their rights. (7-1-05)T

05. Communicate Privately. Communicate privately and without restrictions with any resident who consents to the communication. (7-1-05)T

203 -- 224. (RESERVED)

225. UNIFORM ASSESSMENT REQUIREMENTS.

01. State Responsibility for State-Funded Residents. The Department will assess State-funded residents according to IDAPA 16.03.23, "Rules Governing Uniform Assessments for State-Funded Clients". (7-1-05)T

02. Provider Responsibility for Private-Pay Residents. The provider will develop, identify, assess, or direct a uniform needs assessment of private-pay residents. The Department's Uniform Assessment Instrument may be used as the uniform needs assessment as described in IDAPA 16.03.23, "Rules Governing Uniform Assessments for State-Funded Clients". (7-1-05)T

03. Results of Assessment. The results of the assessment may be used to evaluate the ability of a provider to meet the identified resident's needs. The results of the assessment may also be used to determine the need for special training or licenses or certificates that may be required to care for certain residents. (7-1-05)T

04. Uniform Needs Assessment for Private-Pay. The uniform needs assessment used by the home for private-pay residents must include: (7-1-05)T

- a.** Identification and background information; (7-1-05)T
- b.** Medical diagnosis; (7-1-05)T
- c.** Medical and health problems; (7-1-05)T
- d.** Prescription and over-the-counter medications; (7-1-05)T
- e.** Behavior patterns; (7-1-05)T
- f.** Cognitive function; (7-1-05)T
- g.** The psychosocial and physical needs of the resident; (7-1-05)T
- h.** Functional status; and (7-1-05)T
- i.** Assessed level of care. (7-1-05)T

05. Time Frames for Completing the Uniform Needs Assessment for Private-Pay Residents. The assessment must be completed no later than fourteen (14) calendar days after admission. The assessment must be reviewed when there is a change in need, or every twelve (12) months, whichever comes first. Upon request, the Department may provide training in conducting a uniform needs assessment. (7-1-05)T

226 - 249. (RESERVED).

250. PLAN OF SERVICE.

The resident must have a plan of service. The plan must identify the resident, describe the services to be provided, and describe how the services will be delivered. (7-1-05)T

- 01. Core Elements.** A resident's plan of service will be based on: (7-1-05)T
- a.** Assessment; (7-1-05)T
 - b.** Service needs for activities of daily living; (7-1-05)T
 - c.** Need for limited nursing services; (7-1-05)T
 - d.** Need for medication assistance; (7-1-05)T
 - e.** Frequency of needed services; (7-1-05)T
 - f.** Level of assistance; (7-1-05)T
 - g.** Habilitation and training needs; (7-1-05)T
 - h.** Behavioral management needs, including identification of situations that trigger inappropriate behavior; (7-1-05)T
 - i.** Physician's dated history and physical; (7-1-05)T
 - j.** Admission records; (7-1-05)T
 - k.** Community support systems; (7-1-05)T
 - l.** Resident's desires; (7-1-05)T
 - m.** Transfer and discharge requirement; and (7-1-05)T
 - n.** Other identified needs. (7-1-05)T
- 02. Signature and Approval.** The provider and the resident, his legal guardian or his conservator must sign and date the plan of service upon its completion, within fourteen (14) days after the resident's admission. For homes serving state-funded residents, services must be authorized by the Department prior to admission. (7-1-05)T
- 03. Developing the Plan.** The provider will consult the resident and other individuals identified by the resident in developing the plan of service. Professional staff must be involved in developing the plan if required by another program. (7-1-05)T
- 04. Resident Choice.** A resident must be given the choice and control of how and what services the provider or external vendors will provide to the extent the resident can make choices. (7-1-05)T
- 05. Copy of the Plan.** Signed copies of the plan of service must be placed in the resident's file, given to the resident, and given to his legal guardian or his conservator no later than fourteen (14) days after admission. A copy of the Department approved plan must be in the resident's file, if applicable. (7-1-05)T
- 06. Changes to the Plan.** A record must be made of any changes to the plan or when the provider is unable to provide services outlined in the plan of service. (7-1-05)T
- 07. Periodic Review.** The next scheduled date of review must be documented in the plan of service. The plan of service should be reviewed as necessary but must be reviewed at least every twelve (12) months. (7-1-05)T
- 251 - 259. (RESERVED).**
- 260. ADMISSIONS.**

01. Admission Agreement. At the time of admission to a certified family home, the provider and the resident must enter into an admission agreement. The agreement will be in writing and must be signed by both parties. The agreement must, in itself or by reference to the resident's plan of care, include at least the following:

(7-1-05)T

a. Whether or not the resident will assume responsibility for his own medication including reporting missed medication or medication taken on a PRN basis;

(7-1-05)T

b. Whether or not the resident has ongoing ability to safeguard himself against personal harm, injury or accident. The certified family home must have a plan in place for steps it will take if the resident is not able to carry out his own self-preservation.

(7-1-05)T

c. Whether or not the provider will accept responsibility for the resident's funds;

(7-1-05)T

d. How a partial month's refund will be managed;

(7-1-05)T

e. Responsibility for valuables belonging to the resident and provision for the return of a resident's valuables should the resident leave the home;

(7-1-05)T

f. Amount of liability coverage provided by the homeowner's or renter's insurance policy.

(7-1-05)T

g. Fifteen (15) calendar days' written notice or up to thirty (30) calendar days as agreed to in the admission agreement prior to transfer or discharge on the part of either party;

(7-1-05)T

h. Conditions under which emergency transfers will be made;

(7-1-05)T

i. Signed permission to transfer pertinent information from the resident's record to a hospital, nursing home, residential and assisted living facility, or other certified family home;

(7-1-05)T

j. Responsibility to obtain consent for medical procedures including the name, address, phone of guardian or power of attorney for health care for any resident who is unable to make his own medical decisions.

(7-1-05)T

k. Resident responsibilities as appropriate;

(7-1-05)T

l. Amount the home will charge for room, utilities and three (3) daily meals; and

(7-1-05)T

m. Other information as needed.

(7-1-05)T

02. Termination of Admission Agreement. The admission agreement must not be terminated except under the following conditions:

(7-1-05)T

a. By written notification by either party giving the other party fifteen (15) calendar days' written notice or as agreed to in the Admission Agreement but not to exceed thirty (30) days;

(7-1-05)T

b. The resident's mental or physical condition deteriorates to a level requiring evaluation or services that cannot be provided in a certified family home;

(7-1-05)T

c. Nonpayment of the resident's bill;

(7-1-05)T

d. Emergency conditions requiring a resident to transfer out of the home without fifteen (15) calendar days' written notice to protect the resident or other residents in the home from harm; and

(7-1-05)T

e. Other written conditions as mutually established between the resident and the provider at the time of admission.

(7-1-05)T

261. -- 269. (RESERVED).

270. RESIDENT RECORDS.

01. Admission Records. Records required for admission to a home must be maintained and updated and must be kept confidential. Their availability without the consent of the resident, subject to IDAPA 16.05.01, "Use and Disclosure of Department Records," is limited to the home, professional consultants, the resident's physician and representatives of the Department. All entries must be kept current, recorded legibly in ink, dated, signed, and must include: (7-1-05)T

- a.** Name; (7-1-05)T
- b.** Permanent address if other than the home; (7-1-05)T
- c.** Marital status and sex; (7-1-05)T
- d.** Birth place and date of birth; (7-1-05)T
- e.** The name, address, and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident; (7-1-05)T
- f.** Personal physician and dentist; (7-1-05)T
- g.** Admission date and name of person who completed admission form; (7-1-05)T
- h.** Results of a history and physical performed by a licensed physician or nurse practitioner within six (6) months prior to admission; (7-1-05)T
- i.** For private-pay residents, the history and physical should include a description of the resident's needs for personal assistance and supervision, and indicate that the resident is appropriate for placement in a home; (7-1-05)T
- j.** A list of medications, treatments, and special diets, if any, prescribed for the resident and signed and dated by the physician; (7-1-05)T
- k.** Religious affiliation if resident chooses to disclose; (7-1-05)T
- l.** Interested relatives and friends other than those outlined in Subsection 270.01.e. of these rules, to include names, addresses, and telephone numbers of family members, legal guardian or conservator, or significant others, or all; (7-1-05)T
- m.** Social information, obtained by the home from the resident, family, service coordinator, legal guardian or conservator, or other knowledgeable individuals. The information must include the resident's social history, hobbies, and interests; (7-1-05)T
- n.** Written admission agreement which is signed and dated by the provider and the resident, his legal guardian or his conservator; (7-1-05)T
- o.** A signed copy of the resident's rights as specified in Section 200 of these rules, or documentation that the resident, his legal guardian, or his conservator has read and understands his rights as a resident of the home; (7-1-05)T
- p.** A copy of the resident's most current uniform needs assessment for the certified family home; (7-1-05)T
- q.** A copy of the signed and dated admission plan of service that contains all elements of a plan of service between the resident, his legal guardian, or his conservator and the home; (7-1-05)T

- r. An inventory of the resident's belongings. The resident can inventory any item he chooses; (7-1-05)T
- s. Information about any specific health problems of the resident which may be useful in a medical emergency; and (7-1-05)T
- t. Any other health-related, emergency, or pertinent information which the resident requests the home to keep on record. (7-1-05)T
- 02. Ongoing Resident Records.** Records must be kept current, including: (7-1-05)T
 - a. Admission information required in Subsection 270.01 of these rules; (7-1-05)T
 - b. A current list of medications, diet, and treatments prescribed for the resident which is signed and dated by the physician giving the order. Current orders may be a copy of the signed doctor's order from the pharmacy; (7-1-05)T
 - c. Documentation of any medication refused by the resident, not given to the resident or not taken by the resident with the reason for the omission. All PRN medication must be documented with the reason for taking the medication; (7-1-05)T
 - d. Any incident or accident occurring while the resident is living in the home; (7-1-05)T
 - e. Notes from the licensed nurse, home health, physical therapy, and other service providers, documenting the services provided at each visit; (7-1-05)T
 - f. Documentation of significant changes in the residents' physical, mental status, or both and the home's response; (7-1-05)T
 - g. If appropriate, the resident's financial accounting records; (7-1-05)T
 - h. The resident's uniform needs assessment, to include the admission assessment and all assessments for the past year, for certified family home care; (7-1-05)T
 - i. Signed and dated plan of service, to include the admission plan of service and all service agreements for the past year between the resident, his legal guardian, or his conservator and the home; (7-1-05)T
 - j. Contact name, address, phone number of individuals or agencies providing paid supports; (7-1-05)T
 - k. Signed copies of all care plans that are prepared by all outside service providers; and (7-1-05)T
 - l. An inventory of resident's belongings. The resident can inventory any item he chooses. The inventory can be updated at any time but must be updated annually. (7-1-05)T
- 03. Maintenance of Resident Records.** All records of services delivered by the provider must be maintained in the home for at least five (5) years from the date of service. (7-1-05)T

271. -- 274. (RESERVED).

275. RESIDENT FUNDS AND FINANCIAL RECORDS.

01. Resident Funds Policy. If a resident's funds are turned over to the provider for any purpose other than payment for services allowed under these rules, or if the provider or his relative acts as resident payee, the home is deemed to be handling the resident's funds. Each home must develop and implement a policy and procedure outlining how the resident's funds will be managed. This policy and procedure must include the following: (7-1-05)T

- a. Statement of whether the home will or will not manage resident funds; (7-1-05)T
- b. If the home manages resident funds and the resident leaves the home under any circumstances, the home can only retain room and board funds prorated to the last day of the fifteen (15) calendar day notice period, or thirty (30) calendar day notice period as specified in the admission agreement, or upon moving from the home, whichever is later. All remaining funds must follow the resident, and resident funds must be used for resident expenses until a new payee is appointed. (7-1-05)T
- 02. Managing Resident Funds.** A home that manages resident funds must: (7-1-05)T
- a. Establish a separate account at a financial institution for each resident. There can be no commingling of resident funds with home funds. Borrowing between resident accounts is prohibited; (7-1-05)T
- b. Notify the resident that funds are available for his use; (7-1-05)T
- c. Bill each resident for his certified family home care charges on a monthly basis from his funds; (7-1-05)T
- d. Document on a monthly or on a weekly basis any financial transactions in excess of five dollars (\$5) between the resident and the home. A separate transaction record must be maintained for each resident; (7-1-05)T
- e. Restore funds to the resident if the home cannot produce proper accounting records of resident's funds or property, including receipts for purchases made using the resident's personal funds. Restitution of the funds to the resident is a condition for continued operation of the home; (7-1-05)T
- f. Not require the resident to purchase goods or services from the home other than those designated in the admission agreement; (7-1-05)T
- g. Provide access to the resident's funds to the resident, his legal guardian or conservator or another person of the resident's choice; (7-1-05)T
- h. On the death of a private-pay resident, convey the resident's funds with a final accounting of those funds to the individual administering the resident's estate; within thirty (30) days; (7-1-05)T
- i. On the death of a client of the Department, convey the resident's funds with a final accounting of those funds, to the Department within thirty (30) days. (7-1-05)T

276. -- 299. (RESERVED).

300. SHORT-TERM CARE AND SUPERVISION.

When the provider is temporarily unable to provide care or supervision to the resident, he may designate another adult to provide care and supervision or supervision only to the resident. The provider must assure that this short-term arrangement meets the needs of the resident and protects the resident from harm. (7-1-05)T

01. Alternate Caregiver. An alternate caregiver must be a certified family home provider. An alternate caregiver provides care and supervision in his home to a resident from another certified family home according to the resident's original plan of service and admission agreement. The provider is responsible to provide or arrange for resident-specific training for the alternate caregiver. Alternate care can be provided for up to thirty (30) consecutive days. (7-1-05)T

02. Substitute Caregiver. A substitute caregiver must be approved by the provider to provide care and supervision to the resident in the provider's certified family home. The provider is responsible to provide or arrange for resident-specific training for the substitute caregiver. Substitute care can be provided for up to thirty (30) consecutive days. In addition the substitute caregiver must have: (7-1-05)T

- a. Current certification in first aid and Cardio-Pulmonary Resuscitation (CPR); (7-1-05)T

- b.** A criminal history check as provided in Section 009 of these rules; and (7-1-05)T
- c.** Completed the “Assistance with Medications” course as provided in Section 400 of these rules, if they will assist the resident with medications. (7-1-05)T

03. Incidental Supervision. An individual providing incidental supervision must be approved by the provider to supervise the resident. Incidental supervision must not include resident care. Incidental supervision may be provided for up to four (4) hours per week. (7-1-05)T

301. -- 399. (RESERVED).

400. MEDICATION STANDARDS AND REQUIREMENTS.

01. Medication Policy. The certified family home provider must develop written medication policies and procedures that outline in detail how the home will assure appropriate handling and safeguarding of medications. This documentation must be maintained in the home. (7-1-05)T

02. Handling of Resident's Medication. (7-1-05)T

a. The medication must be in the original pharmacy-dispensed container, or in an original over-the-counter container, or placed in a unit container by a licensed nurse and be appropriately labeled with the name of the medication, dosage, time to be taken, route of administration, and any special instructions. Each medication must be packaged separately unless in a Mediset, blister pack, or similar system. (7-1-05)T

b. Evidence of the written or verbal order for the medication from the physician or other practitioner of the healing arts must be maintained in the resident's record. Medisets filled and labeled by a pharmacist or licensed nurse may serve as written evidence of the order. An original prescription bottle labeled by a pharmacist describing the order and instructions for use may also serve as written evidence of an order from the physician or other practitioner of the healing arts. (7-1-05)T

c. The home is responsible to safeguard the resident's medications. (7-1-05)T

d. Medications that are no longer used by the resident must not be retained by the certified family home for longer than thirty (30) calendar days. (7-1-05)T

03. Self-Administration of Medication. If the resident is responsible for administering his own medication without assistance, a written approval stating that the resident is capable of self-administration must be obtained from the resident's primary physician or other practitioner of the healing arts. The resident's record must also include documentation that a licensed nurse or other qualified professional has evaluated the resident's ability to self-administer medication and has found that the resident: (7-1-05)T

- a.** Understands the purpose of the medication; (7-1-05)T
 - b.** Knows the appropriate dosage and times to take the medication; (7-1-05)T
 - c.** Understands expected effects, adverse reactions or side effects, and action to take in an emergency; (7-1-05)T
- and
- d.** Is able to take the medication without assistance. (7-1-05)T

04. Assistance With Medications. The certified family home must provide assistance with medications to residents who need assistance; however, only a licensed nurse or other licensed health professional may administer medications. Prior to assisting residents with medication, the following conditions must be in place: (7-1-05)T

- a.** Each person assisting with resident medications must be an adult who successfully completed and

follows the “Assistance with Medications” course available through the Idaho Professional Technical Education Program approved by the Idaho State Board of Nursing, or other Department-approved training. Family members previously exempted from this requirement must complete this course before July 1, 2006. (7-1-05)T

- b.** The resident's health condition is stable; (7-1-05)T
- c.** The resident's health status does not require nursing assessment before receiving the medication nor nursing assessment of the therapeutic or side effects after the medication is taken; (7-1-05)T
- d.** The medication is in the original pharmacy-dispensed container with proper label and directions or in an original over-the-counter container or the medication has been placed in a unit container by a licensed nurse. Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container; (7-1-05)T
- e.** Written and oral instructions from the licensed physician or other practitioner of the healing arts, pharmacist, or nurse concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency have been reviewed by the staff person; (7-1-05)T
- f.** Written instructions are in place that outline required documentation of medication assistance, and whom to call if any doses are not taken, overdoses occur, or actual or potential side effects are observed; and (7-1-05)T
- g.** Procedures for disposal/destruction of medications must be documented and consistent with procedures outlined in the “Assistance with Medications” course. (7-1-05)T

05. Administration of Medications. Only a licensed nurse or other licensed health professionals working within the scope of their license may administer medications. Administration of medications must comply with the Administrative Rules of the Board of Nursing, IDAPA 23.01.01, “Rules of the Idaho Board of Nursing”. Some services are of such a technical nature that they must always be performed by, or under the supervision of, a licensed nurse or other licensed health professional. These services are outlined in IDAPA 23.01.01, “Rules of the Idaho Board of Nursing,” Section 490. (7-1-05)T

06. Written Record of Disposal. A written record of all disposal of drugs must be maintained in the home and will include: (7-1-05)T

- a.** A description of the drug, including the amount; (7-1-05)T
- b.** The resident for whom the medication was prescribed; (7-1-05)T
- c.** The reason for disposal; (7-1-05)T
- d.** The method of disposal; and (7-1-05)T
- e.** Signatures of responsible home personnel and a witness or the resident's family. (7-1-05)T

401. -- 499. (RESERVED).

500. ENVIRONMENTAL SANITATION STANDARDS.

The home is responsible for disease prevention and maintenance of sanitary conditions. (7-1-05)T

- 01. Water Supply.** The water supply for the home must be adequate, safe, and sanitary. (7-1-05)T
 - a.** The home must use a public or municipal water supply or a Department-approved private water supply; (7-1-05)T
 - b.** If water is from a private supply, water samples must be submitted to a private accredited laboratory or the District Public Health Laboratory for bacteriological examination at least annually or more

frequently if deemed necessary by the Department. Copies of the laboratory reports must be kept on file at the home; and (7-1-05)T

c. There must be enough water pressure to meet the sanitary requirements at all times. (7-1-05)T

02. Sewage Disposal. The sewage disposal system must be in good working order. All sewage and liquid wastes must be discharged, collected, treated, and disposed of in a manner approved by the Department. (7-1-05)T

03. Nonmunicipal Sewage Disposal. For homes with nonmunicipal sewage disposal, at the time of the initial certification and at least every three (3) years thereafter the home must provide proof that the septic tank has been pumped or that pumping was not necessary at the time of the sewage system inspection. The home must follow the recommendations of the sewage system inspection. In addition, at the time of initial certification: (7-1-05)T

a. The home must obtain a statement from the local health district indicating that the sewage disposal system meets local requirements. The statement must be kept on file at the home; or (7-1-05)T

b. If the local health district does not issue these statements, the home must have the system inspected by a person in the business of servicing these systems. The inspection report must be kept on file at the home. (7-1-05)T

04. Garbage and Refuse Disposal. Garbage and refuse disposal must be provided by the home. (7-1-05)T

a. Garbage containers outside the home used for storage of garbage and refuse must be constructed of durable, nonabsorbent materials and must not leak or absorb liquids. Containers must be provided with tight-fitting lids. (7-1-05)T

b. Garbage containers must be maintained in good repair. Sufficient containers must be available to hold all garbage and refuse which accumulates between periods of removal from the premises. Storage areas must be kept clean and sanitary. (7-1-05)T

05. Insect and Rodent Control. The home must be maintained free from infestations of insects, rodents and other pests. Chemicals (pesticides) used in the control program must be selected, stored, and used safely. (7-1-05)T

a. The chemical must be selected on the basis of the pest involved and used only in the manner prescribed by the manufacturer; (7-1-05)T

b. The home must take the necessary precautions to protect residents from obtaining toxic chemicals. (7-1-05)T

06. Yard. The yard surrounding the home must be safe and maintained. (7-1-05)T

07. Linen-Laundry Facilities and Services. A washing machine and dryer must be provided for the proper and sanitary washing of linen and other washable goods. (7-1-05)T

08. Housekeeping and Maintenance. Sufficient housekeeping and maintenance must be provided to maintain the interior and exterior of the home in a clean, safe, and orderly manner. (7-1-05)T

a. A sleeping room must be thoroughly cleaned including the bed, bedding, and furnishings before it is occupied by a new resident; and (7-1-05)T

b. Deodorizers must not be used to cover odors caused by poor housekeeping or unsanitary conditions. (7-1-05)T

501. -- 599. (RESERVED).

600. FIRE AND LIFE SAFETY STANDARDS.

Certified family homes must meet all applicable requirements of local and state codes concerning fire and life safety. (7-1-05)T

01. General Requirements. General requirements for the fire and life safety standards for a certified family home are: (7-1-05)T

a. The home must be structurally sound and equipped and maintained to assure the safety of residents; and (7-1-05)T

b. When natural or man-made hazards are present, suitable fences, guards, and railings must be provided to protect the residents according to their need for supervision as documented in the plan of service; and (7-1-05)T

c. The premises of the certified family home must be kept free from the accumulation of weeds, trash, and rubbish. (7-1-05)T

02. Fire and Life Safety Requirements. (7-1-05)T

a. Smoke detectors must be installed in sleeping rooms, hallways, on each level of the home, and as recommended by the local fire district. (7-1-05)T

b. Any locks installed on exit doors must be easily opened from the inside without the use of keys or any special knowledge; (7-1-05)T

c. Portable heating devices of any kind are prohibited; (7-1-05)T

d. Homes that use fuel-fired stoves must provide adequate railings or other approved protection designed to prevent residents from coming into contact with the stove surfaces; (7-1-05)T

e. Each resident's sleeping room will have a window that can be easily opened from the inside. The window sill height must not be more than forty-four (44) inches above the finished floor. Window openings must be at least twenty-two (22) inches in width and height; (7-1-05)T

f. Flammable or highly combustible materials must not be stored in the home; (7-1-05)T

g. Boilers, hot water heaters, and unfired pressure vessels must be equipped with automatic pressure relief valves; (7-1-05)T

h. Portable fire extinguishers must be mounted throughout the home according to the configuration of the home. Location of fire extinguishers is subject to Department approval. All extinguishers must be at least five (5) pound multipurpose ABC type and; (7-1-05)T

i. Electrical installations and equipment must comply with the applicable local and state electrical codes; (7-1-05)T

j. Solid fuel heating devices must be approved by the local building/heating/venting/air conditioning board. Openings in all solid fuel heating devices must have a door constructed of heat-tempered glass or other approved material; (7-1-05)T

k. Exits must be free from obstruction; (7-1-05)T

l. Doorways in the path of travel to an exit and all exit doorways must be at least twenty-eight (28) inches wide; (7-1-05)T

m. The door into each bathroom must unlock from the outside in case of an emergency. (7-1-05)T

03. Smoking. Smoking is a fire hazard. The home may choose to allow or not allow smoking. If the home chooses to allow smoking it must reduce the risk of fire by: (7-1-05)T

- a.** Prohibiting smoking in any area where flammable liquids, gases, or oxidizers are in use or stored; (7-1-05)T
- b.** Prohibiting residents from smoking in bed; and (7-1-05)T
- c.** Prohibiting unsupervised smoking by residents unless unsupervised smoking is allowed in the plan of service. (7-1-05)T

04. Emergency Preparedness. Each certified family home will develop and implement a plan for emergencies including evacuation of the home. The emergency plan must be reviewed with residents at admission and at least every six (6) months thereafter. This review must be documented in each resident's individual file. (7-1-05)T

05. Fire Drills. Homes must conduct and document fire drills at least quarterly. Residents who are physically unable to exit unassisted are exempt from physical participation in the drill if the provider has an effective evacuation plan for such residents and discusses the plan with the resident at the time of the drill. (7-1-05)T

06. Report of Fire. A separate report on each fire incident occurring within the home must be submitted to the Department within thirty (30) calendar days of the occurrence. The report must include date of incident, origin, extent of damage, how the fire was extinguished, and injuries, if any. (7-1-05)T

07. Maintenance of Equipment. The home will assure that all equipment is properly maintained. (7-1-05)T

a. The smoke detectors must be tested at least monthly and a written record of the test results maintained on file; (7-1-05)T

b. Portable fire extinguishers must be serviced annually by an outside servicing agency. Fire extinguishers purchased in the last twelve (12) months are exempt from annual service if the home has a dated receipt on file. All portable fire extinguishers must be examined at least quarterly by a knowledgeable family member to determine that; (7-1-05)T

i. The extinguisher is in its designated location; (7-1-05)T

ii. Seals or tamper indicators are not broken; (7-1-05)T

iii. The extinguisher has not been physically damaged; (7-1-05)T

iv. The extinguisher does not have any obvious defects; and (7-1-05)T

v. Inspecting tags on each extinguisher show at least the initials of the person making the quarterly examinations and the date of the examinations. (7-1-05)T

c. Fuel-fired heating systems must be inspected, serviced, and approved at least annually by person(s) in the business of servicing these systems. The inspection records must be maintained on file in the home. (7-1-05)T

601. -- 699. (RESERVED).

700. HOME CONSTRUCTION AND PHYSICAL HOME STANDARDS.

01. General Requirements. Any residence used as certified family home must be suitable for that use. Certified family homes must only be located in buildings intended for residential use. (7-1-05)T

a. Remodeling or additions to homes must be consistent with residential use of the property and must conform to local building standards including obtaining building permits as required by the local jurisdiction. Remodeling that is not consistent with the general practice of the neighborhood is not permitted. Examples may include converting garages to bedrooms or constructing large buildings which overwhelm the lot. (7-1-05)T

b. All homes are subject to Department approval. (7-1-05)T

02. Walls and Floors. Walls and floors must withstand frequent cleaning. Walls in sleeping rooms must extend from floor to ceiling. (7-1-05)T

03. Telephone. There must be a landline telephone in the home that is accessible to all residents. The resident must have adequate privacy while using the telephone. The telephone must be immediately available in case of an emergency. Emergency numbers must be posted near the telephone. (7-1-05)T

04. Toilet Facilities and Bathrooms. Each certified family home must contain: (7-1-05)T

a. At least one (1) flush toilet, one (1) tub or shower, and one (1) lavatory with a mirror; (7-1-05)T

b. Toilet facilities and bathrooms must be separated from all rooms by solid walls or partitions; (7-1-05)T

c. All toilet facilities and bathrooms must have either a window that is easily opened or forced ventilation to the outside; (7-1-05)T

d. Tubs, showers, and lavatories must be connected to hot and cold running water; and (7-1-05)T

e. Access to resident toilet facilities and bathrooms must not require a resident to pass through another sleeping room to reach the toilet or bath. (7-1-05)T

05. Accessibility for Residents With Physical and Sensory Impairments. Homes choosing to provide services to residents who have difficulty with mobility or who have sensory impairments must assure the physical environment meets the needs of the resident and maximizes independent mobility and use of appliances, bathroom facilities, and living areas. The home must provide necessary accommodations as described below according to the individual resident's needs: (7-1-05)T

a. A ramp that complies with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) 4.8; (7-1-05)T

b. Bathrooms and doorways large enough to allow easy passage of a wheelchair and that comply with the ADAAG 4.13; (7-1-05)T

c. Toilet facilities that comply with the ADAAG 4.16 and 4.23; (7-1-05)T

d. Sinks that comply with the ADAAG 4.24; (7-1-05)T

e. Grab bars in resident toilet facilities and bathrooms that comply with the ADAAG 4.26; (7-1-05)T

f. Bathtubs and shower stalls that comply with ADAAG 4.20 and 4.21; (7-1-05)T

g. Non-retractable faucet handles that comply with the ADAAG 4.19 and 4.27. Self-closing valves are not allowed; (7-1-05)T

h. Suitable handrails on both sides of all stairways leading into and out of the home that comply with the ADAAG 4.9.4; (7-1-05)T

06. Storage Areas. Adequate storage must be provided in addition to the required storage in resident sleeping rooms. (7-1-05)T

07. Lighting. Adequate lighting must be provided in all resident sleeping rooms and any other rooms accessed by the resident. (7-1-05)T

08. Ventilation. The home must be well ventilated and the provider must take precautions to prevent offensive odors. (7-1-05)T

09. Heating. The temperature in the certified family home must be maintained at seventy degrees Fahrenheit (70°F) or more during waking hours when residents are at home and sixty-five degrees Fahrenheit (65°F) or more during sleeping hours or as defined in the plan of service. Wood stoves must not be the primary source of heat and the thermostat for the primary source of heat must be remotely located away from the wood stove. (7-1-05)T

10. Plumbing. All plumbing in the home must comply with local and state codes. All plumbing fixtures must be easily cleanable and maintained in good repair. (7-1-05)T

11. Resident Sleeping Rooms. (7-1-05)T

a. The resident's sleeping room must not be in an attic, stairway, hall, or any room commonly used for other than bedroom purposes. The resident's sleeping rooms may be in a basement only if the following conditions are met: (7-1-05)T

i. The window must not open into a window well that cannot be exited. All other fire and life safety requirements for windows must be met; (7-1-05)T

ii. The basement must have floors, ceilings, and walls which are finished to the same degree as the rest of the home. The sleeping room must meet all other requirements of these rules; and (7-1-05)T

iii. The resident must be assessed through the plan of service to be capable of evacuating from the basement without assistance in an emergency. (7-1-05)T

b. Walls must run from floor to ceiling and doors must be solid; (7-1-05)T

c. The resident must not occupy the same bedroom as the provider. The resident must not occupy the same bedroom as the provider's family unless the resident is also a family member; (7-1-05)T

d. Ceiling heights in sleeping rooms must be at least seven feet six inches (7'6"); (7-1-05)T

e. Sleeping rooms must have closets equipped with doors. Closet space shared by two (2) residents, must have a substantial divider separating each resident's space. Free-standing closets must be deducted from the square footage in the sleeping room; and (7-1-05)T

f. Sleeping rooms must have at least one-hundred (100) square feet of floor space in a one (1) person sleeping room and at least one-hundred and sixty (160) square feet of floor space in a two (2) person sleeping room. (7-1-05)T

701. MANUFACTURED HOMES.

01. Use of Manufactured Homes. A late-model manufactured home may be approved for use as a certified family home when the home meets the following requirements. (7-1-05)T

a. The date the home was manufactured is within eighteen (18) years of the date of initial certification. (7-1-05)T

b. The home meets the requirements of the local jurisdiction in which the home is located. If no local standard has been established, the home must be installed according to the Idaho Manufactured Home Installation standard. (7-1-05)T

02. Previously Certified. A manufactured home approved for use as a certified family home before July 1, 2005, may continue to be certified when evaluated on a case-by-case basis. (7-1-05)T

702. -- 709. (RESERVED).

710. SITE REQUIREMENTS FOR CERTIFIED FAMILY HOMES.

In addition to the requirements of Section 700 of these rules, certified family homes must comply with the following site requirements. (7-1-05)T

01. Fire District. The home must be in a lawfully constituted fire district. (7-1-05)T

02. Accessible Road. The home must be served by an all-weather road kept open to motor vehicles at all times of the year. (7-1-05)T

03. Emergency Medical Services. The home must be accessible to emergency medical services within thirty (30) minutes driving time; and (7-1-05)T

04. Accessible to Services. The home must be accessible within thirty (30) minutes driving time to necessary social, medical, and rehabilitation services. (7-1-05)T

711. -- 899. (RESERVED).

900. EMERGENCY POWERS OF THE DIRECTOR.

In the event of an emergency endangering the life or safety of a resident, the Director may summarily suspend or revoke any certified family home certificate. As soon thereafter as practical, the Director will provide an opportunity for a hearing in accordance with the provisions of IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (7-1-05)T

901. ENFORCEMENT PROCESS.

If the Department finds that a home does not or did not meet a rule governing certified family homes, it may impose a remedy, independently or in conjunction with others, subject to the provisions of these rules for notice and appeal. (7-1-05)T

01. Recommendation of Remedy. In determining which remedy to recommend, the Department will consider the home's compliance history, change of ownership, the number of deficiencies, scope, and severity of the deficiencies. Subject to these considerations, the Department may impose any of the following remedies: (7-1-05)T

a. Ban on all admissions, see Section 910 of these rules; (7-1-05)T

b. Ban on admissions of residents with certain diagnosis, see Section 911 of these rules; (7-1-05)T

c. Summarily suspend the certificate and transfer residents, see Section 912 of these rules; (7-1-05)T

d. Issue a provisional certificate, see Subsection 110.02 of these rules; or (7-1-05)T

e. Revoke the home's certificate, see Section 913 of these rules. (7-1-05)T

02. Notice of Enforcement Remedy. The Department will give the home written notice of an enforcement remedy by certified mail or by personal service. (7-1-05)T

902. FAILURE TO COMPLY.

The Department may institute an action to revoke the home's certificate when the Department determines the home is out of compliance. (7-1-05)T

01. Out of Compliance. A home has not complied with a program requirement within thirty (30) days of the date the home is found out of compliance with that requirement. (7-1-05)T

02. Lack of Progress. A home has made little or no progress in correcting deficiencies within thirty (30) days from the date the Department accepted the home's plan of correction. (7-1-05)T

903. REPEATED NONCOMPLIANCE.

When the Department makes a determination of repeated noncompliance with respect to a home, the Department may impose any of the remedies listed in Sections 910 through 913 of these rules. The Department will monitor the home on an as-needed basis, until the home has demonstrated that it is in compliance with all program requirements governing homes and that it will remain in compliance. (7-1-05)T

904. -- 909. (RESERVED).

910. ENFORCEMENT REMEDY OF BAN ON ALL ADMISSIONS.

All admissions to the home are banned pending satisfactory correction of all deficiencies. Bans will remain in effect until the Department determines that the home has achieved full compliance with all program requirements, or until a substitute remedy is imposed. (7-1-05)T

911. ENFORCEMENT REMEDY OF BAN ON ADMISSIONS OF RESIDENT WITH SPECIFIC DIAGNOSIS.

Admission of any resident with a specific diagnosis is banned. A ban may be imposed for all prospective residents both state and private, and will prevent the home from admitting the kinds of residents for whom it has shown an inability to provide adequate care. (7-1-05)T

912. ENFORCEMENT REMEDY OF SUMMARY SUSPENSION AND TRANSFER OF RESIDENT.

The Department may summarily suspend a home's certificate and transfer the resident when convinced by a preponderance of the evidence that the resident's health and safety are in immediate jeopardy. (7-1-05)T

913. ENFORCEMENT REMEDY OF REVOCATION OF CERTIFICATE.

01. Revocation of the Home's Certificate. The Department may institute a revocation action when persuaded by a preponderance of the evidence that the home is not in substantial compliance with this chapter. (7-1-05)T

02. Causes for Revocation of the Certificate. The Department may revoke any certificate to include the following causes: (7-1-05)T

a. The certificate holder has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a certificate; (7-1-05)T

b. The home is not in substantial compliance with these rules; (7-1-05)T

c. When persuaded by a preponderance of the evidence that such conditions exist which endanger the health or safety of any resident; (7-1-05)T

d. Any act adversely affecting the welfare of residents is being permitted, aided, performed, or abetted by the person or persons in charge of the home. Such acts may include, but are not limited to, neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, or exploitation; (7-1-05)T

e. The provider has demonstrated or exhibited a lack of sound judgment essential to the operation and management of a home; (7-1-05)T

f. The provider has violated any of the conditions of a provisional certificate; (7-1-05)T

g. The home has one (1) or more core issues. A core issue is a deficiency that endangers the health, safety, or welfare of any resident; (7-1-05)T

h. An accumulation of minor violations that, taken as a whole, would constitute a major deficiency;

- (7-1-05)T
- i.** Repeat violations of any requirement of these rules or of the Idaho Code; (7-1-05)T
 - j.** The home lacks the ability to properly care for the type of residents residing at the home, as required by these rules or as directed by the Department; (7-1-05)T
 - k.** The home is not in substantial compliance with the provisions for services, resident rights or admissions; (7-1-05)T
 - l.** Certificate holder refuses to allow the Department or Protection and Advocacy agencies full access to the home environment, home records, or the residents; or (7-1-05)T
 - m.** Any condition exists in the home which endangers the health or safety of any resident. (7-1-05)T

914. (RESERVED).

915. TRANSFER OF RESIDENT.

The Department may require transfer of a resident from a home to an alternative placement on the following grounds. (7-1-05)T

01. Violation of Rules. As a result of a violation of a provision of these rules or standards, the home is unable or unwilling to provide an adequate level of meals, lodging, personal assistance, or supervision of a resident. (7-1-05)T

02. Violation of Resident's Rights. A violation of a resident's rights provided in Section 39-3516, Idaho Code, or Section 200 of these rules. (7-1-05)T

03. Immediate Jeopardy. A violation of a provision of this chapter or applicable rules or standards results in conditions that present an immediate jeopardy. (7-1-05)T

916. -- 949. (RESERVED).

950. RIGHT TO SELL.

Nothing contained in these rules limits the right of any home owner to sell, lease, mortgage, or close any home in accordance with all applicable laws. (7-1-05)T

951. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.22 - RULES FOR LICENSED RESIDENTIAL OR ASSISTED LIVING FACILITIES IN IDAHO

DOCKET NO. 16-0322-0501 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 39, Chapter 33, Idaho Code.

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

Wednesday, October 12, 2005
7:00 - 9:00 p.m.
DHW - Region I Office
1120 Ironwood Dr., Suite 102
Coeur d'Alene, ID

Thursday, October 13, 2005
7:00 - 9:00 p.m.
DHW - Region IV Office
1720 Westgate Dr., Suite D
Room 119
Boise, ID

Monday, October 17, 2005
7:00 - 9:00 p.m.
DHW Region VI
Human Development Center
421 Memorial Dr., Room 210
Pocatello, ID

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: This entire chapter of rules is being repealed. The text of the rewritten chapter appears under Docket No. 16-0322-0502.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year. The expansion for the approved State Fiscal Year 2006 budget for RALF changes includes 4 additional full-time employee positions (FTEs) and \$277,600 in personnel and operating funds, 50% of which comes from the state general fund. Without the rule changes, there would have been a total of 10 additional staff and \$635,600 of additional funds needed.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 05-6, page 33. Both formal and informal negotiations were conducted with residential or assisted living facilities, associations for these facilities, and advocacy groups for vulnerable individuals. Legislative committee hearings were held for the adoption of the statute changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Debra Ransom at (208) 334-6626.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2005.

DATED this 24th day of August, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16.03.22 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.22 - RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES IN IDAHO
DOCKET NO. 16-0322-0502 (CHAPTER REWRITE)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Title 39, Chapter 33, Idaho Code.

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

Wednesday, October 12, 2005
7:00 - 9:00 p.m.
DHW - Region I Office
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Room 119
Boise, ID

Monday, October 17, 2005
7:00 - 9:00 p.m.
DHW Region VI
Human Development Center
421 Memorial Dr., Room 210
Pocatello, ID

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

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

This chapter of rules is being rewritten to better serve Idaho's population of vulnerable adults living in residential or assisted living facilities. The current chapter of rules is being repealed under Docket No. 16-0322-0501. Legislation adopted in 2005 made the current chapter of rules obsolete. The chapter was rewritten to align it with the changes made in statute and to incorporate the changes negotiated with the industry.

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

This docket is a rewrite of existing rules and the fee imposed in this docket is not an increase.

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

The expansion for the approved State Fiscal Year 2006 budget for RALF changes includes 4 additional full-time employee positions (FTEs) and \$277,600 in personnel and operating funds, 50% of which comes from the state general fund. Without the rule changes, there would have been a total of 10 additional staff and \$635,600 of additional funds needed.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Volume 05-6, page 33. Both formal and informal negotiations were conducted with residential or assisted living facilities, associations for these facilities, and advocacy groups for vulnerable individuals. Legislative committee hearings were held for the adoption of the statute changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Debra Ransom at (208) 334-6626.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2005.

DATED this 24th day of August, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0322-0502

IDAPA 16
TITLE 03
CHAPTER 22

16.03.22 - RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES IN IDAHO

000. LEGAL AUTHORITY.

The Idaho Board of Health and Welfare is authorized under Section 39-3305, Idaho Code, to adopt and enforce rules to protect the health, safety, and the individual's rights for residents in residential care or assisted living facilities. ()

001. TITLE, SCOPE, AND RESPONSIBILITIES.

01. Title. The title of this chapter of rules is IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho". ()

02. Scope. The purpose of a residential care or assisted living facility in Idaho is to provide choice, dignity and independence to residents while maintaining a safe, humane, and home-like living arrangement for individuals needing assistance with daily activities and personal care. These rules set standards for providing services that maintain a safe and healthy environment. ()

03. General Provider Responsibilities. The facility must ensure quality services by providing choices, dignity and independence to residents. The facility must have an administrator and staff who have the knowledge and experience required to provide safe and appropriate services to all residents of the facility. The facility must be operated consistent with the rules and statutes as it conducts its work. ()

04. General Department Responsibilities. The Department is responsible for monitoring and enforcing the provisions of the statute and this chapter to protect residents in these facilities by providing information, education and evaluating providers to ensure compliance with statute and these rules. This responsibility includes: licensing facilities and monitoring the condition of the facility. ()

05. Exemptions. The provisions of these rules do not apply to any of the following: ()

a. Health Facility. The provisions of these rules do not apply to hospitals, nursing facilities, intermediate care facilities for persons with mental retardation, or any other health facility as defined by Title 39, Chapter 13, Idaho Code. ()

b. Alternate Living Arrangements. The provisions of these rules do not apply to any house, institution, hotel, congregate housing project, retirement home, or other similar place that is limited to providing one (1) or more of the following: housing, meals, transportation, housekeeping, or recreational and social activities, or that have

residents independently accessing supportive services from an entity approved to provide such services in Idaho and holding no legal ownership interest in the entity operating the facility. ()

c. Relatives. The provisions of these rules do not apply to any arrangement for the receiving and care of persons by a relative, except when the caretaker is paid for the care through a state or federal program, in which case the caretaker relative and the care setting must meet all applicable requirements. ()

002. WRITTEN INTERPRETATIONS.

These rules may be interpreted through informational letters generated and maintained by the Department. ()

003. ADMINISTRATIVE APPEALS AND CONTESTED CASES.

01. Administrative Appeals and Contested Cases. Administrative appeals and contested cases are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". ()

02. Informal Dispute Resolution Meeting. If a facility disagrees with a deficiency cited for a core issue, it may request an informal dispute resolution meeting to the Bureau of Facility Standards. The policy and procedure for requesting informal dispute resolution is posted on the Licensing and Survey Agency website at www.facilitystandards.idaho.gov. ()

004. INCORPORATION BY REFERENCE.

The documents, referenced in Subsection 004.01 through 004.08 of these rules, are incorporated by reference as provided by Section 67-5229 (a), Idaho Code. These incorporated documents are available for public review upon request at the Department of Health and Welfare, 450 West State Street, Boise, Idaho 83702, or when available on line at the websites provided in these rules. ()

01. National Fire Protection Association (NFPA) documents. The NFPA documents referenced in these regulations are available from the National Fire Protection Association, 11 Tracy Drive, Avon, MA 02322-9908; 1-800-344-3555; and online at <http://www.nfpa.org>. ()

02. Idaho Diet Manual. This manual is available from the Idaho Dietetic Association, Ninth Edition, 2005, online at <http://eatrightidaho.org>. ()

03. Idaho Food Code. IDAPA 16.02.19, "Food Safety and Sanitation Standards For Food Establishments," April 6, 2005. These rules are available online at www2.state.id.us/adm/adminrules/rules/idapa16/0219.pdf. ()

04. Americans with Disabilities Act Accessibility Guidelines. 28 CFR Part 36, Appendix A. This code is available online at www.ada.gov/publicat.htm. Contact phone number is 1-800-514-0301. ()

05. Idaho Board of Nursing Rules. IDAPA 23.01.01, "Rules of the Idaho Board of Nursing". These rules are available online at www2.state.id.us/adm/adminrules/rules/idapa23/23index.htm. ()

06. Idaho Board of Pharmacy Rules. IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy". These rules are available online at www2.state.id.us/adm/adminrules/rules/idapa27/27index.htm. ()

07. International Building Code. Edition 2003. This code is available from the International Code Council, 4051 West Flossmoor Rd., Country Club Hills, IL 60478-5795, phone: 888-422-7233 and online at www.iccsafe.org. ()

08. Idaho Medical Assistance Program Rules. IDAPA 16.03.09, "Rules Governing the Medicaid Assistance Program," Section 817. These rules may be found online at www2.state.id.us/adm/adminrules/rules/idapa16/0309.pdf. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. ()

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

04. Telephone. (208) 334-5500. ()

05. Internet Website Address. The Department Internet website address is: <http://www.healthandwelfare.idaho.gov>. ()

06. Licensing and Survey Agency. The Department's Licensing and Survey Agency, 3232 Elder Street, Boise, ID 83705; Phone: 208 334-6626. ()

07. Licensing and Survey Agency Website. <http://www.facilitystandards.idaho.gov>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records". ()

02. Public Records. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Public records in the custody of the Department of Health and Welfare are subject to disclosure, unless otherwise exempted by state and federal law. ()

03. Disclosure of Resident Identity. Information received by the Department through filed reports, inspections, or as otherwise authorized under the law, will not be disclosed publicly in such a manner as to identify individual residents except as necessary in a proceeding involving a question of licensure. ()

04. Public Availability of Deficiencies. The survey documents relating to a facility will be available to the public upon written request to the Department and posted on the Licensing and Survey Agency Web site. ()

007. -- 008. (RESERVED).

009. CRIMINAL HISTORY AND BACKGROUND CHECKS.

01. Compliance With Department Criminal History and Background Checks. Residential Care or Assisted Living Facilities must comply with IDAPA 16.05.05, "Criminal History and Background Checks in Long Term Care Settings". ()

02. Direct Patient Access Individuals. These rules apply to employees and contractors hired or contracted with after October 1, 2005, that have direct patient access to residents in Residential Care or Assisted Living Facilities. ()

03. Fees for Criminal History and Background Checks. Fees for the criminal history and background checks are paid through the Federal Pilot Project grant as provided in Public Law 108-173, Section 307 of the Medicare Prescription Drug, Improvement and Modernization Act of 2003, from October 1, 2005 through September 30, 2007, or until federal funding is no longer available. ()

04. Availability to Work. Any direct patient access individual hired or contracted with on or after October 1, 2005, must complete a self-declaration form before having access to residents. If a designated crime listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," is disclosed, the individual cannot have access to any resident without a clearance by the Department. Once the notarized self-declaration is completed the

individual can only work under supervision until the individual has been fingerprinted. The individual must have the fingerprinting completed within twenty (20) days of completion of the self-declaration. ()

010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.

01. Abuse. The non-accidental act of sexual, physical or mental mistreatment, or injury of a resident through the action or inaction of another individual. ()

02. Accident. An unexpected, unintended event that can cause a resident injury. ()

03. Activities. All organized and directed social and rehabilitative services a facility provides, arranges, or cooperates with. ()

04. Activities of Daily Living. The performance of basic self-care activities in meeting an individual's needs to sustain him in a daily living environment, including bathing, washing, dressing, toileting, grooming, eating, communicating, continence, and mobility. ()

05. Administrator. An individual, properly licensed by the Bureau of Occupational Licensing, who is responsible for day to day operation of a residential care or assisted living facility. ()

06. Adult. A person who has attained the age of eighteen (18) years. ()

07. Advance Directive. A written instruction, such as a living will or durable power of attorney for health care, recognized under State Law, whether statutory or as recognized by the courts of the State, and relates to the provision of medical care when the individual is unable to communicate. ()

08. Advocate. An authorized or designated representative of a program or organization operating under federal or state mandate to represent the interests of a population group served by a facility. ()

09. Ambulatory Person. A person who, unaided by any other person, is physically and mentally capable of walking a normal path to safety, including the ascent and descent of stairs. ()

10. Assessment. The conclusion reached using uniform criteria which identifies resident strengths, weaknesses, risks and needs, to include functional, medical and behavioral needs. ()

11. Authentication. Proof of authorship. ()

12. Authorized Provider. An individual who is a nurse practitioner or clinical nurse specialist or physician assistant. ()

13. Basement. That portion of a building that is partly or completely below grade plane. A basement will be considered as a story above grade plane where the finished surface of the floor above the basement is: (1) More than six (6) feet (1829 mm) above grade plane; (2) More than six (6) feet (1829 mm) above the finished ground level for more than fifty percent (50%) of the total building perimeter; or (3) More than twelve (12) feet (3658 mm) above the finished ground level at any point. International Building Code-2003. ()

14. Bed Bound. A resident who is in bed or in a recliner for twenty (20) hours or more per day. This definition also includes residents who are primarily bedfast but have bathroom privileges. ()

15. Behavioral Plan. A written plan which decreases the frequency or intensity of maladaptive behaviors and increases the frequency of adaptive behaviors and introduces new skills. ()

16. Call System. A signaling system whereby a resident can contact staff directly from their sleeping room, toilet room, and bathing area. The system may be voice communication; an audible or visual signal; and, may include wireless technology. ()

17. Chemical Restraint. A medication used to control behavior or to restrict freedom of movement

and is not a standard treatment for the resident's condition. ()

18. Client of the Department. Any person who receives financial aid, or services, or both from an organized program of the Department. ()

19. Complaint. A formal expression of dissatisfaction, discontent, or unhappiness by or on behalf of a resident concerning the care or conditions at the facility. This expression could be oral, in writing, or by alternative means of communication. ()

20. Complaint Investigation. A survey to investigate the validity of allegations of noncompliance with applicable state requirements. ()

21. Core Issue. A core issue is any one (1) of the following: abuse; neglect; exploitation; inadequate care; a situation in which the facility has operated for more than thirty (30) days without a licensed administrator designated the responsibility for the day to day operations of the facility; inoperable fire detection or extinguishing systems with no fire watch in place pending the correction of the system; or surveyors denied access to records, residents or facilities. ()

22. Criminal Offense. Any crime as defined in Section 18-111, Idaho Code, in 18 U.S.C. Section 4A1.2(o), and 18 U.S.C. Sections 1001 through 1027. ()

23. Deficiency. A determination of non-compliance with a specific rule or part of a rule. ()

24. Dementia. A chronic deterioration of intellectual function and other cognitive skills severe enough to interfere with the ability to perform activities of daily living and instrumental activities of daily living. ()

25. Department. The Idaho Department of Health and Welfare. ()

26. Developmental Disability. A developmental disability, as defined in Section 66-402, Idaho Code, means chronic disability of a person which appears before the age of twenty-two (22) years of age and: ()

a. Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism, or other conditions found to be closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from such impairments; and ()

b. Results in substantial functional limitations in three (3) or more of the following areas of major life activity; self-care, receptive and expressive language, learning, mobility, self-direction, capacity of independent living, or economic self-sufficiency; and ()

c. Reflects the need for a combination and sequence of special, interdisciplinary or direct care, treatment or other services which are of life-long or extended duration and individually planned and coordinated. ()

27. Director. The Director of the Idaho Department of Health and Welfare or his designee. ()

28. Electronic Signature, E-Signature. The system for signing electronic documents by entering a unique code or password that verifies the identity of the person signing and creates an individual "signature" on the record. ()

29. Exit Conference. A meeting with the facility administrator or designee to: (1) provide review, discussion and written documentation of non-core issues (Punch List), and (2) to provide preliminary findings of core issues. ()

30. Exploitation. The misuse of a resident's funds, property, resources, identity or person for profit or advantage. ()

011. DEFINITIONS AND ABBREVIATIONS F THROUGH M.

- 01. Follow-Up Survey.** A survey conducted to confirm that the facility is in compliance and has the ability to remain in compliance. ()
- 02. Functional Abilities Assessment.** An assessment of the resident's degree of independence with which the resident performs activities of daily living and instrumental activities of daily living. ()
- 03. Governmental Unit.** The state, any county, municipality, or other political subdivision or any Department, division, board, or other agency thereof. ()
- 04. Grade Plane.** A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane will be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six (6) feet (1829 mm) from the building, between the building and a point six (6) feet (1829 mm) from the building. International Building Code - 2003. ()
- 05. Hands On.** Physical assistance to the resident beyond verbal prompting. ()
- 06. Hourly Adult Care.** Nonresident daily services and supervision provided by a facility to individuals who are in need of supervision outside of their personal residence for a portion of the day. ()
- 07. Immediate Danger.** Any resident is subject to an imminent or substantial danger. ()
- 08. Inadequate Care.** When a facility fails to provide the services required to meet the terms of the Negotiated Service Agreement, or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services, a safe living environment, or engages in violations of resident rights or takes residents who have been admitted in violation of the provisions of Section 39-3307, Idaho Code. ()
- 09. Incident.** An unexpected, unintended event that can cause a resident injury. ()
- 10. Incident, Reportable.** A situation when a facility is required to report information to the Licensing and Survey Agency. ()
- 11. Independent Mobility.** A resident's ability to move about freely of their own choice with or without the assistance of a mobility device such as a wheelchair, cane, crutches, or walker. ()
- 12. Instrumental Activities of Daily Living.** The performance of secondary level of activities that enables a person to live independently in the community, including preparing meals, access to transportation, shopping, laundry, money management, housework, and medication management. ()
- 13. Legal Guardian or Conservator.** A court-appointed individual who manages the affairs or finances or both of another who has been found to be incapable of handling his own affairs. ()
- 14. License.** A permit to operate a facility. ()
- 15. Licensee.** The business and all owners with more than five percent (5%) of the assets. ()
- 16. Licensing and Survey Agency.** The section of the Department responsible for licensing and surveying residential care or assisted living facilities. ()
- 17. Medication.** Any substance or drug used to treat a disease, condition, or symptom, which may be taken orally, injected, or used externally and is available through prescription or over-the-counter. ()
- 18. Medication Administration.** It is a process where a prescribed medication is given to a resident by one (1) of several routes by licensed nurses. ()

19. Medication Assistance. The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a person who cannot independently self-administer medications. IDAPA 23.01.01. "Rules of the Idaho State Board of Nursing," Section 010. ()

20. Medication Dispensing. The act of filling, labeling and providing a prescribed medication to a resident. ()

21. Medication, Self-Administration. The act of a resident taking a single dose of his own medication from a properly labeled container and placing it internally in, or externally on, his own body as a result of an order by a authorized provider. ()

22. Mental Disorders. Health conditions that are characterized by alterations in thinking, mood or behavior (or some combination thereof), that are all mediated by the brain and associated with distress and or impaired functioning. ()

23. Mental Illness. Refers collectively to all diagnosable mental disorders. ()

24. Monitoring Visit. A visit by a representative of the Licensing and Survey Agency for the purpose of ensuring residents are not in immediate danger. ()

25. Neglect. Failure to provide food, clothing, shelter, or medical care necessary to sustain the life and health of a resident. ()

26. Negotiated Service Agreement. The plan reached by the resident and/or their representative and the facility based on the assessment, physician or authorized provider's orders, admission records, and desires of the resident, and which outlines services to be provided and the obligations of the facility and the resident. ()

27. Non-Core Issue. Any finding of deficiency that is not a core issue. ()

28. Non-Repudiation. The ability to ensure that a party to a communication cannot deny the authenticity of his or her signature on a document or the sending of a message that he or she originated. ()

012. DEFINITIONS AND ABBREVIATIONS O THROUGH Z.

01. Owner. Any person or entity, having legal ownership of the facility as an operating business, regardless of who owns the real property. ()

02. Personal Assistance. The provision by the staff of the facility of one (1) or more of the following services as outlined in the Negotiated Service Agreement: ()

a. Assisting the resident with activities of daily living and instrumental activities of daily living. ()

b. Arranging for supportive services. ()

c. Being aware of the resident's general whereabouts and supervision. ()

d. Monitoring the activities of the resident while on the premises of the facility to ensure the resident's health, safety, and well-being. ()

e. Assisting residents with self-administration of medication. ()

03. Personnel. Paid or unpaid individuals assigned the responsibility of providing care and supervision and services to the facility and its residents. ()

04. Physical Restraint. Any device or physical force that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body. ()

- 05. Portable Heating Device.** Any device designed to provide heat on a temporary basis; is not designed as part of a building's heating system; is not permanently affixed to the building; and, if electrical, is not hardwired to the building's electrical service. ()
- 06. PRN.** Indicates that a medication or treatment prescribed by a medical professional to an individual may be given as needed. ()
- 07. Pressure Ulcer.** Any lesion caused by unrelieved pressure that results in damage to the underlying tissue(s). Although friction and shear are not primary causes of pressure ulcers, friction and shear are important contributing factors to the development of pressure ulcers. ()
- 08. Provisional License.** A license which may be issued to a facility not in compliance with the rules pending the satisfactory correction of all deficiencies. ()
- 09. Psychosocial History.** A combined summary of psychological and social histories of an individual designed to inform a care giver of a person's abilities and limitations which will assist in identifying appropriate resources. ()
- 10. Publicly Funded Programs.** Any program funded in whole or in part by an appropriation of the U.S. Congress, the Idaho Legislature, or other governmental body. ()
- 11. Punishment.** Any action in which an adverse consequence is presented to a resident that is designed to produce a decrease in the rate, intensity, duration or probability of the occurrence of a behavior; or the administration of any noxious or unpleasant stimulus or deprivation of a resident's rights or freedom for the purpose of reducing the rate, intensity, duration, or probability of a particular behavior. ()
- 12. Relative.** A person related by birth, adoption, or marriage to the first degree and grandparent and grandchild. ()
- 13. Repeat Deficiency.** A deficiency found on a resurvey, complaint investigation, or follow-up survey that was also found on the previous survey or visit. ()
- 14. Resident.** An adult, other than the owner, administrator, their immediate families, or employees, who lives in a residential care or assisted living facility. ()
- 15. Residential Care or Assisted Living Facility.** A facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals, and lodging to three (3) or more adults not related to the owner. In this chapter, Residential Care or Assisted Living Facilities are referred to as "facility". Distinct segments of a facility may be licensed separately, provided each segment functions independently and meets all applicable rules. ()
- 16. Room and Board.** Lodging, meals, and utilities. ()
- 17. Scope.** The frequency or extent of the occurrence of a deficiency in a facility. ()
- 18. Self-Evacuating Resident.** A resident who is able to leave the building without one-on-one (1 on 1) or hands-on assistance and can remain at a designated location. ()
- 19. Self Preservation.** The ability of a person to independently avoid situations and circumstances in which he might be easily taken advantage of, and to protect themselves and property. ()
- 20. Short Term.** Fourteen (14) days or less. ()
- 21. Story.** That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two (2) successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the

ceiling joists or, where there is not a ceiling, to the top of the roof rafters. ()

22. Story Above Grade Plane. Any story having its finished floor surface entirely above grade plane, except that a basement will be considered as a story above grade plane where the finished surface of the floor above the basement is: (1) more than six (6) feet (1829 mm) above grade plane, (2) more than six (6) feet (1829 mm) above the finished ground level for more than fifty percent (50%) of the total building perimeter; or (3) more than twelve (12) feet (3658 mm) above the finished ground level at any point. ()

23. Substantial Compliance. A facility is in substantial compliance with these rules when no core issues have been cited as a deficiency during any survey. ()

24. Substantial Evening Meal. An offering of three (3) or more menu items at one-time, one (1) of which includes a high-quality protein such as meat, fish, eggs, or cheeses. The meal should represent no less than twenty percent (20%) of the day's total nutritional requirements. ()

25. Supervision. A critical watching and directing activity which provides protection, guidance, knowledge of the resident's general whereabouts, and assistance with activities of daily living. The administrator is responsible for providing appropriate supervision based on each resident's Negotiated Service Agreement or other legal requirements. ()

26. Supportive Services. Services provided to the resident in the community. ()

27. Survey. A review conducted by a surveyor to determine compliance with statutes and rules. There are two (2) components to a survey, health care and fire life safety and sanitation. ()

28. Surveyor. A person authorized by the Department to conduct surveys or complaint investigations to determine compliance with statutes and rules. ()

29. Syringe - Oral Feeding. Use of a syringe to deliver liquid or pureed nourishment directly into the mouth. ()

30. Therapeutic Diet. A diet ordered by a physician or authorized provider as part of treatment for a clinical condition or disease, or to eliminate or decrease specific nutrients in the diet, (e.g. sodium) or to increase specific nutrients in the diet (e.g. potassium) or to provide food the resident is able to eat (e.g. mechanically altered diet). ()

31. Traumatic Brain Injury (TBI). An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech. ()

32. Trust Account. An account maintained by the facility separate from its own accounts, to deposit, hold, or disburse monies belonging to a resident. The facility is the trustee of such accounts and the residents are the beneficiaries. ()

33. Uniform Assessment Instrument (UAI). A set of standardized criteria to assess functional and cognitive abilities of the resident. ()

34. Unlicensed Assistive Personnel (UAP). Unlicensed assistive personnel (UAP) employed to perform nursing care services under the direction and supervision of licensed nurses. UAP also includes licensed or credentialed health care workers whose job responsibilities extend to health care services beyond their usual and customary roles and which activities are provided under the direction and supervision of licensed nurses. ()

35. Variance. Permission by the Department to do something contrary to rule. ()

36. Waiver Services. Home and Community Based (HCBS) Services. ()

013. -- 049. (RESERVED).

050. VARIANCES.

The Licensing and Survey Agency may grant a variance provided the following criteria in Subsection 050.01 of these rules are met. ()

01. Written Request. A written request for a variance must be sent to the Licensing and Survey Agency. The request must include the following: ()

a. Reference to the section of the rules for which the variance is requested; ()

b. Reasons that show good cause why the variance should be granted, the extenuating circumstances which caused the need for the variance, any compensating factors or conditions that may have bearing on the variance such as additional floor space or additional staffing; and ()

c. Written documentation that assures residents' health and safety will not be jeopardized if a variance is granted. ()

02. Temporary Variance. A temporary variance may be granted for a specific resident or situation. The variance expires when the resident no longer lives at the facility or when the situation no longer exists. ()

03. Continuing Temporary Variance. The Licensing and Survey Agency reviews the appropriateness of continuing a variance during the survey process. If the facility administrator wishes to continue the variance, an annual request must be submitted to the Licensing and Survey Agency in writing. ()

04. Permanent Variance. A permanent variance may be granted provided the provisions of Subsections 050.01.a. through 050.01.c. of these rules are met. ()

05. Decision to Grant a Variance. The decision to grant a variance will not be considered as a precedent or be given any force or effect in any other proceeding. ()

06. Revocation of Variance. The Licensing and Survey Agency may revoke a variance if circumstances identify a risk to resident health and safety. ()

051. -- 054. (RESERVED).

055. SPECIAL WAIVER.

The Department may grant a special waiver of the requirement for licensure as a residential care or assisted living facility when it is deemed in the best interests of individuals, residents, and with due consideration of the criteria as specified in Section 39-3354A, Idaho Code. ()

056. -- 099. (RESERVED).

100. REQUIREMENTS FOR A LICENSE.

01. Current License. No person, firm, partnership, association, corporation, or governmental unit can operate, establish, manage, conduct, or maintain a residential care or assisted living facility in Idaho without a license issued by the Department. ()

02. Issuance of License. Upon completion of the application process requirements the Department will issue: ()

a. A residential care or assisted living license, in the name of the licensee applying for the license and to the address of the facility stated in the application; ()

b. The residential care or assisted living license will specify the maximum allowable number of beds.

All occupants other than the owner, administrator, immediate family, or employees will be included in the licensed bed capacity of the facility. ()

03. Distinctive Business Name. Every facility must use a distinctive name, which is registered with the Secretary of State of Idaho. If a facility decides to change its name, it will only be changed upon written notification to the Licensing and Survey Agency confirming the registration of the name change with the Secretary of State of Idaho. This notification needs to be received by the Licensing and Survey Agency at least thirty (30) calendar days prior to the date the proposed name change is to be effective. ()

04. Licensed Administrator. Each facility must have an administrator, licensed by the Bureau of Occupational Licensing, who is responsible for the day-to-day operation of the facility. ()

05. Display of Facility License. The current facility license must be posted in the facility and clearly visible to the general public. ()

06. Change in Corporate Shares. When there is a significant change in shares held by a corporate licensee of a residential care or assisted living facility, which does not alter the overall ownership or operation of the business, that change must be communicated to the Licensing and Survey Agency within (60) days of the effective date of change. ()

07. Licensee Responsibility. The licensee of the facility is responsible for the operation of the residential care or assisted living facility, even when a separate administrator is employed. ()

101. -- 104. (RESERVED).

105. CHANGE OF OWNERSHIP.

01. Non-Transfer of Facility License. A facility license is not transferable from one (1) individual to another, from one (1) business entity to another, or from one (1) location to another. When a change of licensee, ownership, lease or location occurs, the facility must be re-licensed. The new licensee must follow the application procedures, and obtain a license, before commencing operation as a facility. ()

02. Application for Change of Ownership. The application for a change of ownership must be submitted to the Licensing and Survey Agency at least ninety (90) days prior to the proposed date of change. ()

03. Change of Ownership for a Facility In Litigation. An application for change of ownership of a facility from a person who is in litigation for failure to meet licensure standards, or who has had a license revoked, must include evidence that there is a bonafide arms length agreement and relationship between the two (2) parties. An entity purchasing a facility with an enforcement action acquires the enforcement action. ()

106. -- 109. (RESERVED).

110. FACILITY LICENSE APPLICATION.

01. Facility License. License application forms are available upon written request or online at the Licensing and Survey Agency's website "facilitystandards.idaho.gov". The applicant must provide the following information: ()

a. A written statement that the applicant has thoroughly read and reviewed the statute, Title 39, Chapter 33, Idaho Code, and IDAPA 16.03.22, "Rules for Residential Care or Assisted Living Facilities in Idaho," and is prepared to comply with both; ()

b. The applicant must provide a written statement that discloses any license revocation or other disciplinary action taken or in the process of being taken, against a license held or previously held by the entity in Idaho or any other state or jurisdiction; ()

c. When the applicant is a firm, association, organization, partnership, business trust, corporation,

government entity, or company, the administrator and other members of the organization who provide direct resident care or who directly influence the facility's operation must provide the information contained in Subsections 110.01.a. and 110.01.b. of these rules. ()

d. Each shareholder or investor holding five percent (5%) or more interest in the business must be listed on the application; ()

e. A copy of the Certificate of Assumed Business Name from Secretary of State of Idaho; ()

f. A statement from the local fire authority that the facility is located in a lawfully constituted fire district or affirmation that a lawfully constituted fire authority will respond to a fire at the facility; ()

g. A statement from a licensed electrician or the local or state electrical inspector that all wiring in the facility complies with current electrical codes; ()

h. When the facility does not use an approved municipal water or sewage treatment system, a statement from a local environmental health specialist with the public health district indicating that the water supply and sewage disposal system meet the Department's requirements and standards; ()

i. A complete set of printed operational policies and procedures as described in Sections 150 through 162 of these rules. ()

j. A detailed floor plan of the facility, including measurements of all rooms, or a copy of architectural drawings must be submitted for evaluation by the Licensing and Survey Agency. See Sections 250-260, 400-410, 430 of these rules. ()

k. A copy of the Purchase Agreement, Lease Agreement, or Deed. ()

l. For facilities with nine (9) beds or more, signatures must be obtained from the following: ()

i. The local zoning official documenting that the facility meets local zoning codes for occupancy; ()

ii. The local building official documenting that the facility meets local building codes for occupancy; and ()

iii. The local fire official documenting that the facility meets local fire codes for occupancy. ()

02. Written Request for Building Evaluation. The applicant must request in writing to the Licensing and Survey Agency for a building evaluation of existing buildings. The request must include the physical address of the building that is to be evaluated; the name, address, and telephone number of the person who is to receive the building evaluation report. ()

03. Building Evaluation Fee. This application and request must be accompanied by a five hundred dollar (\$500) initial building evaluation fee. ()

04. Identification of the Licensed Administrator. The applicant must provide the following information for the licensed administrator: ()

a. A copy of the administrator license; ()

b. A current primary residence of the administrator. ()

05. Failure to Complete Application Process. Failure of the applicant to complete the Licensing and Survey Agency's application process within six (6) months, of the original date of application, may result in a denial of the application. If the application is denied the applicant is required to initiate a second licensing process. ()

111. -- 114. (RESERVED).

115. EXPIRATION AND RENEWAL OF LICENSE.

01. Application for License Renewal. The facility must submit a Licensing and Survey Agency application for renewal of a license at least thirty (30) days prior to the expiration of the existing license. ()

02. Existing License. The existing license, unless suspended or revoked remains in force and effect until the Licensing and Survey Agency has acted upon the application renewal, when such application for renewal has been filed. ()

116. -- 119. (RESERVED).

120. FACILITY OPERATING WITHOUT A LICENSE.

01. Facility Without a License. An operation is considered an unlicensed facility if it meets the definition of a facility stated in these rules, or is represented to provide care and serve the population of a residential or assisted living facility, is not licensed and is not exempt from licensure. ()

02. Residents in Facility Without a License. Upon discovery of a facility operating without a license, the Department will refer residents to an appropriate placement or adult protective services agency if either of the following conditions exist: ()

a. There is an immediate threat to the resident's health and safety; or ()

b. The unlicensed facility does not cooperate with the Department to apply for a license and meet licensing standards requirements. ()

03. Operator of a Facility Operating Without a License. A person found to be operating a facility without a license is guilty of a misdemeanor punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed five thousand dollars (\$5000), according to Section 39-3352(4), Idaho Code. ()

04. Prosecution of Violators. In the event the county attorney in the county where the alleged violation occurred fails or refuses to act within thirty (30) days of notification of the violation, the Attorney General is authorized to prosecute violations under the provisions of Section 39-3352(5), Idaho Code. ()

121. -- 124. (RESERVED).

125. EFFECT OF PREVIOUS REVOCATION OR DENIAL OF A LICENSE.

The Department will not review an application of an applicant who has had a license denied or revoked. The Department will review an application after five (5) years have elapsed from the date of license denial or revocation. ()

126. -- 129. (RESERVED).

130. LICENSURE SURVEYS.

01. Surveys of Facilities. The Licensing and Survey Agency will ensure that surveys are conducted at specified intervals in order to determine compliance with this chapter and applicable rules and statutes. The intervals of surveys will be: ()

a. Within ninety (90) days from initial licensure followed by a survey within fifteen (15) months. Facilities receiving no core issue deficiencies during both the initial and the subsequent survey will then enter the three (3) year survey cycle. ()

b. Once every twelve (12) months, or more frequently at the discretion of the Licensing and Survey

Agency for those facilities receiving core issue deficiencies during any survey. Surveys will be conducted until the facility attains two (2) consecutive surveys, excluding follow-up surveys, without a core issue deficiency. ()

c. At least every thirty-six (36) months, for those facilities having attained no core issue deficiencies for two (2) or more consecutive surveys, regardless of survey type. ()

d. Complaint investigation survey in accordance with triage timeframes. ()

02. Unannounced Surveys. Surveys are made unannounced and without prior notice at the discretion of the Department. ()

03. Inspection or Survey Services. The Department may use the services of any qualified person or organization, either public or private, to examine, survey or inspect any entity requesting or holding a facility license. ()

04. Access and Authority to Entire Facility. A surveyor must have full access and has the authority to examine: quality of care, services delivery, resident records, facility's records including any records or documents pertaining to any financial transactions between residents and the facility or any of its employees, resident accounts, physical premises, including the condition of buildings, grounds and equipment, food service, water supply, sanitation, maintenance, housekeeping practices, and any other areas necessary to determine compliance with applicable statute, rules, and standards. ()

05. Interview Authority. A surveyor has the authority to interview any individual associated with the facility or the provision of care, including the license holder, administrator, staff, residents, residents' families, service providers, authorized provider or physician or other legally responsible person. Interviews are confidential and conducted privately unless otherwise specified by the interviewee. ()

06. Access to Staff Living Quarters. The surveyor has full authority to inspect the facility, including personal living quarters of operators, administrator, or staff living in the facility, to check for inappropriate storage of combustibles, faulty wiring, or other conditions that may have a direct impact on compliance with these rules. ()

07. Written Report of Deficiencies. The Licensing and Survey Agency will provide a written report to support any deficiencies found. ()

a. Core Issue Deficiency. The Licensing and Survey Agency will provide, within ten (10) business days from the exit conference or from the last day of receipt of additional material, a written Statement of Deficiencies and Plan of Correction form to the facility when core deficiencies are identified during the survey. ()

b. Non-Core Issue Deficiency. The Licensing and Survey Agency will provide the facility a written report specifying the non-core issue deficiencies at the time of the exit conference. ()

08. Plan of Correction for Core Issue Deficiencies. The facility must develop a plan of correction and return an acceptable plan of correction to the Licensing and Survey Agency, for all core-issue deficiencies, within ten (10) calendar days of receipt of the Statement of Deficiencies and Plan of Correction form. An acceptable plan of correction must include: ()

a. A plan to ensure correction of each deficient practice and to ensure ongoing compliance; ()

b. Describe how and the frequency that the corrective actions will be monitored to ensure that each deficient practice is corrected and will not recur, such as what program will be put into place to monitor the continued effectiveness of the systemic change; ()

c. State the completion date for correcting each deficiency, except in unusual circumstances, and only with the written approval of the Licensing and Survey Agency. No correction date may be more than sixty (60) days from the inspection exit date as printed on the "Statement of Deficiencies and Plan of Correction" form; and ()

- d. The administrator's signature and the date submitted. ()

09. Evidence of Resolution for Non-Core Deficiencies. The facility must provide evidence of resolution of non-core issues to the Licensing and Survey Agency, within thirty (30) calendar days of the exit conference. The facility may show evidence of resolution by providing receipts, pictures, and completed policies, training, schedules, and other records. If there are non-core issues that the facility is unable to resolve due to extenuating circumstances, a written request for the delay must be submitted for Licensing and Survey Agency approval within thirty (30) days of the exit conference. The request must contain the following information: ()

- a. The reason for the delay; ()
- b. A plan for resolution; ()
- c. The date of the expected resolution, which may not exceed six (6) months; and ()
- d. A plan for ensuring the safety of the residents until resolution. ()

10. Follow-Up Survey. The Licensing and Survey Agency will conduct follow-up surveys to ascertain corrections to core issue and non-core issue deficiencies are made according to time frames established in the plan of correction and evidence of resolution. ()

131. -139. (RESERVED).

140. COMPLAINTS AND INVESTIGATIONS.

01. Filing a Complaint. Any person who believes that the facility has failed to meet any provision of the rules or statute may file a complaint with the Department. All complaints must have a basis in rule or statutory requirements. In the event that it does not, the complainant will be referred to the appropriate entity or agency. ()

02. Investigation Survey. The Licensing and Survey Agency will investigate, or cause to be investigated, any complaint alleging a violation of the rules or statute or reportable incident. ()

03. Disclosure of Complaint Information. The Department will not disclose the name or identifying characteristics of a complainant unless: ()

- a. The complainant consents in writing to the disclosure; ()
- b. The investigation results in a judicial proceeding and disclosure is ordered by the court; or ()
- c. The disclosure is essential to prosecution of a violation. The complainant is given the opportunity to withdraw the complaint before disclosure. ()

04. Method of Investigation. The nature of the complaint will determine the method used to investigate the complaint. ()

05. Notification to Complainant. The Licensing and Survey Agency will inform the complainant of the results of the investigation survey when the complainant has provided a name and address. ()

141. -- 149. (RESERVED).

150. POLICIES AND PROCEDURES.

Each facility must develop a written set of policies and procedures which are available to all staff at all times and include the facility policies described in Sections 151 through 162 of these rules. ()

151. ACTIVITY POLICIES.

01. Policy and Plan. Each facility must develop a written activity policy that assists, encourages and promotes residents to maintain and develop their highest potential for independent living through their participation in planned recreational and other activities. ()

02. Activity Opportunities. The policy must include opportunities for the following activities: ()

a. Socialization through group discussion, conversation, recreation, visiting, arts and crafts, music; ()

b. Daily living activities to foster and maintain independent functioning; ()

c. Physical activities such as games, sports, and exercises which develop and maintain strength, coordination, and range of motion; ()

d. Education through special classes or activities; and ()

e. Leisure time so residents may engage in activities of their own choosing. ()

03. Community Resources for Activities. The facility will utilize community resources to promote resident participation in integrated activities of their choice both in and away from the facility. ()

152. ADMISSION POLICIES.

01. Admissions. Each facility must develop written admission policies and procedures. The written admission policy must include; ()

a. The purpose, quantity and characteristics of available services; ()

b. Any restrictions or conditions imposed because of religious or philosophical reasons. ()

c. Limitations concerning delivery of routine personal care by persons of the opposite gender. ()

d. Notice of non-resident and residents who have been convicted of a sexual crime who live on the premises or in the facility ()

e. Appropriateness of placement to meet the needs of the resident, when there are non resident adults or children residing in the facility. ()

02. Screening for Diseases. Policy and procedure for screening residents on admission for tuberculosis (TB), according to the Centers for Disease Control and Prevention (CDC) screening guidelines. ()

03. Fee Description. A written description of how fees will be handled by the facility. ()

04. Resident Funds Policies. When a resident's funds are deposited with the facility or administrator, the facility must manage the residents' funds as provided in Sections 39-3316 (1), (5) & (6), Idaho Code, and Section 505 and Subsections 550.05 and 550.06 of these rules. Each facility must develop written policies and procedures outlining how residents' funds will be handled. ()

a. A statement if the facility does not manage resident funds. ()

b. If the facility manages resident funds, how funds are handled and safeguarded. ()

05. Resident Admission, Discharge, and Transfer. Admission, discharge, and transfer of residents to, from, or within the facility. ()

06. Policies of Acceptable Admissions. Written descriptions of the conditions for admitting residents

to the facility must include: ()

a. A resident will be admitted or retained only when the facility has the capability, capacity, and services to provide appropriate care, or the resident does not require a type of service for which the facility is not licensed to provide or which the facility does not provide or arrange for, or if the facility does not have the personnel, appropriate in numbers and with appropriate knowledge and skills to provide such services; ()

b. No resident will be admitted or retained who requires ongoing skilled nursing or care not within the legally licensed authority of the facility. Such residents include: ()

i. A resident who has a gastrostomy tube, arterial-venous (AV) shunts, or supra-pubic catheter inserted within the previous twenty-one (21) days; ()

ii. A resident who is receiving continuous total parenteral nutrition (TPN) or intravenous (IV) therapy; ()

iii. A resident who requires physical restraints, including bed rails, an exception is a chair with locking wheels or chair in which the resident can not get out of; ()

iv. A resident who is bed bound, except for a resident whose death is imminent; ()

v. A resident who is comatose, except for a resident whose death is imminent; ()

vi. A resident who is on a mechanically supported breathing system; ()

vii. A resident who has a tracheotomy who is unable to care for the tracheotomy independently; ()

viii. A resident who is fed by a syringe; ()

ix. A resident with open, draining wounds; ()

x. A resident with a Stage III or IV pressure ulcer; ()

xi. A resident with any type of pressure ulcer or open wound that is not improving weekly; ()

xii. A resident whose condition is unstable and needs nursing assessment and observation. ()

c. For any resident who has needs requiring a nurse, the facility must ensure a licensed nurse is available to meet the needs of the resident. Licensed nursing care must not be delegated to unlicensed personnel. ()

d. A resident will not be admitted or retained who has physical, emotional, or social needs that are not compatible with the other residents in the facility; ()

e. A resident that is violent or a danger to himself or others; ()

f. Any resident requiring assistance in ambulation must reside on the first story unless the facility complies with Sections 401 through 404 of these rules; ()

g. Residents who are not capable of self evacuation must not be admitted or retained by a facility which does not comply with the NFPA Standard #101, "Life Safety Code, 2000 Edition, Chapter 33, Existing Residential Board and Care Impracticable Evacuation Capability;" and ()

h. Resident safety can be assured by the appropriate combination of personnel and facility design. ()

153. ADDITIONAL POLICIES REQUIRED.

- 01. Response of Staff to Abuse, Neglect or Exploitation of Residents.** The facility must develop policies and procedures to assure that allegations of abuse, neglect and exploitation are identified, reported, investigated, followed up with interventions to prevent reoccurrence and assure protection, and documented. ()
- 02. Response of Staff to Emergencies.** How staff are to respond to emergency situations: ()
- a. Medical and psychiatric emergencies; ()
 - b. Resident absence; ()
 - c. Criminal situations; and ()
 - d. Presence of law enforcement officials at the facility. ()
- 03. Notification of Changes to Resident Health or Mental Status.** Who and how staff are to notify of any changes in residents' health or mental status. ()
- 04. Provided Care and Services by Staff.** How staff are to provide care and services to residents in the following areas: ()
- a. Activities of daily living; ()
 - b. Dietary and eating, including when a resident refuses to eat or follow a prescribed diet; ()
 - c. Dignity; ()
 - d. Ensuring each individual's rights; ()
 - e. Medication assistance; ()
 - f. Provision of privacy; ()
 - g. Social activities; ()
 - h. Supervision; ()
 - i. Supporting resident independence; and ()
 - j. Telephone access. ()
- 05. Resident Property Identified and Safe.** Identification of resident property and ensuring that personal items are kept safe and used only by the resident. ()
- 06. Intervention Procedures to Ensure Safety of Residents and Staff.** How to intervene to ensure resident and staff safety in unsafe situations-physical or behaviorally caused. ()
- 07. Behavior Management for Residents.** The facility must have policies and procedures to assure timely assessment, plan development which implements the least restrictive intervention to address the behavior and document the effect of interventions. ()
- 08. Staff Procedures for Accidents, Incidents, and Complaints.** The facility must develop policies and procedures to assure that accidents and incidents are identified, reported, investigated, and followed up with interventions to prevent reoccurrence and assure protection, and documented. ()
- 09. Facility Operations, Inspections, Maintenance, and Testing.** Plans and procedures for the

operation, periodic inspection, and testing of the physical plant, which includes utilities, fire safety and plant maintenance for all areas of the facility's campus. ()

10. Hazardous Materials. Policies and procedures for handling of hazardous materials. ()

11. Mechanical Equipment. Policies and procedures for handling potentially dangerous mechanical equipment. ()

154. EMERGENCY PREPAREDNESS POLICIES.

01. Emergency Preparedness Plan. Each facility must develop and implement an emergency preparedness plan to follow in the event of fire, explosion, flood, earthquake, high wind, or other emergency. ()

02. Written Procedures. The facility must have written procedures outlining steps to be taken in the event of an emergency including: ()

a. Who is to respond; ()

b. Each person's responsibilities; ()

c. Where and how residents are to be evacuated; and ()

d. Notification of emergency agencies. ()

155. HOURLY ADULT CARE POLICIES.

Facilities offering hourly adult care must develop written policies and procedures which include the following:()

01. Services Offered for Hourly Adult Care. A description of services offered, including: transportation services if offered, meals, activities, and supervision. ()

02. Acceptable Hourly Care Individuals. Types of individuals who may or may not be accepted for hourly care. ()

03. Cost of Program. Cost of program to individual. ()

04. Health and Other Individual Needs. Health and other pertinent information regarding the individual's needs. ()

05. Emergency Information. Emergency telephone numbers of family members and physician or authorized provider, and other identification information. ()

06. Hours for Care. Time periods of program not to exceed fourteen (14) consecutive hours in a twenty-four (24) hour period. ()

156. INFECTION CONTROL POLICIES.

Each facility must develop policies and procedures consistent with recognized standards which control and prevent infections for both staff and residents. ()

157. MEDICATION POLICIES.

01. Medication. Each facility must develop written medication policies and procedures that detail the following: ()

a. Receiving of medications; ()

b. Storage of medications; ()

- c. Medication distribution system to be used; ()
- d. How staff are to respond if: ()
 - i. A resident refuses a medication; ()
 - ii. A resident misses a medication and the reason; ()
 - iii. A resident medication is not available; ()
 - iv. Medications are missing; ()
 - v. A resident receives an incorrect medication; ()
- e. The process for determining who can self-administer medication; ()
- f. Unused medications: ()
 - i. Destruction; ()
 - ii. Return of medications to the pharmacy; ()
- g. Documentation requirements: ()
 - i. Given; ()
 - ii. Refused; ()
 - iii. Missed; ()
 - iv. Not available; and ()
 - v. For residents self-medicating. ()

02. Nurse Delegation. The process the nurse will use to delegate assistance with medication and how it will be documented. ()

158. FOOD AND NUTRITIONAL CARE POLICIES.

Each facility must develop written policies and procedures for providing proper nutritional care for each resident which includes procedures to follow if the resident refuses food or to follow the prescribed diet. ()

159. RECORDS POLICIES.

01. Complete and Accurate Records. Each facility must develop written policies and procedures to ensure complete, accurate, and authenticated records. ()

02. Electronic Records. Facilities that implement an electronic record or signature must have written policies in place to ensure the following: ()

- a. Proper security measures to protect the use of an electronic signature by anyone other than the person to which the electronic signature belongs; ()
- b. The privacy and integrity of the record; ()
- c. Includes which records will be maintained and signed electronically; ()
- d. How an e-signature code is assigned and the code and associated staff identities are protected; ()

- ()
- e. How passwords are assigned and the frequency for which they are changed; ()
- f. Allows resident access to his records within twenty-four (24) hours of the request; and ()
- g. Allows immediate access to records by surveyors, and others who are authorized by law; ()

160. RESIDENT RIGHTS POLICIES.

Each facility must develop written policies and procedures which ensure that resident rights will be promoted and protected in the facility. ()

161. SMOKING POLICIES.

01. Policy on Smoking. The facility must develop written rules governing smoking. These rules must be made known to all facility personnel, residents, and the visiting public. ()

02. Smoking Prohibited. Nothing in this section requires that smoking be permitted in a facility whose admission policies prohibit smoking. ()

03. Policy Content. The policy must include: ()

- a. Prohibiting smoking in any area where flammable liquids, gases, or oxidizers are in use or stored; ()
- b. Prohibiting smoking in bed by anyone; ()
- c. Prohibiting unsupervised smoking by residents classified as not mentally or physically responsible, and residents affected by medication; ()
- d. Prohibiting smoking in areas where combustible supplies or materials are stored; and ()
- e. Designating areas where smoking is permitted. ()

162. STAFFING POLICIES.

The facility must develop written staffing policies and procedures based on the numbers of residents, resident needs, and configuration of the facility. ()

163. -- 209. (RESERVED).

210. REQUIREMENTS FOR ACTIVITIES.

The facility must provide an ongoing program of activities that is consistent with the facility's policies and procedures as described in Section 151 of these rules. ()

211. -- 214. (RESERVED).

215. REQUIREMENTS FOR A FACILITY ADMINISTRATOR

Each facility must be organized and administered under one (1) licensed administrator assigned as the person responsible for the operation of the facility. Multiple facilities under one (1) administrator may be allowed by the Department based on an approved plan of operation. ()

01. Administrator Responsibility. The administrator is responsible for ensuring that policies and procedures required in Title 39, Chapter 33, Idaho Code and IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho" are implemented. ()

02. Availability of Administrator. The facility's administrator must be on site sufficiently to provide for safe and adequate care of the residents to meet the terms in the Negotiated Service Agreement. The facility's

administrator or his designee must be available to be on-site at the facility within two (2) hours. ()

03. Thirty Day Operation Limit. The facility may not operate for more than thirty (30) days without a licensed administrator. ()

04. Representation of Residents. The administrator, his relatives, or employees cannot act as or seek to become the legal guardian of, or have power of attorney for any resident. The administrator may not require the resident to name the facility or any employee of the facility as the payee as a condition of providing services. Specific limited powers of attorney to address emergency procedures where competent consent cannot otherwise be obtained are permitted. ()

05. Responsibility for Acceptable Admissions. The administrator must ensure that each resident is admitted or retained in compliance with Section 39-3307, Idaho Code, and Subsection 152.06 of these rules. ()

06. No One Allowed to Live or Work in the Facility if Convicted of Sexual Crime. The administrator must assure that a non-resident convicted of a sexual crime is not allowed to live or work in the facility. ()

07. Notification of Adult Protection and Law Enforcement. The administrator must assure that adult protection and law enforcement are notified in accordance with Section 39-5310, Idaho Code. ()

08. Procedures for Investigations. The administrator must assure the facility procedures for investigation of incidents, accidents, and allegations of abuse, neglect, or exploitation are implemented to assure resident safety. ()

09. Notification of Reportable Incidents. The administrator must assure notification to the Licensing and Survey Agency of the following reportable incidents: ()

a. Resident injuries of unknown origin. This includes any injury, the source of which was not observed by any person or the source of the injury could not be explained by the resident; or the injury includes severe bruising on the head, neck, or trunk, fingerprint bruises anywhere on the body, lacerations, sprains, or fractured bones. Minor bruising and skin tears on the extremities need not be reported. ()

b. Any accident involving facility-sponsored transportation resulting in resident injury. Examples: falling from the facility's van lift, wheel chair belt coming loose during transport, or an accident with another vehicle. ()

c. Resident elopement of any duration. Elopement is when a resident who is unable to make sound decisions physically leaves the facility without the facility's knowledge. ()

d. Resident-to-resident abuse incidents where there is injury. ()

e. Staff mistakes that result in the resident's need for hospitalization, treatment in a hospital emergency room, fractured bones, IV treatment, dialysis, or death. Some examples of staff mistakes include failure to adhere to the NSA, failure to notify appropriate staff of a significant change. ()

10. Administrator's Designee. A person authorized in writing to act in the absence of the administrator and who is knowledgeable of facility operations, the residents and their needs, emergency procedures, the location and operation of emergency equipment, and how the administrator can be reached in the event of an emergency. ()

11. Ability to Reach Administrator or Designee. The administrator or his designee must be reachable and available at all times. ()

12. Minimum Age of Personnel. The administrator will assure that no personnel providing hands-on care or supervision services will be under eighteen (18) years of age unless they have completed a certified nursing

assistance (CNA) certification course. ()

216. -- 219. (RESERVED).

220. REQUIREMENTS FOR ADMISSION AGREEMENTS.

01. Admission Agreements. Prior to, or on the day of, admission, the facility and each resident or the resident's legal guardian or conservator will enter into a written admission agreement that is understandable and translated into a language the resident or his representative understands. The agreement must be signed by all involved parties. The admission agreement may be integrated within the Negotiated Service Agreement, provided that all requirements for the Negotiated Service Agreement and admission agreement are met. Admission agreements must include: ()

a. Services the facility provides including: room, board, assistance with activities of daily living, supervision, assistance and monitoring of medications, laundering of linens owned by the facility, coordination of outside services, arrangement for routine, urgent, and emergency medical and dental services, emergency interventions, housekeeping services, maintenance, utilities, access to basic television in common areas, maintenance of self-help skills, recreational activities, and provisions for trips to social functions; ()

b. Staffing patterns and qualification of staff on duty during a normal day; ()

c. The facility must notify potential residents of the types of populations it specializes in serving; ()

d. The administrator of a residential care or assisted living facility must disclose in writing at the time of admission or before a resident's admission if the facility does not carry professional liability insurance. If the facility cancels the professional liability insurance all residents must be notified of the change in writing; ()

e. The facility's and resident's roles and responsibilities relating to assistance with medications including the reporting of missed doses or those taken on a PRN basis; ()

f. Who is responsible for the resident's personal funds; ()

g. Responsibility for protection and disposition of all valuables belonging to the resident and provision for the return of resident's valuables if the resident leaves the facility; ()

h. Fee description and conditions under which emergency transfers will be made: ()

i. Arrangement for payments; ()

ii. How a partial month's resident fees are to be refunded when a resident no longer resides in the facility; ()

iii. Written notice to vacate the facility must be given thirty (30) calendar days prior to transfer or discharge on the part of either party except in the following situations; ()

iv. In the case of the resident's death, fifteen (15) days notice is required. The date of death begins the fifteen (15) days notice requirement; ()

v. In the case of an emergency condition that requires a resident's transfer, fifteen (15) days notice is required. The date of transfer starts the fifteen (15) days notice requirement; ()

i. Permission to transfer information from the resident's records to any facility to which the resident transfers; ()

j. Resident responsibilities, as appropriate; ()

k. Any restriction on choice of care or service providers, such as pharmacy, home health agency, hospice agency, physician or authorized provider; ()

l. Written documentation of the resident's preference regarding the formulation of an Advance Directive in accordance with Idaho state law. When a resident has an Advanced Directive, a copy must be immediately available for staff and emergency personnel; ()

m. Agreement that within fifteen (15) days after admission the resident will be skin tested for tuberculosis, unless there is a documented medical contraindication from an authorized provider or physician; and ()

n. Other information that the facility may deem appropriate. ()

02. Conditions for Termination of the Admission Agreement. The admission agreement cannot be terminated, except under the following conditions: ()

a. By written notification, by either party, giving the other party thirty (30) calendar days written notice; ()

b. The resident's death; ()

c. Emergency conditions that requires the resident to be transferred to protect the resident or other residents in the facility from harm; ()

d. The resident's mental or medical condition deteriorates to a level requiring care as described in Section 33-3307, Idaho Code, and Subsection 152.06 of these rules; ()

e. Nonpayment of the resident's fees; ()

f. When the facility can not meet resident needs due to changes in services, in house or contracted, or inability to provide the services; and ()

g. Other written conditions as may be mutually established between the resident, the resident's legal guardian or conservator and the administrator of the facility at the time of admission. ()

03. Facility Responsibility During Resident Discharge. The facility is responsible to assist the resident with transfer by providing a list of skilled nursing facilities, other residential care or assisted living facilities, and certified family homes that may meet the needs of the resident. ()

04. Resident's Appeal of Involuntary Discharge. A resident may appeal all discharges with the exception of an involuntary discharge in the case of non-payment, emergency conditions that require the resident to be transferred to protect the resident or other residents in the facility from harm. ()

a. Before a facility discharges a resident, the facility must notify the resident, and if known, a family member, or his legal representative of the discharge and the reasons for the discharge. ()

b. This notice must be in writing and in a language and manner the resident or his representative can understand. ()

05. Written Notice of Discharge. The written notice of discharge must include the following: ()

a. The reason for the discharge; ()

b. Effective date of the discharge; ()

c. A statement that the resident has the right to appeal the discharge to the Department within thirty (30) calendar days of receipt of written notice of discharge; ()

- d.** The name and address of where the appeal must be submitted; ()
 - e.** The name, address, and telephone number of the local ombudsman, for residents sixty (60) years of age or older; and ()
 - f.** The name, address and telephone number of CO-AD, for residents with developmental disabilities or mental illness. ()
 - g.** If the resident fails to pay fees to the facility, as agreed to in the admission agreement, during the discharge appeal process, the resident's appeal of the involuntary discharge becomes null and void and the discharge notice applies. ()
 - h.** When the notice does not contain all the above required information, the notice is void and must be reissued. ()
- 06. Receipt of Appeal.** Request for an appeal must be received by the Department within thirty (30) calendar days of the resident's or resident's representative's receipt of written notice of discharge to stop the discharge before it occurs. ()

221. -- 224. (RESERVED).

225. REQUIREMENTS FOR BEHAVIOR MANAGEMENT.

The facility must identify and assess behavioral symptoms that are distressing to the resident or infringe on other residents' rights. ()

- 01. Assessment for Behavior Management.** The assessment must include the following; ()
 - a.** Identification if the behavioral symptoms are transitory or permanent; ()
 - b.** Study of antecedent behaviors and activities; ()
 - c.** Baseline data, including intensity, duration and frequency of the behavior; ()
 - d.** Identification of recent changes in the resident's life, such as death in the family, change in resident's daily routine; ()
 - e.** Identification of environmental causes such as excessive heat, noise, overcrowding, hunger, staffing; and ()
 - f.** Ruling out possible medical causes such as pain, constipation, fever, or infection. ()
- 02. Intervention.** Interventions must be developed for each behavioral symptom. ()
 - a.** All staff must consistently implement behavioral symptom interventions. ()
 - b.** The interventions need to be the least restrictive. ()
- 03. Ordering Provider and Pharmacists.** The resident's medication regime must be evaluated every six (6) months to ensure that medications used to treat behavioral symptoms are necessary and at the lowest possible dose. ()

226. -- 249. (RESERVED).

250. REQUIREMENTS FOR BUILDING CONSTRUCTION AND PHYSICAL STANDARDS.

- 01. Building Character.** All buildings utilized as residential care or assisted living facilities must be of

such character as to be suitable for such use. Facilities must be of such character as to enhance normalization and integration of residents into the community. ()

02. Plans and Specifications. Plans and specifications for any proposed new facility construction, any addition or remodeling are governed by the following: ()

a. Plans must be prepared by an architect or engineer licensed in the state of Idaho. A variance of this requirement may be granted by the Licensing and Survey Agency when the size of the project does not necessitate involvement of an architect or engineer; ()

b. Plans and specifications must be submitted to the Licensing and Survey Agency to assure compliance with applicable construction standards, codes, and regulations; ()

c. Newly constructed or converted buildings housing sixteen (16) or more residents must submit professionally prepared drawings or plans of the kitchen and a listing of all kitchen equipment for review and approval prior to construction. ()

03. Remodeling or Additions. Remodeling of or additions to a facility will be consistent with all applicable fire and life safety requirements. ()

04. Approval. All buildings, additions and remodeling are subject to approval by the Licensing and Survey Agency and must meet applicable requirements. ()

05. Walls and Floor Surfaces. Walls and floors must be of such character to permit cleaning. Walls and ceilings in kitchens, bathrooms, and utility rooms must have washable surfaces. ()

06. Toilet and Bathrooms. Each facility must provide: ()

a. A toilet and bathroom for resident use so arranged that it is not necessary for an individual to pass through another resident's room to reach the toilet or bath; ()

b. Solid walls or partitions to separate each toilet and bathroom from all adjoining rooms; ()

c. Mechanical ventilation to the outside from all inside toilets and bathrooms not provided with an operable exterior window; ()

d. Each tub, shower, and lavatory with hot and cold running water; ()

e. At least one (1) flush toilet for every six (6) residents; ()

f. At least one (1) tub or shower for every eight (8) residents; ()

g. At least one (1) lavatory with a mirror for each toilet; and ()

h. At least one (1) toilet, tub or shower, and lavatory in each building in which residents sleep, with additional units if required by the number of persons. ()

07. Accessibility for Persons With Mobility and Sensory Impairments. For residents with mobility or sensory impairments, the facility must provide a physical environment which meets the needs of the person for independent mobility and use of appliances, bathroom facilities, and living areas. New construction must meet the requirements of the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Existing facilities must comply, to the maximum extent feasible, with 28 CFR Sections 36.304 and 36.305 regarding removal of barriers under the Americans with Disabilities Act, without creating an undue hardship or burden on the facility, and must provide as required, the necessary accommodations: ()

a. Ramps for residents who require assistance with ambulation shall comply with the requirements of the ADAAG 4.8; ()

- b.** Bathrooms and doors large enough to allow the easy passage of a wheelchair as provided for in the ADAAG 4.13; ()
- c.** Grab bars in resident toilet and bathrooms in compliance with ADAAG 4.26; ()
- d.** Toilet facilities in compliance with ADAAG 4.16 and 4.23; ()
- e.** Non-retractable faucet handles in compliance with ADAAG 4.19, with the exception of self-closing valves under 4.19.5, and 4.27; and ()
- f.** Suitable hand railing must be provided on both sides of all stairs leading into and out of a building for residents who require the use of crutches, walkers, or braces. ()
- 08. Lighting.** The facility must provide adequate lighting in all resident sleeping rooms, dining rooms, living rooms, recreation rooms, and hallways. ()
- 09. Ventilation.** The facility must be ventilated, and precautions shall be taken to prevent offensive odors. ()
- 10. Plumbing.** All plumbing in the facility must comply with local and state codes. All plumbing fixtures must be easily cleanable and maintained in good repair. The temperature of hot water at plumbing fixtures used by residents must be between one hundred five degrees (105°F) Fahrenheit and one hundred twenty degrees (120°F) Fahrenheit. ()
- 11. Heating.** A heating system must be provided for the facility that is capable of maintaining a minimum temperature of seventy degrees (70°F) Fahrenheit during the day and a minimum of sixty-two degrees (62°F) Fahrenheit during the night. Wood stoves are not be permitted as the sole source of heat and the thermostat for the primary source of heat must be remotely located away from any wood stove. ()
- 12. Dining, Recreation, Shower, Bathing and Living Space.** The total area set aside for these purposes must be no less than thirty (30) square feet per licensed bed. A hall or entry can not be included as living or recreation space. ()
- 13. Residents Required to Go Outside.** Residents requiring the use of wheelchairs, walkers, or assistance with ambulation cannot be admitted to a facility that requires residents to go outside to go back and forth from the dining room and recreation areas. ()
- 14. Covered Cement Walks.** For facilities licensed after July 1, 1991, where residents are required to go outside to another building for dining or recreation, there must be covered paved walks from one (1) building to the other. ()
- 15. Resident Sleeping Rooms.** The facility must assure that: ()
- a.** Resident sleeping rooms are not in attics, stairs, halls, or any other room commonly used for other than bedroom purposes; ()
- b.** A room with a window that opens into an exterior window well cannot be used for a resident sleeping room; ()
- c.** Not more than four (4) residents can be housed in any multi-bed sleeping room in facilities licensed prior to July 1, 1991. New facilities or building converted to a licensed facility after July 1, 1992, cannot have more than two (2) residents in any multi-bed sleeping room. When there is any change in ownership of the facility, the maximum number of residents allowed in any room is two (2); ()
- d.** Square footage requirements for resident sleeping rooms must provide for not less than one hundred (100) square feet of floor space per resident in a single-bed sleeping room and not less than eighty (80)

square feet of floor space per resident in a multi-bed sleeping room; ()

e. Each resident's sleeping room must be provided with an operable exterior window. An operable window is not required where there is a door directly to the outside from the sleeping room; ()

f. The operable window sill height must not exceed thirty-six (36) inches above the floor in new construction, additions, or remodeling; ()

g. The operable window sill height must not exceed forty-four (44) inches above the floor in existing buildings being converted to a facility; ()

h. Each resident sleeping room must provide a total window space that equals at least eight percent (8%) of the room's total square footage; ()

i. Window screens must be provided on operable windows; ()

j. Resident sleeping rooms must have walls that run from floor to ceiling; have doors that will limit the passage of smoke; and provide the resident(s) with privacy; ()

k. Ceiling heights in sleeping rooms must be at least seven (7) feet, six (6) inches; and ()

l. Closet space in each resident sleeping room must provide at least four (4) usable square feet per resident. Common closets used by two (2) or more residents must have substantial dividers for separation of each resident's clothing. All closets must be equipped with doors. Free-standing closets are deducted from the square footage of the sleeping room. ()

16. Secure Environment. If the facility accepts and retains residents who have cognitive impairment, the facility must provide a secure interior environment and exterior yard which is secure and safe. ()

17. Call System. The facility must have a call system. The call system cannot be a substitute for supervision. For facilities licensed prior to January 1, 2006, when the current system is no longer operational or repairable the facility must install a call system as defined in these rules. ()

18. Dietary Standards. Each facility must have a full service kitchen to meet the needs of the residents. Any satellite kitchen must meet all applicable requirements. ()

251. -- 254. (RESERVED).

255. REQUIREMENTS FOR ADDITIONAL PHYSICAL STANDARDS.

01. Fire District. The facility site must be in a lawfully constituted fire district. ()

02. Roads. The facility must be served by an all-weather road and kept open to motor vehicles at all times of the year. ()

03. Medical Accessibility. The facility site must be accessible to authorized providers, or emergency medical services within thirty (30) minutes driving time. ()

04. Service Accessibility. The facility site must be accessible within thirty (30) minutes driving time to necessary social, medical, and rehabilitation services. ()

256. -- 259. (RESERVED).

260. REQUIREMENTS FOR ENVIRONMENTAL SANITATION.

01. Water Supply. The facility must have an adequate water supply that is safe and of a sanitary quality. It must be from: ()

- a. An approved private, public, or municipal water supply; ()
- b. Water from a private supply, must have water samples submitted annually to either a private accredited laboratory or to the Public Health District Laboratory for bacteriological examination. The Department may require more frequent examinations if warranted; and ()
- c. There must be a sufficient amount of water under adequate pressure to meet sanitary and fire sprinkler system requirements of the facility at all times. ()
- 02. Sewage Disposal.** All sewage and liquid waste must be discharged, into a municipal sewage system where such a system is available. If a municipal sewage system is not available sewage and liquid waste must be collected, treated, and disposed of in a manner approved by the Department. ()
- 03. Garbage and Refuse Disposal.** All garbage and refuse disposal must be provided by the facility. ()
- a. The premises and all buildings must be kept free from accumulation of weeds, trash and rubbish. ()
- b. Material not directly related to the maintenance and operation of the facility must not be stored on the premises. ()
- c. All containers used for storage of garbage and refuse must be constructed of durable, nonabsorbent material and must not leak or absorb liquids. Containers must be provided with tight fitting lids unless stored in a vermin-proof room(s) or enclosures. ()
- d. Garbage containers must be maintained in a sanitary manner. Sufficient containers must be afforded to hold all garbage and refuse which accumulates between periods of removal from the facility. Storage areas must be clean and sanitary. ()
- 04. Insect and Rodent Control.** A pest control program must be in effect at all times. This program must effectively prevent insects, rodents and other pests from entrance to, or infestation of the facility. ()
- a. All toxic chemicals must be properly labeled and stored under lock and key; and ()
- b. No toxic chemicals must be stored in resident areas, where drugs are stored, or in any area where food is stored, prepared or served. ()
- 05. Linen and Laundry Facilities and Services.** ()
- a. The facility must have available at all times a quantity of linen essential to the proper care and comfort of residents; ()
- b. There must be at least two (2) complete changes of clean bed linen and two (2) sets of towels on hand for each licensed bed; ()
- c. Linen must be of good quality, not thread-bare, torn or badly stained; ()
- d. Linens must be handled, processed and stored in a appropriate manner that prevents contamination; ()
- e. Adequate facilities must be provided for the proper and sanitary washing and drying of linen and other washable goods laundered in the facility; ()
- f. The laundry must be situated in an area separate and apart from where food is stored, prepared or served; ()

g. The laundry must be well lighted and ventilated, adequate in size for the needs of the facility, maintained in a sanitary manner and kept in good repair; ()

h. When the facility sends linen and personal laundry out for laundry services, care must be taken that soiled linen and clothing are properly handled before sending out. Clean linen and clothing received from a laundry service must be stored in a proper manner; and ()

i. Residents' and personnel's personal laundry must be collected, transported, sorted, washed, and dried in a sanitary manner and cannot be washed with general linens (towels, sheets). ()

06. Housekeeping Services and Equipment. Housekeeping, maintenance personnel, and equipment must be provided to maintain the interior and exterior of the facility in a clean, safe, and orderly manner. Prior to occupancy of any sleeping room by a new resident, the room must be thoroughly cleaned including the bed, bedding, and furnishings. ()

261. -- 299. (RESERVED).

300. REQUIREMENTS FOR NURSING SERVICES.

Nursing services must be performed in accordance with IDAPA 23.01.01, "Rules of the Idaho Board of Nursing". The facility must have on staff or under contract the nursing personnel listed in Subsections 300.01 and 300.02 of these rules to provide nursing service requirements. ()

01. Licensed Professional Nurse (RN). A licensed professional nurse (RN) must visit the facility at least once each calendar month. The licensed professional nurse is responsible for delegation of all nursing functions, according to IDAPA 23.01.01, "Idaho Board of Nursing Rules," Section 400. ()

02. Licensed Nurse. The facility must ensure that a licensed nurse is immediately available by telephone and capable of being onsite within one (1) hour, twenty-four (24) hours per day, to address changes in the resident's health or mental status and to review and implement new orders prescribed by the resident's health care provider. ()

301. -- 304. (RESERVED).

305. LICENSED PROFESSIONAL NURSE RESPONSIBILITY REQUIREMENTS.

Each month the licensed professional nurse must assess and document, including date and signature, for each resident as described in Subsections 305.01 through 305.08 of these rules. ()

01. Resident Response to Medications and Therapies. Conduct a nursing assessment of each resident's response to medications and prescribed therapies. ()

02. Current Medication Orders. Assure the residents' medication orders are current by verifying that the medication listed on the medication distribution container and medication recap sheet provided by the pharmacy, including over-the-counter-medications as appropriate, are consistent with physician or authorized provider orders. A copy of the actual written, signed and dated orders must be present in each resident's care record. ()

03. Resident Health Status. Conduct a nursing assessment of the health status of each resident by identifying symptoms of illness, or any changes in mental or physical health status. ()

04. Recommendations. Make recommendations to the administrator regarding any medication needs, other health needs requiring follow up, or changes needed to the Negotiated Service Agreement. ()

05. Progress of Previous Recommendations. Conduct a review and follow-up of the progress on previous recommendations made to the administrator regarding any medication needs or other health needs that require follow up. Report to the attending physician or authorized provider and state agency if recommendations for care and services are not implemented that have affected or have the potential to affect the health and safety of residents. ()

06. Self-Administered Medication. Conduct a nursing assessment on each resident participating in a self-administered medication program as follows: ()

a. Before the resident can self-administer medication to assure resident safety; and ()

b. Evaluate the accuracy of the assessment to assure the resident is still capable to safely continue the self-administered medication for the next month. ()

07. Medication Interactions and Usage. Conduct a review of the resident's use of all prescribed and over-the-counter medications for side effects, interactions, abuse or a combination of these adverse effects. The nurse must notify the resident's physician or authorized provider, and pharmacist of any identified concerns. ()

08. Resident and Facility Staff Education. Assess, document and recommend any health care related educational needs, for both the resident and facility staff, as the result of the assessment or at the direction of the resident's health care provider. ()

306. -- 309. (RESERVED).

310. REQUIREMENTS FOR MEDICATION.

01. Medication Distribution System. Each facility must use medi-sets or blister packs. The medication system must be filled by a pharmacist and appropriately labeled in accordance with pharmacy standards and physician or authorized provider instructions. A licensed nurse may fill medi-sets, blister packs, or other Licensing and Survey Agency approved system as provided in Section 39-3326, Idaho Code and Section 157 of these rules. ()

a. All medications will be kept in a locked area such as a locked box or room; ()

b. Poisons, toxic chemicals, and cleaning agents will be stored in separate locked areas apart from medications, such as a locked medication cart, locked box or room; ()

c. Biologicals and other medications requiring cold storage will be refrigerated. A covered container in a home refrigerator will be considered to be satisfactory storage if the temperature is maintained at thirty-eight to forty-five degrees (38-45°F) Fahrenheit. The temperature will be monitored and documented on a daily basis; ()

d. Assistance with medication must comply with the Board of Nursing requirements; ()

e. Each medication must be given to the resident directly from the medi-set, blister pack or medication container; and ()

f. Each resident must be observed taking the medication. ()

02. Unused Medication. Unused, discontinued, or outdated medications cannot accumulate at the facility for longer than thirty (30) days. The unused medication must be disposed of in a manner that ensures it cannot be retrieved. The facility may enter into agreement with a pharmacy to return unused, unopened medications to the pharmacy for proper disposition and credit. See IDAPA 16.03.09, "Rules Governing the Medicaid Assistance Program," Section 817, and IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy". A written record of all drug disposals must be maintained in the facility and include: ()

a. A description of the drug, including the amount; ()

b. Name of resident for prescription medication; ()

c. The reason for disposal; ()

d. The method of disposal; ()

- e. The date of disposal; and ()
- f. Signatures of responsible facility personnel and witness. ()

03. Controlled Substances. The facility must track all controlled substances entering the facility in accordance with Title 37, Chapter 27, Idaho Code, and IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy," Section 495, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing Rules," Section 490. ()

04. Psychotropic or Behavior Modifying Medication. ()

a. Psychotropic or behavior modifying medication intervention must be used only as a last recourse and at the lowest effective dosage. Prior to the facility obtaining physician or authorized provider orders for psychotropic or behavior modifying medication, the facility must implement a less restrictive systematic non-medication, behavior management approach to assist and redirect the resident to control specified behaviors. ()

b. The facility must ensure that an authorized provider's orders for psychotropic or behavior modifying medications are ordered for a specific condition, as diagnosed and documented in the medical record, at the lowest possible dosage and for a duration not to exceed a six (6) month period. At the end of each six (6) month period, the need for the medication and the current dosage will be reassessed by the resident's physician or authorized provider for possible continuation, dose reduction, or discontinuation of the medication. The facility must have written documentation, signed and dated by a physician or authorized provider and the consultant pharmacist regarding the resident's reassessment and determinations for continuation, reduction, or discontinuances of medications or behavioral management interventions. ()

311. -- 319. (RESERVED).

320. REQUIREMENTS FOR THE NEGOTIATED SERVICE AGREEMENT.

The Negotiated Service Agreement must be completed and signed no later than fourteen (14) calendar days from the date of admission. A written interim plan must be developed and used while the Negotiated Service Agreement is being completed. ()

01. Use of Negotiated Service Agreement. Each resident, regardless of the source of funding, must enter into a Negotiated Service Agreement. The Negotiated Service Agreement provides for coordination of services, guidance of the facility staff, and management of the facility. Upon completion, the agreement must clearly identify the resident; describe services to be provided, the frequency of such services, and how such services are to be delivered. The Negotiated Service Agreement must be implemented. ()

02. Key Elements of the Negotiated Service Agreement. A resident's agreement must be based on the following: ()

- a. Resident's uniform assessment or assessment based on the uniform assessment criteria; ()
- b. Level of support in activities of daily living; ()
- c. Health services; ()
- d. Level of assistance for medications; ()
- e. Frequency of needed services; ()
- f. Scope of needed assistance; ()
- g. Habilitation needs, to specify the program being used if applicable; ()
- h. Training needs, to specify the program being used if applicable; ()

- i.** Identification of specific behavioral symptoms, situations that trigger the behavior symptoms and the specific interventions for each behavioral symptom; ()
- j.** Physician or authorized provider's signed and dated orders; ()
- k.** Admission records; ()
- l.** Community support systems; ()
- m.** Resident's desires; ()
- n.** Transfer plans; ()
- o.** Discharge plans; ()
- p.** Identification of individual services being provided by other providers and who is providing the service; and ()
- q.** Other identified needs. ()
- 03. Signature, Date and Approval of Agreement.** The administrator and resident, legal guardian, or conservator, must sign and date the service agreement upon its completion. ()
- 04. Review Date.** The Negotiated Service Agreement must include the next scheduled date of review. ()
- 05. Development of the Service Agreement.** The resident, and other relevant persons as identified by the resident, must be included in the development of the service agreement. Licensed and professional staff will be involved in the development of the service agreement as applicable. ()
- 06. Provision of Copy of Agreement.** Signed copies of the agreement must be given to the resident, legal guardian, or conservator, and a copy placed in the resident's record file, no later than fourteen (14) calendar days from admission. ()
- 07. Resident Choice.** A resident must be given the choice and control of how and what services the facility or external vendors will provide, to the extent the resident can make choices. The resident's choice must not violate the provisions of Section 39-3307(1), Idaho Code. ()
- 08. Periodic Review.** The Negotiated Service Agreement must be reviewed when there is a change in a diagnosis for the resident or other change in condition requiring different, additional, or replacement services or at least every twelve (12) months. ()
- 321. -- 329. (RESERVED).**
- 330. REQUIREMENTS FOR RECORDS.**
The facility administrator is responsible for ensuring that record policies and procedures are implemented in the facility. ()

 - 01. Individual Resident Care Record.** An individual resident care record must be maintained for each admission with all entries kept current, dated and signed. All paper records must be recorded legibly in ink. ()
 - 02. Resident Record Retention.** Records must be preserved in a safe location protected from fire, theft, and water damage for a period of not less than five (5) years. ()
 - 03. Resident Record Confidentiality.** The facility must safeguard resident information against loss, destruction, and unauthorized use. ()

04. Staff Access. Resident care records of current residents must be available to direct care staff at all times. ()

05. Electronic Records. The facility must be able to print records maintained electronically in the facility. ()

06. Accessibility of Records to Survey Staff. Survey staff must have complete and immediate access to resident and facility records. ()

331. -- 334. (RESERVED).

335. REQUIREMENTS FOR INFECTION CONTROL.

The administrator is responsible for ensuring that infection control policy and procedure are implemented. ()

01. Implementation of Policies. Staff must implement facility policy and procedure. ()

02. Staff With Infectious Disease. Staff with an infectious disease must not work until the infectious stage is corrected or must be reassigned to a work area where contact with others is not expected and likelihood of transmission of infection is absent. ()

03. Universal Precautions. Universal Precautions must be used in the care of residents to prevent transmission of infectious disease according to the Centers for Disease Control and Prevention (CDC) guidelines. These guidelines may be accessed on the CDC website www.cdc.gov/ncidod/hip/Blood/universa.htm. ()

04. Reporting of Individual With Infectious Disease. The name of any resident or facility personnel with a reportable disease listed in IDAPA 16.02.10, "Idaho Reportable Diseases," will be reported immediately to the local Health District authority and appropriate infection control procedures must be immediately implemented as directed by that local health authority. ()

05. Screening Staff for Tuberculosis (TB). The facility must screen all newly hired personnel for tuberculosis (TB) within two (2) weeks of employment, according to the Centers for Disease Control and Prevention (CDC) screening guidelines. These guidelines may be accessed on the CDC website www.cdc.gov/mmwr/preview/mmwrhtml/rr4906a1.htm. ()

06. Screening New Residents for Tuberculosis (TB). The facility must screen all new residents within in two (2) weeks of admission for tuberculosis (TB), in accordance with a physician or authorized provider order and according to the Centers for Disease Control and Prevention (CDC) screening guidelines. These guidelines may be accessed on the CDC website www.cdc.gov/mmwr/preview/mmwrhtml/rr4906a1.htm. ()

336. -- 339. (RESERVED).

340. REQUIREMENTS FOR MENTAL HEALTH CONTRACT BEDS.

A facility may enter into an agreement with the Department to provide short-term care to certain residents designated by the mental health program of the Department. These residents are temporarily distressed and unable to fully meet their basic needs. They require strong support, supervision, and while nonviolent nor a danger to self or others, could regress without these supports. ()

01. License and Personnel. The facility must be on a full license and must be staffed with at least one (1) staff member up and awake at night to assure the safety of all residents. ()

02. Written Contract. The facility must have a written contract with the Department outlining the responsibilities of both parties and lists the names and telephone numbers of individuals who may be contacted if questions arise regarding the residents' care. ()

03. Resident Assessment. The facility must have on file the results of a Department assessment which clearly assures that the resident is not a danger to them self or others. ()

04. Personnel Orientation and Training. Personnel providing direct resident care, including contract staff must have documented evidence on file at the facility of appropriate orientation and training in providing care for residents with mental illness. ()

341. -- 344. (RESERVED).

345. REQUIREMENTS FOR HOURLY ADULT CARE.

If the facility provides hourly adult care, the administrator must assure that the facility's policies and procedures are implemented. ()

01. Medication and Treatment Orders. All medications and treatments must be ordered by a physician or authorized provider. ()

02. Assistance With Medication. Assistance with medication by unlicensed assistive personnel in the facility must follow IDAPA 23.01.01, "Rules of the Idaho Board of Nursing". ()

a. Each hourly adult care individual is responsible for bringing appropriately labeled medications for the stay; and ()

b. The facility is responsible for the safeguarding hourly adult care individual's medications while at the facility. ()

03. Restrictions for Hourly Adult Care. The facility must ensure that the restrictions for hourly adult care in Subsections 345.03.a. through 345.03.f. of these rules are followed. ()

a. Hourly adult care services may be provided to such number of individuals that the facility can handle without interference with the normal activities of the facility; staffing must be based upon the needs of all residents in the facility to include full-time residents and hourly adult care individuals; ()

b. Provision of time appropriate accommodations will be made available for the individual, to include, napping furniture for day time hours, 6 a.m. through 10 p.m., such as lounge chairs, recliners, and couches; ()

c. The facility will have the ability to space napping furniture at least three (3) feet apart; ()

d. Beds and bedrooms will be available for the sleeping hours when needed by the hourly adult care individual. This bed will not be counted as a licensed bed if the individual sleeps over; ()

e. Beds, and bedrooms of non-hourly residents will not be utilized by hourly adult care individuals; and ()

f. No individual will be admitted to the hourly adult care program that requires skilled nursing or for whom the facility cannot adequately provide services and supervision. ()

346. -- 349. (RESERVED).

350. REQUIREMENTS FOR HANDLING ACCIDENTS, INCIDENTS, OR COMPLAINTS.

The administrator must assure that the facilities policies and procedures are implemented. ()

01. Notification of Accidents, Incidents, and Complaints. The administrator or person designated by the administrator must be notified of all accidents, incidents, reportable, or complaints according to the facility's policies and procedures. ()

02. Administrator or Designee Investigation within Thirty Days. The administrator or designee must complete an investigation and written report of the finding within thirty (30) calendar days for each accident, incident, complaint, or allegation of abuse, neglect or exploitation. ()

03. Resident Protection. Any resident involved must be protected during the course of the investigation. ()

04. Written Response to Complaint Within Thirty Days. The person making the complaint must receive a written response from the facility of the action taken to resolve the matter or reason why no action was taken within thirty (30) days of the complaint. ()

05. Facility Notification to Appropriate Agencies. The facility must notify the Idaho Commission on Aging or its Area Agencies on Aging, and law enforcement in accordance with Section 39-5303, Idaho Code. ()

06. Corrective Action for Known Allegations. When an allegation of abuse, neglect or exploitation is known by the facility, corrective action must be immediately taken and monitored to ensure the problem does not recur. ()

07. Notification of Licensing and Survey Agency within Twenty-Four Hours. When a reportable incident occurs, the administrator must notify the Licensing and Survey Agency within twenty-four (24) hours of the incident. ()

351. -- 399. (RESERVED).

400. REQUIREMENTS FOR FIRE AND LIFE SAFETY STANDARDS.

A facility's buildings must meet all requirements of the local and state codes that are applicable to residential care or assisted living facilities for fire and life safety standards. ()

401. FIRE AND LIFE SAFETY STANDARDS FOR BUILDINGS HOUSING THREE THROUGH FIFTEEN RESIDENTS.

A newly constructed facility or a building converted to a residential care or assisted living facility after January 1, 2006, housing three (3) through fifteen (15) residents on the first story only must comply with one (1) of the following: ()

01. NFPA, Standard #101. NFPA, Standard #101, Life Safety Code, 2000 Edition, Chapter 32, New Residential Board and Care Occupancies, Small Facilities, Impractical Evacuation Capability. Exceptions: ()

a. The minimum water supply for a residential sprinkler system can be equal to the water demand rate times ten (10) minutes, and ()

b. Section 32.7, Operational Features do not apply. ()

02. NFPA, Standard 101A. NFPA Standard 101A, 2001 Edition, Fire Safety Evaluation System for Board and Care Occupancies, Chapter 7, Impractical Evacuation Capability. ()

402. FIRE AND LIFE SAFETY STANDARDS FOR BUILDINGS HOUSING SIXTEEN OR MORE RESIDENTS AND MULTI-STORY BUILDINGS.

A newly constructed facility or a building converted to a residential care or assisted living facility after January 1, 2006, housing sixteen (16) residents or more, or any building housing residents on stories other than the first story must comply with requirements of NFPA, Standard #101, Life Safety Code, 2000 Edition, Chapter 18, New Health Care/Limited Care Occupancies. ()

403. FIRE AND LIFE SAFETY STANDARDS FOR EXISTING BUILDINGS LICENSED FOR THREE THROUGH FIFTEEN RESIDENTS PRIOR TO JANUARY 1, 2006.

01. Existing Buildings Housing Three Through Nine Residents. Existing facilities licensed prior to January 1, 2006, and housing three (3) through nine (9) residents on the first story only, can continue to comply with the requirements of the NFPA, Standard #101, Life Safety Code, 1988 Edition, Chapter 21, Residential Board and Care Occupancies, Small Facilities, Prompt Evacuation Capability. With the exception, of the requirement for a door closure on the sleeping room door, which will not apply. ()

02. Existing Buildings Housing Ten Through Fifteen Residents for Facilities. Existing facilities licensed prior to January 1, 2006, and housing ten (10) through fifteen (15) residents on the first story only, can continue to comply with the requirements of the NFPA, Standard #101, Life Safety Code, 1988 Edition, Chapter 21, Residential Board and Care Occupancies, Small Facilities, Impractical Evacuation Capability. With the exception, of the requirement for a door closure on the sleeping room door, which will not apply. ()

03. Any Change in Ownership of Facility. When there is any change in ownership, existing buildings housing three (3) through fifteen (15) beds will be required to comply with NFPA Standard #101, Life Safety Code, 2000 Edition, Chapter 33, Existing Residential Board and Care Occupancies, Impractical Evacuation Capability. ()

404. FIRE AND LIFE SAFETY STANDARDS FOR EXISTING BUILDINGS LICENSED FOR SIXTEEN OR MORE RESIDENTS AND MULTI-STORY BUILDINGS PRIOR TO JANUARY 1, 2006.

01. Existing Buildings Housing Sixteen or More Residents and Multi-Story Buildings. Existing facilities with buildings housing sixteen (16) or more residents or any building housing residents on stories other than the first story licensed prior to January 1, 2006, can continue to comply with NFPA, Standard #101, Life Safety Code, 1988 Edition, Chapter 13, Existing Health Care/Limited Care Occupancies. ()

02. Any Change in Ownership of Facility. When there is any change in ownership, existing buildings housing sixteen (16) residents or more or any building housing residents on stories other than the first story will be required to comply with NFPA, Standard #101, Life Safety Code, 2000 edition, Chapter 19, Existing Health Care/Limited Care Occupancies. ()

405. ADDITIONAL FIRE AND LIFE SAFETY STANDARDS FOR BUILDINGS AND FACILITIES.

01. Electrical Installations and Equipment. Electrical installations and equipment must comply with applicable local or state electrical requirements to include the following: ()

a. Equipment designed to be grounded must be maintained in a grounded condition; and ()

b. Extension cords and multiple electrical adapters are prohibited, with the exception of approved grounded multiple electrical adapters with a built-in breaker. ()

02. Fire Alarm Smoke Detection System. An electrically-supervised, manually-operated fire alarm smoke detection system must be installed throughout each building housing residents. The system must have a control panel, manual pull stations, smoke detectors, sounding devices, power backup and any sprinkler flow or alarm devices. The system, including devices, their location, and installation must be approved by the Licensing and Survey Agency prior to installation. ()

03. Medical Gases. Handling, use and storage of medical gas must be according to NFPA Standard 99, Standard for Health Care Facilities, 2003 Edition. ()

04. Solid Fuel Heating Devices. Solid fuel heating devices must be installed according to standards in NFPA Standard #211, Standard for Chimneys, Fireplaces, Vents, and Solid Burning Appliances, 2000 Edition. ()

05. Structure, Maintenance, Equipment to Assure Safety. The facility must be structurally sound, maintained, and equipped to assure the safety of residents, personnel, and the public including: ()

a. Furnishings, decorations, or other objects cannot be placed so as to obstruct exit access or exits; ()

b. All ramps, open porches, sidewalks, and open stairs must be maintained free of snow and ice buildup; ()

c. Wood stoves must have railings or other protection designed to prevent residents from coming into contact with the stove surfaces; ()

- d.** All fireplaces must have heat tempered glass fireplace enclosures or its equivalent; ()
- e.** Boilers, hot water heaters, and unfired pressure vessels must be equipped with automatic pressure relief valves; ()
- f.** Portable heating devices of any kind are prohibited; Portable electric space heaters and moveable fuel-fired heaters are considered portable comfort heating devices. Exceptions: Heated mattress pads, electric blankets and heating pads when ordered by an authorized provider, physician; ()
- g.** Flammable and highly combustible materials deemed hazardous by the Licensing and Survey Agency cannot be stored in the facility unless the building is protected throughout by an approved automatic fire extinguishing system. ()

06. Natural or Man-Made Hazards. When natural or man-made hazards are present on the facility property or border the facility property, suitable fences, guards, railing, or a combination must be installed to provide protection for the residents. ()

07. Exit Door Locks. Any locks on exit doors must be single action and easily operable from the inside without the use of keys or any special knowledge. Special locking arrangements as permitted in Chapter 7 of the NFPA, Standard 101, Life Safety Code, 2000 Edition, can be used. ()

08. Portable Fire Extinguishers. Portable fire extinguishers must be installed throughout each building used as a facility. Each extinguisher must be installed according to the standards in NFPA Standard #10, Standard for Portable Fire Extinguishers, 2002 Edition. ()

09. Resident Placement. Any resident requiring assistance in ambulation must reside on the first story, unless the facility complies with Sections 401 through 404 of these rules. ()

10. Telephone. The facility must have a telephone on the premises available for staff use in the event of an emergency. Emergency telephone numbers must be posted near the telephone. ()

11. Weeds and Trash. The premises and all buildings used as a facility must be maintained free from the accumulation of weeds and trash. ()

406. -- 409. (RESERVED).

410. REQUIREMENTS FOR EMERGENCY PREPAREDNESS.

Each facility must implement its emergency preparedness plan in the event of fire, explosion, flood, earthquake, high wind, or other emergency. ()

01. Written Agreement for Relocation. The facility must have a written agreement developed between the facility and the location to which residents would be relocated in the event the building cannot be reoccupied. ()

02. Fire Drills. All personnel and residents must participate in a minimum of one (1) fire drill per shift per quarter. Fire drills must be unannounced. ()

03. Report of Fire. A separate report on each fire incident occurring within the facility must be submitted to the Licensing and Survey Agency within thirty (30) days of the occurrence. The reporting form, "Facility Fire Incident Report," issued by the Licensing and Survey Agency is used to secure specific data concerning date, origin, extent of damage, method of extinguishment, and injuries, if any. A fire incident is considered any activation of the building's fire alarm system other than a false alarm, during testing of the fire alarm system, or during a fire drill. ()

411. -- 414. (RESERVED).

415. MAINTENANCE OF EQUIPMENT AND SYSTEMS FOR FIRE AND LIFE SAFETY.

01. Maintenance of Equipment and Systems. The facility must assure that all equipment and systems are properly maintained to assure the safety of the residents. ()

02. Fuel-Fired Heating. Fuel-fired heating devices and systems, including wood stoves, must be inspected/serviced/cleaned at least annually by a person professionally engaged in the business of servicing these devices or systems. ()

03. Portable Fire Extinguisher Service and Testing. Portable fire extinguishers must be serviced in accordance with NFPA Standard #10, Standard for Portable Fire Extinguishers, 2002 Edition. In addition, portable fire extinguishers must be examined at least monthly by a designated person in the facility to determine that: ()

- a.** Each extinguisher is in its designated location; ()
- b.** Each extinguisher seal or tamper indicator is not broken; ()
- c.** Each extinguisher has not been physically damaged; ()
- d.** Each extinguisher gauge, if provided, shows a charged condition; and ()
- e.** The inspection tag attached to the extinguisher shall show at least the initials of the person making the monthly examination and the date of the examination. ()

04. Fire Alarm Smoke Detection System Service and Testing. ()

a. The facility's fire alarm smoke detection system must be inspected, tested, and serviced at least annually by a person or business professionally engaged in the servicing of such systems; and ()

b. The fire alarm smoke detection system must be inspected and tested at least monthly by a designated facility employee. ()

05. Automatic Fire Extinguishing System Service and Testing. All automatic fire extinguishing systems must be inspected, tested, and serviced at least annually by a sprinkler system contractor licensed by the Idaho State Fire Marshal's office. ()

06. Fire Watch. The facility must institute a fire watch during any time the fire alarm, smoke detection, or sprinkler system is inoperable for greater than four (4) hours. ()

416. -- 419. (RESERVED).

420. USE OF MODULAR (I.E., FACTORY BUILT) BUILDINGS AND MANUFACTURED HOMES.

Modular Buildings as defined in Section 39-4105, Idaho Code, must conform to the requirements of the International Building Code unless approved for use as a facility prior to July 1, 1999, and may continue to be licensed when evaluated on a case-by-case basis for fire and life safety issues. Manufactured Homes as defined in Section 39-4105, Idaho Code, that meet International Building Code requirements can be considered for use as residential care or assisted living facilities. ()

421. -- 429. (RESERVED).

430. REQUIREMENTS FOR FURNISHINGS, EQUIPMENT, SUPPLIES, AND BASIC SERVICES.

Each facility must provide at no cost to the resident: ()

01. Common Shared Furnishings. Appropriately designed and constructed furnishings to meet the needs of each resident, including reading lamps, tables, and comfortable chairs or sofas; all items must be in good repair, clean, and safe. ()

02. Resident Sleeping Room Furnishings. Comfortable furnishings and individual storage, such as a dresser, for personal items for each resident in each sleeping room; all items must be in good repair, clean, and safe. ()

03. Resident Bed. Each resident must be provided his own bed, which will be at least thirty-six (36) inches wide, substantially constructed, clean, and in good repair. Roll-away beds, cots, folding beds, or double bunks are prohibited. Bed springs must be in good repair; and clean and comfortable. Bed mattresses must be standard for the bed, clean and odor free. A pillow must be provided. ()

04. Resident Telephone Privacy. The facility must have at least one (1) telephone that is accessible to all residents. The telephone must be placed in such a manner as to provide the resident privacy while using the telephone. ()

05. Basic Services. The following are services to be provided by the facility at no cost to the resident: room, board, activities of daily living services, supervision, assistance and monitoring of medications laundering of linens owned by the facility, coordination of outside services, arrangement for emergency transportation, emergency interventions, first aid, housekeeping services, maintenance, utilities, and access to basic television in common areas. ()

06. Basic Supplies. The following are to be supplied by the facility at no cost to the resident: Linen, towels, wash cloths, soap, shampoo, comb, hairbrush, toilet paper, sanitary napkins, first aid supplies, electric razors or other means of shaving, toothbrush, and toothpaste. ()

07. Resident Furnishings. If a resident chooses to provide his own furnishings, the facility must ensure that the resident's furnishings meet the minimum standards as identified in Subsections 430.01 through 430.06 of these rules. ()

431. -- 449. (RESERVED).

450. REQUIREMENTS FOR FOOD AND NUTRITIONAL CARE SERVICES.

The facility must meet the standards in the Idaho Food Code, IDAPA 16.02.19, "Food Safety and Sanitation Standards for Food Establishments," as incorporated in Section 004 of these rules. The facility must also implement the operational policies as described in Section 158 of these rules. ()

451. MENU AND DIET PLANNING.

The facility must provide each resident with at least the minimum food and nutritional needs in accordance with the Recommended Dietary Allowances established by the Food and Nutrition Board of the National Academy of Sciences. These recommendations are found in the Idaho Diet Manual incorporated by reference in Section 004 of these rules. The menu must be adjusted for age, sex, and activity as approved by a registered dietitian. ()

01. Menu. The facility must have a menu planned or approved, signed and dated by a registered dietitian prior to being served to the resident. The planned menu must meet nutritional standards. ()

a. Menus will provide a sufficient variety of foods in adequate amounts at each meal. ()

b. Menus must be different for the same days each week and adjusted for seasonal changes. ()

c. Food selections must include foods that are served in the community, in season, as well as residents' preferences, food habits, and physical abilities. ()

d. The menus must be prepared in advance and available to residents on request. ()

e. The facility must serve the planned menu and if substitutions are made the menu must be corrected to reflect the substitutions. ()

02. Snacks. Snacks must be available and offered to residents between meals and at bedtime. ()

03. Therapeutic Diets. The facility must have a therapeutic diet menu planned or approved, signed and dated by a registered dietitian prior to being served to a resident. ()

a. The therapeutic diet planned menu, to the extent it is possible, must meet nutritional standards; ()

b. The therapeutic diet menu must be planned as close to a regular diet as possible; and ()

c. The facility must have for each resident on a therapeutic diet, an order from a physician or authorized provider. ()

04. Facilities Licensed for Fifteen Beds or Less. In facilities licensed for fifteen (15) beds or less, menus must be planned in writing at least one week in advance. ()

05. Facilities Licensed for Sixteen Beds or More. Facilities licensed for sixteen (16) beds or more must: ()

a. Develop and implement a cycle menu which covers a minimum of two (2) seasons and is four (4) to five (5) weeks in length; ()

b. Follow standardized recipes; and ()

c. Have available in the kitchen a current diet manual approved by the Licensing and Survey Agency. ()

452. -- 454. (RESERVED).

455. FOOD SUPPLY.

The facility must maintain a seven (7) day supply of nonperishable foods and a two (2) day supply of perishable foods. The facility's kitchen must have the types and amounts of food to be served readily available to meet the planned menu. ()

456. -- 459. (RESERVED).

460. FOOD PREPARATION AND SERVICE.

01. Food Preparation. Foods must be prepared by methods that conserve nutritional value, flavor, and appearance. ()

02. Frequency of Meals. ()

a. The facility must provide residents at least three (3) meals daily, at regular times comparable to normal mealtimes in the community; ()

b. There must not be more than fourteen (14) hours between a substantial evening meal and breakfast; ()

c. The facility must ensure that residents who are not in the facility for the noon meal receive a substantial evening meal; and ()

d. The facility must offer evening snacks. ()

03. Food Preparation Area. ()

a. No live animals or fowl will be kept or maintained in the food service preparation or service area. ()

b. Neither food preparation nor food service areas will be used as living quarters for staff. ()

04. Disposable Items. The facility will not use single use items except in unusual circumstances for a short period of time or for outdoor outings. ()

461. -- 499. (RESERVED).

500. REQUIREMENTS FOR NOTICE OF MONTHLY FEE INCREASE.

The resident or resident's legal guardian, or conservator must be notified in writing of an increase in the facility monthly rates at least thirty (30) calendar days prior to such a raise taking effect. ()

501. -- 504. (RESERVED).

505. REQUIREMENTS FOR HANDLING OF RESIDENT FUNDS.

01. Separate Trust Account Established. if a facility agrees to handle resident funds, a separate trust account must be established for each resident and an accounting record maintained. There can be no commingling of resident funds with facility funds. Borrowing between resident accounts is prohibited. ()

a. The facility cannot require a resident to purchase goods or services from the facility for other than those designated in the admission policies, or the admission agreement, or both; ()

b. Each transaction must be documented at the time of the transaction, with facility personnel and resident signatures for the transaction; and ()

c. The facility must ensure that the resident has access to his personal funds during reasonable hours. ()

02. Resident's Funds Upon Permanent Discharge. When the facility manages the resident's funds and the resident permanently leaves the facility, the facility can only retain room and board funds prorated to the last day of the thirty (30) day notice, except in situations described in Subsections 220.01.h.iv. and 220.01.h.v. of these rules. All remaining funds are the property of the resident. In the event of the resident's death, the resident's facility's fees cease accruing fifteen (15) days after death. ()

506. -- 509. (RESERVED).

510. REQUIREMENTS TO PROTECT RESIDENTS FROM ABUSE.

The administrator must assure that policies and procedures are implemented to ensure that all residents are free from abuse. ()

511. -- 514. (RESERVED).

515. REQUIREMENTS TO PROTECT RESIDENTS FROM EXPLOITATION.

The administrator must assure that policies and procedures are implemented to ensure that all residents are free from exploitation. ()

516. -- 519. (RESERVED).

520. REQUIREMENTS TO PROTECT RESIDENTS FROM INADEQUATE CARE.

The administrator must assure that policies and procedures are implemented to ensure that all residents are free from inadequate care. ()

521. -- 524. (RESERVED).

525. REQUIREMENTS TO PROTECT RESIDENTS FROM NEGLECT.

The administrator must assure that policies and procedures are implemented to ensure that all residents are free from neglect. ()

526. -- 549. (RESERVED).

550. REQUIREMENTS FOR RESIDENTS' RIGHTS.

The administrator must assure that policies and procedures are implemented to ensure that residents' rights are observed and protected: ()

01. Resident Records. The facility must maintain and keep current a record of the specific information on each resident. Upon request a resident must be provided access to information in his record. ()

a. A copy of the resident's current Negotiated Service Agreement and physician or authorized provider's order; ()

b. Written acknowledgement that the resident has received copies of the rights; ()

c. A record of all personal property and funds that the resident has entrusted to the facility, including copies of receipts for the property; ()

d. Information about any specific health problems of the resident that may be useful in a medical emergency; ()

e. The name, address, and telephone number of an individual identified by the resident who should be contacted in the event of an emergency or death of the resident; ()

f. Any other health-related, emergency, or pertinent information which the resident requests the facility to keep on record; and ()

g. The current admission agreement between the resident and the facility. ()

02. Privacy. Each resident must be assured the right to privacy with regard to accommodations, medical and other treatment, written and telephone communications, visits, and meetings of family and resident groups. ()

03. Humane Care and Environment. ()

a. Each resident has the right to humane care and a humane environment, including the following: ()

i. The right to a diet that is consistent with any religious or health-related restrictions; ()

ii. The right to refuse a restricted diet; and ()

iii. The right to a safe and sanitary living environment. ()

b. Each resident has the right to be treated with dignity and respect, including: ()

i. The right to be treated in a courteous manner by staff; ()

ii. The right to receive a response from the facility to any request of the resident within a reasonable time; and ()

iii. The right to be communicated with, orally or in writing, in a language they understand. If the resident's knowledge of English or the predominant language of the facility is inadequate for comprehension, a means to communicate in a language familiar to the resident must be available and implemented. There are many possible methods such as bilingual staff, electronic communication devices, family and friends to translate. The method implemented must assure the resident's right of confidentiality, if the resident desires. ()

- 04. Personal Possessions.** Each resident has the right to: ()
- a.** Wear his own clothing; ()
 - b.** Determine his own dress or hair style; ()
 - c.** Retain and use his own personal property in his own living area so as to maintain individuality and personal dignity; and ()
 - d.** Be provided a separate storage area in his own living area and at least one (1) locked cabinet or drawer for keeping personal property. ()
- 05. Personal Funds.** Residents whose board and care is paid for by public assistance will retain, for their personal use, the difference between their total income and the applicable board and care allowance established by Department rules. ()
- a.** A facility must not require a resident to deposit his personal funds with the facility; and ()
 - b.** Once the facility accepts the written authorization of the resident, it must hold, safeguard, and account for such personal funds under a system established and maintained by the facility in accordance with this paragraph. ()
- 06. Management of Personal Funds.** Upon a facility's acceptance of written authorization of a resident, the facility must manage and account for the personal funds of the resident deposited with the facility as follows: ()
- a.** The facility must deposit any amount of a resident's personal funds in excess of five (5) times the personal needs allowance in an interest bearing account (or accounts) that is separate from any of the facility's operating accounts and credit all interest earned on such separate account to such account. The facility must maintain any other personal funds in a noninterest bearing account or petty cash fund; ()
 - b.** The facility must assure a full and complete separate accounting of each resident's personal funds, maintain a written record of all financial transactions involving each resident's personal funds deposited with the facility, and afford the resident (or a legal representative of the resident) reasonable access to such record; and ()
 - c.** Upon the death of a resident with such an account, the facility must promptly convey the resident's personal funds (and a final accounting of such funds) to the individual administering the resident's estate. For clients of the Department, the remaining balance of funds must be refunded to the Department. ()
- 07. Access and Visitation Rights.** Each facility must permit: ()
- a.** Immediate access to any resident by any representative of the Department, by the state ombudsman for the elderly or his designees, or by the resident's individual physician; ()
 - b.** Immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives; ()
 - c.** Immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; and ()
 - d.** Reasonable access to a resident by any entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time. ()
- 08. Employment.** Each resident must have the right to refuse to perform services for the facility except as contracted for by the resident and the administrator of the facility. If the resident is hired by the facility to perform services as an employee of the facility, the wage paid to the resident must be consistent with state and federal law. ()

09. Confidentiality. Each resident must have the right to confidentiality of personal and clinical records. ()

10. Freedom from Abuse, Neglect, and Restraints. Each resident must have the right to be free from physical, mental or sexual abuse, neglect, corporal punishment, involuntary seclusion, and any physical or chemical restraints. ()

11. Freedom of Religion. Each resident must have the right to practice the religion of his choice or to abstain from religious practice. Residents must also be free from the imposition of the religious practices of others. ()

12. Control and Receipt of Health-Related Services. Each resident must have the right to control his receipt of health related services, including: ()

a. The right to retain the services of his own personal physician, dentist, and other health care professionals; ()

b. The right to select the pharmacy or pharmacist of his choice so long as it meets the statute and rules governing residential care or assisted living and the policies and procedures of the residential care or assisted living facility; ()

c. The right to confidentiality and privacy concerning his medical or dental condition and treatment; and ()

d. The right to refuse medical services based on informed decision making. Refusal of treatment does not relieve the facility of its obligations under this chapter. ()

13. Grievances. Each resident must have the right to voice grievances with respect to treatment or care that is (or fails to be) furnished, without discrimination or reprisal for voicing the grievances and the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents. ()

14. Participation in Resident and Family Groups. Each resident must have the right to organize and participate in resident groups in the facility and the right of the resident's family to meet in the facility with the families of other residents in the facility. ()

15. Participation in Other Activities. Each resident must have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility. ()

16. Examination of Survey Results. Each resident must have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Licensing and Survey Agency with respect to the facility and any plan of correction in effect with respect to the facility. ()

17. Access by Advocates and Representatives. A residential care or assisted living facility must permit advocates and representatives of community legal services programs, whose purposes include rendering assistance without charge to residents, to have access to the facility at reasonable times in order to: ()

a. Visit, talk with, and make personal, social, and legal services available to all residents; ()

b. Inform residents of their rights and entitlements, and their corresponding obligations, under state, federal and local laws by distribution of educational materials and discussion in groups and with individuals; ()

c. Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and social security benefits, and in all other matters in which residents are aggrieved, that may be provided individually, or in a group basis, and may include organizational activity, counseling and litigation; ()

d. Engage in all other methods of assisting, advising, and representing residents so as to extend to them the full enjoyment of their rights; ()

e. Communicate privately and without restrictions with any resident who consents to the communication; and ()

f. Observe all common areas of the facility. ()

18. Access by Protection and Advocacy System. A residential care or assisted living facility must permit advocates and representatives of the protection and advocacy system designated by the governor under 42 U.S.C. Section 15043 and 42 U.S.C. Section 10801 et seq., access to residents, facilities, and records in accordance with applicable federal statutes and regulations. ()

19. Access by the Long Term Care Ombudsman. A residential care or assisted living facility must permit advocates and representatives of the long term care ombudsman program pursuant to 42 U.S.C. Section 3058, Section 67 5009, Idaho Code, and IDAPA 15.01.03, "Rules Governing the Ombudsman for the Elderly Program," access to residents, facilities and records in accordance with applicable federal and state law, rules, and regulations. ()

20. Transfer or Discharge. Each resident must have the right to be transferred or discharged only for medical reasons, or for his welfare or that of other residents, or for nonpayment for his stay. In non-emergency conditions, the resident must be given at least thirty (30) calendar days notice of discharge. A resident has the right to appeal any involuntary discharge. ()

21. Citizenship Rights. Each resident has a right to be encouraged and assisted to exercise rights as a citizen, including the right to be informed and to vote. ()

22. Advanced Directives. Residents have the right to be informed, in writing, regarding the formulation of an advanced directive to include applicable State law, Section 39-4510, Idaho Code. ()

551. -- 559. (RESERVED).

560. NOTICE OF RESIDENTS' RIGHTS.

Each facility must; ()

01. Inform Residents Orally and in Writing. Inform each resident, orally and in writing at the time of admission to the facility, of his legal rights during the stay at the facility. ()

02. Written Statements. Make available to each resident, upon reasonable request, a written statement of such rights and when the rights change the resident is notified. ()

03. Written Description of Rights. Assure the written description of legal rights under Section 560 must include a description of the protection of personal funds and a statement that a resident may file a complaint with the Department respecting resident abuse and neglect and misappropriation of resident property in the facility. ()

04. Posting of Resident Rights. Conspicuously post the residents' rights in the facility at all times. ()

561. -- 599. (RESERVED).

600. REQUIREMENTS FOR STAFFING STANDARDS.

01. On-Duty Staff During Residents' Sleeping Hours for Facilities of Fifteen Beds or Less. For facilities licensed for fifteen (15) beds or less, there must be at least one (1), or more qualified and trained staff, immediately available, in the facility during resident sleeping hours. If any resident has been assessed as having night needs or is incapable of calling for assistance staff must be up and awake. ()

02. On-Duty Staff Up and Awake During Residents' Sleeping Hours for Facilities Licensed for Sixteen Beds or More. For facilities licensed for sixteen (16) beds or more, qualified and trained staff must be up and awake and immediately available, in the facility during resident sleeping hours. ()

03. Detached Buildings or Units. Facilities with residents housed in detached buildings or units, must have at least one (1) staff present, and available in each building or unit when residents are present in the building or unit. The facility must also ensure that each building or unit complies with the requirements for on-duty staff during resident sleeping hours in accordance with the facility's licensed bed capacity as provided in Subsections 600.01 and 600.02 of these rules. The Licensing and Survey Agency will consider a variance based on the facility's written submitted plan of operation. ()

04. Mental Health Bed Contract Facility. Facilities that have entered into a Mental Health Bed contract with the Department must be staffed with at least one (1) staff up and awake at night to assure the safety of all residents. ()

05. Supervision. The administrator must provide supervision for all personnel to include contract personnel. Staff who have not completed the orientation training requirements must work under the supervision of a staff who has completed the orientation training. ()

06. Sufficient Personnel. The facility will employ and the administrator will schedule sufficient personnel to: ()

a. Provide care, during all hours, required in each resident's Negotiated Service Agreement, to assure residents' health, safety, comfort, and supervision, and to assure the interior and exterior of the facility is maintained in a safe and clean manner; and ()

b. To provide for at least one (1) direct care staff with certification in first aid and cardio-pulmonary resuscitation (CPR) in the facility at all times. Facilities with multiple buildings or units will have at least one (1) direct care staff with certification in first aid and CPR in each building or each unit at all times. ()

601. -- 619. (RESERVED).

620. REQUIREMENTS FOR TRAINING OF FACILITY PERSONNEL.

The facility must follow structured written training programs designed to meet the training needs of personnel in relation to responsibilities, as specified in the written job description, to provide for quality of care and compliance with these rules. Signed evidence of personnel training, indicating hours and topic, must be retained at the facility. ()

621. -- 624. (RESERVED).

625. ORIENTATION TRAINING REQUIREMENTS.

01. Number of Hours of Training. A minimum of sixteen (16) hours of job-related orientation training must be provided to all new personnel before they are allowed to provide unsupervised personal assistance to residents. ()

02. Timeline for Completion of Training. All orientation training must be completed within one (1) month of hire. ()

03. Content for Training. Orientation training must include the following: ()

a. The philosophy of residential care or assisted living and how it guides care giving; ()

b. Resident Rights; ()

c. Cultural awareness; ()

d. Providing assistance with activities of daily living and instrumental activities of daily living;()

- e. How to respond to emergencies; ()
- f. Documentation associated with resident care needs and the provision of care to meet those needs; ()
- g. Identifying and reporting changes in residents' health and mental condition or both; ()
- h. Documenting and reporting adverse outcomes (e.g., resident falls, elopement, lost items); ()
- i. Advance Directives and do not resuscitate (DNR) orders; ()
- j. Relevant policies and procedures; ()
- k. The role of the Negotiated Service Agreement; and ()
- l. All staff employed by the facility, including housekeeping personnel, or contract personnel, or both, who may come into contact with potentially infectious material, must be trained in infection control procedures for universal precautions. ()

626. -- 629. (RESERVED).

630. TRAINING REQUIREMENTS FOR FACILITIES ADMITTING RESIDENTS WITH DIAGNOSIS OF DEMENTIA, MENTAL ILLNESS, DEVELOPMENTAL DISABILITY, OR TRAUMATIC BRAIN INJURY.

A facility admitting and retaining residents with diagnosis of dementia, mental illness, developmental disability, or traumatic brain injury must train staff to meet the specialized needs of these residents. The training must address the following areas: ()

- 01. Dementia:** ()
 - a. Overview of dementia; ()
 - b. Symptoms and behaviors of people with memory impairment; ()
 - c. Communication with people with memory impairment; ()
 - d. Resident's adjustment to the new living environment; ()
 - e. Behavior management; ()
 - f. Activities of daily living; and ()
 - g. Stress reduction for facility personnel and resident. ()
- 02. Mental Illness:** ()
 - a. Overview of mental illnesses; ()
 - b. Symptoms and behaviors specific to mental illness; ()
 - c. Resident's adjustment to the new living environment; ()
 - d. Behavior management; ()
 - e. Communication; ()

- f. Activities of daily living; ()
- g. Integration with rehabilitation services; and ()
- h. Stress reduction for facility personnel and resident. ()
- 03. Developmental Disability:** ()
- a. Overview of developmental disabilities; ()
- b. Interaction and acceptance; ()
- c. Promotion of independence; ()
- d. Communication; ()
- e. Behavior management; ()
- f. Assistance with adaptive equipment; ()
- g. Integration with rehabilitation services; ()
- h. Activities of daily living; and ()
- i. Community integration. ()
- 04. Traumatic Brain Injury:** ()
- a. Overview of traumatic brain injuries; ()
- b. Symptoms and behaviors specific to traumatic brain injury; ()
- c. Adjustment to the new living environment; ()
- d. Behavior management; ()
- e. Communication; ()
- f. Integration with rehabilitation services; ()
- g. Activities of daily living; ()
- h. Assistance with adaptive equipment; and ()
- i. Stress reduction for facility personnel and resident. ()

631. -- 639. (RESERVED).

640. CONTINUING TRAINING REQUIREMENTS.

Each employee must receive a minimum of eight (8) hours of job-related continuing training per year. ()

01. Staff Not Trained in Appropriate Areas. When a resident is admitted with a diagnosis of dementia, mental illness, developmental disability, or traumatic brain injury, or a resident acquires one (1) of these diagnoses, if staff have not been trained in the appropriate areas outlined in Section 630 of these rules, staff must be trained within thirty (30) calendar days. In the interim the facility must meet the resident's needs. ()

02. Additional Training Related to Changes. When policies or procedures are added, modified, or

deleted staff must receive additional training relating to the changes. ()

641. -- 644. (RESERVED).

645. ASSISTANCE WITH MEDICATION CERTIFICATION REQUIREMENT.

Before staff can begin assisting residents with medications, the staff must have successfully completed a Board of Nursing approved medication assistance course. This training is not included as part of the minimum of sixteen (16) hours of orientation training or minimum of eight (8) hours of continuing training requirement per year. ()

646. -- 649. (RESERVED).

650. REQUIREMENTS FOR UNIFORM ASSESSMENT CRITERIA FOR PRIVATE PAY RESIDENTS.

01. Facility Responsibility For Assessing Private-Pay Residents. The facility must develop, identify, assess, or direct a uniform assessment for private-pay residents who seek admission to the residential care or assisted living facility. The Department's uniform assessment tool may be used as the facility's identified uniform assessment. ()

02. Information Included in a Uniform Assessment. The uniform assessment used by the facility will include, but not be limited to identification/background information, medical diagnosis, medical and health problems, prescription and over the counter medications, behavior patterns, cognitive function, and functional status. ()

03. Qualifications of Person Making Uniform Assessment. The uniform assessment can only be conducted by persons who are trained and knowledgeable in administering the facility's identified uniform assessment. ()

04. Time Frames for Completing the Uniform Assessment. The assessment must be completed no later than fourteen (14) calendar days after admission. The assessment will be reviewed when there is a change in the resident's medical, mental, or social status or every twelve (12) months, whichever comes first. ()

05. Use of Uniform Assessment for Determining the Ability of Facility to Meet Private-Pay Resident Needs. The results of the assessment must be used to evaluate the ability of an administrator and facility to meet the identified residents' needs. The results of the assessment must also be used to determine the need for special training in caring for certain residents. ()

651. -- 654. (RESERVED).

655. USE OF THE UNIFORM ASSESSMENT CRITERIA IN DETERMINING FACILITY STAFFING.

A facility will have sufficient numbers and types of personnel to provide care and supervision to all residents within the facility's care in accordance with each resident's Negotiated Service Agreement based on the uniform assessment and in accordance with all rules and statutes governing the facility. The facility must include both private-pay and residents who are clients of the Department in the total number when determining staffing requirements. ()

656. -- 659. (RESERVED).

660. REQUIREMENTS FOR UNIFORM ASSESSMENT CRITERIA FOR DEPARTMENT CLIENTS.

Department clients will be assessed by the Department in compliance with IDAPA 16.03.23, "Rules Governing Uniform Assessments for State-Funded Clients". ()

661. -- 699. (RESERVED).

700. RECORDS.

The administrator must ensure that facility policies and procedures for record keeping are implemented and followed as described in Sections 700 through 750 of these rules. ()

01. Records Information. Entries must include date, time, name, and title of the person making the

entry. Staff must sign each entry made by him during his shift. ()

02. Availability of Records. Resident care records must be available at all times to caregivers when on duty. ()

03. Electronic Records. Electronic records must be able to be printed in the facility at the request of the resident, legal guardian, payer, or survey agency. ()

701. -- 704. (RESERVED).

705. RESIDENT BUSINESS RECORDS.

Resident business records must contain the records described in Subsection 705.01 through 705.09 of these rules. ()

01. Individual Responsible for Payment. Name, address, and telephone number of the individual responsible for payment. ()

02. Written Admissions Agreement. Written admission agreement that is signed and dated by the administrator, the resident, or his legal guardian or conservator. ()

03. Payment Schedule. A copy of the payment schedule and fee structure signed and dated by the resident, or his legal guardian or conservator, if such is separate from the admission agreement. ()

04. Resident Rights. A signed copy of the resident's rights as identified in Section 550 of these rules or a signed and dated statement that the resident or his legal guardian or conservator has read and understands his rights as a resident of the facility. ()

05. Personal Property Inventory. An inventory of all of the resident's personal items. ()

06. Completion of Admissions Process. Name, title of the facility representative who completed the admission process with the resident, legal guardian, or conservator. ()

07. Agreement to Handle Resident's Funds. if the facility handles resident funds, there must be a signed and dated written agreement between the facility and the resident or the resident's legal guardian or conservator setting the terms. ()

08. Financial Transaction Documentation. Documentation of each financial transaction at the time the transaction occurs with signatures by the administrator or his designee and the resident. ()

09. Emergency Condition Advisory. Documentation indicating that the resident has been advised of actions required under emergency conditions. ()

706. -- 709. (RESERVED).

710. RESIDENT CARE RECORDS.

The administrator must assure that the facility's policies and procedures for resident care records are implemented and meet the requirements described in Subsections 710.01 through 710.09 of these rules. ()

01. Resident Demographics. Records required for admission to the facility must include: ()

a. Name; ()

b. Permanent address, if other than the facility; ()

c. Marital Status; ()

d. Gender; ()

- e. Date and Place of Birth; ()
- f. Name and address of emergency contact(s); and ()
- g. Admission date. ()
- 02. Providers of Choice.** Providers of choice including address and telephone numbers; ()
 - a. Physician or authorized provider; ()
 - b. Dentist; ()
 - c. Pharmacy; and ()
 - d. Others; such as outside service providers, e.g., home health, hospice, psychosocial services rehabilitation specialist, case manager. ()
- 03. Religious Affiliation.** Religious affiliation, if the resident chooses to state. ()
- 04. Prior History and Physical.** Results of a history and physical examination performed by a physician or authorized provider within six (6) months prior to admission. ()
- 05. Prescribed Medication and Treatment List.** A list of medications, diet, treatments, and any limitations, prescribed for the resident that is signed and dated by a physician or authorized provider giving the order. ()
- 06. Social Information.** Social information, obtained by the facility through interviews with the resident, family, legal guardian, conservator or outside service provider. The information must include the resident's social history, hobbies, and interests. ()
- 07. Initial Uniform Assessment.** The resident's initial uniform assessment. ()
- 08. Initial Interim Plan and Negotiated Service Agreement.** The resident's initial signed and dated interim plan and Negotiated Service Agreement. ()
- 09. Result of Tuberculosis Screening.** Documentation of the outcome of the tuberculosis screening. ()

711. ONGOING RESIDENT CARE RECORDS.

The administrator must assure that the facility's policies and procedures for ongoing resident care records are implemented and meet the requirements described in Subsections 711.01 through 711.14 of these rules. ()

- 01. Behavior Management Records.** The facility must have behavior management records for residents when applicable. These records must document requirements in Subsections 225 and 320.02 of these rules. The records must also include the following: ()
 - a. The date and time a specific behavior was observed; ()
 - b. What interventions were used; and ()
 - c. The effectiveness of the intervention. ()
- 02. Complaints.** The facility must assure that the individual resident's record documents complaints and grievances, the date received, the investigation, outcome, and the response to the individual who made the complaint or grievance. ()

- 03. Involuntary Discharge.** The facility's records must maintain documentation of: ()
- a.** The facility's efforts to resolve the situation; and ()
 - b.** A copy of the signed and dated notice of discharge. ()
- 04. Refusal of Care Consequences.** Documented evidence that if the resident refuses care or services, the resident has been informed of the consequences of the refusal and the notification of the resident's physician or authorized provider being notified. ()
- 05. Assessments.** The resident's uniform assessment, including the admission assessment, and all assessments for the prior eighteen (18) months. ()
- 06. Negotiated Services Agreement.** Signed and dated negotiated services agreements, including the admission Negotiated Service Agreement, and any modification and new agreements for the prior eighteen (18) months. ()
- 07. Care Plans.** Signed and dated copies of all care plans prepared by outside service agencies, if appropriate, to include who is responsible for the integration of care and services. ()
- 08. Care Notes.** Care notes that are signed and dated by the person providing the care and services must include: ()
- a.** Care and services provided; ()
 - b.** Unusual events such as reportable incidents, accidents, altercations, residents refusing treatments or care and the facility's response; and ()
 - c.** Notes of care and services provided by outside contract entities, e.g., nurses, home health, hospice, case managers, psychosocial rehabilitation specialists, or service coordinator. ()
- 09. Changes in Physical and Mental Status.** Documentation of significant changes in the resident's physical or mental status and the facility's response. ()
- 10. Current List of Medications, Diet and Treatments.** A current list of medications, diet, treatments prescribed for the resident which is signed and dated by a physician or authorized provider giving the order. ()
- 11. Six Month Review of Medications.** Written documentation, signed and dated by the physician or authorized provider and pharmacist, documenting their every six (6) month review, for possible dose reduction, of the resident's use of psychotropic or behavioral modifying medications. ()
- 12. Medications Not Taken.** Documentation of any medication refused by the resident, not given to the resident or not taken by the resident with the reason for the omission. ()
- 13. PRN Medication.** Documentation of all PRN medication with the reason for taking the medication. ()
- 14. Nursing Assessments.** Monthly nursing assessments, signed and dated, from the licensed professional nurse documenting the requirements in Section 305 of these rules. ()
- 712. -- 714. (RESERVED).**
- 715. MENTAL HEALTH CONTRACT BED RECORDS.**
The administrator must assure that the facility's records for mental health contract beds are maintained as described in Subsections 715.01 and 715.02, of these rules. ()
- 01. Contract With Department.** The facility must maintain on file a written contract with the

Department outlining the responsibilities of both parties and lists the names and telephone numbers of individuals who may be contacted if questions arise regarding the resident's care. ()

02. Department Assessment. Results of the Department assessment for each mental health contract resident, which clearly assures that the resident is not a danger to himself or others must be in the resident's care record. ()

716. -- 719. (RESERVED).

720. ADULT HOURLY CARE RECORDS.

The administrator must assure that the facility's hourly adult care records are maintained as described in Subsections 720.01 and 720.02 of these rules. ()

01. Required Records for Each Hourly Adult Care Individual. The facility must maintain a record for each hourly adult care individual which includes: ()

a. Admission identification information including responsible party and emergency telephone numbers of family members and the physician or authorized provider; ()

b. Pertinent health and social information relevant to the supervision of the individual; and ()

c. Care and services provided to the individual including medication assistance. ()

02. Length of Time Records Kept for Adult Hourly Care. The records for each adult hourly care individual must be maintained for five (5) years. ()

721. -- 724. (RESERVED).

725. FACILITY ADMINISTRATIVE RECORDS FOR ADMISSIONS AND DISCHARGE REGISTER.

The administrator must assure that the facility's administrative records for admission and discharge are maintained as described in Subsections 725.01 through 725.02 of these rules. ()

01. Admission and Discharge Register. Each facility must maintain an admission and discharge register listing the name of each resident, date admitted, the place from which the resident was admitted, date discharged, reason for discharge, and adequate identification of the facility to which the resident is discharged or the home address. The admissions and discharge register must be maintained as a separate document, apart from the individual resident records, and must be kept current. ()

02. Hourly Adult Care Log. A log of hourly adult care individuals, including the dates of service, must be maintained and kept for five (5) years. ()

726. -- 729. (RESERVED).

730. FACILITY ADMINISTRATIVE RECORDS FOR PERSONNEL AND STAFFING.

The administrator must assure that the facility's personnel and staffing records are maintained as described in Subsections 730.01 through 730.03 of these rules. ()

01. Personnel. A record for each employee must be maintained and available which includes the following: ()

a. Name, address, phone number, and date of hire; ()

b. Job description that includes purpose, responsibilities, duties, and authority; ()

c. Evidence that on or prior to hire, staff were notified in writing that the facility does not carry professional liability insurance. If the facility cancels the professional liability insurance, all staff must be notified of the change in writing; ()

- d. Documentation of the outcome of the tuberculosis screening; ()
 - e. A copy of a current license for all nursing staff and verification from the Board of Nursing that the license is in good standing or identification of restrictions; ()
 - f. Signed evidence of training; ()
 - g. CPR, first aid, and assistance with medication certification; ()
 - h. Criminal history clearance as required by Section 56-1004A, Idaho Code, and IDAPA 16.05.05, "Criminal History and Background Checks in Long Term Care Settings"; ()
 - i. Documentation by the licensed professional nurse of delegation to unlicensed staff to assist residents with medications and other nursing tasks; ()
 - j. Documentation by the licensed professional nurse regarding assessment; and ()
 - k. A signed document authorizing by position title of, the individual responsible for acting on behalf of the administrator in his absence. ()
- 02. Work Records.** Work records must be maintained in writing for the previous five (5) years which reflect: ()
- a. Personnel on duty, at any given time; and ()
 - b. The first and last names, of each employee, and their position. ()
- 03. Contract Records.** Copies of contracts with outside service providers and contract staff. ()

731. -- 734. (RESERVED).

735. FACILITY ADMINISTRATIVE RECORDS FOR HANDLING OF MEDICATIONS AND CONTROLLED SUBSTANCES.

The administrator must assure that the facility's records for handling of medications and controlled substances are maintained as described in Subsections 735.01 through 735.04 of these rules. ()

01. Documentation of Cold Storage Temperature. Daily monitoring documentation of the refrigerated temperature where biologicals and other medications requiring cold storage are stored to ensure the temperature is maintained at thirty-eight to forty-five degrees (38-45°F) Fahrenheit for the previous twelve (12) months. ()

02. Return Medication Agreement. If appropriate, the written agreement between the facility and the pharmacy to return unused, unopened medications to the pharmacy for proper disposition and credit. See IDAPA 16.03.09. "Rules Governing the Medicaid Assistance Program," Section 817, and IDAPA 27.01.01, "Rules of the Idaho Board of Pharmacy". ()

03. Documentation of Medication Disposal. A written record of all drug disposals must be maintained in the facility and include: ()

- a. A description of the drug, including the amount; ()
- b. Name of resident for prescription medication; ()
- c. The reason for disposal; ()
- d. The method of disposal; ()

- e. The date of disposal; and ()
- f. Signatures of responsible facility personnel and witness. ()

04. Tracking Controlled Substances Documentation. The facility must maintain a written record tracking all controlled substances entering the facility in accordance with Title 37, Chapter 27, Idaho Code, IDAPA 27.01.01 “Rules of the Idaho Board of Pharmacy,” Section 495, and IDAPA 23.01.01, “Rules of the Idaho Board of Nursing,” Section 490. ()

736. -- 739. (RESERVED).

740. FACILITY ADMINISTRATIVE RECORDS FOR DIETARY.

The administrator must assure that the facility’s records for dietary are maintained as described in Subsections 740.01 and 740.02 of these rules. ()

01. Menu Plan Documentation. The facility must maintain copies of menus, including therapeutic menus planned, approved, signed, and dated by a dietitian in the facility. ()

02. Length of Time Documentation Kept for Menu Plans. The facility must maintain three (3) months of as served menus, including therapeutic menus, corrected to reflect substitutions. ()

741. -- 744. (RESERVED).

745. FACILITY ADMINISTRATIVE RECORDS FOR WATER SUPPLY.

The administrator must assure that the facility’s records for water supply are maintained. Copies of the laboratory reports documenting the bacteriological examination of testing private water supply must be kept on file in the facility. ()

746. -- 749. (RESERVED).

750. FACILITY ADMINISTRATIVE RECORDS FOR FIRE AND LIFE SAFETY.

The administrator must assure that the facility’s records for fire and life safety are maintained as described in Subsections 750.01 through 750.06 of these rules. ()

01. Fire Drill Documentation. Written documentation of each fire drill, one (1) per shift per quarter, must be maintained on file at the facility and must contain a description of each drill, the date and time of the drill, response of the personnel and residents, problems encountered and recommendations for improvement. ()

02. Report of Fire Documentation. A copy of the reporting form, “Facility Fire Incident Report,” must be completed and submitted to the Licensing and Survey Agency. The specific data must include, date of incident, origin, extent of damage, method of extinguishment, and injuries if any. ()

03. Fuel-Fired Heating Inspection Documentation. The facility will maintain a copy of the annual results of the inspection in the facility. ()

04. Portable Fire Extinguisher Examination Documentation. The facility must maintain records of the monthly examination of the Portable Fire Extinguishers documenting the following: ()

- a. Each extinguisher is in its designated location; ()
- b. Each extinguisher seal or tamper indicator is not broken; ()
- c. Each extinguisher has not been physically damaged; ()
- d. Each extinguisher gauge, if provided, shows a charged condition; and ()

e. The inspection tag attached to the extinguisher shall show at least the initials of the person making the monthly examination and the date of the examination. ()

05. Fire Alarm Smoke Detection System Service and Testing. The facility must maintain on file in the facility the following reports: ()

a. The results of the annual inspection and test, by a person or business professionally engaged in the servicing of such systems; and ()

b. The results of the monthly inspection and testing of the fire alarm, smoke detection system by a by a designated facility employee. ()

06. Automatic Fire Extinguishing System Service and Testing. The facility must maintain on file in the facility the results of the annual inspection, testing and service, by a person or business professionally engaged in servicing of such systems. ()

751. -- 899. (RESERVED).

900. ENFORCEMENT ACTIONS.

The Department will consider the facility's compliance history, change of ownership, the number of deficiencies, and scope and severity of the deficiencies when determining an enforcement action. The Department can impose any of the enforcement actions, independently or in conjunction with others, as described in Sections 900 through 940 of these rules. ()

01. Immediate Danger to Residents. When the Department finds that the facility's deficiency(s) immediately places the health or safety of its residents in danger, the Director of the Department or his designee may impose one (1) or more of the following: ()

a. Appoint temporary management; or ()

b. Summarily suspend the facility's license and transfer residents ()

02. Not an Immediate Danger to Residents. When the Department finds that the facility's deficiency does not immediately place the residents' health or safety in danger, the Department will initiate one (1) of the Enforcement Actions "A" through "C" described in Subsections 900.03 through 900.05 of these rules, or "Enforcement Remedy of Revocation of License" described in Section 940 of these rules. ()

03. Enforcement Action "A". ()

a. The facility has forty-five (45) days from the date the facility was found out of compliance with core issue requirements to comply; ()

b. An acceptable Plan of Correction is required as described in Section 130.08 of these rules; and ()

c. When an acceptable Plan of Correction is not submitted within thirty (30) days from the date the facility was found out of compliance with core issue requirements, the Department may take Enforcement Action "B". ()

d. A follow-up survey for Enforcement Action "A" will be conducted after forty-five (45) days from the date the facility was found out of compliance with core issue requirements. During this survey, if the deficiency still exists or a new core issue deficiency is issued, Enforcement Action "B" will be taken. ()

04. Enforcement Action "B". ()

a. The facility has forty-five (45) days, from the date of the follow-up survey for Enforcement Action "A" in which the facility was found out of compliance with core issue requirements, to comply; ()

b. An acceptable Plan of Correction for core issues is required as described in Section 130.08 of these rules; ()

c. When an acceptable Plan of Correction is not submitted within thirty (30) days from the date the facility was found out of compliance with core issue requirements, the Department may take Enforcement Action "C." ()

d. In addition the Department may impose the following enforcement actions: ()

i. A provisional license may be issued; ()

ii. Admissions to the facility may be limited; or ()

iii. The facility may be required to hire a consultant who submits periodic reports to the Licensing and Survey Agency. ()

e. A follow-up survey for Enforcement Action "B" will be conducted after forty-five (45) days from the date the facility was found out of compliance with core issue requirements. During this survey, if the deficiency still exists or a new core issue deficiency is issued, Enforcement Action "C" will be taken. ()

05. Enforcement Action "C". ()

a. The facility has forty-five (45) days, from the date of the follow-up survey for Enforcement Action "B" in which the facility was found out of compliance with core issue requirements to comply; ()

b. An acceptable Plan of Correction for core issues is required as described in Section 130.08 of these rules; ()

c. When an acceptable Plan of Correction is not submitted within thirty (30) days from the date the facility was found out of compliance with core issue requirements, the Department may initiate the remedy of revocation of license as described in Section 940 of these rules; ()

d. In addition the Department may impose the following enforcement actions: ()

i. The provisional license will be continued; ()

ii. Limit on admissions; ()

iii. Temporary management; ()

iv. Civil monetary penalties as described in Section 925 of these rules; ()

e. A follow-up survey for Enforcement Action "C" will be conducted after forty-five (45) days from the date the facility was found out of compliance with core issue requirements; and ()

f. When the facility fails to comply with this enforcement action, the Department may initiate an enforcement remedy of revocation of license as described in Section 940 of these rules. ()

901. -- 904. (RESERVED).

905. CORE ISSUES DEFICIENCY.

The Licensing and Survey Agency will issue a deficiency and appropriate agencies will be notified when core issue deficiencies are found during a survey. When the Department finds that the facility's deficiency does not immediately place the residents' health or safety in danger, the Department will initiate one (1) of the Enforcement Actions "A" through "C" described in Subsections 900.03 through 900.05 of these rules, or "Enforcement Remedy of Revocation of License" described in Section 940 of these rules. ()

906. -- 909. (RESERVED).

910. NON-CORE ISSUES DEFICIENCY.

The Licensing and Survey Agency will issue a deficiency for non-core issues that are found during a survey. ()

01. Evidence of Resolution. Acceptable evidence of resolution as described in Subsection 130.09 of these rules, must be submitted by the facility to the Licensing and Survey Agency. If acceptable evidence of resolution is not submitted within sixty (60) days from when the facility was found to be out of compliance, the Department may impose enforcement actions as described in Subsection 910.02.a. through 910.02.c. of these rules. ()

02. First Follow-Up Survey. When the Licensing and Survey Agency finds on the first follow-up survey that repeat non-core deficiencies exist, the Department may initiate any of the following enforcement actions: ()

- a.** A provisional license may be issued; ()
- b.** Admissions to the facility may be limited; or ()
- c.** The facility may be required to hire a consultant who submits periodic reports to the Licensing and Survey Agency. ()

03. Second Follow-Up Survey. When the Licensing and Survey Agency finds on the second follow-up survey that repeat non-core deficiencies still exist, the Department may initiate the "Enforcement Remedy of Civil Monetary Penalties," as described in Section 925 of these rules. ()

911. -- 919. (RESERVED).

920. ENFORCEMENT REMEDY OF LIMIT ON ADMISSIONS.

01. Notification of Limit on Admissions. The Department will notify the facility limiting admissions or limiting admissions of residents with specific diagnosis to the facility pending correction of deficiencies. Limits of admissions to the facility remain in effect until the Department determines the facility has achieved full compliance with requirements or have received written evidence and statements from the outside consultant that the facility is in compliance. ()

02. Reasons for Limit on Admissions. The Department may limit admissions for the following reasons: ()

- a.** The facility is inadequately staffed or the staff is inadequately trained to handle more residents. ()
- b.** The facility otherwise lacks the resources necessary to support the needs of more residents. ()
- c.** Enforcement Action "B" or "C" is taken as described in Sections 900.04 and 900.05, of these rules. ()
- d.** Enforcement Remedy for Revocation of License as described in Section 940 of these rules. ()

921. -- 924. (RESERVED).

925. ENFORCEMENT REMEDY OF CIVIL MONETARY PENALTIES.

01. Civil Monetary Penalties. Civil monetary penalties are based upon one (1) or more deficiencies of noncompliance. Nothing will prevent the Department from imposing this remedy for deficiencies which existed prior to the survey or complaint investigation through which they are identified. Actual harm to a resident or residents does

not need to be shown. A single act, omission or incident will not give rise to imposition of multiple penalties, even though such act, omission or incident may violate more than one (1) rule. ()

02. Assessment Amount for Civil Monetary Penalty. When civil monetary penalties are imposed, such penalties are assessed for each day the facility is or was out of compliance. The amounts below are multiplied by the total number of licensed beds according to the records of the Department at the time of the survey. ()

a. Initial deficiency is eight dollars (\$8). Example below:

Number of Beds in Facility	Initial Deficiency	Times Number of Days Out of Compliance	Amount of Penalty
11	\$8.00	45 days	\$3960

()

b. Repeat deficiency is ten dollars (\$10). Example below:

Number of Beds in Facility	Repeat Deficiency	Times Number of Days Out of Compliance	Amount of Penalty
11	\$10.00	30 days	\$3300

()

c. In any ninety (90) day period, the penalty amounts may not exceed the limits shown in the following table:

Limits on Accruing Civil Monetary Amount.		
Number of Beds in Facility	Initial Deficiency	Initial Deficiency
3-4 Beds	\$1440	\$2880
5-50 Beds	\$3200	\$6400
51-100 Beds	\$5400	\$10,800
101-150 Beds	\$8800	\$17,600
151 or More Beds	\$14,600	\$29,200

()

03. Notice of Civil Monetary Penalties and Appeal Rights. The Department will give written notice informing the facility of the amount of the penalty, the basis for its assessment and the facility's appeal rights. ()

04. Payment of Penalties. The facility must pay the full amount of the penalty within thirty (30) calendar days from the date the notice is received, unless the facility requests an administrative review of the decision to assess the penalty. The amount of a civil monetary penalty determined through administrative review must be paid within thirty (30) calendar days of the facility's receipt of the administrative review decision unless the facility requests an administrative hearing. The amount of the civil monetary penalty determined through an administrative hearing must be paid within thirty (30) calendar days of the facility's receipt of the administrative hearing decision unless the facility files a petition for judicial review. Interest accrues on all unpaid penalties at the legal rate of interest for judgments. Such interest accrual will begin one (1) calendar day after: ()

a. The date of the initial assessment of the penalty; ()

b. If the facility waives its right to a hearing and opts to pay the penalty, the amount of the civil monetary penalty will be reduced by thirty-five percent (35%); or ()

c. The date of the issuance of the administrative review, administrative hearing or the final judicial review. ()

05. Failure to Pay. Failure of a facility to pay the entire penalty, together with any interest, is cause for revocation of the license or the amount will be withheld from Medicaid payments to the facility. ()

926. -- 929. (RESERVED).

930. ENFORCEMENT REMEDY OF TEMPORARY MANAGEMENT.

01. Need for Temporary Management. The Department may impose the remedy of temporary management in situations where there is a need to oversee operation of the facility and to assure the health and safety of the facility's residents: ()

a. During an orderly transfer of residents of the facility to other facilities; or ()

b. Pending improvements to bring the facility into compliance with program requirements. ()

02. Notice of Temporary Management. The Department will give written notice to the facility of the imposition of temporary management. ()

03. Who May Serve as a Temporary Manager. The Department may appoint any person or organization that meets the following qualifications: ()

a. The temporary manager must not have any pecuniary interest in or preexisting fiduciary duty to the facility to be managed; ()

b. The temporary manager must not be related, within the first degree of kinship, to the facility's owner, manager, administrator, or other management principal; ()

c. The temporary manager must possess sufficient training, expertise and experience in the operation of a facility as would be necessary to achieve the objectives of temporary management. If the temporary manager is to serve in a facility, the manager must possess an Idaho Residential Care Administrator's license; and ()

d. The temporary manager must not be an existing competitor of the facility who would gain an unfair competitive advantage by being appointed as temporary manager of the facility. ()

04. Powers and Duties of the Temporary Manager. The temporary manager has the authority to direct and oversee the management, hiring and discharge of any consultant or personnel, including the administrator of the facility. The temporary manager has the authority to direct the expenditure of the revenues of the facility in a reasonable and prudent manner, to oversee the continuation of the business and the care of the residents, to oversee and direct those acts necessary to accomplish the goals of the program requirements and to direct and oversee regular accounting. When the facility fails or refuses to carry out the directions of the temporary manager, the Department will revoke the facility's license. ()

a. The temporary manager must observe the confidentiality of the operating policies, procedures, employment practices, financial information, and all similar business information of the facility, except that the temporary manager must make reports to the Department; ()

b. The temporary manager may be liable for gross, willful or wanton negligence, intentional acts of omissions, unexplained shortfalls in the facility's fund, and breaches of fiduciary duty; ()

c. The temporary manager does not have authority to cause or direct the facility, its owner, or administrator to incur debt, unless to bring the facility into compliance with these rules, or to enter into any contract with a duration beyond the term of the temporary management of the facility; ()

d. The temporary manager does not have authority to incur, without the permission of the owner, administrator or the Department, capital expenditures in excess of two thousand dollars (\$2,000), unless the capital expenditures are directly related to correcting the identified deficiencies; ()

e. The temporary manager does not have authority to cause or direct the facility to encumber its assets or receivables; ()

f. The temporary manager does not have authority to cause or direct a facility, which holds liability or casualty insurance coverage, to cancel or reduce its liability or casualty insurance coverage; and ()

g. The temporary manager does not have authority to cause or direct the sale of the facility, its assets or the premises on which it is located. ()

05. Responsibility for Payment of the Temporary Manager. All compensation and per diem costs of the temporary manager must be paid by the licensee. ()

06. Termination of Temporary Management. A temporary manager may be replaced under the following conditions: ()

a. The Department may require replacement of any temporary manager whose performance is deemed unsatisfactory by the Department. No formal procedure is required for such removal or replacement, but written notice of any action will be given to the facility. ()

b. A facility subject to temporary management may petition the Department for replacement of a temporary manager whose performance it considers unsatisfactory. The petition must include why the replacement of a temporary manager is necessary or appropriate. ()

931. -- 934. (RESERVED).

935. ENFORCEMENT REMEDY OF PROVISIONAL LICENSE.

A provisional license may be issued when a facility is cited with one (1) or more core issue deficiencies, or when non-core issues have not been corrected or become repeat deficiencies. The provisional license will state the conditions the facility must follow to continue to operate. See Subsections 900.04, 900.05 and 910.02 of these rules. ()

936. -- 939. (RESERVED).

940. ENFORCEMENT REMEDY OF REVOCATION OF LICENSE.

01. Revocation of Facility's License. The Department may revoke a license when the facility endangers the health or safety of residents, or when the facility is not in substantial compliance with the provisions of Title 39, Chapter 33, Idaho Code, or this chapter of rules. ()

02. Reasons for Revocation or Denial of a License. The Department may revoke or deny any license for the following reason: ()

a. The licensee has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a license; ()

b. When persuaded by a preponderance of the evidence that such conditions exist which endanger the health or safety of any resident; ()

c. Any act adversely affecting the welfare of residents is being permitted, aided, performed, or abetted by the person or persons in charge of the facility. Such acts may include, but are not limited to, neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, criminal activity, or exploitation; ()

d. The licensee has demonstrated or exhibited a lack of sound judgment essential to the operation and management of a facility; ()

- e. The licensee has violated any of the conditions of a provisional license; ()
 - f. The facility lacks adequate personnel, as required by these rules or as directed by the Department, to properly care for the number and type of residents residing at the facility; ()
 - g. Licensee refuses to allow the Department or the Protection and Advocacy agencies full access to the facility environment, facility records, and the residents as described in Subsections 010.21, 130.03 through 130.06, and 550.18 through 550.19 of these rules; ()
 - h. The licensee or administrator has been guilty of fraud, gross negligence, abuse, assault, battery, or exploitation with respect to the operation of a health facility or residential care or assisted living facility or certified family home; ()
 - i. The licensee or administrator is actively affected in his performance by alcohol or the use of drugs classified as controlled substances; ()
 - j. The licensee or administrator has been convicted of a criminal offense other than a minor traffic violation within the past five (5) years; ()
 - k. The licensee or administrator is of poor moral and responsible character or has been convicted of a felony or defrauding the government; ()
 - l. The licensee or administrator has been denied, or the licensee's wrong doing, has caused the revocation of any license or certificate of any health facility, residential care or assisted living facility, or certified family home; ()
 - m. The licensee or administrator has been convicted of operating any health facility or residential care or assisted living facility without a license or certified family home without a certificate; ()
 - n. The licensee is directly under the control or influence of any person who has been the subject of proceedings as described in Subsection 940.02.m. of these rules; ()
 - o. The licensee is directly under the control or influence of any person who is of poor moral and responsible character or has been convicted of a felony or defrauding the government; ()
 - p. The licensee is directly under the control or influence of any person who has been convicted of a criminal offense other than a minor traffic violation in the past five (5) years; ()
 - q. The licensee fails to pay civil monetary penalties imposed by the Department as described in Section 925 of these rules; ()
 - r. The licensee fails to take sufficient corrective action as described in Sections 900, 905 and 910 of these rules; or ()
 - s. The number of residents currently in the facility exceeds the number of residents the facility is licensed to serve. ()
- 03. Failure to Pay.** Failure of a facility to pay the entire penalty, together with any interest, is cause for revocation of the license or the amount will be withheld from Medicaid payment to the facility. ()

941. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.05.03 - RULES GOVERNING CONTESTED CASE PROCEEDINGS
AND DECLARATORY RULINGS

DOCKET NO. 16-0503-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 16-107, 56-133, 56-135, 56-202, 56-203, 56-204A, 56-216, 56-1003, 56-1004, and 56-1005, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2005.

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:

After several years of use, the Department's contested case rules can benefit from minor changes. Implementing the rule changes described below will reduce the number of appeals that are unnecessarily reviewed, saving both time and money. Pertinent sections of this chapter are being published in order to conform the text with the Department's policy of using "must" instead of "shall."

Three sections of this rule will be revised to clarify the following issues: when an appeal is to be filed; the hearing officer must dismiss an untimely appeal; and that a proposed order of default must be issued if someone fails to appear for a hearing. Currently the hearing officer has discretion in issuing a proposed order of default.

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

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

This rulemaking has no negative fiscal impact to the general fund; however, it should provide a positive fiscal impact in two ways: (1) if the hearing officer issues proposed orders of default, this will avoid Director, delegees, and staff time to review unnecessary appeals, and (2) individuals who continue their benefits during the hearing process and who ultimately do not prevail will have smaller overpayments if the hearing is held expeditiously. Currently if an appeal is remanded back to the Hearing Officer he charges the Department for setting up a new file and another hearing for the same individual. This rule change will save the Department money by reducing the number of remanded appeals. Currently the cost of an individual hearing is \$278.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of limited time to promulgate rule and this rule benefits participants.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeanne T. Goodenough, Division Chief, Department of Health and Welfare, Office of Attorney General at (208) 334-6558.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2005.

DATED this 24th day of August, 2005.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

FOLLOWING IS THE TEXT OF DOCKET NO. 16-0503-0501

000. LEGAL AUTHORITY.

The Idaho Legislature has granted the Director of the Department of Health and Welfare and the Board of Health and Welfare the power and authority to conduct contested case proceedings and issue declaratory rulings, and to adopt rules governing such proceedings pursuant to under Sections 16-107, 56-133, 56-135, 56-202, 56-203, 56-204A, 56-216, 56-1003, 56-1004, and 56-1005, Idaho Code. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

All contested cases ~~shall be~~ are governed by the provisions of this chapter. The Board of Health and Welfare and the Director of the Department of Health and Welfare find that the provisions of IDAPA 04.11.01.000, et seq., “Idaho Rules of Administrative Procedure of the Attorney General,” are inapplicable for contested cases involving the programs administered by the Department, because of the specific requirements of federal and state law regarding hearing processes, and the complexity of the rules at IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General”. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

005. ADMINISTRATIVE PROCEDURES SECTION.

Petitions for adoption of rules, petitions for declaratory rulings, and appeals ~~shall be~~ are filed with: Administrative Procedures Section, 10th Floor, 450 West State Street, P.O. Box 83720, Boise, ID 83720-0036. Phone: (208) 334-5564. FAX: ~~332-7347~~ 334-6558. (3-30-01)(____)

006. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (____)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (____)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (____)

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-

5500. ()

05. Internet Website. The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. ()

007. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

Any use or disclosure of Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records". ()

~~0068.~~ -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

040. PETITION FOR ADOPTION OF RULES.

~~Pursuant to~~ Under Section 67-5230, Idaho Code, any person may file a written petition with the Administrative Procedures Section requesting the promulgation, amendment, or repeal of a rule. The petition ~~shall~~ must include a name, address and phone number to which the Department may respond; list the rule in question and explain the reasons for the petition; and include the suggested language of the rule. The Director ~~shall~~ will initiate rulemaking proceedings or deny the petition in writing within twenty-eight (28) days. (3-30-01)()

041. -- 049. (RESERVED).

050. PETITION FOR DECLARATORY RULING.

~~Pursuant to~~ Under Section 67-5232, Idaho Code, any person may file a written petition to the Director through the Administrative Procedures Section for a declaratory ruling as to the applicability of any statute or rule of the Department to an actual set of facts involving that person. (3-30-01)()

051. CONTENTS OF PETITION FOR DECLARATORY RULING.

A petition for a declaratory ruling ~~shall~~ must identify that it is a request for a declaratory ruling ~~pursuant to~~ under this section; the specific statute, or rule with respect to which the declaratory ruling is requested; a complete description of the situation for which the declaratory ruling is requested; and the specific ruling requested. The petition ~~shall~~ must include the date of the petition, the name, address and phone number of the petitioner and whether the petition is made on behalf of a corporation or organization. The petition ~~shall~~ must identify the manner by which the statute or rule interferes with, impairs, or threatens to interfere with or impair the legal rights, duties, licenses, immunities, interests or privileges of the petitioner. (3-30-01)()

052. DISPOSITION OF PETITION FOR DECLARATORY RULING.

The Director ~~shall~~ will issue a final declaratory ruling in writing within seventy (70) days after receipt of the petition or within such additional time as may be required. The Director may decline to issue a declaratory ruling in the following circumstances: (3-30-01)()

- 01. Incomplete.** When a petition fails to meet the requirements set forth in Section 051 of these rules; (3-30-01)
- 02. Contested Case.** When the issue set forth in the petition would be more properly addressed as a contested case, such as where there is a reasonable dispute as to the relevant facts, or where witness credibility is an issue; (3-30-01)
- 03. No Legal Interest.** When the petition fails to state a sufficient or cognizable legal interest to confer standing; (3-30-01)
- 04. Others Affected.** When the issue presented would substantially affect the legal rights, license, privileges, immunities, or interests of parties other than petitioners; or (3-30-01)

05. Beyond Authority. When the ruling requested is beyond the authority of the Department. (3-30-01)

053. -- 099. (RESERVED).

100. DEPARTMENT RESPONSIBILITY.

When a decision is appealable, the Department ~~shall~~ will advise the individual or provider in writing of the right and method to appeal and the right to be represented. (3-30-01)(____)

101. FILING OF APPEALS.

Appeals ~~shall~~ must be filed in writing and ~~shall~~ state the appellant's name, address and phone number, and the remedy requested, except that appeals of action relating to Division of Welfare programs listed in Section 200 of these rules may be made verbally to Department Staff by an individual or representative. Appeals should be accompanied by a copy of the decision that is the subject of the appeal. Unless otherwise provided by statute or these rules, individuals who are aggrieved by a Department decision ~~shall~~ have twenty-eight (28) days from the date ~~of~~ the decision is mailed to file an appeal. An appeal is filed when it is received by the Department or postmarked within the time limits set forth in these rules. (3-30-01)(____)

102. NOTICE OF HEARING.

All parties in an appeal ~~shall~~ will be notified of a hearing at least ten (10) days in advance, or within such time period as may be mandated by law. The hearing officer may provide a shorter advance notice upon request of a party or for good cause. The notice ~~shall~~ will identify the time, place and nature of the hearing; a statement of the legal authority under which the hearing is to be held; the particular sections of any statutes and rules involved; the issues involved; and the right to be represented. The notice ~~shall~~ must identify how and when documents for the hearing will be provided to all parties. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

105. DISPOSITION OF CASE WITHOUT A HEARING.

Any contested case may be resolved without a hearing on the merits of the appeal by stipulation, settlement, motion to dismiss, summary judgment, default, withdrawal, or for lack of jurisdiction; ~~or if~~ The hearing officer must dismiss an appeal that is not filed within the time limits set forth in these rules. (3-30-01)(____)

106. DEFAULT.

If a party fails to appear at a scheduled hearing or at any stage of a contested case, the hearing officer ~~may~~ must enter a proposed default order against that party. The default order ~~shall~~ must be set aside if, within fourteen (14) days of the date of mailing, the appellant submits a written explanation for not appearing, which the hearing officer finds substantial and reasonable. (3-30-01)(____)

107. INTERVENTION.

Persons other than the original parties to an appeal who are directly and substantially affected by the proceeding may participate if they first secure an order from the hearing officer granting leave to intervene. The granting of leave to intervene ~~shall~~ is not to be construed ~~to be~~ as a finding or determination that the intervenor is or may be a party aggrieved by any ruling, order or decision of the Department for purposes of judicial review. (3-30-01)(____)

108. -- 119. (RESERVED).

120. DISCOVERY.

Except for hearings involving Section 56-1005(5), Idaho Code, prehearing discovery ~~shall be~~ is limited to obtaining the names of witnesses and copies of documents the opposing party intends to offer as exhibits. The hearing officer may order production of this information if a party refuses to comply after receiving a written request. The hearing officer ~~shall~~ will issue such other orders as are needed for the orderly conduct of the proceeding. Nothing in Section 120 ~~shall~~ limits the authority of the Director provided in Section 56-227C, Idaho Code. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

122. FILING OF DOCUMENTS IN AN APPEAL.

All documents intended to be used as exhibits ~~shall~~ must be filed with the hearing officer. Such documents ~~shall~~ will be provided to every party at the time they are filed with the hearing officer, in person or by first class mail. Service by mail is complete when the document, properly addressed and stamped, is deposited in the United States or Statehouse mail. A certificate showing delivery to all parties ~~shall~~ will accompany all documents when they are filed with the hearing officer. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

124. REPRESENTATION OF INDIVIDUALS WITH DEVELOPMENTAL DISABILITIES.

Unless an individual, authorized representative or attorney provides a written declaration to the contrary, eligible individuals with developmental disabilities or mental illness ~~shall be~~ are deemed to be represented by the state Protection and Advocacy System established ~~pursuant to~~ under 42 USC 6041, et seq., and 42 USC 10801 et seq., and designated by the Governor. The protection and advocacy system ~~shall have~~ has access to records of such individuals maintained by any program or institution of the Department if the individual is unable to authorize the system to have such access, or does not have a legal guardian, conservator or other legal representative. Service of documents ~~shall~~ will be made on the protection and advocacy system and the individual. Unless the protection and advocacy system provides written notification to the Department that it will not be representing the individual, the system ~~shall be~~ is an authorized representative. (3-30-01)(____)

125. INTERPRETERS.

If necessary, an interpreter ~~shall~~ will be provided by the Department. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

131. AUTHORITY OF HEARING OFFICER.

The hearing officer ~~shall~~ will consider only information that was available to the Department at the time the decision was made. If appellant shows that there is additional relevant information that was not presented to the Department with good cause, the hearing officer ~~shall~~ will remand the case to the Department for consideration. No hearing officer ~~shall have~~ has the jurisdiction or authority to invalidate any federal or state statute, rule, regulation, or court order. The hearing officer ~~shall~~ must defer to the Department's interpretation of statutes, rules, regulations or policy unless the hearing officer finds the interpretation to be contrary to statute or an abuse of discretion. The hearing officer ~~shall~~ will not retain jurisdiction on any matter after it has been remanded to the Department. (3-30-01)(____)

132. BURDEN OF PROOF - INDIVIDUAL BENEFIT CASES.

The Department has the burden of proof if the action being appealed is to limit, reduce or terminate services or benefits; establish an overpayment or disqualification; revoke or limit a license; or to contest a tobacco violation ~~pursuant to~~ under Sections 39-5705 and 39-5708, Idaho Code. The appellant has the burden of proof on all other issues, including establishing eligibility for a program, service or license; seeking an exemption required due to criminal history or abuse registry information; or seeking to avoid license suspension for failure to pay child support. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

134. EVIDENCE.

~~Pursuant to~~ Under Section 67-5251, Idaho Code, the hearing ~~shall be~~ is informal and technical rules of evidence ~~shall do~~ not apply, except that irrelevant, immaterial, incompetent, unduly repetitious evidence, evidence excludable on constitutional or statutory grounds, or evidence protected by legal privilege ~~shall be~~ is excluded. Hearsay evidence ~~shall will~~ be received if it is relevant to a matter in dispute and is sufficiently reliable that prudent persons would commonly rely on it in the conduct of their affairs, or corroborates competent evidence. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantially prejudicing the interest of any party. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Unless otherwise stated in statute, rule, or regulation, the evidentiary standard ~~shall be~~ is proof by a preponderance of the evidence. (3-30-01)(____)

135. DISCRETIONARY JUDICIAL NOTICE.

Notice may be taken of judicially cognizable facts by the hearing officer or authority on its own motion or on motion of a party. In addition, notice may be taken of generally recognized technical or scientific facts within the Department's specialized knowledge. Parties ~~shall will~~ be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed including any staff memoranda or data, and the parties ~~shall will~~ be afforded an opportunity to contest the material so noticed. The Department's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. (3-30-01)(____)

136. MANDATORY JUDICIAL NOTICE.

~~01. Judicial Notice.~~ The hearing officer ~~shall will~~ take judicial notice, on its own motion or on the motion of any party, of the following ~~admissible, valid and enforceable~~ materials: (3-30-01)

~~02. Admissible, Valid, and Enforceable Materials. The following are admissible, valid and enforceable:-~~ (3-30-01)

- ~~a-~~ Rules of the Department and other state agencies; (3-30-01)
- ~~b-~~ Federal regulations; (3-30-01)
- ~~c-~~ State plans of the Department; (3-30-01)
- ~~d-~~ The Constitutions and statutes of the United States and Idaho; (3-30-01)
- ~~e-~~ Public records; and (3-30-01)
- ~~f-~~ Such other materials that a court of law must judicially notice. (3-30-01)(____)

137. HEARING RECORD.

The hearing officer ~~shall must~~ arrange for a record to be made of a hearing. The hearing ~~shall must~~ be recorded unless a party requests a stenographic recording by a certified court reporter, in writing, at least seven (7) days prior to the date of hearing. The record ~~shall must~~ be transcribed at the expense of the party requesting a transcript and prepayment or guarantee of payment may be required. Once a transcript is requested, any party may obtain a copy at the party's own expense. The Department ~~shall must~~ maintain the complete record of each contested case for a period of not less than six (6) months after the expiration of the last date for judicial review, unless otherwise provided by law. (3-30-01)(____)

138. DECISION AND ORDER.

A preliminary order ~~shall must~~ be issued by the hearing officer not later than thirty (30) days after the case is submitted for decision. The order ~~shall must~~ include specific findings on all major facts at issue; a reasoned statement in support of the decision; all other findings and recommendations of the hearing officer; a preliminary decision affirming, reversing or modifying the action or decision of the Department, or remanding the case for further proceedings; and the procedures and time limits for filing requests for review of the order. Unless otherwise provided by a statute governing a particular program, motions for reconsideration of a preliminary order ~~shall will~~ not be accepted. (3-30-01)(____)

139. -- 149. (RESERVED).

150. REVIEW OF PRELIMINARY ORDERS BY DEPARTMENT.

In cases under the jurisdiction of the Department, either party may file a request for review with the Administrative Procedures Section not later than fourteen (14) days from the date the preliminary order was mailed. The request *shall* must identify all legal and factual bases of disagreement with the preliminary order. The Director or designee *shall* must allow for briefing by the parties and *shall* determines whether oral argument will be allowed. The Director or designee *shall* determines whether a transcript of the hearing is needed and if so, one *shall* will be provided by the party who requests review of the preliminary order. The Director or designee *shall* must exercise all of the decision-making power he would have had if he had presided over the hearing. (3-30-01)(____)

151. PETITION FOR REVIEW BY BOARD OF HEALTH AND WELFARE.

In cases under the jurisdiction of the Board, either party may file a petition for review with the Administrative Procedures Section not later than twenty-eight (28) days from the date the preliminary order was mailed. The Administrative Procedures Section *shall* will establish a schedule for the submission of briefs and if allowed, oral argument. Appellant *shall* must provide a transcript of the hearing before the hearing officer unless the appeal involves only questions of law. The Board *shall* will exercise all of the decision-making power they would have had if they had presided over the hearing. (3-30-01)(____)

152. FINAL ORDER.

The Board, Director or designee may affirm, modify, or reverse the order, or remand the matter to the hearing officer for further proceedings. The decision *shall* informs the parties of the procedure and time limits for filing appeals with the district court. Motions for reconsideration of a final order *shall* will not be accepted. (3-30-01)(____)

153. SERVICE OF PRELIMINARY AND FINAL ORDERS.

Orders *shall* will be deemed to have been served when copies *thereof* are mailed to all parties of record or their attorneys. (3-30-01)(____)

154. MAINTENANCE OF ORDERS.

All final orders of the Board or the Director *shall* will be maintained by the Administrative Procedures Section and made available for public inspection for at least six (6) months, or until all appeals are concluded, whichever is later. (3-30-01)(____)

155. EFFECT OF PETITION FOR JUDICIAL REVIEW.

The filing of a petition for judicial review *shall* will not stay compliance with a final order or suspend the effectiveness of the order, unless otherwise ordered or mandated by law. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

201. TIME FOR FILING APPEAL.

A decision issued by the Department in a Division of Welfare program *shall* will be final and effective unless an individual or representative appeals within thirty (30) days from the date the decision was mailed, except that a recipient or applicant for Food Stamps *shall* have has ninety (90) days to appeal. An individual or representative may also appeal when the Department delays in making an eligibility decision or making payment beyond the limits specified in the particular program within thirty (30) days after the action would have been taken if the Department had acted in a timely manner. (3-30-01)(____)

202. INFORMAL CONFERENCE.

An appellant or representative has the right to request an informal conference with the Department or Community Action Agency before the hearing date. This conference may be used to resolve the issue informally or to provide the appellant with information about the hearing or actions. The conference will not affect the appellant's right to a hearing or the time limits for the hearing. After the conference, the hearing *shall* will be held unless the appellant withdraws the appeal, or the Department withdraws the action contested by the appellant. (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

204. TIME LIMITS FOR COMPLETING HEARINGS.

The Department ~~shall~~ must conduct the hearing relating to an individual's benefits and take action within ninety (90) days from the date the hearing request is received. When the hearing request concerns the computed amount of the Community Spouse Resource Allowance, the hearing ~~shall~~ will be held within thirty (30) days from the date the hearing request is received. The Department ~~shall~~ will expedite hearing requests from appellants such as migrant farm workers who are planning to move before the hearing decision would normally be reached. (3-30-01)(____)

205. APPEAL OF AUTOMATIC ADJUSTMENTS.

An appeal ~~shall~~ will be dismissed if the hearing officer determines that the sole issue is an automatic grant adjustment, change in rule that affects benefit amount or eligibility, or reduction of Medicaid services under state or federal law. (3-30-01)(____)

206. CONSOLIDATED HEARING.

When there are multiple appeals or a group appeal involving same change in law, rules, or policy, the hearing officer ~~shall~~ will hold a consolidated hearing. (3-30-01)(____)

207. POSTPONEMENT OF FOOD STAMP HEARINGS.

An appellant may request, and ~~shall~~ be granted a postponement of a hearing, not to exceed thirty (30) days. The time limit for the Department's response shall be extended for as many days as the hearing is postponed. (3-30-01)(____)

208. -- 249. (RESERVED).

250. FOOD STAMPS DISQUALIFICATION HEARINGS.

A disqualification hearing ~~shall~~ will be scheduled when the Department has evidence that an individual has allegedly committed one (1) or more acts of intentional program violations (IPV). (3-30-01)(____)

251. COMBINING DISQUALIFICATION HEARING AND BENEFIT HEARING.

The hearing officer ~~shall~~ must consolidate a hearing regarding benefits or overpayment and a disqualification hearing if the issues are the same or related. The appellant ~~shall~~ must be notified that the hearings will be combined. (3-30-01)(____)

252. RIGHT NOT TO TESTIFY.

The hearing officer ~~shall~~ must advise the appellant that he may refuse to answer questions during a disqualification hearing. (3-30-01)(____)

253. FAILURE TO APPEAR.

If an appellant or representative fails to appear at a disqualification hearing or cannot be located, the hearing ~~shall~~ will be conducted in his absence. The Department ~~shall~~ must present proof that advance notice of the hearing was mailed to the appellant's last known address. The hearing officer ~~shall~~ must consider the evidence and determine if an IPV occurred based solely on the information provided by the Department. The appellant has ten (10) days from the date of the scheduled hearing to show good cause for failure to appear. If an IPV had been established, but the hearing officer determines the appellant had good cause for not appearing, the previous decision ~~shall~~ will be void and a new hearing ~~shall~~ will be conducted. The previous hearing officer may conduct the new hearing. (3-30-01)(____)

254. STANDARD FOR DETERMINING INTENTIONAL PROGRAM VIOLATIONS.

The determination that an intentional program violation has been committed ~~shall~~ must be established by clear and convincing evidence that the appellant committed or intended to commit an IPV. (3-30-01)(____)

255. -- 299. (RESERVED).

300. DIVISION OF MEDICAID - REQUEST FOR ADMINISTRATIVE REVIEW.

An action relating to licensure or certification, billing or reimbursement ~~shall be~~ is final and effective unless the

provider or facility requests in writing an administrative review within twenty-eight (28) days after the notice is mailed. The request *shall must* be signed by the licensed administrator of the facility or by the provider, identify the challenged decision, and state specifically the grounds for its contention that the decision was erroneous. The parties *shall must* clarify and attempt to resolve the issues at the review conference. If the Department determines that additional documentation is needed to resolve the issues, a second session of the conference may be scheduled. A written decision by the Department *shall will* be furnished to the facility or provider. (~~3-30-01~~)(____)

301. SCOPE OF HEARING.

If the Department's decision after the administrative review is appealed, only issues and documentation that were presented in the administrative review *shall will* be admissible in the appeal hearing. (~~3-30-01~~)(____)

302. -- 399. (RESERVED).

400. DIVISION OF HEALTH -- LABORATORIES.

A notice of grounds for denial, suspension, revocation or renewal *shall* becomes final and effective unless the applicant or responsible party files a written appeal by registered or certified mail within fourteen (14) days of receipt of the notice. A hearing *shall will* be held not more than twenty-eight (28) days from receipt of the appeal. The applicant or responsible person *shall will* receive at least fourteen (14) days of notice of the hearing date. If the Department finds that the public health, safety or welfare imperatively requires emergency action, and incorporates the findings to that effect in its notice of denial, suspension or revocation, summary suspension of the approval may be ordered. (~~3-30-01~~)(____)

401. REPORTABLE DISEASES.

An order or restriction as specified in IDAPA 16.02.10, Subsections 015.05 through 015.10, "Idaho Reportable Diseases," *shall* becomes final and effective unless an appeal is filed within five (5) working days after the effective date of the order or restriction. (~~3-30-01~~)(____)

01. Conduct of Hearing. The Department may take whatever precautions and make whatever arrangements are necessary for the conduct of such hearing to insure that the health of participants and the public is not jeopardized. (3-30-01)

02. Review. Any person directly affected by an order or restriction may file exceptions to the Director's determination, which *shall will* be reviewed by the Board. The order or restriction *shall* remains effective unless rescinded by the Board. (~~3-30-01~~)(____)

402. FOOD ESTABLISHMENTS.

A notice of action or intended action to deny, suspend, revoke, or fail to renew a license *shall* becomes final and effective unless an appeal is filed with the appropriate health district by the applicant or license holder within fourteen (14) days of receipt of the notice. The health district *shall will* conduct an administrative review and issue a decision, which *shall* becomes final and effective unless an appeal is filed with the Department within fourteen (14) days. If an appeal is received timely, a hearing *shall will* be scheduled and a decision issued within twenty-one (21) days of receipt of the appeal. (~~3-30-01~~)(____)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.05.05 - CRIMINAL HISTORY AND BACKGROUND CHECKS
IN LONG TERM CARE SETTINGS**

DOCKET NO. 16-0505-0501 (NEW CHAPTER)

NOTICE OF RULEMAKING

PENDING RULE AND AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is October 1, 2005. This pending rule has been adopted by the agency and is now pending review by the 2006 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-203(g), and 56-1004A, Idaho Code.

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

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the original temporary and proposed text are published in this bulletin. The original text of the temporary and proposed rules was published in the August 3, 2005, Idaho Administrative Bulletin, Volume 05-8, pages 258 through 261.

The changes made to the rules are because of comments and concerns received from long term care facility operators during the comment period and during training sessions for the criminal history and background checks. The individual is available to work under supervision when a self declaration has been completed, notarized and no designated crimes have been disclosed. The individual cannot work unsupervised until the Department has received the notarized self declaration and fingerprint card within 20 days from the date the self declaration is notarized.

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

The general fund will not be impacted by this rule change. Funds for this project are being paid through a federal grant.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1), and 56-1004A, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

This temporary rule is necessary to protect the public health and safety of individuals living in long term care settings and to meet the federal grant guidelines.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule contact Mond Warren at (208) 334-5997.

DATED this 24th day of August, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16, TITLE 05, CHAPTER 05

CRIMINAL HISTORY AND BACKGROUND CHECKS IN LONG TERM CARE SETTINGS

There are substantive changes from the proposed rule text.

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

The text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 05-8, August 3, 2005, pages 258 through 261](#).

This rule has been adopted as a pending rule by the Agency and is now pending review and approval by the 2006 Idaho State Legislature as a final rule.

THE FOLLOWING IS THE AMENDED TEXT OF DOCKET 16-0505-0501

Subsection 005.06

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

- 06. Criminal History Unit.** The Criminal History Unit may be contacted as listed below: (10-1-05)T
- a.** Address: 823 Park Center Way, Nampa, ID 83651; (10-1-05)T
- b.** Phone: (208) 442-8353; Toll Free: 1-800-340-1246; FAX: (208) 442-8352; and (10-1-05)T
- c.** Website: www.chu.dhw.idaho.gov. (10-1-05)T

Subsection 006.02

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

02. Public Records. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. ~~Unless otherwise exempt, as set forth in Section 9-340, Idaho Code, and other state and federal laws and regulations, all p~~Public

records in the custody of the Department of Health and Welfare are subject to disclosure, unless otherwise exempted by state or federal law. ~~(10-1-05)F~~(10-1-05)T

Entire Section 102

102. SELF DECLARATION AND FINGERPRINT REQUIREMENT.

A notarized self declaration and fingerprint card must be submitted to the Department for a criminal history and background check. (10-1-05)T

01. Access to Patients or Residents. A direct patient access individual hired or contracted with to provide services must complete a self declaration and have the self declaration notarized before having access to patients. Once the self declaration is complete, a direct patient access individual may only have supervised access to patients or residents until the fingerprints are submitted to the Department. If a designated crime listed in IDAPA 16.05.06 "Rules Governing Mandatory Criminal History Checks," has been disclosed, the individual cannot have access to residents without a clearance by the Department. (10-1-05)T

02. Submission of the Self Declaration and Fingerprints to the Department. (10-1-05)T

a. The completed self declaration and fingerprint card must be submitted to the Department within twenty (20) days of the self declaration being notarized. (10-1-05)T

b. The self declaration may be completed online and the fingerprints collected by the Department, or the self declaration may be signed, notarized and submitted to the Department with the ten (10) rolled fingerprint card. (10-1-05)T

1023. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING

DOCKET NO. 16-0602-0501

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1004 and 56-1005(8), Idaho Code, and Section 39-1217, Idaho Code, regarding the maximum Department visitation interval under the Child Care Licensing Reform Act.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, October 19, 2005.

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

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

Recent improvements initiated by the Department in children's programs have made the current semi-annual licensing visit requirement redundant. The Department can more effectively meet the growing need for foster care and continue to maintain the health, safety, and welfare of children in care with current staff resources by changing this licensing requirement.

For foster homes, children's agencies, children's therapeutic outdoor programs, and children's residential care facilities the maximum length of time allowed between on-site licensing visits by the Department is being increased from 6 months to 12 months, as allowed under statute. However, monitoring visits to foster homes will continue to be conducted at least once every other month and agencies or facilities with deficiencies will be visited on the schedule required under their plan of correction. This assures safe, quality care for children in care while making more efficient use of the Department's licensing workers.

Adds to and makes corrections in the required rule sections at the beginning of the chapter.

FEE SUMMARY: There is no fee or charge being imposed or increased in this docket.

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

There are no anticipated impacts to State of Idaho general funds as a result of this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because the rule change is being made simply to increase administrative efficiency under the existing statutory requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kathy Morris at (208) 334-5700.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2005.

DATED this 5th day of August, 2005.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0602-0501

000. LEGAL AUTHORITY.

Pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1004~~3~~ and 56-1005(8), Idaho Code, the Idaho Legislature has granted authority to the Department and Board of Health and Welfare to adopt and enforce rules governing standards for licensure or certification of foster homes, children's agencies and children's residential care facilities. (~~3-30-01~~)()

(BREAK IN CONTINUITY OF SECTIONS)

003. ADMINISTRATIVE APPEALS.

Administrative Appeals shall be governed by the ~~Idaho Department of Health and Welfare Rules~~ provisions of, IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings". (~~3-30-01~~)()

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ()

05. Internet Website. The Department's internet website is found at <http://www.healthandwelfare.idaho.gov>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records". ()

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

0057. POLICY.

It is hereby declared to be the policy of this state to insure that children of this state shall receive adequate substitute parental care in the event of absence, temporary or permanent inability of parents to provide care and protection for their children or the parents are seeking alternative twenty-four (24) hour long-term care for their children. This policy is predicated upon the fact that children are vulnerable, not capable of protecting themselves, and when their parents for any reason have relinquished their care to others, there arises the possibility of certain risks to the children's lives, health and safety which the community as a whole must protect against. This requires the offsetting statutory protection of review and, in certain instances, licensing or registration. (3-30-01)

008. -- 009. (RESERVED).

~~006~~010. DEFINITIONS.

For the purposes of the rules contained in this Chapter, the following terms are used as defined below: (3-30-01)

This Section is being renumbered only - there are no substantive changes to Subsections 010.01 through 010.47

~~007~~011. -- 099. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

104. MANDATORY VISITATIONS.

Pursuant to Section 39-1217, Idaho Code, the Department or other licensing authority shall visit each foster home, child care facility or children's agency as often as it is deemed necessary to assure conformity with the rules for child care licensing. In accordance with Section 39-1217, Idaho Code, the Department or other licensing authority shall must visit, and must be given access to, the premises of each licensed foster home, licensed children's agency, licensed children's therapeutic outdoor program, and licensed children's residential care facility and children's agency as often as deemed necessary or desirable by the Department to assure conformity with the requirements in this chapter of rules but, in any event, at intervals not to exceed ~~six~~ twelve (612) months. (3-30-01)()

(BREAK IN CONTINUITY OF SECTIONS)

873. -- 996. (RESERVED).

997. CONFIDENTIALITY OF RECORDS.

All records obtained and used by the Department in connection with activities related to these rules must be held confidential in accordance with the IDAPA 16.05.01, "Use and Disclosure of Department Records". (3-30-01)

~~998. -- 999. (RESERVED).~~

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

IDAPA 01 - BOARD OF ACCOUNTANCY **PO Box 83720, Boise, ID 83720-0002**

01-0101-0501, Idaho Accountancy Rules. Updates incorporations by reference.

IDAPA 02 - DEPARTMENT OF AGRICULTURE **PO Box 790, Boise, ID 83701-0790**

02-0303-0501, Rules Governing Pesticide and Chemigation Use and Application. Increases fee for annual pesticide registration to \$160 to fund pesticide Container Recycling Program.

02-0420-0501, Rules Governing Brucellosis. Updates incorporations by reference; clarifies calthood vaccination; updates vaccination protocol for imported adult cattle.

02-0421-0501, Rules Governing the Importation of Animals. Updates incorporations by reference; clarifies importation requirements for cattle not vaccinated for brucellosis; adds additional testing requirements for dairy cattle entering Idaho.

02-0424-0501, Rules Governing Tuberculosis. Updates incorporations by reference; clarifies identification requirements for tuberculosis reactors.

***02-0427-0501, Rules Governing Deleterious Exotic Animals.* Defines exotic hybrids; adds provisions for permit revocation, record keeping, annual inventories, and reporting; adds additional species to the list of deleterious exotic animals.

***02-0429-0501, Rules Governing Fur Farms.* New chapter sets requirements for classifying a facility as an agricultural fur farm; allows differentiation between agricultural fur farms and captive wildlife facilities or fur bearing animals kept as pets.

02-0617-0501, Rules Governing the Disposal of Cull Onions and Potatoes. Standardizes language relating to cull disposal methods.

02-0626-0501, Rules Governing Seed Potato Crop Management Areas. Defines geographical boundaries for a new Seed Potato Crop Management Area in Fremont County.

IDAPA 07 - DIVISION OF BUILDING SAFETY **1090 E. Watertower St., Meridian, ID 83642**

07-0101-0501, Rules Governing Electrical Inspection Tags. Clarifies that industrial accounts must designate a supervising master electrician.

07-0102-0501, Rules Governing Fees for Electrical Inspections. Establishes a \$10 "small-work" permit and inspection fee for jobs under \$200 with no change in service connection.

07-0103-0403, Rules of Electrical Licensing and Registration - General. Changes journeyman to master electrician and clarifies master electrician qualifications and duties.

07.01.04 - Rules Governing Electrical Specialty Licensing.

07-0104-0501, Increases the number of effluent pumps that serve family installations that a licensee in the well driller/pump installer category may install or work on under certain conditions.

07-0104-0502, Adds communications installations to the Limited Energy Electrical License.

07-0104-0503, Clarifies that specialty electrical contractors are required to have a supervising specialty journeyman to countersign while an electrical contractor must have a supervising master electrician.

07.03.01 - Rules of Building Safety – General.

07-0301-0501, Chapter repeal.

07-0301-0502, Chapter rewrite consolidates six existing building chapters (see below) and increases fees for processing and issuance of modular building insignia tags to out-of-state manufacturers to \$100.

07-0302-0501, Rules of the Idaho Building Code Board. Chapter repeal.

07-0303-0501, Rules Governing Modular Buildings. Chapter repeal.

07-0305-0501, Rules Governing Manufactured Homes. Chapter repeal.

07-0306-0501, Rules Governing the Use of the International Building Code. Chapter repeal.

07-0308-0501, Rules Governing Commercial Coaches. Chapter repeal.

07-0501-0501, Rules of the Public Works Contractors License Board. Allows public works contractors to qualify for licensing class upgrades by demonstrating work experience; eliminates the use of indemnification by applicants to satisfy minimum financial requirements for licensure.

07-0701-0502, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems. Establishes criteria for issuance of a specialty journeyman certificate of competency to include approved educational programs and on-the-job experience.

IDAPA 08 - DEPARTMENT OF EDUCATION

PO Box 83720, Boise, ID 83720-0027

****08-0203-0506, Rules Governing Thoroughness.** Increases math and science credits requirement for high school graduation; establishes middle school requirements and requires a cumulative C average in required courses.

IDAPA 11 – IDAHO STATE POLICE

PO Box 700, Meridian, ID 83680-0700

11-1003-0501, Rules Governing the Sex Offender Registry. Adds required sections; authorizes link from the State's site to the National Sex Offender Registry Internet site; changes sex offender registration forms.

IDAPA 12 – DEPARTMENT OF FINANCE

PO Box 83720 Boise, ID 83720-0031

12-0108-0501, Rules Pursuant to the Uniform Securities Act. Allows issuers with less than 1 year of operations to file reviewed financial statements until the end of the first fiscal year; conforms to disqualifications put forth by federal law; requires individuals to register as an issuer agent, unless exempt, if paid for certain activities; a broker-dealer or salesman, registered elsewhere, must register in Idaho; removes "by order" from renewal/application provision; administrator may defer effective date of registration of an investment adviser or his representative until 45th day after filing amendment to complete application.

IDAPA 13 – DEPARTMENT OF FISH AND GAME

PO Box 25, Boise, ID 83707

13-0104-0501, Rules Governing Licensing. Broadens military rain check and refund rule to include all military deployments and removes reference to a specific year.

13-0108-0501, Rules Governing the Taking of Big Game. Increases eligibility for left-over moose permits; allows use of round ball or conical lead bullets in traditional muzzleloader hunts; requires applicants for outfitter allocated controlled hunts to have a written agreement before submitting a controlled hunt application; develops application and drawing criteria, and marketing procedures for controlled hunt tags; grants priority to military personnel

returning from active duty for emergency depredation hunts.

13-0110-0501, Rules Governing the Importation, Possession, Release, Sale or Salvage of Wildlife. Addresses requirements and specifications for possessing or raising wildlife for medical research; standardizes terminology; clarifies requirement for an importation permit and updates allowed species importation list; sets bird disease and bird marking standards for shooting preserves.

13-0117-0501, Rules Governing the Use of Bait for Taking Big Game Animals. Allows bear baiting 1 week prior to season opening in several wilderness areas.

**IDAPA 16 – DEPARTMENT OF HEALTH AND WELFARE
PO Box 83720, Boise, ID 83720-0036**

****16-0224-0501, Clandestine Drug Laboratory Cleanup.** New chapter implements new law by establishing processes and standards for clandestine drug laboratory cleanup.

16-0301-0501, Eligibility for Health Care Assistance for Families and Children. Removes asset transfer penalty for any Family Medicaid Program; changes self-employment income calculation; excludes Idaho Tribal TANF from Family Medicaid Program eligibility; changes time period to request a hearing; removes asset requirement and minimum income requirement for CHIP B and the Children's Access Card to allow more uninsured children to be eligible.

16-0304-0501, Rules Governing the Food Stamp Program in Idaho. Clarifies language and brings rule into compliance with federal law; extends certification period for families with no income to 6 months; excludes grants from HUD's Family Self Sufficiency Initiative per federal law.

16.03.05 - Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD).

16-0305-0502, Explains uses and limitations of revocable trusts and clarifies the description of and consideration of annuities and life estates when determining eligibility.

16-0305-0503, Conforms to federal law changes on asset definitions and criteria; establishes guidelines for required Medicare Part D Prescription Drug Program for certain low income applicants.

16-0309-0503, Rules Governing the Medical Assistance Program. Requires annual review of reimbursement rates with Medicaid mental health and developmental disability providers; identifies how rate comparisons with other state Medicaid programs will be conducted, how costs of Medicaid service providers of mental health and developmental disabilities will be obtained and evaluated, current access to services, and methods used to compile an annual report.

16.03.19 - Rules Governing Certified Family Homes.

****16-0319-0501,** Chapter repeal.

****16-0319-0502,** Chapter rewrite conforms to statutory changes that makes rule more appropriate for a family home rather than large facility.

16.03.22 - Rules for Licensed Residential or Assisted Living Facilities in Idaho.

****16-0322-0501,** Chapter repeal.

****16-0322-0502,** Chapter rewrite conforms to statutory changes and incorporates changes negotiated with the industry.

16-0503-0501, Rules Governing Contested Case Proceedings and Declaratory Rulings. Clarifies when an appeal is to be filed and that a hearing officer must dismiss an untimely appeal; and requires issuance of a proposed order of default if someone fails to appear for a hearing.

16-0602-0501, Rules Governing Standards for Child Care Licensing. Increases maximum length of time allowed between on-site licensing visit requirement to 12 months for foster homes, residential care facilities, children agencies and other programs; does not change other monitoring visits.

**IDAPA 17 – IDAHO INDUSTRIAL COMMISSION
PO Box 83720, Boise, ID 83720-0041**

****17-0208-0501, Miscellaneous Provisions.** Proposes using the Resource-Based Relative Value Scale and the

Relative Value Unit assigned for all medical services with a Physicians' Current Procedural Terminology code and a conversion factor for various categories of CPT coded services; deletes obsolete language. Comment by: 11/1/05.

**IDAPA 20 – DEPARTMENT OF LANDS
PO Box 83720, Boise, ID 83720-0050**

****20-0302-0502, Rules Governing Exploration and Surface Mining in Idaho.** Establishes rules for permanent closure of cyanidation facilities and performance bond requirements for permanent closure plans; allows operators of cyanidation facilities to apply to file permanent closure bonds in phases; includes requirements for nonpoint source control and best management practices to protect groundwater and surface water; allows director to request a geotechnical analysis and report for pit walls; deletes statutory language and replaces it with citations to Idaho Code.

**IDAPA 22 – BOARD OF MEDICINE
PO Box 83720, Boise, ID 83720-0058**

22-0101-0501, Rules of the Board of Medicine for Licensure to Practice Medicine and Surgery and Osteopathic Surgery in Idaho. Removes outdated language and references; removes language and time periods related to old state examinations; adds new volunteer, zero-fee license; adds and clarifies grounds for discipline; and eliminates outdated state examination fee.

22-0105-0501, Rules Governing Licensure of Physical Therapists and Physical Therapist Assistants. Conforms to statutory changes; provides for and defines "physical therapy licensure board"; removes language referencing advisory committee; adds continuing education requirements and requires proof of completion of CE requirements for renewal of active licenses.

22-0111-0501, Rules for the Licensure of Respiratory Therapists and Permitting of Polysomnographers in Idaho. Updates and clarifies rules and allows for proration of licensure application or temporary permit fees.

**IDAPA 24 – BUREAU OF OCCUPATIONAL LICENSES
1109 Main St., Boise, ID 83702**

24-0101-0501, Rules of the Idaho Board of Architectural Examiners. Updates incorporation by reference and contact information; clarifies examination process; requires exams to be completed within a 5-year period.

24-0301-0501, Rules of the State Board of Chiropractic Physicians. Updates contact information; defines and sets standard for athletic trainer; provides for supervision of athletic trainers; sets deadline for appeals on reviews conducted by peer review committee.

24-0501-0501, Rules of the Board of Drinking Water and Wastewater Professionals. Updates contact information; reduces endorsement, renewal, and original license fees; clarifies requirements for licensure, continuing education, and reinstatement or renewal of licenses for operator-in-training, backflow assembly tester, and wastewater land application.

24-0601-0501, Rules Governing the Idaho Board of Hearing Aid Dealers and Fitters. Chapter repeal.

24-0801-0501, Rules of the State Board of Morticians. Updates contact information; defines funeral establishment and resident trainee; changes meeting criteria and examination dates; includes funeral director in application process; defines standard for pre-need trust account; clarifies minimum standards for funeral establishments; expands and clarifies responsibilities for record keeping; corrects language in fee section.

24-1101-0501, Rules of the State Board of Podiatry. Updates incorporations by reference and board contact information; amends podiatric residency requirements; changes exam dates; requires official certification of exam for licensure by endorsement; adds scope of practice.

24-1401-0501, Rules of the State Board of Social Work Examiners. Updates contact information; changes requirements for group supervision and for social work supervisor registration.

24-1501-0501, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. Adds supervisory and continuing education requirements; increases number of supervisees; adds a deadline for application review; and adds an administrative fee for exam.

24-1801-0502, Rules of the Real Estate Appraiser Board. Updates incorporation by reference and board contact information; defines quorum for voting purposes; removes “certification” from licensing fee schedule; amends eligibility for exam requirements and licensure requirements; adds registered trainee real estate appraiser classification; amends qualifications criteria for certified residential and certified general real estate appraisers.

24-1901-0501, Rules of the Board of Examiners of Residential Care Facility Administrators. Updates contact information; revises qualifications for licensure; changes educational and training and continuing education course approval process; and increases annual license renewal fee.

24-2101-0501, Rules Governing the Idaho State Contractors Board. New chapter includes contact information, definitions, board duties, application requirements, and registration and renewal fees.

24-2201-0501, Rules Governing the Idaho Liquefied Petroleum Gas Safety Board. New chapter includes contact information, board duties, definitions, application and licensure requirements, license and renewal fees, required education and experience, exam requirements, facility licensure, and discipline.

24-2301-0501, Rules Governing the Idaho Board of Speech and Hearing Services. New chapter includes contact information, definitions, board duties, application requirements, licensure and renewal fees, exam and testing requirements, contracting, and continuing education requirements.

IDAPA 26 – DEPARTMENT OF PARKS AND RECREATION

PO Box 83720, Boise, ID 83720-0065

26-0120-0501, Rules Governing Administration of Park and Recreation Areas and Facilities. Adds and expands definitions; changes campsite and facility fees; clarifies park and facility operational provisions.

26-0131-0501, Rules Governing Administration of Idaho Department of Parks and Recreation State and Federal Grant Funds. Clarifies existing terminologies; removes outdated definitions; eliminates obsolete references.

26-0137-0501, Rules Governing Test Procedures and Instruments for Noise Abatement of Off Highway Vehicles. Changes specifications that define “All Terrain Vehicle” (ATV).

IDAPA 27 – BOARD OF PHARMACY

PO Box 83720, Boise, ID 83720-0067

27.01.01 - Rules of the Idaho Board of Pharmacy.

27-0101-0501, Clarifies requirements and outlines the types of positive identification that are required for delivery of controlled substances; adds requirement that pharmacy prescription record reflect the means of positive identification used.

27-0101-0502, Eliminates reference to drug product selection for Medicaid patients to comply with Medicaid law.

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

PO Box 83720, Boise, ID 83720-0074

31-1101-0501, Safety and Accident Reporting Rules for Public Utilities Regulated by the Idaho Public Utilities Commission. Updates CFR incorporation by reference.

****31-2101-0402, Customer Relations Rules for Gas, Electric and Water Public Utilities Regulated by the Idaho Public Utilities Commission.** Changes contents of notices given to customers by utilities before terminating service during winter moratorium; amends eligibility requirements and operation of the winter moratorium; expands moratorium eligibility to households receiving financial assistance through LIHEAP; prohibits disconnection on weekends or holidays or any day immediately preceding a holiday and moves termination threshold on Friday to 12 noon; lists required contents of the annual summary of rules and requires PUC to provide utilities with a “model” of the annual summary of rules including a Spanish language model.

31-7103-0501, Railroad Safety/Sanitation Rules. Incorporates by reference new amendments to the federal hazardous materials regulations regarding the transport of HMRs.

**IDAPA 33 – REAL ESTATE COMMISSION
PO Box 83720, Boise, ID 83720*****33.01.01 - Rules of the Idaho Real Estate Commission.***

****33-0101-0501**, Removes rule text that is now in statute.

****33-0101-0502**, Reduces licensing fees for licensed individuals and business entities per licensing period.

**IDAPA 35 – STATE TAX COMMISSION
PO Box 36, Boise, ID 83722-0410*****35.01.01 - Income Tax Administrative Rules.***

35-0101-0501, Updates incorporation by reference; clarifies LLCs and members will be treated according to federal classification; adds table for 2005 income tax brackets and rates; adds new addback for state and local taxes deducted by individuals as itemized deductions; allows deduction for taxpayers who restore income under the federal claim of right and claimed the federal credit; changes how nonresident reports gain or loss from the sale or disposition of a partnership interest or stock in an S corporation; clarifies that unity can be established under any one of the judicially acceptable tests; provides exceptions that income producing activity for purposes of the sales factor does not include transactions and activities performed on behalf of the taxpayer; establishes exception that alternative apportionment may be required to represent the extent of the taxpayer's business activity in Idaho; changes due date for paying withholding for employers who are farmers.

35-0101-0502, Addresses qualifying entities and what investment in securities and activities incident thereto includes.

35-0101-0503, Adds to the list of priority of credits; adds rules to implement the Idaho Corporate Headquarters Incentive Act of 2005 and the Idaho Small Employer Incentive Act.

35.01.02 - Idaho Sales and Use Tax Administrative Rules.

35-0102-0501, Changes sales tax rate back to 5%; reduces amusement device fee to \$35.

35-0102-0502, Changes conform to federal law; sales of rafting trips aren't taxable if they occur on navigable waters unless courts find differently; changes sales tax rate back to 5%.

35-0102-0503, Allows for issuance of temporary sales tax permits; adds rule for construction equipment.

35.01.03 - Idaho Property Tax Administrative Rules.

35-0103-0501, Updates procedures for calculation of the county weighted average forestland levy.

35-0103-0503, Updates incorporations by reference; clarifies assessment of land for the rural speculative homesite exemption; improves equalization of manufactured homes; requires submission of exempt land values; clarifies exemption of homes on jointly owned land and exempt status of personal property; excludes new construction in annexed areas from the annexation value; modifies date for county clerks to submit notices of compliance.

35-0105-0501, Idaho Motor Fuels Tax Administrative Rules. Defines "Indian-owned retail outlet"; adds "delivered to an Indian-owned retail outlet tax not collected" to disbursements list and limits deduction to 10% of the total volume; only taxable and nontaxable fuel sales can be included in calculation of fuels tax bad debt when partial payments are made and sets statute of limitations for fuels tax bad debt claims; requires licensed fuel distributors using credit card receipts as sales invoices to comply with invoice documentation requirements; removes "federal government" from updated list of consumers who can use low-sulfur dyed diesel fuel; adds language for standard power take-off (PTO) and auxiliary engine allowance for concrete pumping trucks; corrects Idaho Code references and terminology.

35-0110-0501, Idaho Cigarette and Tobacco Products Tax Administrative Rules. Prohibits distribution of free or below cost tobacco products to sellers; taxes must be reported on the return for the month in which the stamps are affixed; first distributor is liable for tax and must indicate the tax was paid on the invoice.

35-0111-0501, Idaho Unclaimed Property Administrative Rules. Updates contact information; requires holders to report and remit total dividends and stock certificate or its electronic equivalent if under \$50; adds claimant has burden of proof to establish claim and must contact persons and search out documents relating to the claim.

35-0201-0501, Tax Commission Rules Governing Administration and Enforcement. Defines pay, paid, payable or payment and excludes drafts made on foreign banks; allows Commission to reject certain types of payments; establishes formula for calculating the yearly interest rate applied to deficiencies of tax and refunds; changes deposit requirement when appealing a decision; allows Commission to exchange information related to public works

contracts with Division of Building Safety Administrator.

**IDAPA 39 – IDAHO TRANSPORTATION DEPARTMENT
PO Box 7129, Boise, ID 83707-1129**

39-0402-0501, Rules Governing Marking of Obstructions to Air Flight. Redefines “airport hazard” to be consistent with Federal Code; increases structure height considered a hazard to safe airflight to 200 feet and requires notice of construction of such structure; reduces minimum size for marker balls to 36 inches.

**IDAPA 58 – DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, ID 83706-1255**

****58-0101-0508, Rules for the Control of Air Pollution in Idaho.** Addresses process for permitting air quality minor sources. Comment by: 11/4/05.

**IDAPA 59 – PUBLIC EMPLOYEE RETIREMENT SYSTEM OF IDAHO
PO Box 83720, Boise, ID 83720-0078**

59-0106-0501, Retirement Rules of the Public Employee Retirement System of Idaho (PERSI). Increases contribution rates for funding the unused sick leave account for public school employees; clarifies the retirement election requirements; and changes terminology to more accurately describe the effect of reemployment on retirement benefits.

**Scheduled Negotiated Rulemaking Public Meeting:
Dept of Environmental Quality**

58-0112-0501, Rules for Administration of Water Pollution Control Loans

**Scheduled Public Hearings on Proclamations:
Dept of Fish and Game**

13-0108-0501P, Rules Governing the Taking of Big Game Animals in the State of Idaho

13-0109-0501P, Rules Governing the Taking of Game Birds in the State of Idaho

**The Deadline For Submitting Written Comments For These Rulemakings
Is October 26, 2005, Unless Otherwise Listed.**

****Rulemakings with Scheduled Public Hearings.**

Please refer to the Idaho Administrative Bulletin, **October 5, 2005, Volume 05-10** for notices and text of all rulemakings, public hearing and meeting schedules, Governor’s executive orders, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at the county law libraries or online.

To view the Bulletin or Code or for information on purchasing the Bulletin and other rules publications, visit our website at www.idaho.gov/adm/adminrules/ or call (208) 332-1820 or write the Dept. of Administration, Office of Administrative Rules, 650 W. State St., Room 100, Boise, ID 83720-0306.

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**FOR THE ABOVE LINK TO WORK YOU HAVE
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**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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