

IDAHO ADMINISTRATIVE BULLETIN

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June 4, 2008 -- Volume 08-6

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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 rulemaking 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 Notice of Rulemaking 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 07-1 refers to the first Bulletin issued in calendar year 2007; Bulletin 08-1 refers to the first Bulletin issued in calendar year 2008. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 08-1 refers to January 2008; Volume No. 08-2 refers to February 2008; and so forth. Example: The Bulletin published in January 2008 is cited as Volume 08-1. The December 2007 Bulletin is cited as Volume 07-12.

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 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 only published in the Bulletin and **not** printed in the Administrative Code.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Rulemaking Index of Idaho Administrative Rules**, 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, even when published in conjunction with a temporary rule, and therefore, is not enforceable. An agency may vacate a proposed rulemaking if it decides not to proceed beyond the proposed rulemaking step, and stops the formal rulemaking process.

TEMPORARY RULEMAKING

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

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

If a rulemaking meets 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 requires 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 rule 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 becomes a final, enforceable rule.

When a pending rule is published in the Bulletin, the agency is required to include certain information in the "Notice of Pending 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 reviewed by the legislature and not rejected, amended or modified becomes 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 83720-0306, 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 a table of contents, reference guides, and a subject index.

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

Internet Access - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: <http://adm.idaho.gov/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 38.05.01.200.02.c.ii.

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

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

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

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

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

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

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

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

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER." The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0801). 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 number:

"DOCKET NO. 38-0501-0801"

"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**).

"0801" denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rule-making action published in **calendar year 2008**. A subsequent rulemaking on this same rule chapter in calendar year 2008 would be designated as "0802". The docket number in this scenario would be 38-0501-0802.

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" denotes the main Section number of the rule to which the citation refers.

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 2008

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
08-1	January 2008	*November 14, 2007	January 2, 2008	January 23, 2008
08-2	February 2008	January 4, 2008	February 6, 2008	February 27, 2008
08-3	March 2008	February 8, 2008	March 5, 2008	March 26, 2008
08-4	April 2008	March 7, 2008	April 2, 2008	April 23, 2008
08-5	May 2008	April 4, 2008	May 7, 2008	May 28, 2008
08-6	June 2008	May 2, 2008	June 4, 2008	June 25, 2008
08-7	July 2008	May 30, 2008	July 2, 2008	July 23, 2008
08-8	August 2008	July 3, 2008	August 6, 2008	August 27, 2008
08-9	September 2008	August 1, 2008	September 3, 2008	September 24, 2008
08-10	October 2008	**August 20, 2008	October 1, 2008	October 22, 2008
08-11	November 2008	October 3, 2008	November 5, 2008	November 26, 2008
08-12	December 2008	October 31, 2008	December 3, 2008	December 24, 2008

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2009

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
09-1	January 2009	*November 14, 2008	January 7, 2009	January 28, 2009
09-2	February 2009	January 9, 2009	February 4, 2009	February 25, 2009
09-3	March 2009	February 6, 2009	March 4, 2009	March 25, 2009
09-4	April 2009	March 6, 2009	April 1, 2009	April 22, 2009
09-5	May 2009	April 3, 2009	May 6, 2009	May 27, 2009
09-6	June 2009	May 1, 2009	June 3, 2009	June 24, 2009
09-7	July 2009	May 29, 2009	July 1, 2009	July 22, 2009
09-8	August 2009	July 3, 2009	August 5, 2009	August 26, 2009
09-9	September 2009	July 31, 2009	September 2, 2009	September 23, 2009
09-10	October 2009	**August 28, 2009	October 7, 2009	October 28, 2009
09-11	November 2009	October 2, 2009	November 4, 2009	November 25, 2009
09-12	December 2009	November 6, 2009	December 2, 2009	December 23, 2009

****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 01 - BOARD OF ACCOUNTANCY

01.01.01 - IDAHO ACCOUNTANCY RULES

DOCKET NO. 01-0101-0801

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2008.

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 54-204(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 June 18, 2008.

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:

HB 379 was passed in 2008 with an effective date of July 1, 2008. These rules implement the legislative changes and consolidate other minor updates. The primary changes coming from HB 379 are to remove the notice and fee requirements for out-of-state licensees to practice in Idaho, and to clarify client record confidentiality. Additionally the rule proposal: incorporates national standards by reference and updates their effective dates; clarifies the Board's ability to share disciplinary investigations with other State Boards of Accountancy; explains the evidence used to apply the good moral character requirement set forth in statute; defines a requirement for an ethics component in Idaho's Continuing Professional Education; and housekeeping items regarding the CPA Examination and the Peer Review program.

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

HB 379 was passed in 2008 with an effective date of July 1st. These rules implement the legislative changes and consolidate other minor updates. DFM advised our agency to combine both into one set of rule changes, which has been very efficient time-wise and cost-wise.

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 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 temporary and proposed rule, contact Barbara R. Porter, Executive Director, at 208-334-2490.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2008.

DATED this 24th Day of April, 2008.

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@isba.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET NO. 01-0101-0801

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. 2007~~8~~ AICPA Professional Standards, except as superceded by Section 54-206(8), Idaho Code. (~~3-30-07~~)(7-1-08)T

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

03. PCAOB Standards. 2007~~8~~ Standards issued by the Public Company Accountability Oversight Board. (~~3-30-07~~)(7-1-08)T

04. NASBA Model Code of Conduct. 2008 Model Code of Conduct issued by the National Association of State Boards of Accountancy. (7-1-08)T

(BREAK IN CONTINUITY OF SECTIONS)

006. PUBLIC RECORDS (RULE 006).

01. Documents Exempt from Public Disclosure. Pursuant to Section 9-340B(1), Idaho Code, the Board office shall not disclose the filing of a complaint, the nature of a complaint, nor the details of an investigation, except to disclose such information to appropriate authorities in cases where the Board is cooperating with other states in investigation and enforcement concerning violations of the Idaho Accountancy Act and rules and comparable acts of other states. (~~4-2-03~~)(7-1-08)T

02. Documents Open for Public Inspection. (4-2-03)

a. Final, formal enforcement actions such as fines, assessment of expenses, revocations or suspensions. (4-2-03)

b. Probations and conditions may be subject to public disclosure whenever the Board believes it is in the public interest. Following a hearing or the entry of a consent agreement, the Board may publish a summary of any order issued by it, in a newsletter or newspapers of general circulation. The Board may also advise anyone requesting such information of the contents of any order issued by it. (4-2-03)

c. All rules issued by this agency. (4-2-03)

007. -- 009. (RESERVED).

010. DEFINITIONS (RULE 010).

The Idaho State Board of Accountancy adopts the definitions set forth in Section 54-206, Idaho Code. In addition, as used in this chapter: (4-2-03)

01. Administering Organization. An entity that has met, and at all relevant times continues to meet, the standards specified by the Board for administering peer reviews. (4-2-03)

02. Board. The Board or its designated representative. (4-2-03)

03. Candidate. Applicants approved to sit for the CPA Examination. (4-2-03)

04. CPA Examination. Uniform Certified Public Accountant Examination. (4-2-03)

~~**05. CPCAF.** Center for Public Company Audit Firms of the AICPA. (4-6-05)~~

~~**06. CPE.** Continuing Professional Education. (4-2-03)~~

06. Ethics CPE. Programs in ethics include topics such as ethical reasoning, state-specific statutes and rules, and standards of professional conduct, including those of other applicable regulatory bodies. (7-1-08)T

07. Examination Window. The three-month period in which candidates have an opportunity to take the CPA Examination. (3-16-04)

08. Monitoring Organization. An independent body that oversees the self-regulatory programs of the CPCAF. (4-6-05)

09. NASBA. The National Association of State Boards of Accountancy. (3-16-04)

10. National Candidate Database. The National Association of State Boards of Accountancy database of all CPA Examination candidates on a nationwide basis. (3-16-04)

11. Oversight Committee. The Peer Review Oversight Committee. (4-2-03)

12. Peer Review. The study, appraisal or review, by a licensee who is not affiliated with the licensee or firm being reviewed, of one (1) or more aspects of the professional work of a licensee or firm that issues attest or compilation reports. (4-2-03)

13. Reporting Form. CPE reporting form. (4-2-03)

14. State-Specific Ethics for Idaho. A two-hour (2) CPE course on Idaho Accountancy Act and rules, which is exempt from the Statements on Standards for CPE. (7-1-08)T

~~**15. Test Delivery Service Provider.** *Prometric is* ~~the~~ contract vendor that delivers the computer-based CPA Examination. (3-16-04)(7-1-08)T~~

~~**16. Verification of Employment and Experience Evaluation Form.** Work experience verification form. (4-2-03)~~

~~**17. Year of Review.** The calendar year during which a peer review is conducted. (4-2-03)~~

~~**18. Year Under Review.** The twelve-month (12) period that is reviewed by the reviewers. (4-2-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

012. BOARD RESPONSIBILITIES (RULE 012).

- The Board has these primary responsibilities: (4-2-03)
- 01. Public Protection.** To protect the public; (4-2-03)
 - 02. Rules of Conduct.** To adopt and enforce rules of professional ethics and conduct to be observed by certified public accountants and licensed public accountants in this state; (4-2-03)
 - 03. Exam Applicants.** To determine and review the qualifications of applicants for the Uniform CPA Examination; (4-2-03)
 - 04. CPA Examination.** To administer the Uniform CPA Examination; (4-2-03)
 - 05. Initial Licenses and Practice Privileges.** To grant CPA certificates and practice privileges to those who have met the legal requirements; (4-2-03)
 - 06. License ~~and Practice Privileges~~ Renewal.** To annually renew the licenses ~~and practice privileges~~ of qualifying certified public accountants and licenses of licensed public accountants; (~~4-2-03~~)(7-1-08)T
 - 07. CPE.** To monitor and enforce compliance with continuing professional education requirements; (4-2-03)
 - 08. Hearings.** To conduct administrative hearings in accordance with state statutes and Board rules; (4-2-03)
 - 09. Firm Registration.** To register public accounting firms; (4-2-03)
 - 10. Peer Review.** To monitor compliance with the peer review program; (4-2-03)
 - 11. Enforcement.** To curtail activities by unlicensed persons representing themselves as certified public accountants or licensed public accountants; and (4-2-03)
 - 12. Other.** To administer other provisions of Title 54, Chapter 2, Idaho Code. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

016. DUTIES OF THE EXECUTIVE DIRECTOR (RULE 016).

- 01. CPA Examination.** The executive director shall determine when the prerequisites and procedures for examination qualification have been satisfactorily completed and shall submit a list of the approved names of exam applicants at each Board meeting. (4-2-03)
- 02. Licensure or Practice Privileges.** The executive director shall determine when the prerequisites and procedures for licensure or practice privileges have been satisfactorily completed and shall submit a list of the approved names for licensure ~~or practice privileges~~ at each Board meeting. (~~4-2-03~~)(7-1-08)T
- 03. Minutes.** The executive director shall insure that accurate minutes of the meetings of the Board are kept. (4-2-03)
- 04. Records.** The executive director shall insure that complete records are kept of all applications for examination. The executive director shall keep a list of the names of persons issued licenses ~~or granted practice privileges~~ as certified public accountants, persons issued licenses to practice as licensed public accountants, registered firms, final formal disciplinary action, and such other records as deemed necessary by the Board or executive director. (~~4-2-03~~)(7-1-08)T

Board. **05. Other Duties.** The executive director shall perform other administrative duties as assigned by the Board. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

020. GOOD MORAL CHARACTER (RULE 020).

01. Demonstrating Good Moral Character. Applicants have the burden of demonstrating good moral character as defined by Section 54-206(11), Idaho Code, in the manner specified by the Board in its application forms. (7-1-08)T

02. Evidence. Prima facie evidence of a lack of good moral character includes, but is not limited to: (7-1-08)T

a. Any deferred prosecution agreement involving an admission of wrongdoing, or any criminal conviction, including conviction following a guilty plea or plea of nolo contendere, for any felony or any crime, an essential element of which is fraud, dishonesty, or deceit, or any other crime which evidences an unfitness of the applicant to provide professional services in a competent manner and consistent with the public safety; (7-1-08)T

b. Revocation of any license or other authority to practice by or before any state, federal, foreign or other licensing or regulatory authority; or (7-1-08)T

c. Any act which would be grounds for revocation or suspension of a license if committed by a licensee of the Board. (7-1-08)T

03. Rehabilitation. Factors which the Board may consider in determining rehabilitation of moral character include, but are not limited to, completion of criminal probation, restitution, community service, military or other public service, the passage of time without the commission of further crime or act demonstrating a lack of good moral character, the expungement of any conviction or reduction of a conviction from a felony to misdemeanor. (7-1-08)T

~~020~~1. -- 099. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

101. APPLICATIONS -- AUTHORIZATION TO TEST AND NOTIFICATION TO SCHEDULE -- TIME AND PLACE -- CHANGE OF ADDRESS (RULE 101).

01. Applications. Applications to take the CPA Examination must be made on a form prescribed by the Board and filed with the Board office ~~by a due date specified by the Board in the application form~~. An application will not be considered filed until the fee as required in Rule 700 and all required supporting documents have been received, including proof of identity as determined by the Board and specified on the application form, and official transcripts sent directly from the college or university to the Board office as proof that the applicant has satisfied the education requirement. (~~3-16-04~~)(7-1-08)T

02. Authorization to Test and Notification to Schedule. The Board will forward notification of eligibility in the form of an Authorization to Test (ATT) ~~to the candidate and~~ NASBA's national candidate database. The ATT is issued for the test section(s) the candidate applied. Candidates shall pay the actual fees charged by the AICPA, the national candidate database, and the test delivery service provider directly to NASBA. Eligible candidates will receive a Notice to Schedule (NTS) for the CPA Examination from NASBA. The NTS is valid for six (6) months from the date issued. A candidate's ATT lasts as long as the NTS is valid, or until the candidate tests

whichever occurs first. However, the ATT will expire ninety (90) days after it is issued if the candidate has not requested an NTS and paid the appropriate fees to NASBA. ~~(3-16-04)~~(7-1-08)T

03. Time and Place of Examination. Eligible candidates who have received an NTS shall independently contact a test delivery center operator identified by the Board to schedule the time and place for the examination at an approved test site. (3-16-04)

04. Change of Address. Candidates must file a change of address with the Board within thirty (30) days of the change. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

301. ANNUAL LICENSE RENEWAL AND LATE FEE (RULE 301).

01. Renewal. Licenses shall expire on June 30 of each year. ~~Practice privileges shall be granted through June 30 of each year provided the individual maintains an active license in good standing in his state of principle place of business.~~ To renew, an individual must submit a renewal form and appropriate fee by the prescribed date. The renewal form shall require the individual to provide a business address and phone number, residence address and phone number, business connection or employer, whether or not the individual's work is subject to peer review, affidavit of good moral character, and other information as deemed necessary by the Board. ~~(4-2-03)~~(7-1-08)T

02. Non-Renewal. Individuals choosing not to renew their license ~~or practice privileges~~ shall notify the Board, on the renewal form by the expiration date, of their intention. Upon such notification, the license ~~or privileges~~ shall be deemed lapsed. Individuals with lapsed licenses ~~or practice privileges~~ shall not publicly display their wall certificates, use the title CPA or LPA, or provide services that are reserved to licensees. ~~(4-2-03)~~(7-1-08)T

03. Late Fee. Licenses ~~and practice privileges~~ renewed after July 1, but before August 1, shall be subject to the late renewal fee as prescribed in Rule 703. After August 1, any license not renewed shall be deemed lapsed and is subject to reinstatement pursuant to Section 54-211, Idaho Code. ~~(3-20-04)~~(7-1-08)T

302. NOTIFICATION OF CHANGE OF ADDRESS, FELONY CHARGES, OR ACTIONS TAKEN (RULE 302).

Within thirty (30) days after its occurrence, a licensee ~~or individual granted practice privileges~~ shall notify the Board, in writing, of: ~~(4-2-03)~~(7-1-08)T

01. Address Change. A change in the licensee's business address, residence address, or business connection, employer, or principal place of business; (4-2-03)

02. Felony Charge. Any felony charges; or (4-2-03)

03. Actions Taken. The issuance, denial, disciplinary action, restriction, revocation, or suspension of a certificate, license, or permit by another state or by any federal agency. (3-20-04)

303. PRACTICE PRIVILEGES (RULE 303).

01. Substantially Equivalent. An individual who holds an active license in good standing in another state, whose principal place of business is not in this state, ~~seeking is automatically granted~~ practice privileges in this state, ~~must certify, on a form prescribed by the Board, that either:~~ There are no notice or fee requirements for practice privileges. Practice privilege holders are subject to the disciplinary authority of the Board, which they consent to by any act of practicing in this state. ~~(4-2-03)~~(7-1-08)T

~~α- The individual's license is from a jurisdiction with education, examination, and experience requirements comparable to or exceeding such requirements in this state; or~~ (4-2-03)

~~*b.* The individual licensee's education, examination, and experience qualifications are comparable to or exceed such requirements of this state; or (3-20-04)~~

~~*e.* The individual has no less than four (4) years' experience, provided the experience was obtained after original licensure as a certified public accountant and within the ten (10) years immediately preceding the practice privilege application. (3-20-04)~~

~~**02.** Notice. A qualified individual seeking practice privileges in this state must comply with the notice requirement as follows: (4-2-03)~~

~~*a.* Notice shall be on forms prescribed by this Board providing such information as deemed necessary by the Board; (4-2-03)~~

~~*b.* Notice is immediately due and shall be received by the Board within fifteen (15) days after the qualified individual knowingly avails himself of the laws of this state by either accepting an engagement or an assignment to render professional services to persons in this state, or offering to render professional services through direct solicitation or marketing targeted to persons in this state, whether or not the qualified individual physically enters this state; (4-2-03)~~

~~*e.* The qualified individual shall accept responsibility for compliance with the Idaho Accountancy Act and these rules; (4-2-03)~~

~~*d.* Notice shall include a statement from the qualified individual agreeing to notify the Board and submit a reciprocity license application if the individual moves his principal place of business to this state; and (4-2-03)~~

~~*e.* Notice must be accompanied by the fee prescribed in Rule 701. (4-2-03)~~

~~**032.** Internet Disclosures. An individual entering into an engagement to provide professional services via a web site, pursuant to Idaho practice privileges granted by Idaho, shall disclose, via their web site, their principle principal state of licensure, license number, and address. A firm offering or rendering professional services to Idaho businesses or residents via a web site shall provide, in the web site's homepage, a means for regulators and the public to contact a responsible licensee in charge at the firm regarding complaints, questions, or regulatory compliance. Such a firm or individual consents to the disciplinary authority of the Board by the act of providing services via a web site. (4-2-03)(7-1-08)T~~

~~**04.** Exclusion. Non-resident individuals shall not be deemed to have entered this state for purposes of Section 54-227, Idaho Code and notice is not required if the individual's contact with this state is limited to any of the following activities: (4-2-03)~~

~~*a.* Teaching either a college or continuing professional education course; (4-2-03)~~

~~*b.* Delivering a lecture; (4-2-03)~~

~~*e.* Moderating a panel discussion; (4-2-03)~~

~~*d.* Rendering professional services to the individual's employers or to persons employed by the individual's employer, including affiliated, parent, or subsidiary entities, provided such services are not rendered for the employer's clients; (4-2-03)~~

~~*e.* Performing peer reviews for a qualified administering organization; (4-2-03)~~

~~*f.* Providing professional services during no more than ten (10) days cumulatively in any calendar year by either accepting an engagement or an assignment to render Professional Services to persons in this state, or offering to render Professional Services through direct solicitation or marketing targeted to persons in this state, whether or not the qualified individual physically enters this state. (3-20-04)~~

(BREAK IN CONTINUITY OF SECTIONS)

402. CONFIDENTIAL CLIENT INFORMATION (RULE 402).

01. Confidentiality. A licensee shall not voluntarily disclose any confidential client information obtained in the course of performing professional services, unless the licensee has obtained the specific consent of the client, or of such client's heirs, successors or personal representatives, or others legally authorized to give such consent on behalf of the client. (4-2-03)

02. Exemptions. Nothing in these rules shall ~~affect a licensee's obligation to comply with a validly issued subpoena or summons enforceable by order of a court. Nor shall it~~ be construed as prohibiting the disclosure of information that is required to be disclosed: ~~(4-2-03)(7-1-08)T~~

- a. In reporting on the examination of financial statements; (4-2-03)
- b. In investigations by the Board or other accounting regulatory agency; ~~(4-2-03)(7-1-08)T~~
- c. In ethical investigations conducted in private professional organizations; (4-2-03)
- d. In the course of peer reviews; (4-2-03)
- e. To other persons active in the organization performing services for that client on a need to know basis; (4-2-03)
- f. To persons in the entity who need this information for the sole purpose of assuring quality control; or (4-2-03)
- g. By any act of law. (4-2-03)

03. Disciplinary Proceedings. Members of the Board and investigative officers shall not disclose any confidential client information which comes to their attention from licensees in disciplinary proceedings or otherwise in carrying out their responsibilities, except that they may furnish such information to an investigative or disciplinary body as described in Rule 400. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

500. BASIC REQUIREMENTS (RULE 500).

A licensee seeking active license renewal shall show that he has completed no less than eighty (80) hours of CPE, of which at least four (4) hours must be ethics CPE, during the two (2) calendar years immediately preceding the date the reporting form is required, with a minimum of thirty (30) hours in any one (1) calendar year, and a maximum of fifty (50) hours recorded in any one (1) calendar year. The licensee shall demonstrate participation in a program of learning that meets the requirements prescribed in Rule 503. New, reciprocal, reinstated, or re-entered active licensees must complete the two-hour (2) course on state-specific ethics for Idaho during the first calendar year that the license is issued. ~~(4-2-03)(7-1-08)T~~

501. WHO MUST COMPLY (RULE 501).

01. Licensees. Certified public accountants and licensed public accountants must comply with these continuing education requirements to maintain an active license. ~~(4-2-03)(7-1-08)T~~

02. Practice Privileges. ~~Individuals granted practice privileges, who are applying for renewal of those privileges in this state, shall be determined to have met the CPE requirements of Subchapter F by meeting the CPE~~

~~requirements in the state of the individual's principal place of business. (4-2-03)~~

~~**a.** Individuals filing for renewal of practice privileges shall sign a statement, on a form provided by the Board, of their compliance with the CPE requirements in the state of the individual's principal place of business. (4-2-03)~~

~~**b.** If the state of said individual's principal place of business has no CPE requirements, the individual must comply with all CPE requirements of this state. (4-2-03)~~

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

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

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

b. A penalty of no more than fifty percent (50%) of the hours a licensee is short in meeting the calendar year CPE requirement may be assessed for extensions. In such cases, the licensee shall be required to complete the CPE hours and any assessed penalty no later than May 31. The penalty for non-compliance with ethics CPE is to obtain the mandatory hours of ethics CPE plus fifty (50) percent penalty hours in ethics CPE prior to May 31. The penalty for non-compliance with state-specific ethics for Idaho is to complete the course plus fifty (50) percent penalty hours in ethics CPE prior to May 31. (4-2-03)(7-1-08)T

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

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

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

ii. The preparation of tax returns, or the furnishing of advice on tax matters as a licensee. (4-2-03)

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

c. Those individuals who are inactive and have reached sixty (60) years of age may substitute the word "retired" for the word "inactive"; (4-2-03)

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

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

(BREAK IN CONTINUITY OF SECTIONS)

506. REPORTING, CONTROLS AND LATE FEES (RULE 506).

01. Reporting. No later than January 31 of each year, individuals renewing their licenses must provide a signed reporting form either: (4-2-03)

a. Applying for exception, extension, or exemption under Rule 502; or (4-2-03)

b. Disclosing the following information pertaining to the educational programs submitted for qualification under this rule: (4-2-03)

i. Sponsoring organization; (4-2-03)

~~ii. Instructor's name;~~ (~~4-2-03~~)

~~iii.~~ Location of program; (4-2-03)

~~iv.~~ Title of program or description of content; (4-2-03)

v. Dates attended; (4-2-03)

vi. Hours of credit claimed; and (4-2-03)

vii. Any other information as may be called for to verify they have met the requirements for participation in a program of CPE as set forth in Rule 503. (4-2-03)

02. Controls. The Board shall review the signed reporting forms submitted by licensees, which are subject to formal verification. If a licensee submits a reporting form and it is not approved, the licensee shall be notified and administrative action shall be taken pursuant to Rules 507 through 509. (4-2-03)

03. Late Fees. Until the licensee files the reporting form with supporting documentation, pays the fee for late filing as prescribed in Rule 703 and the license renewal fee, and any other penalty the Board may impose, a license will not be issued. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

510. NEW LICENSEES, RECIPROCITY, REINSTATEMENT AND RE-ENTRY (RULE 510).

01. New Licensees. A new licensee will be required to comply with the CPE requirement beginning January 1st of the calendar year following the year in which the license was granted. The new licensee shall file the annual CPE reporting form, indicating that the licensee has completed the two-hour (2) course on state-specific ethics for Idaho and is otherwise exempt from obtaining CPE hours during the first year of licensure. The licensee shall be required to complete a minimum of thirty (30) hours during the second calendar year of licensure. (~~4-2-03~~)(7-1-08)T

02. Reciprocity. An individual who holds a valid and unrevoked certified public accountant license issued by any state, or comparable certificate or degree issued by any foreign country, and who receives a license to practice in this state, will be required to comply with the CPE requirement beginning January 1st of the calendar year following issuance of the license. The new licensee shall file the annual CPE reporting form, indicating the licensee has completed a two-hour (2) course on Idaho's statutes and rules and is otherwise exempt from obtaining CPE hours during the first year of licensure. The licensee shall be required to complete a minimum of thirty (30) hours during the second calendar year of licensure. (~~4-2-03~~)(7-1-08)T

03. Reinstatement. An individual whose license has lapsed under Rule 301 shall complete no less than eighty (80) hours of CPE, of which at least four (4) hours must be in ethics CPE, during the twelve (12) months immediately prior to applying for reinstatement of an active license. The state-specific ethics for Idaho may constitute

~~two (2) of the four (4) hours of ethics CPE.~~ The applicant shall be required to identify and complete a program of learning designed to demonstrate the currency of the applicant's competencies directly related to his area of service. ~~The licensee shall file the annual CPE reporting form, indicating the licensee has completed the two-hour (2) course on state-specific ethics for Idaho and is otherwise exempt from obtaining CPE hours during the first year of licensure.~~ An individual whose license lapsed under Rule 301 applying for reinstatement of an inactive or retired license is not required to meet a CPE requirement. The applicant shall pay the license reinstatement fee prescribed in Rule 701 and shall have met the reinstatement requirements of Section 54-211, Idaho Code. ~~(3-20-04)(7-1-08)T~~

04. Re-Entry from Inactive or Retired Status. A licensee, granted an exemption from the CPE requirement under Rule 502, may discontinue use of the word "inactive" or "retired" in association with the CPA or LPA title upon showing that the licensee has completed no less than eighty (80) hours of CPE, ~~of which at least four (4) hours must be in ethics CPE,~~ during the twelve (12) months immediately prior to applying for return to active status. ~~The state-specific ethics for Idaho may constitute two (2) of the four (4) hours of ethics CPE.~~ The licensee shall be required to identify and complete a program of learning designed to demonstrate the currency of the licensee's competencies directly related to the licensee's area of service. ~~The licensee shall file the annual CPE reporting form, indicating the licensee has completed the two-hour (2) course on state-specific ethics for Idaho and is otherwise exempt from obtaining CPE hours during the first year of licensure.~~ The licensee shall pay the annual license renewal fee prescribed in Rule 701. If a licensee applies for re-entry during a license period and has already paid the fee for an inactive or retired license, the licensee is required to pay the difference between the cost of an inactive or retired license and the annual license renewal fee. ~~(4-2-03)(7-1-08)T~~

(BREAK IN CONTINUITY OF SECTIONS)

600. PURPOSE OF FIRM REGISTRATION AND PEER REVIEW (RULE 600).

The purpose of the program is to monitor compliance with applicable accounting and auditing standards adopted by generally recognized standard setting bodies. The program shall emphasize appropriate education programs or remedial procedures which may be recommended or required where the firm does not comply with appropriate professional standards. In the event a firm is unwilling or unable to comply with professional standards, or a firm's failure to comply with professional standards is so egregious as to warrant continuing action, the Board shall take appropriate action to protect the public interest as authorized by Section 54-219, Idaho Code. ~~The information discovered solely as a result of a firm's peer review shall not be grounds for suspension or revocation of a license.~~ ~~(4-2-03)(7-1-08)T~~

(BREAK IN CONTINUITY OF SECTIONS)

602. PEER REVIEW PROGRAM PARTICIPATION (RULE 602).

01. Participation. Any firm that issues reports on accounting and auditing engagements, including audits, reviews, compilations, and prospective financial information shall participate. A licensee who issues compilation reports through any form of business other than a firm shall participate in the peer review program. Such licensees must meet the requirements for registration and peer review as set forth in Subchapter G. (4-2-03)

02. Practice Privileges. Individuals ~~applying for~~ with practice privileges in Idaho shall comply with the peer review requirements in the state of their principal place of business. ~~The licensee must comply with the peer review requirements of this state, if the state of the licensee's principal place of business has no peer review requirement.~~ ~~(4-2-03)(7-1-08)T~~

(BREAK IN CONTINUITY OF SECTIONS)

607. ADMINISTERING ORGANIZATIONS (RULE 607).

This section shall not require any licensee of a firm to become a member of any administering organization. Qualified administering organizations which register with, and are approved by the Board based on their adherence to the AICPA Peer Review minimum standards, shall include the: (4-2-03)

~~01. **Monitoring Organizations.** AICPA practice monitoring organizations such as the Center for Public Company Audit Firms (CPCAF). (4-6-05)~~

~~02. **Peer Review Program.** Peer review program of the American Institute of Certified Public Accountants (AICPA). (4-2-03)~~

~~03. **State CPA Societies.** State CPA societies fully involved in the administration of the AICPA Peer Review Program and their successor organizations which meet the minimum standards. (4-2-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

611. OVERSIGHT COMMITTEE ~~DUTIES FOR NON-CPCAF~~ PROCEDURES FOR MONITORING ADMINISTERING ORGANIZATIONS (RULE 611).

The oversight procedures to be performed by the committee in monitoring ~~non-CPCAF~~ administering organizations may consist of the following: (4-6-05)(7-1-08)T

01. Visit the Administering Organization Annually. During such visit, Oversight Committee may: (4-2-03)

a. Meet with the organization's peer review committee during the committee's consideration of peer review documents. (4-2-03)

b. Review the organization's procedures for administering the peer review program. (4-2-03)

c. Review, on the basis of a random selection, a number of reviews performed by the administering organization. The review shall include, at a minimum, a review of the report on the peer review, the letter of comments (if any), the firm's response to the matters discussed in the letter of comments, the administering organization's acceptance letter outlining any additional corrective or monitoring procedures, and the working papers on the selected reviews. The purpose of review by Oversight Committee is to determine whether the reviews are being conducted and reported on in accordance with the peer review minimum standards. (4-2-03)

d. Expand the review of peer review documents if significant deficiencies, problems, or inconsistencies are encountered during the review of the materials. (4-2-03)

02. Oversight Report Review. Alternatively, for those organizations participating in the AICPA oversight program in connection with involved state societies, Oversight Committee may obtain and review the oversight program report to insure that the reviews are being conducted and reported on in accordance with the peer review minimum standards. (4-2-03)

03. Annual Recommendation. On the basis of the result of the foregoing procedures, Oversight Committee shall make an annual recommendation to the Board as to the continuing qualifications of the approved administering organizations. (4-2-03)

612. ~~OVERSIGHT COMMITTEE PROCEDURES FOR THE CPCAF (RULE 612) (RESERVED).~~

~~Where the administering organization is the CPCAF, the Oversight Committee shall review the published annual report of the monitoring organization. The Oversight Committee shall conclude whether the procedures carried out by the monitoring organization and the disclosures contained in the annual report are indicative of an acceptable level of oversight. Based on the results of its review, Oversight Committee shall make an annual recommendation to the Board as to the continuing qualifications of CPCAF as an approved administering organization. (4-6-05)~~

(BREAK IN CONTINUITY OF SECTIONS)

701. LICENSURE ~~AND PRACTICE PRIVILEGES~~ FEES (RULE 701).

- 01. Annual License Renewal.** The annual license renewal fee is one hundred twenty dollars (\$120). (4-2-03)
- 02. Initial License.** The initial license fee is one hundred twenty dollars (\$120). (4-2-03)
- 03. Reciprocity.** The application fee for licensure by reciprocity is one hundred seventy-five dollars (\$175), in addition to the initial license fee. (4-2-03)
- 04. Transfer-of-Grades.** The application fee for licensure by transfer-of-grades is one hundred seventy-five dollars (\$175), in addition to the initial license fee. (4-2-03)
- 05. Wall Certificate.** The original or replacement wall certificate fee is twenty dollars (\$20). (4-2-03)
- 06. International Reciprocity.** The application fee for licensure by international reciprocity is one hundred seventy-five dollars (\$175), in addition to the initial license fee. (4-2-03)
- ~~**07. Practice Privileges.** The fee for practice privileges under Section 54-227, Idaho Code is fifty dollars (\$50) each licensure year. (4-2-03)~~
- 08. Reinstatement Fee.** The fee for reinstatement of a license shall be the sum of the license fees not paid for the preceding three license renewal cycles. (4-2-03)
- ~~**09. Inactive or Retired.** The fee for annual license renewal of an inactive or retired license is one hundred dollars (\$100). (4-2-03)~~

(BREAK IN CONTINUITY OF SECTIONS)

703. LATE FEES AND FINES (RULE 703).

- 01. Late License ~~and Practice Privileges~~ Renewal Fee.** The fee for late license renewal ~~or practice privileges renewal~~ is one hundred dollars (\$100). ~~(4-2-03)~~(7-1-08)T
- 02. Non-Compliance With CPE Filing Deadline.** The fine for non-compliance with CPE filing deadline is one hundred dollars (\$100) for filing anytime during the month of February, one hundred and fifty dollars (\$150) for filing anytime during the month of March, two hundred dollars (\$200) for filing anytime during the month of April, two hundred and fifty dollars (\$250) for filing anytime during the month of May, and three hundred dollars (\$300) for filing anytime during the month of June. (3-30-07)
- 03. Non-Compliance with Firm Registration and Peer Review.** The fine shall be one hundred dollars (\$100) per licensee for each act of non-compliance defined in Rule 617. (4-2-03)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.27 - RULES GOVERNING DELETERIOUS EXOTIC ANIMALS

DOCKET NO. 02-0427-0801

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Title 25 Chapter 39, Idaho Code.

MEETING SCHEDULE: Public meetings on the negotiated rulemaking will be held as follows:

Tuesday - June 10, 2008 - 9:00 a.m.

**Idaho Department of Agriculture
2270 Old Penitentiary Road
Room A
Boise, Idaho**

METHOD OF PARTICIPATION: Persons wishing to participate in the negotiated rulemaking can do so by the following:

Attendance at the initial negotiated rulemaking meeting, or notification to the Idaho State Department of Agriculture, Division of Animal Industries, in writing, of the desire to participate in the negotiated rulemaking. Written notification should include all contact information and an electronic mail or mailing address. Those providing written notification will be contacted regarding any additional scheduled negotiated rulemaking meetings.

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

Amending the Rules Governing Deleterious Exotic Animals to clarify the Idaho State Department of Agriculture's criteria and requirement for issuing permits to import, possess, and propagate deleterious exotic animals in the state of Idaho. Consideration will also be given to amending the list of Deleterious Exotic animals, contained within the rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking or to obtain a copy of the preliminary draft of the text of the proposed rule, contact Bill Barton, (208) 332-8540 or Brian Oakey at (208) 332-8500.

Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 10, 2008. As the process moves forward, written comments may be accepted after that date.

DATED this 5th day of May, 2008.

Brian Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
Phone: (208) 332-8500
FAX: (208) 334-4062

IDAPA 08 - STATE BOARD OF EDUCATION

**08.01.11 - OUT-OF-STATE INSTITUTIONS, IN-STATE NON-ACCREDITED INSTITUTIONS
AND CORRESPONDENCE OR PRIVATE COURSES**

DOCKET NO. 08-0111-0801 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 17, 2008.

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 33-105, 33-2402, and 33-2403, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 18, 2008.

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 is being repealed in its entirety and will be replaced by the chapter adopted in Docket No. 08-0111-0802. That new chapter of rules is being published in this Bulletin.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To be in compliance with 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 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 these rules needed to be adopted in order to be in compliance with amendments to law.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tracie Bent at 332-1582.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2008.

DATED this 1st day of May, 2008.

Mike Rush
Interim Executive Director
State Board of Education
PO Box 83720

Boise, ID 83720-0037
(208) 334-2270 phone
(208) 334-2632 FAX

IDAPA 08.01.11 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 08 - STATE BOARD OF EDUCATION

08.01.11 - REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS AND PROPRIETARY SCHOOLS

DOCKET NO. 08-0111-0802 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED FEE RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 17, 2008.

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 33-105, 33-2402, and 33-2403, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 18, 2008.

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:

Title 33, Chapter 1 and 24, Idaho Code were amended to clarify that postsecondary institutions need to register to ensure they are legitimate degree granting institutions and that proprietary schools are legitimate. Criteria for evaluating these institutions and schools are set forth in this rule. Criteria are essential for determining the legitimacy of the institution for degree granting purposes and the legitimacy of proprietary schools.

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:

To be in compliance with 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:

Post-secondary institutions will be charged \$100 per course with a \$2000 maximum. Proprietary schools will be charged \$100 per school. Fees will be used to investigate schools that have submitted an application to operate in Idaho under this portion of Idaho code. Institutions must be thoroughly investigated and evaluated to ensure they are legitimate degree granting institutions and not diploma mills.

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 conducted by working with representatives of degree-granting postsecondary institutions to establish qualified accreditation agencies that would be accepted by the State Board of Education.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed fee rule, contact Tracie Bent at 332-1582.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2008.

DATED this 1st day of May, 2008.

Mike Rush
Interim Executive Director
State Board of Education
PO Box 83720, Boise, ID 83720-0037
(208) 332-1567 phone / (208) 334-2632 FAX

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0111-0802

IDAPA 08, TITLE 01, CHAPTER 11

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

000. LEGAL AUTHORITY.

The following rules are made under authority of Sections 33-105, 33-107, 33-2402, and 33-2403, Idaho Code, to implement the provisions of Chapter 24, Title 33, Idaho Code. (4-17-08)T

001. TITLE AND SCOPE.

01. Title. This rule shall be cited as IDAPA 08.01.11, "Registration of Post-Secondary Educational Institutions and Proprietary Schools." (4-17-08)T

02. Scope. This rule sets forth the registration requirements for post-secondary educational institutions that are required to register with the Idaho State Board of Education ("Board") under Section 33-2402, Idaho Code, and for proprietary schools required to register with the Board under Section 33-2403, Idaho Code. In addition, this rule describes the standards and criteria for Board recognition of accreditation organizations, for registration purposes. (4-17-08)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of this rule. (4-17-08)T

003. ADMINISTRATIVE APPEALS.

The Administrative Procedures Act, Chapter 52, title 67, Idaho Code, applies to any denial of registration of any post-secondary educational institution or proprietary school. Hearings and appeals shall be governed according to the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (4-17-08)T

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference. (4-17-08)T

005. OFFICE INFORMATION.

01. Office Hours. The offices of the Board are open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. (4-17-08)T

02. Mailing Address. The mailing address of the Board is P.O. Box 83720, Boise, Idaho 83720-0037. (4-17-08)T

03. Street Address. The offices of the Board are located at 650 W. State Street, Boise, Idaho. (4-17-08)T

- 04. Telephone.** The telephone number of the Board is (208) 334-2270. (4-17-08)T
- 05. Facsimile.** The facsimile number of the Board is (208) 334-2632. (4-17-08)T
- 06. Electronic Address.** The electronic address of the Board is <http://www.boardofed.idaho.gov>. (4-17-08)T

006. PUBLIC RECORDS ACT COMPLIANCE.

This rule is subject to the provisions of the Public Records Act, Title 9, Chapter 3, Idaho Code. (4-17-08)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Accredited. Defined in Section 33-2401(1), Idaho Code, and means that a post-secondary educational institution has been recognized or approved as meeting the standards established by an accrediting organization recognized by the Board. (4-17-08)T

02. Agent. Defined in Section 33-2401(2), Idaho Code, and means any individual within the state of Idaho who solicits students for or on behalf of a proprietary school. (4-17-08)T

03. Agent's Permit. Defined in Section 33-2401(3), Idaho Code, and means a nontransferable written document issued to an agent by the Board or its designee. (4-17-08)T

04. Course. Defined in Section 33-2401(5), Idaho Code, and means instruction imparted in a series of lessons or class meetings to meet an educational objective. (4-17-08)T

05. Course or Courses of Study. Defined in Section 33-2401(6), Idaho Code, and means either a single course or a set of related courses for which a student enrolls, either for academic credit or otherwise. A course of study is sometimes also referred to in this rule as a program. (4-17-08)T

06. Degree. Defined in Section 33-2401(7), Idaho Code, and means any academic, vocational, professional-technical or honorary title or designation, mark, appellation, series of letters, numbers, or words such as, but not limited to, "bachelor's," "master's," "doctorate," or "fellow," which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, vocational, professional-technical, educational or professional program of study beyond the secondary school level or for a recognized title conferred for meritorious recognition, and an associate of arts or associate of science degree awarded by a community college or other public or private post-secondary educational institution or other entity which may be used for any purpose whatsoever. (4-17-08)T

07. Post-Secondary Educational Institution. Sometimes referred to in this rule simply as an institution, is defined in Section 33-2401(8), Idaho Code, and means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within or which operates or purports to operate, from a location within the state of Idaho, and which provides courses or programs that lead to a degree, or which provides, offers or sells degrees. (4-17-08)T

08. Proprietary School. Sometimes referred to in this rule simply as a school, is defined in Section 33-2401(9), Idaho Code, and means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within or which operates or purports to operate, from a location within the state of Idaho and which conducts, provides, offers or sells a course or courses of study, but which does not provide, offer or sell degrees. (4-17-08)T

011. -- 099. (RESERVED).

100. RECOGNITION OF ACCREDITATION ORGANIZATIONS.

Registration of Post-Secondary Educational Institutions. For purposes of registration of post-secondary educational

institutions, the Board recognizes the regional accreditation organizations listed in Subsections 100.01 through 100.06, below. In addition, the Board recognizes institutional accreditation organizations which are also recognized by and in good standing with both the United States Department of Education and by the Council for Higher Education Accreditation, and which accredit entire colleges or universities, and which do not accredit only courses or courses of study (such as specialized accreditation organizations). Further, the Board may recognize other accreditation organizations on a case-by-case basis. A request for recognition of other accreditation organizations for purposes of registration should be made to the Board's Chief Higher Education Academic Officer, who will review and evaluate the request with the input and advice of the Board's Committee on Academic Affairs and Programs (CAAP). The Board will make a final decision based on such evaluation and review. (4-17-08)T

01. Middle States Association of Schools and Colleges (MSA), Commission on Higher Education. Accredits institutions of higher education in Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the U.S. Virgin Islands. (4-17-08)T

02. New England Association of Schools and Colleges, Commission on Institutions of Higher Education (NEASC-CIHE). Accredits institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. (4-17-08)T

03. North Central Association of Colleges and Schools, The Higher Learning Commission (NCA-HLC). Accredits degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming, including schools of the Navaho Nation. (4-17-08)T

04. Northwest Commission on Colleges and Universities (NWCCU). Accredits post-secondary educational institutions in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington. (4-17-08)T

05. Southern Association of Colleges and Schools (SACS), Commission on Colleges. Accredits degree-granting institutions of higher education in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. (4-17-08)T

06. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities (WASC-ACSCU). Accredits senior colleges and universities in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands. (4-17-08)T

101. -- 199. (RESERVED).

200. REGISTRATION OF POST-SECONDARY EDUCATIONAL INSTITUTIONS.

01. Registration Requirement. (4-17-08)T

a. Unless exempted by statute or this rule, as provided herein, a post-secondary educational institution which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register and hold a valid certificate of registration issued by the Board. An institution shall not conduct, provide, offer, or sell a course or courses of study, or degree unless registered. An institution shall not solicit students on behalf of such institution, or advertise in this state, unless registered. (4-17-08)T

b. Initial registration shall be for the period beginning on the date of issue of a certificate of registration and continue through June 30 of the next succeeding year. Initial registration shall mean an institution's initial registration under this rule, even if an institution has previously registered with the Board. A registered post-secondary educational institution must renew its certificate of registration annually, and renewal of registration is not automatic. Renewal of registration shall be for the period beginning on July 1 of any year, and continue through June 30 of the next succeeding year. (4-17-08)T

02. Idaho Presence. An institution shall be deemed to have a presence in Idaho, or to be operating or purporting to be operating from a location within the state of Idaho, if it owns, rents, leases, or uses any office or other type of physical location in Idaho, including a mailing or shipping center, or if it represents in any way, such as on an

electronic or Internet website, to have an Idaho street or mailing address, including a post office box in Idaho.

(4-17-08)T

03. Institutions Exempt from Registration.

(4-17-08)T

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

(4-17-08)T

b. Certain Idaho private, not for profit, post-secondary educational institutions. A private, not for profit, post-secondary educational institution that is already established and operational as of the effective date of this rule and located within the state of Idaho, and that is accredited by an accreditation organization recognized by the Board, as set forth in Section 100 of this rule, shall not be required to register. A private, not for profit, institution is located within the state of Idaho only if it has been lawfully organized in the state of Idaho and its principal place of business is located within the state of Idaho.

(4-17-08)T

04. Institutions that Must Register.

(4-17-08)T

a. Out-of-state public post-secondary educational institutions. A public institution that is supported primarily by taxation from another state, or from a local source not within the state of Idaho, must register as provided herein.

(4-17-08)T

b. Out-of-state private, not for profit, post-secondary educational institutions. An out-of-state private, not for profit, post-secondary educational institution must register as provided herein.

(4-17-08)T

c. Certain Idaho private, not for profit, post-secondary educational institutions. A private, not for profit, post-secondary educational institution that is located within the state of Idaho, but that is not exempt under Subsection 200.03.b. of this rule, must register as provided herein.

(4-17-08)T

d. For-profit post-secondary educational institutions. A post-secondary educational institution that operates for profit, or which is an operating subsidiary of a publicly or privately held corporation that operates for profit, must register as provided herein.

(4-17-08)T

05. Exception to Registration Requirement for Certain Post-Secondary Institutions.

(4-17-08)T

a. A post-secondary educational institution that demonstrates to the satisfaction of the Board that its primary mission and objectives are to offer courses or courses of study that do not lead to the awarding of degrees, may instead register as a proprietary school, in accordance with Section 400 of this rule.

(4-17-08)T

b. A request to register as a proprietary school must be submitted in writing to the Board by the first business day of December preceding a registration year. A decision on such request will be issued by the Board within thirty (30) days after it is received. A request to register as a proprietary school must be made on an annual basis.

(4-17-08)T

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

(4-17-08)T

07. Registration Fees. The Board shall assess an annual registration fee for initial registration, or renewal of registration, of a post-secondary educational institution. The registration fee must accompany the application for registration, and shall be in the amount of one hundred dollars (\$100) for each course that the institution intends to conduct, provide, offer or sell during the registration year, as set forth in the registration application, not to exceed two thousand dollars (\$2,000). Registration fees are not refundable.

(4-17-08)T

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

anytime. An institution should expect the Board's review process for an initial registration to take approximately three (3) to five (5) months. An application for renewal of registration must be submitted to the Board on or before the first business day of May that precedes a registration year. (4-17-08)T

09. Information Required. Such application must include the information requested on the application form, as well as the following information: (4-17-08)T

a. If an institution that is required to register under this rule is accredited by an accreditation organization recognized by the Board in Section 100 of this rule, such institution must submit documentation demonstrating that it has received accreditation status, and that it will maintain its accreditation from such agency during the entire registration year. An institution that is so accredited qualifies for a streamlined registration process, and will not be required to submit information and/or documentation that documents compliance with Standards I through VI, set forth in Subsections 200.10.a. through 200.10.f. of this rule. Such institution must submit the following information and/or documentation with its application for registration: (4-17-08)T

- i. Copy of most recent accreditation report; (4-17-08)T
- ii. Current list of chief officers - e.g. president, board chair, chief academic officer, chief fiscal officer; (4-17-08)T
- iii. Most recent copy of strategic plan; (4-17-08)T
- iv. Enrollment data for current and past two (2) years; (4-17-08)T
- v. Copy of annual audited financial statement; (4-17-08)T
- vi. Any additional information that the Board may request. (4-17-08)T

b. All other institutions applying for registration must submit information and/or documentation with its application for registration that documents compliance with all of the Standards I through VI, set forth in Subsections 201.01 through 201.06. of this rule. (4-17-08)T

c. The Board may, in connection with a renewal of registration; request that an institution only submit information that documents changes from the previous year, provided that the institution certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 200.07 of this rule, shall remain applicable. (4-17-08)T

201. APPROVAL STANDARDS FOR POST-SECONDARY EDUCATIONAL INSTITUTIONS.

Except as provided in Subsection 200.09.a. of this rule, an institution applying for registration must meet, or demonstrate that it will meet, all of the following standards: (4-17-08)T

01. Standard I - Legal Status and Administrative Structure. The institution must be in compliance with all local, state, and federal laws, administrative rules, and other regulations applicable to post-secondary educational institutions. (4-17-08)T

a. The institution must have a clearly stated mission and objectives that are consistent with educational offerings under consideration for approval by the Board. The institution must demonstrate how its stated mission and objectives are being accomplished. (4-17-08)T

b. The governing board or the board of directors must be comprised of at least five (5) members who are selected to represent students, faculty, and other constituents of the institution. Board members must be given the responsibility for assuring that the mission and objectives are achieved, for establishing policies and overseeing their implementation, and for providing oversight for the entire institution, including the financial stability of the institution. Board members should generally not be affiliated with the institution from an employment, contractual, familial, or financial standpoint. Any affiliation or financial interest in the institution must be fully disclosed, and provisions must be made to address any conflicts of interest. (4-17-08)T

c. There must be sufficient distinction between roles and responsibilities of the institution's governing board and the administration, faculty, and staff to ensure appropriate separation and independence. (4-17-08)T

d. Each of the administrative officers must be appropriately qualified with educational credentials to ensure programs are of high quality and that the rights of students are protected. In particular, the chief academic officer of the institution must be academically prepared at least at the Master's degree level, and have a minimum of five (5) years of post-secondary educational experience at an accredited institution. (4-17-08)T

e. Administrators must be paid a fixed salary. Commissions may not be used for any portion of the compensation or to supplement an administrative salary. (4-17-08)T

f. Policies must have been established to govern admissions, hiring procedures, and working conditions; evaluation/assessment of all employees and instructional offerings; awarding of credit and grades that are comparable to other institutions; academic freedom; student and faculty rights and responsibilities; grievance procedures; approval of the curriculum and other academic procedures, etc.; to ensure the quality of educational offerings. (4-17-08)T

g. The administration must establish procedures for evaluating the effectiveness of the entire institution and for assessing the quality of instruction through established and recognized methods of instructional assessment. Evaluation and assessment results must be used to improve institutional programs and services. Evaluative/assessment processes must involve internal constituents from the institution and appropriate external representatives. (4-17-08)T

02. Standard II - Educational Program and Curriculum. Instruction must be the primary focus of the institution, and all instructional activities must be clearly related to the achievement of the institution's mission and objectives. (4-17-08)T

a. The requirements for all instructional programs must be defined clearly, including applicable completion requirements for courses, credits, and clinicals. Faculty must be given the responsibility for developing the curriculum for all courses or courses of study or degrees, designing effective learning strategies for students, identifying and organizing all instructional materials and specialized facilities, identifying instructional assessment methods, and evaluating the effectiveness of the course offerings. (4-17-08)T

b. The institution must identify the number of credits required to earn a degree based on the following guidelines. Forty-five (45) clock-hours of student involvement are required for each semester credit, which includes a minimum of fifteen (15) student contact hours for each semester credit. Degrees are: (4-17-08)T

i. Associate of Applied Science Degree. A credential awarded for completion of requirements entailing at least two (2) years, but less than four (4) years, of full-time professional-technical study with a minimum of sixty (60) semester credits (includes a minimum of sixteen (16) general education credits) and includes mastery of specific competencies drawn from requirements of business/industry; (4-17-08)T

ii. Associate Degree. A credential awarded for completion of requirements entailing at least two (2) years, but normally less than four (4) years, of full-time academic work; (4-17-08)T

iii. Baccalaureate Degree. A credential awarded for completion of requirements entailing at least four (4) years of full-time academic work; (4-17-08)T

iv. Master's Degree. A credential awarded for completion of requirements entailing at least one (1) year, but normally not more than two (2) years, of full-time academic work beyond the baccalaureate degree, including any required research; and (4-17-08)T

v. Doctoral Degree. A credential awarded for completion of requirements entailing at least three (3) years of full-time academic work beyond the baccalaureate degree, including any required research. (4-17-08)T

vi. Written course descriptions must be developed for all courses and for all courses within a program or degree and include the following: course overview, learning objectives and outcomes, course content, assessment,

and grading criteria. A written inventory must be maintained for all course descriptions, and course descriptions must be provided to the faculty. Faculty must be expected to follow course descriptions. A syllabus must be developed for each course and distributed to students at the beginning of the course. (4-17-08)T

vii. For each course or courses of study leading to a degree, the institution shall assure that such courses will be offered with sufficient frequency to enable students to complete the courses of study and degree within the minimum time for completion. (4-17-08)T

03. Standard III - Student Support Services. The institution must have clearly defined written policies that are distributed to students through a variety of print and electronic means. Policies must address students' rights and responsibilities, grievance procedures, and must define what services are available to support students and instructional programs. (4-17-08)T

a. The institution must develop a written admissions policy. The admission of students must be determined through an orderly process using published criteria which must be uniformly applied. Admissions must take into account the capacity of the student to undertake a course of study and the capacity of the institution to provide instructional and other support services the student needs to complete the program. (4-17-08)T

b. There must be a clearly defined policy for the readmission of students dismissed from the institution for academic reasons. The readmission of students dismissed under this policy should be consistent with the recognized academic standards of admission to the institution. (4-17-08)T

c. The institution must establish and adhere to a clear and fair policy regarding due process in disciplinary matters, and publish this policy in a handbook, which must include other rights and responsibilities of the students and the grievance procedure. This handbook must be supplied to each student upon enrollment in the institution. The institution must provide the name and contact information for the individual who is responsible for dealing with student grievances and other complaints and for handling due process procedures. (4-17-08)T

d. The institution must provide an effective program of academic advising for all students enrolled. The program must include orientation to the academic program, academic and personal counseling, career information and planning, placement assistance, and testing services. (4-17-08)T

e. The institution must provide students, prospective students prior to enrollment, and other interested persons with a catalog containing, at a minimum, the following information: (4-17-08)T

- i. The institution's mission; (4-17-08)T
- ii. Admissions policies; (4-17-08)T
- iii. Information describing the purpose, length, and objectives for the courses or courses of study or degrees offered by the institution; (4-17-08)T
- iv. Credit requirements for all courses or courses of study or degrees offered by the institution; (4-17-08)T
- v. Procedures for awarding credit for work completed outside the collegiate setting; (4-17-08)T
- vi. Policies for acceptance of transfer credit; (4-17-08)T
- vii. The schedule of tuition, fees, and all other charges and expenses necessary for completion of the courses or courses of study or degrees; (4-17-08)T
- viii. Cancellation and refund policies; (4-17-08)T
- ix. A definition of the unit of credit as it applies at the institution; (4-17-08)T
- x. An explanation of satisfactory progress, including an explanation of the grading/assessment

system; (4-17-08)T

xi. The institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates; (4-17-08)T

xii. A complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree; (4-17-08)T

xiii. A complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree; (4-17-08)T

xiv. A statement of legal control with the names of the trustees, directors, and officers of the institution or corporation or other entity; (4-17-08)T

xv. A complete listing of all scholarships offered, if any; (4-17-08)T

xvi. A statement describing the nature and extent of available student services; (4-17-08)T

xvii. Complete and clearly stated information about the transferability of credit to other post-secondary educational institutions, including two (2) year and four (4) year colleges and universities; and (4-17-08)T

xviii. Any such other material facts concerning the institution and the courses or courses of study as are reasonably likely to affect the decision of the student to enroll at the institution. (4-17-08)T

f. Accurate and secure records must be kept for all aspects of the student academic record including, at a minimum, admissions information, transcripts, and financial transactions. Standards established by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) must be used as a basis for establishing, maintaining, securing, and retaining student records. (4-17-08)T

g. The institution must provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by courses of study, and job placement rate by course of study. (4-17-08)T

04. Standard IV - Faculty Qualifications, Duties, and Compensation. Faculty qualifications must be clearly defined for each discipline and the assigned location for each faculty member must be identified. (4-17-08)T

a. Faculty must be qualified through academic preparation appropriate to their assigned classes and degree level. For bachelor degree programs, faculty must have a master's degree from an accredited institution. At the graduate level, faculty must have a doctoral degree from an accredited institution. Relevant teaching experience or evidence to indicate they will be successful in the classroom must also be considered. Relevant work experience must also be considered. Transcripts for all faculty must be obtained, reviewed, and retained at the institution. Faculty must be recruited from a variety of institutions and backgrounds to enhance diversity and to avoid hiring a disproportionate number of individuals who are graduates of institutional programs. (4-17-08)T

b. There shall be a sufficient number of full-time faculty members to maintain the continuity and stability of academic programs and policies. At least one (1) full-time faculty must be located in Idaho for each course or courses of study or degree, unless the institution can demonstrate specifically why this is not feasible, and identify what provisions have been, or will be, made to serve students effectively. (4-17-08)T

c. A group of faculty must be organized and given responsibility in conjunction with the institution's chief academic officer for reviewing and approving all courses and courses of study and degrees offered by the institution. This group must also be responsible for overseeing instructional assessment activities and setting standards for program review/evaluation. The group must be of sufficient size to effectively represent a variety of instructional disciplines and faculty perspectives. (4-17-08)T

- d.** The ratio of faculty to students in each course must be sufficient to assure effective instruction. (4-17-08)T
- e.** Faculty must be paid a fixed salary. Commissions may not be used for any portion of the compensation, to supplement faculty salaries, or be connected to recruitment or retention of students. (4-17-08)T
- f.** Procedures for evaluating faculty must be established, including provisions for promoting faculty and recognizing scholarly contributions to their academic discipline. (4-17-08)T
- g.** A faculty development program must be established to encourage professional advancement and to enhance one's knowledge and instructional expertise. (4-17-08)T
- 05. Standard V - Resources, Financial Resources, and Facilities.** The institution must have adequate financial resources to accomplish its educational mission and objective. (4-17-08)T
- a.** A financial officer in a managerial position must be designated for the institution and given responsibility for overseeing all of the financial aspects of the institution. (4-17-08)T
- b.** Adequate financial resources must be provided to accomplish the institutional mission and to effectively support the instructional programs, including teaching facilities (i.e., classrooms, labs), instructional materials, supplies and equipment, faculty, staff, library, and the physical and instructional technology infrastructure. (4-17-08)T
- c.** The institution must have sufficient reserves so that, together with tuition and fees, it is able to complete its educational obligations to currently enrolled students, even if it were unable to admit any new students. (4-17-08)T
- d.** Financial records and reports of the institution must be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a public or not for profit institution must be kept in accordance with the most current guidelines from the National Association of College and University Business Officers. Financial records and reports of a for-profit institution must be kept in accordance with generally accepted accounting principles. A for-profit institution must organize its reports and records under categories or cost centers comparable to accounting funds identified in the most current guidelines from the National Association of College and University Business Officers. (4-17-08)T
- e.** An annual independent audit of all fiscal accounts of the educational institution must be authorized by the governing board, and must be performed by a properly authorized certified public accountant. (4-17-08)T
- 06. Standard VI - Library and Instructional Resources.** The institution must obtain and properly catalog library and other learning resources and make these resources readily available to its students and faculty. These holdings must be of sufficient quality and depth to support its mission and achievement of student and faculty learning objectives. (4-17-08)T
- a.** The institution must have adequate library facilities for the library holdings, space for study, and workspace for the librarian and library staff. (4-17-08)T
- b.** Library services and resources must be available for student and faculty use with sufficient regularity, and at appropriate hours, to support the mission of the institution and its instructional offerings. (4-17-08)T
- c.** If the institution relies on other institutions or entities to provide library resources, or this is done through electronic means, the institution must demonstrate how these arrangements effectively meet the needs of students and faculty. These arrangements must be documented through written agreements. Student and faculty use must be documented and frequently evaluated to ensure quality services are being provided. (4-17-08)T
- d.** The library must be administered by professionally trained staff supported by sufficient personnel. (4-17-08)T

202. THE BOARD MAY NOTIFY THE POST-SECONDARY EDUCATIONAL INSTITUTION OF ADDITIONAL INFORMATION REQUIRED.

If the Board is unable to determine the nature and activities of an institution on the basis of the information provided by the institution under this rule, then the Board may notify the institution of additional information that it will be required to provide in connection with the application for registration. (4-17-08)T

01. Verification of Information. The Board may verify the accuracy of submitted information by inspection, visitation, or any other means it considers necessary. The applicant institution shall be responsible for any costs the Board incurs, including travel, associated with this review. (4-17-08)T

02. Criteria for Approval or Denial of Registration. To be approved for registration, the institution must demonstrate that it is in compliance with Chapter 24, Title 33, Idaho Code and this rule. An institution must remain in compliance for the registration year. (4-17-08)T

03. Public Information. All information submitted to the Board in connection with the application is public information, and is subject to disclosure as set forth in the Public Records Act, Title 9, Chapter 3, Idaho Code. (4-17-08)T

04. Certificate of Registration. (4-17-08)T

a. A certificate of registration will be issued to a post-secondary educational institution that has paid its registration fee and has been approved under this rule. A certificate evidencing initial registration will be effective the date it is issued, and continue through June 30 of the next succeeding year. A renewal certificate will be for the period July 1 through June 30 of the next succeeding year. No institution that is registered with the Board shall advertise or represent in any manner that it is accredited by the Board. An institution may only represent that it is: "Registered with the Idaho State Board of Education." Registration is not an endorsement of the institution. (4-17-08)T

b. If an institution wishes to offer additional courses, courses of study, or degrees during the course of a registration year that were not included in its application to the Board prior to issuance of the certificate of registration, then the institution may submit a supplemental application to the Board, on a form approved by the Board and pay any additional registration fees that are applicable. If approved, the Board will issue a revised certificate of registration evidencing such approval. (4-17-08)T

05. Disapproval and Appeal. If a post-secondary educational institution's request for initial registration, or renewal of registration, is disapproved by the Board, then the institution may appeal such decision in accordance with Chapter 52, Title 67, Idaho Code. The request must be in writing and made to the office within thirty (30) days of the date the institution is notified of the disapproval. (4-17-08)T

06. Withdrawal of Approval. (4-17-08)T

a. The Board may refuse to renew, or may revoke or suspend approval of, an institution's registration by giving written notice and the reasons therefore to the institution. The institution may request a hearing relating to such decision under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (4-17-08)T

b. Withdrawal of approval may be for one (1) or more of the following reasons (4-17-08)T

i. Violation of Chapter 24, Title 33, Idaho Code or this rule; (4-17-08)T

ii. Providing false, misleading, deceptive, or incomplete information to the Board; (4-17-08)T

iii. Presenting to prospective or current students information about the institution which is false, fraudulent, misleading, deceptive, or inaccurate in a material respect; or (4-17-08)T

iv. Refusing to allow reasonable inspection or to supply reasonable information after a written request

by the Board has been received. (4-17-08)T

c. If any information contained in the application submitted by the institution becomes incorrect or incomplete, then the registered institution shall notify the Board of such change within thirty (30) days. An institution that ceases operation during the course of a registration year shall immediately inform the Board of this event. (4-17-08)T

203. -- 299. (RESERVED).

300. REGISTRATION OF PROPRIETARY SCHOOLS.

01. Delegation. Section 33-2403, Idaho Code, provides that a proprietary school must hold a valid certificate of registration issued by the Board or its designee. The Board delegates authority to the Idaho Division of Professional-Technical Education (PTE) to register proprietary schools, in accordance with this rule. (4-17-08)T

02. Registration Requirement. (4-17-08)T

a. Unless exempted by statute or this rule, as provided herein, a proprietary school which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually and hold a valid certificate of registration issued by PTE. A school shall not conduct, provide, offer, or sell a course or courses of study unless registered. A school shall not solicit students for or on behalf of such school, or advertise in this state, unless registered. (4-17-08)T

b. Initial registration shall be for the period beginning on the date of issue of a certificate of registration and continue through June 30 of the next succeeding year. A registered proprietary school must renew its certificate of registration annually and renewal of registration is not automatic. Renewal of registration shall be for the period beginning on July 1 of any year, and continue through June 30 of the next succeeding year. (4-17-08)T

03. Exemptions from Registration. The following individuals or entities are specifically exempt from the registration requirements of this rule: (4-17-08)T

a. An individual or entity that offers instruction or training solely a vocational or recreational in nature, as determined by the Board. (4-17-08)T

b. An individual or entity that offers courses recognized by the Board which comply in whole or in part with the compulsory education law. (4-17-08)T

c. An individual or entity that offers a course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student. (4-17-08)T

d. An individual or entity which is otherwise regulated, licensed, or registered with another state agency pursuant to Title 54, Idaho Code. (4-17-08)T

e. Aviation school or instructors approved by and under the supervision of the Federal Aviation Administration. (4-17-08)T

f. An individual or entity that offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests, or similar instruction for test preparation. (4-17-08)T

g. An individual or entity offering only workshops or seminars lasting no longer than three (3) calendar days. (4-17-08)T

h. A parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted. (4-17-08)T

i. An individual or entity that offers post-secondary credit through a consortium of public and private colleges and universities under the auspices of the western governors. (4-17-08)T

04. Application. A proprietary school that is required to register under this rule must submit to PTE an application for registration (either an application for initial registration, or renewal of registration, as applicable), on a form approved by PTE. The application must include a list of each course or courses of study the applicant school intends to conduct, provide, offer or sell in Idaho during the registration year. (4-17-08)T

05. Registration Fees and Costs. A registration fee shall accompany each application for initial registration or renewal of registration. The fixed portion of such annual registration fee shall be in the amount of one hundred dollars (\$100) for each school. The variable portion of such annual registration fee shall be in the amount of one hundred dollars (\$100) for each course to be offered by the school during the registration year. Fees are not refundable. (4-17-08)T

06. Deadline for Registration. An initial application for registration may be submitted to PTE at anytime. A school should expect PTE's review process for an initial registration to take approximately three (3) to five (5) months. An application for renewal of registration must be submitted to PTE on or before the first business day of May that precedes a registration year. (4-17-08)T

07. Information Required. (4-17-08)T

a. Such application must include the information requested on the application form. In addition, a school applying for registration must submit information and/or documentation with its application for registration that documents compliance with all of the Standards, I through V, set forth in Subsections 400.08.a. through 400.08.e. of this rule. (4-17-08)T

b. PTE may, in connection with a renewal of registration, request that a school only submit information that documents changes from the previous year, provided that the school certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 300.05 of this rule, shall remain applicable. (4-17-08)T

301. APPROVAL STANDARDS FOR REGISTRATION OF PROPRIETARY SCHOOLS.

The Board and its designee accepts the responsibility for setting and maintaining approval standards for proprietary schools that plan to offer courses or a set of related courses in or from Idaho in order to protect consumers and to ensure quality educational programs are provided throughout the state. A school must meet all of the standards prior to issuance of a certificate of registration and the school must provide required evidence to document compliance with the standards as identified in the application form. A certificate of registration may be denied if all of the standards are not met. (4-17-08)T

01. Standard I - Legal Status and Administrative Structure. The school must be in compliance with all local, state and federal laws, administrative rules, and other regulations applicable to proprietary schools. (4-17-08)T

a. The school must have a clearly stated educational purpose that is consistent with the courses or a set of related courses under consideration for approval by PTE. (4-17-08)T

b. The ownership of the school, its agents, and all school officials must be identified by name and title. (4-17-08)T

c. Each owner, agent, and school official must be appropriately qualified to ensure courses are of high quality and the rights of students are protected. (4-17-08)T

d. Policies must have been established to govern admissions, hiring procedures, and working conditions; evaluation/assessment of all employees and instructional offerings; student and instructor rights and responsibilities; grievance procedures; approval of the curriculum and other academic procedures to ensure the quality of educational offerings. (4-17-08)T

e. Procedures for assessing/evaluating the effectiveness of instruction must be established. Evaluation and assessment results must be used to improve courses or courses of study. (4-17-08)T

02. Standard II - Courses or Courses of Study. Instruction must be the primary focus of the school, and all instructional activities must be clearly related to the achievement of the stated instructional objectives. All courses or courses of study must prepare students to enter employment upon completion of the program or prepare them for self-employment. (4-17-08)T

a. The requirements for each course or courses of study must be defined clearly including applicable completion requirements or other requirements such as practicums and clinicals. Courses or courses of study will be designed using effective learning strategies for students, identifying and organizing all instructional materials and specialized facilities, identifying instructional assessment methods, and evaluating the effectiveness of the course offerings. (4-17-08)T

b. Written course descriptions must be developed for all courses or courses of study including: course overview, learning objectives and outcomes, course content, assessment, and grading criteria. A written inventory must be maintained for all course descriptions and course descriptions must be provided to instructors. Instructors must be expected to follow course descriptions. A syllabus must be developed for each course and distributed to students at the beginning of the course. (4-17-08)T

c. The school must assure that a course or courses of study will be offered with sufficient frequency to enable students to complete courses or courses of study within the minimum time for completion. (4-17-08)T

d. The school must clearly state the cost of each course or courses of study and identify the payment schedule. This information must be provided in written form to students, and the refund policy must also be given to students in writing. (4-17-08)T

e. All advertising, pamphlets, and other literature used to solicit students and all contract forms must accurately represent the purpose of the school, its courses or courses of study, job opportunities, and other relevant information to assist students in making an informed decision to enroll. The school must provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the school's current completion and job placement rate. (4-17-08)T

03. Standard III - Student Support Services. The school must have clearly defined written policies that are distributed to students through a variety of print and electronic means. Policies must address students rights and responsibilities, grievance procedures, and define what services are available to support students. (4-17-08)T

a. The school must develop a written admissions policy. The admission of students must be determined through an orderly process using published criteria which must be uniformly applied. Admissions must take into account the capacity of the student to undertake a course or courses of study and the capacity of the school to provide instructional and other support services the student needs to complete the program. (4-17-08)T

b. There must be a clearly defined policy for the readmission of students dismissed from the school. The readmission of students dismissed under this policy must be consistent with the recognized standards of admission to the school. (4-17-08)T

c. The school must establish and adhere to a clear and fair policy regarding due process in disciplinary matters, and publish this policy in a handbook, which must include other rights and responsibilities of the students and the grievance procedure. This handbook must be supplied to each student upon enrollment in the school. The school must provide the name and contact information for the individual who is responsible for dealing with student grievances and other complaints and for handling due process procedures. (4-17-08)T

d. The school must provide written information to prospective students prior to enrollment to include the following: (4-17-08)T

i. Information describing the purpose, length, and objectives of the courses or courses of study; (4-17-08)T

ii. Completion requirements for the courses or courses of study; (4-17-08)T

- iii. The schedule of tuition, fees, and all other charges and all expenses necessary for completion of the courses or courses of study; (4-17-08)T
 - iv. Cancellation and refund policies; (4-17-08)T
 - v. An explanation of satisfactory progress, including an explanation of the grading/assessment system; (4-17-08)T
 - vi. The calendar of study including registration dates, beginning and ending dates for all courses, and holidays; (4-17-08)T
 - vii. A complete list of instructors and their qualifications; (4-17-08)T
 - viii. A listing of available student services; and (4-17-08)T
 - ix. Other information about the courses or courses of study that are likely to affect the decision of the student to enroll in the school. (4-17-08)T
- e.** Accurate and secure records must be kept for all aspects of the student record including, at minimum, admissions information, and the courses each student completed. (4-17-08)T
- 04. Standard IV - Faculty Qualifications and Compensation.** (4-17-08)T
- a.** Instructor qualifications (training and experience) must be described and the assigned location for each instructor must be identified. (4-17-08)T
 - b.** There must be a sufficient number of full-time instructors to maintain the continuity and stability of courses. (4-17-08)T
 - c.** The ratio of instructors to students in each course must be sufficient to assure effective instruction. (4-17-08)T
 - d.** Commissions may not be used for any portion of the faculty compensation. (4-17-08)T
 - e.** Procedures for evaluating instructors must be established. Provisions for student evaluation are recommended. (4-17-08)T
- 05. Standard V - Resources, Finance, Facilities, and Instructional Resources.** (4-17-08)T
- a.** Adequate financial resources must be provided to accomplish instructional objectives and to effectively support the instructional program, including teaching facilities, instructional materials, supplies and equipment, instructors, staff, library, and the physical and instructional technology infrastructure. (4-17-08)T
 - b.** The school must have sufficient resources so that, together with tuition and fees, it is able to complete its educational obligations to currently enrolled students. If the school is unable to fulfill its obligations to students, the school must make arrangements with another proprietary school to have students complete a comparable course or courses of study (a teach-out provision). (4-17-08)T
 - c.** Financial records and reports of the school must be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a school shall be kept in accordance recognized financial accounting methods. (4-17-08)T
 - d.** The school must have adequate instructional resource materials available to students, either on site or through electronic means. These materials must be housed in a designated area and be available for students and instructors with sufficient regularity and at appropriate hours to support achievement of course objectives or to promote effective teaching. (4-17-08)T

e. If the school relies on other schools or entities to provide library resources or instructional resources, the school must demonstrate how these arrangements effectively meet the needs of students and faculty. These arrangements must be documented through written agreements. Student and faculty use must be documented and frequently evaluated to ensure quality services are being provided. (4-17-08)T

302. THE BOARD MAY NOTIFY THE PROPRIETARY SCHOOL OF ADDITIONAL INFORMATION REQUIRED.

If PTE is unable to determine the nature and activities of a school on the basis of the information provided by the school under this rule, then PTE may notify the school of additional information that it will be required to provide in connection with the application for registration. (4-17-08)T

01. Verification of Information. PTE may verify the accuracy of submitted information by inspection, visitation, or any other means it considers necessary. The applicant school shall be responsible for any costs PTE incurs including travel, associated with this review. (4-17-08)T

02. Criteria for Approval or Denial of Registration. To be approved for registration, the school must demonstrate that it is in compliance with Chapter 24, Title 33, Idaho Code and this rule, including all of the standards described in Subsections 300.08.a. through 300.08.e. of this rule. A school must remain in compliance for the registration year. (4-17-08)T

03. Public Information. All information submitted to PTE is public information, and is subject to disclosure as set forth in the Public Records Act, Title 9, Chapter 3, Idaho Code. (4-17-08)T

04. Certificate of Registration. (4-17-08)T

a. A certificate of registration will be issued to a proprietary school that has paid its registration fee and been approved under this rule. A certificate evidencing initial registration will be effective the date it is issued, and continue through June 30 of the next succeeding year. A renewal certificate will be for the period July 1 through June 30 of the next succeeding year. No school that is registered with PTE shall advertise or represent in any manner that it is accredited by PTE. An institution may only represent that it is: "Registered with Idaho Division of Professional-Technical Education." Registration is not an endorsement of the school. (4-17-08)T

b. If a school wishes to offer additional courses or courses of study during the course of a registration year that were not included in its application to PTE prior to issuance of the certificate of registration, then the school may submit a supplemental application to PTE, on a form approved by PTE, and pay any additional registration fees that are applicable. If approved, PTE will issue a revised certificate of registration evidencing such approval. (4-17-08)T

05. Disapproval and Appeal. If a proprietary school's request for initial registration or a renewal of registration is disapproved by PTE, then the school may appeal such decision in accordance with Chapter 52, Title 67, Idaho Code. The request must be in writing and made to PTE within thirty (30) days of the date the school is notified of the disapproval. (4-17-08)T

06. Withdrawal of Approval. (4-17-08)T

a. PTE may refuse to renew, or may revoke or suspend approval of a school's registration by giving written notice and the reasons therefore to the school. The school may request a hearing under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (4-17-08)T

b. Withdrawal of approval may be for one (1) or more of the following reasons: (4-17-08)T

i. Violation of Chapter 24, Title 33, Idaho Code or this rule. (4-17-08)T

ii. Providing false, misleading, deceptive, or incomplete information to PTE. (4-17-08)T

iii. Presenting to prospective or current students information about the school which is false,

fraudulent, misleading, deceptive, or inaccurate in a material respect; or (4-17-08)T

iv. Refusing to allow reasonable inspection or to supply reasonable information after a written request by PTE has been received. (4-17-08)T

c. If any information contained in the application submitted by the school becomes incorrect or incomplete, then the registered school shall notify PTE of such change within thirty (30) days. A school that ceases operation during the course of a registration year shall immediately notify PTE of this event. (4-17-08)T

07. Agent's Permit. Each proprietary school shall ensure that its agents have a valid permit, and that all of its agents are in compliance with Section 33-2404, Idaho Code. The school shall complete a criminal history check that includes the State Bureau of Identification, Federal Bureau of Investigation and statewide sex offender registry for each agent having direct contact with minors in the minor's home or at secondary schools, prior to making application for the agent's permit. (4-17-08)T

08. Annual Agent's Permit Fee. The annual fee for the agent's permit shall be fifty dollars (\$50.00). The agent's permit must be renewed annually upon reapplication and proper qualifications, as required by Section 33-2404, Idaho Code. (4-17-08)T

09. Surety Bond. Each proprietary school shall comply with the provisions in Section 33-2406, Idaho Code, relating to a surety bond. (4-17-08)T

10. Student Tuition Recovery Account. Each proprietary school shall comply with the provisions of Section 33-2407, Idaho Code, relating to a student tuition recovery account. (4-17-08)T

303. -- 999. (RESERVED).

IDAPA 08 - DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-0802

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 17, 2008.

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 Sections 33-1258 and 33-105, Idaho Code.

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

Friday - June 20, 2008 - 1:00 p.m.

**Len B. Jordan Building, 2nd Floor
Lewis & Clark Conference Room
650 West State Street, Boise, ID**

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

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

This rule change addresses concerns regarding the definition of “educationally related” credits for recertification for educators and that it might limit or discourage teachers from seeking another teaching degree or new endorsement. The rule change also explicitly states that all coursework commencing prior to September 1, 2008 will be accepted for recertification, and specifies the availability of an appeal procedure.

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

This temporary rule is necessary because it confers a benefit on educators.

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 Section 67-5220, Idaho Code, negotiated rulemaking was conducted. This rule is the result of discussion and negotiation between legislators, the State Department of Education and the Idaho Education Association.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Christina Linder, (208) 332-6886.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2008.

DATED this 1st Day of May, 2008.

Tom Luna
Superintendent of Public Instruction
State Department of Education
650 West State St., 2nd Floor
PO Box 83720, Boise, ID 83720-0027
(208) 332-6812; f (208) 334-2228

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0202-0802

060. APPLICATION PROCEDURES / PROFESSIONAL DEVELOPMENT.

01. Application for Idaho Certificate. To obtain, renew, or reinstate an Idaho certificate, the applicant will submit an application on a form supplied by the State Department of Education or the State Division of Professional-Technical Education. (3-16-04)

02. State Board of Education Requirements for Professional Growth. (4-1-97)

a. Credits taken for recertification must be educationally related to the professional development of the applicant. (4-1-97)

i. Credits must be specifically tied to content areas and/or an area of any other endorsement; or ~~(4-2-08)~~(4-17-08)T

ii. Credits must be specific to pedagogical best practices or for administrative/teacher leadership; or (4-2-08)

iii. Credits must be tied to a specific area of need designated by district administration. (4-2-08)

b. Graduate or undergraduate credit will be accepted for recertification. Credit must be college transferable and completed through an accredited college or university. (4-1-97)

c. All requests for equivalent inservice training to apply toward recertification must be made through the State Department of Education upon recommendation of the board of trustees consistent with the State Department of Education guidelines. Individuals holding Professional-Technical Specialist Certificates must receive State Division of Professional-Technical Education approval of inservice training and course work prior to applying for renewal. (3-16-04)

d. At least fifteen (15) hours of formal instruction must be given for each hour of inservice credit granted. (4-1-97)

e. Recertification credits may not be carried over from one (1) recertification period to the next. (4-1-97)

f. Certificated personnel teaching in subjects outside their major area of preparation will be encouraged to complete the courses required for major certification endorsement. (4-1-97)

g. All credits gained through coursework taken during the validity period of the certificate and commencing prior to September 1, 2008 shall be accepted toward recertification. (4-17-08)T

h. An appeals process, developed by the State Department of Education in conjunction with the Professional Standards Commission, shall be available to applicants whose credits submitted for recertification, in part or as a whole, are rejected for any reason if such denial prevents an applicant from renewing an Idaho certificate.

An applicant whose credits submitted for recertification are rejected, in part or as a whole, within six (6) months of the expiration of the applicant's current certification shall be granted an automatic appeal and a temporary certification extension during the appeal or for one (1) year, whichever is greater. (4-17-08)T

- 03. State Board of Education Professional Development Requirements.** (4-1-97)
- a.** Districts will have professional development plans. (4-1-97)
- b.** All certificated personnel will be required to complete at least six (6) semester hours or the equivalent within the five (5) year period of validity of the certificate being renewed. (4-1-97)
- c.** At least three (3) semester credits will be taken for university or college credit. Verification will be by official transcript. (4-1-97)

IDAPA 08 - DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-0802

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is February 28, 2008 for cut scores and May 1, 2008 for content standards.

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 33-2002, 33-105, and 33-107 Idaho Code, and 34 CFR Part 200 Title I - Improving the Academic Achievement of the Disadvantaged.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 18, 2008.

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 following are incorporated by reference into this rule: Cut-Score Ranges for the IAA Science Proficiency Levels and Proficiency Level descriptors for the 2008 Idaho Alternate Assessment.

The Idaho Alternative Assessment Extended Content Standards for Language Arts, Mathematics and Science are revised in alignment with the Idaho Content Standards as updated in 2006, and the name of standards is changed to the Idaho Extended Content Standards to better reflect the parallel alignment to the Idaho Content Standards.

The Idaho Content Standards will be updated to include course-specific math content standards for high school because current 9th and 10th grade standards do not reflect the additional courses required for the graduating class of 2013. These content standards are for Algebra I, Geometry, Algebra II, Math Analysis, Math Analysis of Personal Finance, Technical Math, Pre-calculus, AP Calculus, and AP Statistics.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) & (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: This temporary rule is necessary because of compliance with deadlines in amendments to governing law or federal programs, and it confers a benefit on administrators, educators, parents and students.

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 need for temporary rulemaking and the simple nature of the proposed rule change for the cut scores. A group of teachers worked together with the State Department of Education to refine and address the public comment received on the course-specific standards from what was proposed and vacated rulemaking from last year.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cindy Johnstone, (208) 332-6975, for math content standards, Jean Taylor, (208) 332-6918, for extended content standard, or Allison McClintick from the State Board of Education, (208) 332-1579, for alternate assessment cut scores.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2008.

DATED this 1st Day of May, 2008.

Tom Luna, Superintendent of Public Instruction
State Department of Education
650 West State St., 2nd Floor
PO Box 83720, Boise, ID 83720-0027
(208) 332-6812/ fax (208) 334-2228

THE FOLLOWING IS THE TEXT OF DOCKET NO. 08-0203-0802

004. INCORPORATION BY REFERENCE.

The following documents are incorporated into this rule: (3-30-07)

01. The Idaho Content Standards. The Idaho Content Standards as adopted by the State Board of Education on ~~November 1~~ April 17, 2006~~8~~. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. ~~(4-2-08)(5-1-08)T~~

02. The Idaho English Language Development Standards. The Idaho English Language Development Standards as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

03. The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures. The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

04. The Idaho English Language Assessment (IELA) Achievement Standards. The Idaho English Language Assessment (IELA) Achievement Standards as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

05. The Idaho Standards Achievement Tests (ISAT) Achievement Standards. Achievement Standards as adopted by the State Board of Education on May 30, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

06. The Idaho ~~Alternative Assessment~~ Extended Content Standards. The Idaho ~~Alternative Assessment~~ Extended Content Standards as adopted by the State Board of Education on ~~April 20~~ February 28, 2006~~8~~. Copies of the document can be found at the State Board of Education website at <http://www.boardofed.idaho.gov>. ~~(4-2-08)(5-1-08)T~~

07. The Idaho Alternative Assessment Extended Achievement Standards. Alternative Assessment Extended Achievement Standards as adopted by the State Board of Education on ~~April 20~~ February 28, 2006~~8~~. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. ~~(4-2-08)(2-28-08)T~~

08. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing. As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

09. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually Impaired. As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

IDAPA 11 - IDAHO STATE POLICE

11.11.05 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR IDAHO DEPARTMENT OF JUVENILE CORRECTIONS DIRECT CARE STAFF

DOCKET NO. 11-1105-0801 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 3, 2008.

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 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 18, 2008.

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:

Establishes the training and certification requirements for Idaho Department of Juvenile Corrections Direct Care Staff.

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 training and certification of direct care staff is critical for the proper staffing and operation of the new 24-bed co-occurring disorder unit in Nampa, due to open in FY 2009.

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 affected party drafted the rule and submitted it to POST Council for approval.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Trish Christy at (208) 884-7253.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2008.

DATED this 17th day of April, 2008.

Jeffrey J. Black
Executive Director
Idaho State Police/Peace Officer Standards and Training Council
700 S. Stratford Dr.
P.O. Box 700, Meridian, ID 83680-0700
(208) 884-7251/(208) 884-7295

THE FOLLOWING IS THE TEXT OF DOCKET NO. 11-1105-0801

IDAPA 11, TITLE 11, CHAPTER 05

**11.11.05 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL
FOR IDAHO DEPARTMENT OF JUVENILE CORRECTIONS DIRECT CARE STAFF**

000. LEGAL AUTHORITY.

01. Section 20-504(3), Idaho Code. Pursuant to Section 20-504(3), Idaho Code, the Idaho Department of Juvenile Corrections shall establish and administer all secure residential facilities including all state juvenile corrections centers. (4-3-08)T

02. Section 20-504(11), Idaho Code. Pursuant to Section 20-504(11), Idaho Code, the Idaho Department of Juvenile Corrections shall have authority to adopt such administrative rules as are deemed necessary for the functioning of the department and the implementation and administration of the juvenile corrections act. (4-3-08)T

03. Section 20-531(4), Idaho Code. Pursuant to Section 20-531(4), Idaho Code, the Idaho Department of Juvenile Corrections shall adopt standards, policies, and procedures for the regulation and operation of secure facilities. (4-3-08)T

04. Section 19-5109(6), Idaho Code. Pursuant to Section 19-5109(6), Idaho Code, the Peace Officer Standards and Training Council may, upon recommendation of the juvenile training council, implement minimum training and certification standards for employees of the department who are engaged in the direct care and supervision of juveniles. (4-3-08)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 11.11.05, "Rules of the Idaho Peace Officer Standards and Training Council for Idaho Department of Juvenile Corrections Direct Care Staff," IDAPA 11, Title 11, Chapter 05. (4-3-08)T

02. Scope. These rules are established to provide the opportunity for all Idaho Department of Juvenile Corrections staff who are engaged in the direct care and supervision of juveniles to receive quality, consistent training to ensure that juveniles in custody receive appropriate care and supervision. (4-3-08)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, any written statements which might pertain to the interpretations of these rules will be available for public inspection to the extent allowed by Title 9, Chapter 3, Idaho Code, and will be available at the Department of Juvenile Corrections, 400 N. 10th (second floor), P.O. Box 83720, Boise, Idaho 83720-0285. Additional written interpretations are available for public inspection at the Idaho State Police, Peace Officer Standards and Training, 700 South Stratford Drive, P.O. Box 700, Meridian, Idaho 83680-0700. (4-3-08)T

003. ADMINISTRATIVE APPEALS.

Any appeals allowed under these rules shall be governed by the Idaho Administrative Procedure Act and by the IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (4-3-08)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. (4-3-08)T

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

01. Idaho State Police, Peace Officer Standards and Training. The principal place of business of the Idaho State Police, Peace Officer Standards and Training, is in Meridian, Idaho. The office is located at 700 South Stratford Drive, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Peace Officer Standards and Training Academy, P.O. Box 700, Meridian, Idaho 83680-0700. The telephone number of the office is (208) 884-7250. The facsimile number of the office is (208) 884-7295. (4-3-08)T

02. Idaho Department of Juvenile Corrections. The principal place of business of the Idaho Department of Juvenile Corrections is in Boise, Idaho. The office is located at 400 North 10th Street, Second Floor, Boise, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Idaho Department of Juvenile Corrections, P.O. Box 83720, Boise, Idaho 83720-0285. The telephone number of the office is (208) 334-5100. The facsimile number of the office is (208) 334-5120. (4-3-08)T

006. PUBLIC RECORDS ACT COMPLIANCE.

The rules contained herein have been promulgated according to the provisions of Title 67, Chapter 52, Idaho Code, and are public record. (4-3-08)T

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Basic Juvenile Corrections Academy. A basic course of instruction for direct care staff of the Idaho Department of Juvenile Corrections as recognized by POST Council. (4-3-08)T

02. Challenge Exam. A test to determine an IDJC staff's competence for waiver of successful completion of the basic Juvenile Corrections Academy. (4-3-08)T

03. Council. As used in this chapter, refers to the POST Council. (4-3-08)T

04. Department. As used in this chapter, refers to the Idaho Department of Juvenile Corrections, IDJC. (4-3-08)T

05. Director. As used in this chapter, refers to the Director of the Idaho Department of Juvenile Corrections. (4-3-08)T

06. Juvenile Corrections Direct Care Staff. Any full or part-time employee of the department whose primary job duties include providing for the safety, care, education, protection, or supervision of juveniles committed to the custody of the department. Current job titles specifically included in this definition are, but are not limited to: (4-3-08)T

a. Rehabilitation Technician; (4-3-08)T

b. Rehabilitation Technician Supervisor; (4-3-08)T

c. Rehabilitation Specialist; (4-3-08)T

d. Rehabilitation Specialist Associate; (4-3-08)T

e. Instructor - DJC; (4-3-08)T

f. Instructor Specialist; (4-3-08)T

g. Instructor Assistant; and (4-3-08)T

h. Safety and Security Officer. (4-3-08)T

07. Juvenile Training Council. An advisory group to the POST Council that is represented by the Director of the Department of Juvenile Corrections, a Magistrate, a county Juvenile Detention Director, a county Chief Probation Officer, a county Commissioner, a county Clerk, and a county Sheriff. (4-3-08)T

08. Mandatory Certification. To issue a certificate to an IDJC direct care staff based upon successful completion of the mandatory training requirements established by POST Council. (4-3-08)T

09. Voluntary Certification. To issue a certificate to an IDJC direct care staff based upon successful completion of the voluntary training requirements established by POST Council. (4-3-08)T

011. -- 099. (RESERVED).

100. JUVENILE CORRECTIONS DIRECT CARE STAFF CERTIFICATION.

01. Property. Certificates and awards remain the property of the Council and are only valid as long as the direct care staff is employed by the department in a direct care staff role as defined in Subsection 010.06 of these rules. (4-3-08)T

02. Eligibility. To be eligible for the award of a Basic Juvenile Corrections Direct Care Staff Certificate, each applicant must be a full or part-time employee of the department in a direct care staff role. (4-3-08)T

03. Applications. All applications for award of the Basic Juvenile Corrections Direct Care Staff Certificate shall be completed on the prescribed form "Application for Certification" as provided by the POST Council. (4-3-08)T

04. Submission. The Application for Certification form must be submitted by the direct care staff/applicant to the applicant's department head. The department head shall forward the application to the Council. Certificates will be issued to the department head for award to the applicant. (4-3-08)T

05. Minimum Standards. Each applicant must meet the minimum standards for employment and training as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," with the exception of fitness which will be left to the discretion of the department. (4-3-08)T

06. Certification. The following dates govern voluntary and mandatory certification. (4-3-08)T

a. From July 1, 2008 through June 30, 2010 any juvenile corrections direct care staff may receive voluntary certification from POST upon successful completion of the requirements outlined in Sections 101 or 102 of these rules. Earning voluntary certification during this period will satisfy the mandatory requirement in Subsection 100.06 of these rules. This option will close on June 30, 2010. (4-3-08)T

b. If employed after June 30, 2010 every juvenile corrections direct care staff must be certified by the Peace Officer Standards and Training Council within one (1) year after first being employed unless granted additional time to complete certification by the POST Council as set forth in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 030.11. (4-3-08)T

c. Juvenile corrections direct care staff employed prior to June 30, 2010 shall comply with the training and certification provisions of Sections 100 and 101 of these rules by June 30, 2012. However, the requirement for successful completion of the POST Basic Juvenile Corrections Academy will be waived if the direct care staff scores a minimum of seventy-five percent (75%) on the POST juvenile corrections certification examination approved by the Council. The direct care staff will be allowed two (2) attempts to pass the examination. The attempts must be no less than thirty (30) days apart and no more than six (6) months apart. If the direct care staff fails both attempts or fails to retake the examination within six (6) months, they must successfully complete the POST Basic Juvenile Corrections Academy to be certified. (4-3-08)T

07. Decertification. The Council may decertify any juvenile corrections direct care staff in the same manner as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.03. (4-3-08)T

101. THE BASIC CERTIFICATE.

The following requirements are necessary for award of the basic certificate to hired department direct care staff.

(4-3-08)T

01. Probation. The applicant must have satisfactorily completed a minimum one thousand forty (1,040) hour probationary period with the department, which may include basic juvenile corrections academy time. This period must reflect continuous employment as direct care staff with the department. The probationary period may be extended by the department which could delay certification until the probationary period is satisfactorily completed. This probationary period of one thousand forty (1,040) hours must be continuous with the department when applying for certification. The probationary period shall not extend over two thousand eighty (2,080) hours for certification purposes.

(4-3-08)T

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

(4-3-08)T

03. Juvenile Corrections on the Job Training. Successful completion of forty (40) hours of approved and supervised juvenile corrections training provided by the department is required. Evidence of such training must be submitted by the applicant's employer to POST Council prior to certification.

(4-3-08)T

102. CHALLENGE PROCEDURE.

01. Eligibility for Certification - Challenge Procedure. Any juvenile corrections direct care staff employed by the department for a minimum of one (1) year or who, within the last five (5) years, has been employed by another state, county, or the federal government as a juvenile corrections direct care staff, or a student who has satisfactorily completed a Basic Juvenile Corrections Academy equivalent to Idaho's POST Basic Juvenile Corrections Academy within the last three (3) years, shall be eligible for certification in the state of Idaho without attending the Basic Juvenile Corrections Academy if approved by the division administrator for the unit in which the direct care staff will be employed, and provided the staff person:

(4-3-08)T

a. Documents. Submits a POST Juvenile Corrections Certification Challenge Packet to POST Council, which must include copies of transcripts, certificates, diplomas, or other documents that substantiate the direct care staff's training and experience;

(4-3-08)T

b. Examination. Passes the POST juvenile corrections certification examination approved by the Council and administered by a POST Training Specialist, conducted in the manner set forth in Subsection 100.06 of these rules;

(4-3-08)T

c. Training. Attends and passes the following POST-approved courses:

(4-3-08)T

i. The Idaho POST Juvenile Corrections Academy's "Appropriate Use of Physical Force" training;

(4-3-08)T

ii. "Legal and Liability Issues";

(4-3-08)T

iii. "Code of Ethical Conduct";

(4-3-08)T

iv. "Prohibition of Abuse of Residents";

(4-3-08)T

v. "Suicide Prevention";

(4-3-08)T

vi. "Prison Rape Elimination Act;" and

(4-3-08)T

vii. "Incident Reporting;" and (4-3-08)T

d. Satisfactorily completes the employment probationary period as required by Subsection 101.01 of these rules. (4-3-08)T

02. Challenge Academy. In order to facilitate the POST certification of its direct care staff, with the approval of the POST Executive Director, the department may offer academies specific to those topics identified in Subsection 102.01.c. of these rules. In all such cases, only POST-certified courses will be included and each will be led by POST-certified instructors. (4-3-08)T

03. Direct Care Staff Approved for Participation in the Challenge. Juvenile corrections direct care staff approved for participation in the challenge process may also be provided an opportunity to test for POST certification following successful completion of a challenge academy. All otherwise specified rules concerning POST certification testing will apply in these instances. (4-3-08)T

103. LAPSE OF JUVENILE CORRECTIONS CERTIFICATION.

The certification of any juvenile corrections direct care staff will be considered lapsed if the individual does not serve as a direct care staff for the department or as a POST-certified juvenile probation or juvenile detention officer in Idaho for two (2) consecutive years. (4-3-08)T

01. Over Two Years. A juvenile corrections direct care staff who has been out of full-time status with the department in a direct care staff role, or as a certified juvenile detention or juvenile probation officer in Idaho for over two (2) years and whose job requires that he be recertified, or who wishes to be recertified, must meet the following POST requirements: (4-3-08)T

a. Submit a POST Juvenile Corrections Certification Challenge Packet; (4-3-08)T

b. Pass the POST juvenile corrections certification examination approved by the Council, conducted in the manner set forth in Subsection 100.06.c. of these rules, administered by a POST Training Specialist; and (4-3-08)T

c. Satisfactorily complete a probationary period of not less than one thousand forty (1,040) hours of continuous employment in a direct care staff role with the department. (4-3-08)T

02. Over Three Years. A juvenile corrections direct care staff who has been out of full-time status with the department in a direct care staff role, or as a certified juvenile detention or juvenile probation officer in Idaho for over three (3) years, must attend the POST Basic Juvenile Corrections Academy in order to earn recertification. The Council may waive this requirement on a showing of good cause by the direct care staff supported by clear and convincing evidence that during a substantial part of the time out of full-time juvenile corrections direct care staff status, the individual was engaged in an occupation requiring juvenile corrections direct care staff training, skill, and experience. This evidence must be submitted with a POST Juvenile Corrections Certification Challenge Packet. Upon receiving a waiver, the direct care staff must meet the following POST requirements: (4-3-08)T

a. Pass the POST juvenile corrections certification examination approved by the Council, conducted in the manner set forth in Subsection 100.06.c. of these rules, administered by a POST Training Specialist; and (4-3-08)T

b. Satisfactorily complete a probationary period of not less than one thousand forty (1,040) hours of continuous employment in a direct care staff role with the department. (4-3-08)T

03. Over Five Years. A juvenile corrections direct care staff who has been out of full-time status with the department in a direct care staff role, or as a certified juvenile detention or juvenile probation officer in Idaho for over five (5) years must attend and pass the POST Basic Juvenile Corrections Academy in order to earn recertification. No waiver of this requirement will be granted by the Council. (4-3-08)T

104. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.03 - RULES GOVERNING CHILD SUPPORT SERVICES

DOCKET NO. 16-0303-0801 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 32-1214G and 56-203A, Idaho Code, and mandated by the Federal Deficit Reduction Act (DRA) of 2005.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 18, 2008.

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

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

This rule implements a federal mandate from the Deficit Reduction Act (DRA) of 2005. Each state is required to set up a process to collect a \$25 annual fee for each enforced child support case that has never participated in a cash assistance program. Collection of this annual fee is to take place once \$500 in support payments has been collected on each case, each year. For every \$25 collected, the federal government receives \$16.50 and states receive \$8.50. Idaho is planning to use the \$8.50 collections to help cover the federal share of the fee on cases in arrears where collection of the fee cannot be applied. Idaho must implement this program or face loss of federal TANF funds. We are also adding the office information as required by the Office of Administrative rules.

In February 2008, the Department of Health and Welfare adopted this rule as a temporary rule with an effective date of December 6, 2007. The temporary rule was published in the Idaho Administrative Bulletin, Volume 08-02, February 6, 2008, pages 21 and 22.

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

This rulemaking imposes a new \$25.00 dollar annual fee upon the non-custodial parent paying "enforced" child support payments. The Federal Budget Deficit Reduction Act of 2005 mandates that this fee be imposed in each child support case in which an individual has never received assistance under a program funded by the Temporary Assistance for Needy Families (TANF) program (Title IV-A of the Social Security Act) and where the state has collected more than \$500 in child support during the Federal Fiscal Year (FFY). Despite the fact that the federal law requiring this fee was passed during the 2005 Federal Legislative Session, the proposed federal regulation governing the application and imposition of this fee was not published until January 24, 2007.

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 projected fiscal impact for SFY 2009 is \$399,674 general fund dollars, which will be required in order to advance the payment of the federal share of the fee on cases which qualify for the fee, but on which collections cannot be applied to the fee due to existing case arrearages and inability to collect. (Not included in this fiscal impact statement is the total cost to the Department for system modification of \$192,960. Of this total, \$86,746 is the Child Support Program's responsibility.)

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because a federal mandate required this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kandace Yearsley at (208) 334-0620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2008.

DATED this 8th day of April, 2008.

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) 334-6558 fax
kovachs@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0303-0801

006. 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>. ()

0067. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

304. FEES.

01. Application Fee. At the time of application for child support services, a written application must be completed and a fee of twenty-five dollars (\$25) must be paid. The fee must be paid in advance of any services to be provided and is not refundable. (7-1-98)

02. Income Tax Offset Fees. A fee of twenty-five dollars (\$25) will be deducted each time child support is collected as a result of an income tax offset. (7-1-98)

03. Internal Revenue Service (IRS) Referral Fees. A fee of one hundred twenty-two dollars and fifty cents (\$122.50) shall be charged for a referral to the IRS for full collection of the child support obligation. (7-1-98)

04. Locate Fees. Child Support Services may charge an applicant/recipient a fee of ten dollars (\$10) for referral to FPLS for location of a non-custodial parent when no other child support services are being provided.

Child Support Services may also charge a fee of four dollars (\$4) for referral to the FPLS for a social security number search. Child Support Services may charge a fee of seventy cents (\$.70) for referral to FPLS for location of a non-custodial parent. (7-1-98)

05. Federally Mandated Annual Service Fees. Child Support Services must charge an annual fee of twenty-five dollars (\$25) for each Title IV-D enforcement case in which Child Support Services has collected and disbursed five hundred dollars (\$500) of support in the federal fiscal year. The fee will be billed to the child support obligor once five hundred dollars (\$500) of support has been collected during the relevant federal fiscal year provided the case otherwise qualifies. The fee will not be collected on any case in which the applicant/recipient has ever received benefits under a State or Tribal Title IV-A program, or from any child support obligor who is currently required to participate in Title IV-D services as an eligibility requirement for Food Stamps participation. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-0801
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2008.

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 56-203, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 18, 2008.

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

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

The Department is amending the Food Stamp rule regarding the calculation of self-employment income so that applicants who are self-employed, and who have high expenses in their self-employment enterprises, do not have their Food Stamp benefits denied or reduced based on self-employment income not actually available to them. This rule change aligns with the Department's philosophy of supporting employment so that Idahoans can be self-reliant.

Specifically, new language is being added to allow an applicant's actual income and actual expenses to be used in the calculation of self-employment income when determining eligibility for Food Stamp benefits.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because it confers a benefit to food stamp participants.

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 related to this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Rosie Andueza (208) 334-5553.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2008.

DATED this 29th day of April, 2008.

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) 334-6558 fax
kovachs@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0304-0801

426. SELF-EMPLOYMENT INCOME.

For the purposes of these rules, self-employment income is from a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. The Idaho Food Stamp Program recognizes two (2) types of self-employment businesses. (3-30-07)(5-1-08)T

01. Farming A Self-Employment Farmer. ~~The~~ To be considered a self-employed farmer, a person must receive, or expect to receive, an annual gross income of one thousand dollars (\$1000) or more ~~to be a self-employed farmer~~ earned from farming activities. (3-30-07)(5-1-08)T

02. Non-Farming All Other Self-Employment Businesses. ~~All other self-employment businesses.~~ (3-30-07)(5-1-08)T

~~427. COMPUTING NON-FARMING SELF-EMPLOYMENT INCOME STANDARD DEDUCTION.~~
~~Net self-employment income for a non-farming business is computed by subtracting fifty percent (50%) from the gross income as an allowable standard deduction from non-farming self-employment earnings.~~ (3-30-07)

~~428.7. WHEN NON-FARMING AVERAGING SELF-EMPLOYMENT INCOME MUST BE AVERAGED OVER TWELVE MONTHS.~~

01. Annual Self-Employment Income. ~~Non-farming~~ When self-employment income, ~~if it~~ is considered annual support by the household, ~~must be averaged~~ the Department averages the self-employment income over a twelve-month (12) period, even if: (5-1-08)T

a. ~~if~~ The income is received over a shorter period of time ~~period~~ than twelve (12) months; and (5-1-08)T

b. ~~if~~ The household receives income from other sources in addition to self-employment. (3-30-07)(5-1-08)T

~~429. AVERAGING SEASONAL NON-FARMING SELF-EMPLOYED INCOME.~~

02. Seasonal Self-Employment Income. ~~A~~ ~~Seasonally~~ ~~non-farming~~ self-employed ~~households~~ ~~individual~~ receives income from self-employment during part of the year. When self-employment income is considered seasonal, the Department averages ~~self-employment income~~ ~~intended to meet the household's needs~~ for only the part of the year ~~must be averaged over the period of time~~ the income is intended to cover. (3-30-07)(5-1-08)T

~~430.28. COMPUTING NON-FARMING CALCULATION OF SELF-EMPLOYMENT INCOME.~~

~~Compute non-farming~~ The Department calculates self-employment income by adding ~~projected~~ monthly earnings income to ~~projected~~ capital gains and subtracting ~~the self-employment standard~~ a deduction for expenses as determined in Subsection 428.03 of this rule. (3-30-07)(5-1-08)T

01. Determine How Monthly Earnings Income Is Determined. If no income fluctuations are expected, the average monthly income amount is projected for the certification period. If past earnings are income does not reflective of expected future earnings income, make a proportionate adjustment is made to the expected monthly earnings income. Determine the monthly earnings by the using one (1) of the following: (3-30-07)(5-1-08)T

a. ~~If tax returns are available, use the information on the return to determine an appropriate average monthly earnings amount. Do not assume that the tax return reflects a full twelve (12) months of self-employment.~~ (3-30-07)

b. ~~If no tax return is available, the self-employment income is averaged over the period of time the enterprise has been in operation,~~ (3-30-07)

02. ~~Add Monthly Capital Gains Income.~~ Capital gains include profit from the sale or transfer of capital assets used in self-employment. The Department ~~calculates~~ capital gains using the federal income tax method. ~~Determine~~ If the household expects to receive any capital gains income from self-employment assets during the certification period, ~~Add~~ this amount is added to the monthly earnings income, as determined in Subsection 43028.01 of ~~these~~ this rules, to determine the gross monthly income. (3-30-07)(5-1-08)T

03. ~~Subtract Non-Farming Self-Employment Standard Expense Deduction.~~ ~~Subtract fifty percent (50%) of the gross monthly income as a self-employment standard deduction. This is the projected non-farming self-employment monthly income.~~ The Department uses the standard self-employment deduction in Subsection 428.03.a. of this rule, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the expenses as described in Subsection 428.03.b. of this rule. (3-30-07)(5-1-08)T

a. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as determined in Subsections 428.01 and 428.02 of this rule; or (5-1-08)T

b. The self-employment actual expense deduction is determined by subtracting the actual allowable expenses from the gross monthly self-employment income. The following items are not allowable expenses and may not be subtracted from gross monthly self-employment income. (5-1-08)T

i. Net losses from previous tax years; (5-1-08)T

ii. Federal, state, and local income taxes; (5-1-08)T

iii. Money set aside for retirement; (5-1-08)T

iv. Work-related personal expenses such as transportation to and from work; and (5-1-08)T

v. Depreciation. (5-1-08)T

~~431. COMPUTING FARMING SELF-EMPLOYMENT INCOME.~~

~~For farming self-employment, compute net income by subtracting allowable expenses from the gross income as follows in Subsections 431.01 through 431.04 of these rules.~~ (3-30-07)

~~01. Determine Monthly Earnings.~~ ~~If no income fluctuations are expected, the average monthly amount is projected for the certification period. If past earnings are not reflective of expected future earnings, make a proportionate adjustment to the expected monthly earnings. Determine the monthly earnings by using one (1) of the following:~~ (3-30-07)

~~a.~~ ~~If tax returns are available, use the information on the return to determine an appropriate average monthly earnings amount. Do not assume that the tax return reflects a full twelve (12) months of farming self-employment.~~ (3-30-07)

~~b.~~ ~~If no tax return is available, the farming self-employment income is averaged over the period of time the enterprise has been in operation;~~ (3-30-07)

~~02. Add Monthly Capital Gains Income.~~ ~~Capital gains include profit from the sale or transfer of capital assets used in self-employment. Calculate capital gains using the federal income tax method. Determine if the household expects to receive any capital gains income from farming self-employment assets during the certification period. Add this amount to the monthly earnings as determined in Subsection 431.01 of these rules to determine the gross monthly income.~~ (3-30-07)

~~03. Subtract Allowable Expenses.~~ ~~Subtract any allowable expenses for farming self-employment, except those listed in Subsection 431.04 of these rules for expenses that are not allowed. This is the projected farming self-employment monthly income.~~ (3-30-07)

~~04. Costs Not Allowed for Farming Self-Employment Expenses.~~ ~~The following items are not allowed~~

- ~~as costs of doing business and may not be subtracted from the farming self-employment income. (3-30-07)~~
- ~~a. Net losses from previous certification periods; (3-30-07)~~
 - ~~b. Federal, State, and local income taxes; (3-30-07)~~
 - ~~c. Money set aside for retirement; (3-30-07)~~
 - ~~d. Work related personal expenses such as transportation to and from work; and (3-30-07)~~
 - ~~e. Depreciation. (3-30-07)~~

~~432. AVERAGING FARM SELF-EMPLOYMENT INCOME.~~

~~To be a self-employed farmer, the farmer must get or expect to get annual gross income of one thousand dollars (\$1000) or more from farming. Self-employed farmers will have their income and income-producing expenses averaged over a twelve (12) month period. This average monthly income is used to compute the amount of the Food Stamp benefits. If the average income does not reflect actual income due to a large increase or decrease in business, the farm self-employment income must be calculated based on expected earnings. For a cash crop farmer, use the gross amount from the most recent crop sale. (6-1-94)~~

~~43329. OFFSETTING FARM SELF-EMPLOYMENT LOSSES.~~

~~If a farmer's cost of producing self-employment income results in a loss, the loss must be Department subtracted the loss from other countable income in the household in accordance with 7 CFR 273.11(a)(2)(ii)(A) and (B). First, subtract the loss from non farm self-employment income. If any loss remains, subtract the remaining loss from the total of earned income. If any loss remains, subtract the remaining loss from the total of unearned income. Net losses from the self-employment income of a farmer are prorated over the year. (6-1-94)(5-1-08)T~~

~~434. TERMINATION OF FARM SELF-EMPLOYMENT INCOME.~~

~~Where a farmer stops a farming operation during a certification period, remove the annualized income, expenses and loss for the remaining months in the certification period. (6-1-94)~~

~~4350. -- 499. (RESERVED).~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.08 - RULES GOVERNING TEMPORARY ASSISTANCE FOR FAMILIES IN IDAHO (TAFI)

DOCKET NO. 16-0308-0801

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2008.

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 45 CFR Parts 260-265.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 18, 2008.

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:

The Department is aligning the methodologies used to calculate income for self-employed individuals who apply for Temporary Assistance for Families in Idaho (TAFI) cash assistance with those used in the food stamp rules. Use of the same methodologies will:

1. Simplify the process for determining income for self-employed individuals who are applying for TAFI and food stamps; and
2. Reduce the opportunity for errors that may occur when different methods are used to determine eligibility for these two programs.

New language is being added to the rule that provides for two options in the determination of self-employment income. These are the same options being added to the food stamp rules in this same Bulletin under Docket No. 16-0304-0801. The new language includes:

1. Use of a standard 50% deduction from gross income;
2. Use of methodology that would allow an applicant's actual income and actual expenses to be used in the calculation of self-employment income when determining eligibility for TAFI Program benefits.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate because it confers a benefit to TAFI participants.

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 related to this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary rule, contact Genie Sue Weppner (208) 334-5656.

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 July 25, 2008.

DATED this 29th day of April, 2008.

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) 334-6558 fax
kovachs@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0308-0801

229. ~~CALCULATION OF SELF-EMPLOYMENT INCOME.~~

~~Countable self-employment income is the difference between the gross receipts and the allowable costs of producing the income, if the amount is expected to continue. Self-employment income must be calculated by one (1) of the methods listed in Subsections 229.01 and 229.02. For the purposes of these rules, self-employment income is from a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. (7-1-98)(5-1-08)T~~

~~**01. Self-Employed at Least One Year. For individuals who are self-employed for at least one (1) year, income and expenses are averaged over the past twelve (12) months. (7-1-98)**~~

~~**02. Self-Employed Less Than One Year. For individuals who are self-employed for less than one (1) year, income and expenses are averaged over the period of time the business has been in operation. (7-1-98)**~~

230. AVERAGING SELF-EMPLOYMENT ALLOWABLE EXPENSES INCOME.

~~Operating expenses deducted from self-employment income are listed in Subsections 230.01 through 230.16. (7-1-98)~~

~~**01. Labor Annual Self-Employment Income. Labor paid to individuals not in the family. When self-employment income is considered annual support by the household, the Department averages the self-employment income over a twelve (12) month period, even if: (7-1-98)(5-1-08)T**~~

~~**a. The income is received over a shorter period of time than twelve (12) months; and (5-1-08)T**~~

~~**b. The household receives income from other sources in addition to self-employment. (5-1-08)T**~~

~~**02. Materials Seasonal Self-Employment Income. Materials such as stock, seed and fertilizer. A seasonally self-employed individual receives income from self-employment during part of the year. When self-employment income is considered seasonal, the Department averages self-employment income for only the part of the year the income is intended to cover. (7-1-98)(5-1-08)T**~~

~~**03. Rent. Rent on business property. (7-1-98)**~~

~~**04. Interest. Interest paid to purchase income producing property. (7-1-98)**~~

~~**05. Insurance. Insurance paid for business property. (7-1-98)**~~

~~**06. Taxes. Taxes on income producing property. (7-1-98)**~~

~~**07. Business Transportation. Business transportation as defined by the IRS. (7-1-98)**~~

~~**08. Maintenance. Landscape and grounds maintenance. (7-1-98)**~~

~~**09. Lodging. Lodging for business related travel. (7-1-98)**~~

~~**10. Meals. Meals for business related travel. (7-1-98)**~~

~~**11. Use of Home. Costs of partial use of home for business. (7-1-98)**~~

~~**12. Legal. Legal fees for business related issues. (7-1-98)**~~

- ~~13. Shipping. Shipping for business related costs. (7-1-98)~~
- ~~14. Uniforms. Business related uniforms. (7-1-98)~~
- ~~15. Utilities. Utilities for business property. (7-1-98)~~
- ~~16. Advertising. Business related advertising. (7-1-98)~~

231. CALCULATION OF SELF-EMPLOYMENT ~~EXPENSES NOT ALLOWED~~ INCOME.

~~Self-employment expenses not allowed are listed in Subsections 231.01 through 231.09. The Department calculates self-employment income by adding monthly income to capital gains and subtracting a deduction for expenses as determined in Subsection 231.03 of this rule. (7-1-98)(5-1-08)T~~

~~01. **Payments on the Principal of Real Estate** **How Monthly Income is Determined.** *Payments on the principal of real estate mortgages on income-producing property. If no income fluctuations are expected, the average monthly income amount is projected for the certification period. If past income does not reflect expected future income, a proportionate adjustment is made to the expected monthly income.* (7-1-98)(5-1-08)T~~

~~02. **Purchase of Capital Assets or Durable Goods** **Capital Gains Income.** *Purchases of capital assets, equipment, machinery, and other durable goods. Payments on the principal of loans for these items. Capital gains include profit from the sale or transfer of capital assets used in self-employment. The Department calculates capital gains using the federal income tax method. If the household expects to receive any capital gains income from self-employment assets during the certification period, this amount is added to the monthly income, as determined in Subsection 231.01 of this rule, to determine the gross monthly income.* (7-1-98)(5-1-08)T~~

~~03. **Taxes** **Self-Employment Expense Deduction.** *Federal, state, and local income tax. The Department uses the standard self-employment deduction in Subsection 231.03.a. of this rule, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the expenses described in Subsection 231.03.b. of this rule.* (7-1-98)(5-1-08)T~~

~~a. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as determined in Subsections 231.01 and 231.02 of this rule; or (5-1-08)T~~

~~b. The self-employment actual expense deduction is determined by subtracting the actual allowable expenses from the gross monthly self-employment income. The following items are not allowable expenses and may not be subtracted from the gross monthly self-employment income: (5-1-08)T~~

- ~~i. Net losses from previous tax years; (5-1-08)T~~
- ~~ii. Federal, state, and local income taxes; (5-1-08)T~~
- ~~iii. Money set aside for retirement; (5-1-08)T~~
- ~~iv. Work-related personal expenses such as transportation to and from work; and (5-1-08)T~~
- ~~v. Depreciation. (5-1-08)T~~
- ~~04. Savings. Monies set aside for future use such as retirement or work related expenses. (7-1-98)~~
- ~~05. Depreciation. Depreciation for equipment, machinery, or other capital investments. (7-1-98)~~
- ~~06. Labor Paid to Family Member. Labor paid to a family member. (7-1-98)~~
- ~~07. Loss of Farm Income. Loss of farm income deducted from other income. (7-1-98)~~
- ~~08. Personal Transportation. Personal transportation. (7-1-98)~~
- ~~09. Net Losses. Net losses from previous periods. (7-1-98)~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.02 - RULES GOVERNING STANDARDS FOR CHILD CARE LICENSING

DOCKET NO. 16-0602-0801

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5220(2), Idaho Code, notice is hereby given that this agency intends to promulgate rules and desires public comment prior to initiating formal rulemaking procedures. This negotiated rulemaking action is authorized pursuant to Sections 39-1111, 39-1213, 56-1003, and 56-1005, Idaho Code.

MEETING SCHEDULE: A public meeting on this negotiated rulemaking will be held as follows:

Thursday - June 12, 2008 - 1:00 - 3:00 p.m.

**Department of Health & Welfare
Pete T. Cenarrusa Building - Rm. 7-A
450 West State Street, Boise, ID**

METHOD OF PARTICIPATION: Persons wishing to participate in this formal negotiated rulemaking must do at least one of the following:

1. Attend the negotiated rulemaking and participate in the negotiation process;
2. Provide oral or written recommendations, or both, at the negotiated rulemaking; or
3. Submit written recommendations and comments to the address below.

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

The Legislature has given the Department and the Board of Health and Welfare the responsibility to provide substitute parental care in the event of absence, temporary or permanent inability of parents to provide care and protection for their children. Among the services used to provide such care are Children's Residential Care Facilities; Children's Therapeutic Outdoor Programs; and Child Care Agencies. These rules set standards for licensing child care facilities ensuring the safety and well being of youth. The rules are now being reviewed and revised to assure they are both up to date and enforceable. The negotiated rule meetings will include the following areas of concern:

1. Rules specific to client and staff record requirements;
2. Rules specific to service plans;
3. Rules specific to fire safety and to hazardous toxins;
4. Rules specific to strip searches, non-violent physical intervention and mechanical restraints;
5. Rules specific to suspension, revocations and denial of licensure and appeal;
6. Rules specific to audits and tax returns;
7. Rules specific to Education, Maternity Care, and Transitional Living Programs;
8. Rules specific to building inspections;
9. Rules specific to expeditions; and
10. Rules specific to continued care.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS, OBTAINING COPIES: For assistance on technical questions concerning this negotiated rulemaking, contact Brent Porges at (208) 334-5920. Anyone may submit written comments regarding this negotiated rulemaking. All written comments must be directed to the undersigned and delivered on or before June 20, 2008.

DATED this 2nd day of May, 2008.

Sherri Kovach, Program Supervisor
DHW - Administrative Procedures Section
450 West State Street - 10th Floor
(208) 334-5564 phone / (208) 334-6558 fax

P.O. Box 83720
Boise, Idaho 83720-0036
kovachs@dhw.idaho.gov e-mail

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)

DOCKET NO. 16-0612-0801

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 1, 2008.

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.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 18, 2008.

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

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

The Department is aligning the methodologies used to calculate income for self-employed individuals who apply for the Idaho Child Care Program (ICCP) with those used in other Department rules. By using the same methodologies the Department will: (1) simplify the process for determining income for self-employed individuals who are applying for assistance in one or more programs, and, (2) reduce the opportunity for errors that may occur when different methods are used to determine eligibility for these programs.

The qualifying activities for benefit assistance are being amended to define self-employment along with the limit of activity hours in certain situations as determined using self-employment income. Countable income is being amended to include self-employment. The methodology of how self-employment income is determined is being updated to meet current practice. The ICCP rules will no longer differentiate between farming and non-farming self-employment income when determining self-employment income for benefit assistance.

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

These rules confer a benefit and will simplify the processes for determining eligibility for assistance benefits.

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:

This rulemaking has no anticipated fiscal impact to the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because this rule change confers a benefit to an individual applying for program assistance.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Genie Sue Weppner at (208) 334-5656.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2008.

DATED this 29th day of April, 2008.

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) 334-6558 fax
kovachs@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0612-0801

200. QUALIFYING ACTIVITIES FOR CHILD CARE BENEFITS.

To be eligible for child care benefits, a family must need child care because they are engaged in one (1) of the ~~following qualifying activities that qualifies them for child care benefits:~~ listed in Subsections 200.01 through 200.05 of this rule. (4-2-08)(5-1-08)T

01. Employment. The parent is currently employed. (4-2-08)

02. Self-Employment. The parent is currently self-employed in a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. Restrictions apply for self-employment as follows: (5-1-08)T

a. For the first six (6) months of benefit assistance, actual activity hours are used to determine benefit assistance for a parent who is self-employed. (5-1-08)T

b. After receiving six (6) months of benefit assistance, the number of self-employment activity hours that will be used to calculate benefits can be limited for a parent who is self-employed. To calculate the activity hours allowed for ICCP benefit assistance, the gross monthly self-employment income is divided by the current federal minimum hourly wage to determine the number of self-employment activity hours allowed. The lesser of the calculated activity hours or actual activity hours will be used to determine the benefit assistance. (5-1-08)T

023. Training or Education. The parent is attending an accredited education or training program. The following restrictions apply to training or education activities: (4-2-08)

a. On-line classes cannot be counted as a qualifying activity for child care. (4-2-08)

b. Persons with baccalaureate degrees or who are attending post-baccalaureate classes do not qualify for child care benefits. (4-2-08)

c. More than forty (40) months of post-secondary education has been used as a qualifying activity. (4-2-08)

034. Preventive Services. The parent is receiving preventive services as defined in Section 011 of these rules. The Department will verify the continued need for preventive services at least every three (3) months. (4-2-08)

045. Personal Responsibility Contract (PRC). The parent is completing Personal Responsibility Contract (PRC) activities negotiated between the Department and the parent as described in IDAPA 16.03.08, "Rules Governing Temporary Assistance for Families (TAFI) in Idaho." (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

301. COUNTABLE INCOME.

All gross earned and unearned income is counted in determining eligibility and the child care benefit amount, unless specifically excluded under Section 302 of these rules. ~~If a self-employed individual has no countable income for a period of three (3) months, the Department will count the current federal minimum wage times the number of activity hours being claimed to determine child care benefits.~~ (4-2-08)(5-1-08)T

(BREAK IN CONTINUITY OF SECTIONS)

303. AVERAGING SELF-EMPLOYMENT INCOME.

01. Annual Self-Employment Income. When self-employment income is considered annual support by the household, the Department averages the self-employment income over a twelve (12) month period, even if: (5-1-08)T

- a. The income is received over a shorter period of time than twelve (12) months; and (5-1-08)T
- b. The household receives income from other sources in addition to self-employment. (5-1-08)T

02. Seasonal Self-Employment Income. A seasonally self-employed individual receives income from self-employment during part of the year. When self-employment income is considered seasonal, the Department averages self-employment income for only the part of the year the income is intended to cover. (5-1-08)T

303.4. COMPUTING NON-FARMING CALCULATION OF SELF-EMPLOYMENT INCOME.

~~Compute non-farming~~ The Department calculates self-employment income by adding ~~projected~~ monthly ~~earnings~~ income to ~~projected~~ capital gains and subtracting ~~the self-employment standard~~ a deduction for expenses as determined in Subsection 304.03 of this rule. (4-2-08)(5-1-08)T

01. Determine How Monthly Earnings Income is Determined. If no income fluctuations are expected, the average monthly income amount is projected for the certification period. If past ~~earnings are income~~ does not reflective of expected future ~~earnings income~~, make a proportionate adjustment is made to the expected monthly ~~earnings income~~. ~~Determine the monthly earnings by the using one (1) of the following:~~ (4-2-08)(5-1-08)T

- ~~a. If tax returns are available, use the information on the return to determine an appropriate average monthly earnings amount. Do not assume that the tax return reflects a full twelve (12) months of self-employment. (4-2-08)~~
- ~~b. If no tax return is available, the self-employment income is averaged over the period of time the enterprise has been in operation. (4-2-08)~~

02. Add Monthly Capital Gains Income. Capital gains include profit from the sale or transfer of capital assets used in self-employment. ~~The Department~~ calculates capital gains using the federal income tax method. ~~Determine~~ If the household expects to receive any capital gains income from self-employment assets during the certification period, ~~Add~~ this amount is added to the monthly ~~earnings income~~ as determined in Subsection 303.4.01 of ~~these~~ this rules to determine the gross monthly income. (4-2-08)(5-1-08)T

03. Subtract Non-Farming Self-Employment Standard Expense Deduction. ~~Subtract fifty percent (50%) of the gross monthly income as a self-employment standard deduction. This is the projected non-farming self-employment monthly income.~~ The Department uses the standard self-employment deduction in Subsection 304.03.a. of this rule, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the expenses described in Subsection 304.03.b. of this rule. (4-2-08)(5-1-08)T

a. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as determined in Subsections 303.01 and 303.02 of this rule; or (5-1-08)T

b. The self-employment actual expense deduction is determined by subtracting the actual allowable expenses from the gross monthly self-employment income. The following items are not allowable expenses and may not be subtracted from the gross monthly self-employment income: (5-1-08)T

- i. Net losses from previous tax years; (5-1-08)T
- ii. Federal, state, and local income taxes; (5-1-08)T
- iii. Money set aside for retirement; (5-1-08)T
- iv. Work-related personal expenses such as transportation to and from work; and (5-1-08)T
- v. Depreciation. (5-1-08)T

~~304. COMPUTING FARMING SELF-EMPLOYMENT INCOME.~~

~~For farming self-employment, compute net income by subtracting allowable expenses from the gross income as follows in Subsections 304.01 through 304.04 of these rules.~~ (4-2-08)

~~**01. Determine Monthly Earnings.** If no income fluctuations are expected, the average monthly amount is projected for the certification period. If past earnings are not reflective of expected future earnings, make a proportionate adjustment to the expected monthly earnings. Determine the monthly earnings by using one (1) of the following:~~ (4-2-08)

~~**a.** If tax returns are available, use the information on the return to determine an appropriate average monthly earnings amount. Do not assume that the tax return reflects a full twelve (12) months of farming self-employment.~~ (4-2-08)

~~**b.** If no tax return is available, the farming self-employment income is averaged over the period of time the enterprise has been in operation.~~ (4-2-08)

~~**02. Add Monthly Capital Gains Income.** Capital gains include profit from the sale or transfer of capital assets used in self-employment. Calculate capital gains using the federal income tax method. Determine if the household expects to receive any capital gains income from farming self-employment assets during the certification period. Add this amount to the monthly earnings as determined in Subsection 304.01 of these rules to determine the gross monthly income.~~ (4-2-08)

~~**03. Subtract Allowable Expenses.** Subtract any allowable expenses for farming self-employment, except those listed in Subsection 304.04 of these rules for expenses that are not allowed. This is the projected farming self-employment monthly income.~~ (4-2-08)

~~**04. Costs Not Allowed for Farming Self-Employment Expenses.** The following items are not allowed as costs of doing business and may not be subtracted from the farming self-employment income.~~ (4-2-08)

- ~~**a.** Net losses from previous certification periods;~~ (4-2-08)
- ~~**b.** Federal, State, and local income taxes;~~ (4-2-08)
- ~~**c.** Money set aside for retirement;~~ (4-2-08)
- ~~**d.** Work-related personal expenses such as transportation to and from work; and~~ (4-2-08)
- ~~**e.** Depreciation.~~ (4-2-08)

IDAPA 28 - IDAHO DEPARTMENT OF COMMERCE

28.02.03 - RULES OF THE IDAHO REGIONAL TRAVEL AND CONVENTION GRANT PROGRAM

DOCKET NO. 28-0203-0701

NOTICE OF RULEMAKING - FINAL RULE

AUTHORITY: In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the legislature has taken action by concurrent resolution on this rulemaking under Docket No. 28-0203-0701. This agency action for this final rulemaking is authorized pursuant to Sections 67-4715, 67-4717 and 67-4718, Idaho Code.

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

Pursuant to House Concurrent Resolution No. 47, Docket No. 28-0203-0701 is not consistent with legislative intent and is being amended accordingly. In accordance with the concurrent resolution the following change was made to the final rule and is being published here following this notice.

IDAPA 28.02.03, "Rules of the Idaho Regional Travel and Convention Grant Program," Section 222, Plan Selection, Subsection 02.d, the amended language only, and Subsection 02.e, the amended language only, adopted as a pending rule under Docket Number 28-0203-0701, Rules of the Department of Commerce, be, and the same are hereby rejected and declared null, void and of no force and effect.

The original text of the proposed rule was published in the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 203 through 208. The pending rule was published in the January 2, 2008 Idaho Administrative Bulletin, Vol. 08-1, page 196.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this final rule, contact Cathy Bourner, 208 334-2670.

DATED this 18th day of April, 2008.

Cathy Bourner, Grant Analyst
Idaho Department of Commerce
Division of Tourism Development
700 W State St, Boise, ID
PO Box 83720, Boise, ID 83720-0094
208 334-2470
Fax 208 334-2631

THE FOLLOWING IS THE FINAL TEXT OF DOCKET NO. 28-0203-0701

222. PLAN SELECTION.

The Idaho Travel Council is responsible for the selection of plans to be awarded. Selection of Regional Travel and Convention Grants is as follows: (2-22-93)

01. Committee Presentation. At a regularly scheduled ITC meeting, applications for the Regional Travel and Convention Grant Program are presented, discussed and voted upon by the Idaho Travel Council. Grant applicants may be present to comment and answer questions. (2-22-93)

02. Contract Preparation. Once the Idaho Travel Council has selected plans to be funded, the Department of Commerce will notify all applicants, by letter, of their funding status. (2-22-93)

a. All contracts will be signed for a period of no more than fourteen (14) months unless otherwise stipulated in the contract. (2-22-93)

b. If applicable, special conditions of funding will be outlined. (2-22-93)

c. The grant will take effect upon the date of award. Grant monies cannot be obligated or expended until that date. No expenditures can be reimbursed until the contract is signed by the director of the Department of Commerce and Labor. (2-22-93)

d. Extensions and amendments shall be discouraged. However, in the event of an extension or amendment, the grantee may shift, up to twenty-five percent (25%) of the total ITC dollars awarded, between line items, not to exceed ten thousand dollars (\$10,000) during the entire grant cycle. The grantee must complete the appropriate amendment form, and all ITC members will vote on each amendment, for dollar amounts in excess of ten thousand dollars (\$10,000). From the Department of Commerce and Labor, extensions of up to ninety (90) days can be granted. (3-20-04)

e. In the event a plan can be completed for less than the grant amount, the difference between actual plan costs and the grant amount shall revert to the respective regional grant funds. (2-22-93)

IDAPA 29 - IDAHO POTATO COMMISSION

29.01.02 - RULES GOVERNING PAYMENT OF TAX AND USAGE OF CERTIFICATION MARKS AND TRADEMARKS

DOCKET NO. 29-0102-0801 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2008.

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 22-1201, et seq., Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than June 18, 2008.

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 non-technical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rulemaking is to clarify IPC tax calculation and reporting methods.

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

It is necessary to protect the public health, safety, or welfare and it confers a benefit by clarifying the tax rate and allowing the tax to be collected more uniformly and without ambiguity.

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:

Section 22-1211, Idaho Code was amended by the 2007 Legislature and signed by the Governor to increase the potato tax by \$.05 per hundredweight. Following the review required by statute, the Idaho Potato Commission voted unanimously to authorize an increase of \$.025. As the Idaho Potato Commission operates on a September 1 to August 31 fiscal year, this temporary rule is necessary to coincide with that fiscal year and avoid confusion within the industry.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: There is no fiscal impact.

NEGOTIATED RULEMAKING: In compliance with IDAPA 04.11.04.811, negotiated rulemaking was not conducted, however, this rule was developed with input from the potato industry which is affected.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Patrick J. Kole, VP Legal and Government Affairs, at (208) 334-2350.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before June 25, 2008.

DATED this 2nd day of May, 2008.

Patrick J. Kole, VP Legal and Government Affairs
Idaho Potato Commission
661 S. Rivershore Lane, Suite 230
PO Box 1670, Eagle, Idaho, 83616
(208) 334-2350 phone; (208) 334-2274 fax

THE FOLLOWING IS THE TEXT OF DOCKET NO. 29-0102-0801

010. DEFINITIONS.

~~Terms of art used throughout these rules are defined within the rules themselves.~~ As defined in Section 22-1204, Idaho Code, and stated as follows: ~~(3-15-02)~~(8-1-08)T

- 01. Commission.** The Idaho Potato Commission. (8-1-08)T
- 02. Dealer.** Any person engaged in the business of buying, receiving, processing, or selling potatoes for profit or remuneration. (8-1-08)T
- 03. Grower.** Any person who is actively engaged in the production of farm products, primarily potatoes, and who is not engaged in the shipping or processing of potatoes. (8-1-08)T
- 04. Handler.** Any person processing potatoes or handling them in the primary channel of trade. (8-1-08)T
- 05. Hundredweight.** Each one hundred (100) pound unit or combination of packages making a one hundred (100) pound unit of any shipment of potatoes based on invoice and/or bill of lading records. (8-1-08)T
- 06. Person.** An individual, partnership, corporation, association, grower and/or any other business unit. (8-1-08)T
- 07. Potatoes.** Includes only potatoes exclusively sold or intended for human consumption and grown in the state of Idaho. (8-1-08)T
- 08. Primary Channel of Trade.** Potatoes shall be deemed to be delivered for shipment into the primary channel of trade when any such potatoes are sold or delivered for shipment, or delivered for canning and/or processing into by-products. (8-1-08)T
- 09. Processing.** Changing the form of potatoes from the raw or natural state into a product for human consumption. (8-1-08)T
- 10. Processor.** Any person who is actively engaged in the processing of potatoes for human consumption. (8-1-08)T
- 11. Shipment.** A shipment of potatoes shall be deemed to take place when the potatoes are loaded within the state of Idaho, in a car, bulk, truck or other conveyance in which the potatoes are to be transported for sale or otherwise. (8-1-08)T
- 12. Shipper.** Any person who is properly licensed under federal and state laws and actively engaged in the packing and shipping of potatoes in the primary channel of trade in interstate commerce, and who ships more than he produces. (8-1-08)T
- 13. Tax.** An assessment levied on potatoes for the sole purpose of financing the commission's activities in carrying out the purposes of Title 22, Chapter 12, Idaho Code on behalf of the potato industry in Idaho. (8-1-08)T

(BREAK IN CONTINUITY OF SECTIONS)

100. GENERAL.

01. ~~When Idaho Potato Commission Tax Is Due.~~ *The Idaho Potato Commission Tax shall be due on or before the time when such potatoes are first handled in the primary channels of trade and shall be paid not later than the fifteenth day of the month next succeeding the month in which such potatoes were handled in the primary channels of trade. See Section 22-1211, Idaho Code.* **Potato Tax.** All potatoes grown in Idaho, no matter how grown (i.e. by conventional, organic, or other methods) and no matter what variety (i.e. russet, red, yellow, specialty, or other variety) are subject to the potato tax imposed by Section 22-1211, Idaho Code. (3-15-02)(8-1-08)T

02. ~~Idaho Potato Commission Tax.~~ *There is hereby levied and imposed a tax of four cents (\$0.04) per hundredweight on potatoes covered by this act which tax shall be due on or before the time when such potatoes are first handled in the primary channels of trade and shall be paid not later than the fifteenth day of the month next succeeding the month in which such potatoes were handled in the primary channels of trade. In addition to the four cents (\$0.04) tax herein above provided for there is hereby levied and imposed an additional tax of eleven cents (\$0.11) per hundredweight on potatoes covered by this act; provided, however, said additional tax of eleven cents (\$0.11), or any portion thereof, shall only be due and collectible upon a determination by at least two-thirds (2/3) of the commission members that the anticipated expenditures for the next fiscal year following the year in which the determination is made will exceed the anticipated tax revenues to be collected from the said four cents (\$0.04) tax. Upon such a determination, the commission shall collect the additional eleven cents (\$0.11) tax or such portion thereof as is required by such determination, which shall be collected with, and as, other taxes imposed by this act. The person first selling or otherwise delivering potatoes into primary channels of trade shall be responsible for and make payment of all taxes imposed by this chapter. If such person is the dealer or shipper handling potatoes grown by another, he may charge against and recover from the grower of such potatoes or the person from whom he acquired them sixty percent (60%) of the tax.* **Potato Tax Base Rate and Additional Tax.** A base tax of four cents (\$0.04) per hundredweight is imposed by statute on all potatoes grown in Idaho. In addition, an additional tax of eleven cents (\$0.11) per hundredweight may be imposed upon a determination by at least two-thirds (2/3) of commission members that the anticipated expenditures for the fiscal year following the year in which the determination is made will exceed the anticipated tax revenues to be collected from the four cents (\$0.04) base tax rate. (3-26-08)(8-1-08)T

03. ~~Definitions – as Used in These Rules.~~ *Section 22-1204, Idaho Code, defines terms used in these rules.* **Potato Tax Due Date and Responsible Party.** The potato tax is due when potatoes are first handled in the primary channels of trade and must be paid not later than the fifteenth day of the next month. The first person selling or otherwise delivering potatoes into primary channels of trade is responsible for and must pay the full potato tax. However, if the first person is a dealer or shipper handling potatoes grown by another, he may charge back to the person he acquired the potatoes from sixty percent (60%) of the potato tax. The charge back does not reduce the first person's tax liability due to the commission. (7-1-93)(8-1-08)T

04. Growers', Dealers', Handlers', Shippers', Processors' Container Manufacturers' and Out-of-State Repackers' Records. Idaho Potato Commission Tax ~~Returns~~ Report Forms - Audits - Inspections. (3-26-08)(8-1-08)T

a. Every dealer or handler including out-of-state repackers shall keep a complete and accurate record of all potatoes handled ~~by him~~ in the primary channels of trade. Such record shall be in such form as the Commission's Executive Director, duly authorized agent, representative or employee shall prescribe. (3-26-08)(8-1-08)T

b. In addition to such other information that the Executive Director, duly authorized agent, representative or employee requires, each grower, dealer, handler, shipper, processor, container manufacturer, and out-of-state repacker shall keep records that segregates purchases and sales of Idaho® potatoes by calendar month; records of inventories of Idaho® potatoes by calendar month; and records of inventories of containers bearing the registered Certification Marks of the Commission by calendar month. Such records shall be preserved for a minimum period of two (2) years and shall be open to inspection at any time upon written or oral request or demand by the Commission or its duly authorized agents, representatives, or employees. (3-26-08)(8-1-08)T

c. The Commission’s duly authorized agent, representative or employee may enter upon the premises of any grower, dealer, handler, out-of-state repacker, container manufacturer, processor or any other license agreement holder of Idaho® potatoes and examine or cause to be examined any books, papers, records, ledgers, purchase journals, sales journals, electronically and/or magnetically recorded data, computers and computer records or memoranda bearing upon the amount of taxes payable or the correct usage of any Idaho Trade or Certification Mark, and to secure any other information directly or indirectly concerned with the enforcement of Chapter 12, Title 22, Idaho Code, all rules adopted pursuant thereto and all licensing agreements entered into with the Commission. The Commission’s duly authorized agents, representatives or employees may also inspect and take samples of any potatoes, potato products or containers from the premises used by a grower, dealer, handler, shipper, processor, container manufacturer, or out-of-state repacker. Regular audits shall be routinely performed by the Commission or its duly authorized agents, representatives, or employees to assure adherence with these rules. In addition, compliance audits may take place at any time. For further requirements see Section 22-1212, Idaho Code. (3-26-08)

05. Calculation of Tax Due. (3-15-02)

~~a.~~ All first handlers of Idaho® Grown Potatoes shall pay the total tax due on all potatoes handled by them on a net weight basis, ~~except as provided in Rule 100.05.b.~~ Net weight shall be determined by subtracting from the gross scale weight the ~~tare for dirt, rock, and other foreign material only.~~ ~~Net weight shall then be multiplied by ninety percent (90%) which provides for a ten percent (10%) allowance for those, and~~ potatoes that are unusable ~~not used~~ for human consumption. The amount of tax due is the tax rate currently imposed pursuant to Rule 100.023 multiplied by the net hundredweight (cwt) ~~calculated above.~~ The following diagram illustrates the manner in which the formula is to be applied:

		Tare			90%			GWT
<i>Gross Scale Weight</i>	<i>Less</i>	<i>{Dirt, rock and other foreign materials ONLY}</i>	<i>×</i>	<i>{Allowance for potatoes unfit for consumption is 10%}</i>	<i>=</i>	<i>{Upon which TAX is DUE}</i>		

<u>Gross Scale Weight</u>	<u>Less</u>	<u>Dirt, rock, other foreign material, and potatoes not used for human consumption</u>	<u>≡</u>	<u>Net CWT (Hundredweight) upon which tax is due</u>	<u>×</u>	<u>Tax Rate</u>	<u>≡</u>	<u>Tax Amount Due</u>
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(7-1-93)(8-1-08)T

~~b.~~ Any first handler of Idaho® Grown Potatoes who does not have reasonable access to a scale to calculate the tax due on a net weight basis, may make application to the Commission’s Executive Director for permission to use the following alternate procedure: (7-1-93)

~~i.~~ *Fresh Shipped Potatoes.* On all Idaho® potatoes shipped fresh, a permitted handler shall pay the full Idaho Potato Commission Tax on all fresh shipments which meet State Grade Standards or Federal Fresh Market Standards whether sold interstate or intrastate. (3-15-02)

~~ii.~~ *Fresh Potatoes Not Meeting Grades.* A ten percent (10%) discount per hundredweight shall be allowed on all intrastate shipments of fresh potatoes not meeting State Grade Standards or Federal Fresh Market Standards, such as culls or processing grade potatoes sold to processors, after tare is taken for dirt and foreign material only, to allow for that portion which is unusable for human consumption. Statements showing Idaho Potato Commission Tax liability shall be mailed to fresh shippers each month, and payment of Idaho Potato Commission Tax due to be made within thirty days of receipt of statement. This rule is not to be construed as authorizing any shipments of potatoes contrary to Section 22-901, Idaho Code. (3-15-02)

06. Tax Reports to Be Made by Growers, Dealers, Handlers, Shippers and Processors. A report on a form approved by the Commission, showing total weight handled for a given period of time and the Idaho Potato Commission tax due are to be sent to the Idaho Potato Commission office with the tax payment. These reports are to be made on forms furnished by the Commission and shall show such other information as the Commission may require. (3-26-08)

IDAPA 33 - REAL ESTATE COMMISSION

33.01.01 - RULES OF THE IDAHO REAL ESTATE COMMISSION

DOCKET NO. 33-0101-0702

NOTICE OF RULEMAKING - FINAL RULE

AUTHORITY: In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the legislature has taken action by concurrent resolution on this rulemaking under Docket No. 33-0101-0702. This agency action for this final rulemaking is authorized pursuant to Section 54-2007, Idaho Code.

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

Pursuant to Senate Concurrent Resolution No. 131, Docket No. 33-0101-0702 is not consistent with legislative intent and is being amended accordingly. In accordance with the concurrent resolution the following change was made to the final rule and is being published here following this notice.

IDAPA 33.01.01, "Rules of the Idaho Real Estate Commission," Section 500, Minimum Teaching Standards of the Commission, Subsection 08 only, has been rejected by SCR 131. The codified text of Section 500 is being published with this notice.

The original text of the proposed rule was published in the July 4, 2007 Idaho Administrative Bulletin, Vol. 07-7, pages 82 through 84. The pending rule was published in the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, page 241.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this final rule, contact Jeanne Jackson-Heim, Executive Director, Idaho Real Estate Commission, 334-3285.

DATED this 18th day of April, 2008.

Jeanne Jackson-Heim
Executive Director
Idaho Real Estate Commission
633 North Fourth Street
P.O. Box 83720
Boise, ID 83720-0077
(208) 334-3285

THE FOLLOWING IS THE FINAL TEXT OF DOCKET NO. 33-0101-0702

500. MINIMUM TEACHING STANDARDS OF THE COMMISSION.

All courses offered for credit by a certified provider shall be taught in accordance with the following standards of the Real Estate Commission: (3-13-08)

01. Certification Requirement. A course required to be taught by a Commission-certified or Commission-approved instructor shall be taught only by an instructor that is currently approved or certified for that course; (3-13-08)

02. Outlines and Curriculum. A course must be taught in accordance with the course outline or curriculum approved by the Commission; (3-13-08)

03. Attendance Requirement. The course instructor shall adhere to the Commission's written attendance policy and shall submit credit hours only for students who have successfully met the attendance requirements for which the course was approved. (3-13-08)

04. Product Promotion and Recruitment. The course instructor shall adhere to the Commission's written policies restricting product promotion and recruitment activities in the classroom; (3-13-08)

05. Professional Mannerism. The course instructor shall conduct himself or herself in a professional manner when performing instructional duties, and shall not engage in any form of harassment based on the gender, national origin, race, religion, age or physical or mental disability of any student, and shall not engage in conduct that degrades or disparages any student or other instructor. (3-13-08)

06. Subject Matter Knowledge. The instructor shall conduct the class in a manner that demonstrates knowledge of the subject matter being taught; (3-13-08)

07. Competent Teaching Skills. The instructor shall conduct the class in a manner that demonstrates competency in the following basic teaching skills: (3-13-08)

a. The ability to effectively communicate through speech; (3-13-08)

b. The ability to present instruction in an accurate, logical, orderly and understandable manner and to respond appropriately to questions from students; (3-13-08)

c. The ability to utilize varied instructional techniques in addition to lecture, such as class discussion, role playing or other techniques in a manner that enhances learning; (3-13-08)

d. The ability to utilize instructional aids and modern technology in a manner that enhances learning; (3-13-08)

e. The ability to maintain an appropriate learning environment and effective control of a class; (3-13-08)

f. The ability to interact with adult students in a manner that encourages students to learn, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, including fellow peer instructors, any agency or any organization. (3-13-08)

08. Maintaining Exam Security. The instructor shall take reasonable steps to protect the security of course examinations and shall not allow students to retain copies of final course examinations or the exam answer key. (3-13-08)

09. Use of Exam Questions Prohibited. The instructor shall not obtain or use, or attempt to obtain or use, in any manner or form, Idaho real estate licensing examination questions. (3-13-08)

10. Instructor Evaluations. The instructor must maintain, for the course, an annual average of four point zero (4.0) (based on one to five (1-5) scale) on the standard Commission evaluations for the instructor's overall average category. (3-13-08)

501. -- 999. (RESERVED).

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

THE FISH CREEK TMDLS (HUC 17010305)

DOCKET NO. 58-0000-0807

NOTICE OF FINAL DECISION

AUTHORITY: In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Fish Creek Total Maximum Daily Loads (TMDLs) for the Upper Spokane Subbasin.

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Fish Creek TMDLs for the Upper Spokane Subbasin. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Fish Creek TMDLs (Hydrologic Unit Code 17010305) addresses five (5) assessment units (AUs) impaired for temperature, sediment or bacteria. DEQ completed TMDLs for all AU/pollutant combinations deemed water quality impaired. DEQ has submitted this TMDL document to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

AVAILABILITY OF THE TMDL: Electronic copy of the TMDL can be obtained at www.deq.idaho.gov/water/data_reports/surface_water/tmdls/spokane_river_upper/spokane_river_upper.cfm#fish_creek or by contacting Ms. Marti Bridges, TMDL Program Manager, 208-373-0382, marti.bridges@deq.idaho.gov.

Dated this 18th day of April, 2008.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

THE SEDIMENT AND BACTERIA ALLOCATIONS ADDENDUM TO THE LOWER BOISE RIVER TMDL (HUC 17050114)

DOCKET NO. 58-0000-0808

NOTICE OF FINAL DECISION

AUTHORITY: In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Sediment and Bacteria Allocations Addendum to the Lower Boise River Total Maximum Daily Load (TMDL).

DESCRIPTIVE SUMMARY: The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Sediment and Bacteria Allocations to the Lower Boise River TMDL. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The purpose of the addendum is to provide the Avimor Development and City of Kuna, Idaho with wasteload allocations for total suspended solids and E. coli bacteria for discharges to tributaries flowing into the Lower Boise River. The addendum also spells out how the reserve for growth for sediment (TSS) will be distributed. DEQ has submitted this TMDL Addendum to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

AVAILABILITY OF THE TMDL: Electronic copy of the TMDL can be obtained at www.deq.idaho.gov/water/data_reports/surface_water/tmdls/boise_river_lower/boise_river_lower.cfm#addendum or by contacting Ms. Marti Bridges, TMDL Program Manager, 208-373-0382, marti.bridges@deq.idaho.gov.

Dated this 8th day of May, 2008.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.03 - INDIVIDUAL/SUBSURFACE SEWAGE DISPOSAL RULES

DOCKET NO. 58-0103-0801

AMENDED NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality," Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. The meeting will take place simultaneously and will be connected by telephone. Additional meetings may be scheduled if necessary. For information regarding additional meetings, contact the undersigned.

Thursday - June 5, 2008 - 9:30 a.m. to 4 p.m. Mountain Time	
Department of Environmental Quality Conference Room D 1410 N. Hilton Boise, Idaho	Panhandle Health District Board Room, 2nd Floor 8500 North Atlas Road Hayden, Idaho
Central District Health Department McCall Field Office 703 North 1st Street McCall, Idaho	Department of Environmental Quality Snake River Conference Room 444 Hospital Way #300 Pocatello, Idaho
South Central Public District Health 1020 Washington Street North Twin Falls, Idaho	Eastern Idaho Public Health District 1250 Hollipark Drive Idaho Falls, Idaho
North Central District Health 215 10th Street Lewiston, Idaho	

DRAFT NEGOTIATED RULE: Negotiated Rule Draft No. 2 can be obtained at http://www.deq.idaho.gov/rules/subsurface/58_0103_0801_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to provide for a revised method to estimate wastewater flow from single family dwellings that is more consistent with domestic water usage statewide. The proposed revisions would provide for a more refined soil classification system which will allow more precise sizing of drainfields. The rule would also provide a definition of "module" to assist understanding and applicability of the rule within the regulated community.

DEQ published notice of this negotiated rulemaking in the May 2008 issue of the Idaho Administrative Bulletin. In the May 2008 notice, two meetings were scheduled. The first meeting was held on May 22, 2008; the second meeting is scheduled for June 5, 2008. The May 2008 notice included the following items as issues to be addressed during this negotiated rulemaking:

1. Add a definition for the term "module";
2. Revise the wastewater flow rates for single family dwellings; and
3. Refine the soil classification system from 3 to 6 soil types.

The purpose of this amended notice is to notify the public that, in addition to the issues listed in the May 2008 notice, the Maximum Total Square Feet of Trench listed in the Subsurface Disposal Facility Table located in Subsection 009.04 will also be open for discussion and comment during this negotiated rulemaking. If domestic wastewater flow rates are increased, the maximum allowable size for a standard drainfield must increase to be in balance with the increased wastewater flow rates.

Local government, property owners, representatives of the building construction industry, and the public at large may be interested in participating in this rulemaking. Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the summer of 2008 and then present the final proposal to the Board of Environmental Quality for adoption of a pending rule in the fall of 2008. If adopted, the pending rule will be reviewed by the 2009 Idaho Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact AJ Maupin at aj.maupin@deq.idaho.gov, (208)373-0167.

For those who cannot participate by attending the scheduled meeting, written comments may be submitted by mail, fax or e-mail at the address below. The written comment deadline for Negotiated Rule Draft No. 2 is June 11, 2008. For information regarding submission of written comments on subsequent drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 23rd day of May 2008.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-0802

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code.

METHOD OF PARTICIPATION: Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meeting. For those who cannot participate by attending the meeting, information for submitting written comments is provided at the end of this notice.

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. The meeting will take place simultaneously and will be connected by telephone. Additional meetings may be scheduled if necessary. For information regarding additional meetings, contact the undersigned.

Monday - June 23, 2008 - 10:00 a.m. to 3:00 p.m. Mountain Time

DEPARTMENT OF ENVIRONMENTAL QUALITY

**Conference Room D
1410 N. Hilton
Boise, Idaho**

**900 N. Skyline, Suite B
Idaho Falls, Idaho**

**2110 Ironwood Parkway
Coeur d'Alene, Idaho**

PRELIMINARY DRAFT RULE: By June 4, 2008, the preliminary draft rule and an issue paper describing the special primacy requirements can be obtained at http://www.deq.idaho.gov/rules/drinking_water/58_0108_0802_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418. The issue paper covers the topics that will be considered during negotiations.

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

The U.S. Environmental Protection Agency promulgated the Ground Water Rule on November 6, 2006. This is a national primary drinking water regulation. As a state that has primacy for administering the Safe Drinking Water Act, Idaho must adopt this rule within two years of promulgation.

The Ground Water Rule is expected to provide greater protection against microbial pathogens in public water systems that use ground water sources. The rule attempts to target the subset of ground water systems that are at higher risk of fecal contamination by requiring regular sanitary surveys, establishing a flexible program for identifying higher risk systems through existing bacterial monitoring and state determinations, and providing for ground water source monitoring in systems that do not provide demonstrated virus inactivation through disinfection. The rule requires that deficiencies detected during sanitary surveys be corrected on a reasonable schedule. Systems that verify the presence of contamination in a ground water source must remove the source of contamination or provide disinfection treatment.

As a primacy agency, DEQ must adopt state rules that are no less stringent than the federal rule. Under direction from the Idaho Legislature, DEQ must adopt state rules that are no more stringent than the federal rule. To ensure that Idaho's rules will be neither more nor less stringent than the federal rule, DEQ intends to incorporate the federal rule by reference. The federal rule contains certain special primacy requirements that provide limited flexibility to the state. DEQ intends to conduct negotiations that are limited to consideration of how the special primacy requirements should be met. If necessary, this rulemaking may also include any corrections that are typographical and nonsubstantive in nature.

Drinking water system owners and operators, developers, consultants, engineers, cities, counties, industry, drinking water professional organizations, and the public at large may be interested in participating in this rulemaking. Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the summer of 2008 and then present the final proposal to the Board of Environmental Quality for adoption of a pending rule in the fall of 2008. If adopted, the pending rule will be reviewed by the 2009 Idaho Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Tom John at thomas.john@deq.idaho.gov, (208)373-0191.

For those who cannot participate by attending the scheduled meeting, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by June 25, 2008. For information regarding submission of written comments on subsequent drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 8th day of May, 2008.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 - RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-0801

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

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

Written requests for a hearing must be received by the undersigned on or before June 18, 2008. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to provide flexibility to the Department of Environmental Quality (DEQ) in its use of loan fees to meet statewide planning needs, to reduce administrative burden on a majority of wastewater loan recipients, and to achieve administrative efficiency.

The proposed rule includes the following:

1. Revise definitions as necessary to allow for funding to certain individuals to help address nonpoint source water pollution.
2. Make possible a reduced administrative burden by utilizing federal allowances that allow for flexibility in requiring federal consultations for certain loans [Subsection 042.08].
3. Expand the use of wastewater loan fees to allow fees to supplement planning grants [Section 032].
4. In a very limited set of circumstances, allow for 30 year repayment periods (when DEQ purchases or refinances existing debt obligations) [Subsection 050.05.h].
5. Adopt existing state wastewater planning grant priority list scoring process so that the planning grants and the loans can be scored by the same criteria [Subsection 020.02].
6. Align the definitions of "Point Source" and "Nonpoint Source Pollution" to clarify how loan applications should be classified.
7. Revise Section 995, Waivers, to include a process for amending an integrated priority list.

This proposed rule also includes revisions that are typographical and nonsubstantive in nature (e.g., making corrections for consistency with IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program, and other DEQ rules).

Cities, counties, districts, engineering firms, public health districts, soil conservation districts, nonprofit organizations (conservation/environmental/agricultural), Association of Idaho Cities, Association of Idaho Counties, individual property owners and associations that own and operate wastewater treatment facilities or engage in or are considering nonpoint source projects may be interested in commenting on this proposed rule. Some or all would have an interest in the ability of individuals to qualify for loans to address nonpoint source issues, reduction of administrative burden on the majority of loan applicants, and the expansion of the use of fees to meet increasing planning costs.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2008 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2009 legislative session if adopted by the Board and approved by the Legislature.

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

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.810-815. On March 5, 2008, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 08-3, pages 17-18, and a preliminary draft rule was made available for public review. One meeting was held on April 3, 2008. Several members of the public participated in this negotiated rulemaking process by attending the meeting and by submitting written comments.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208)373-0439.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before July 2, 2008.

Dated this 2nd day of May, 2008.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING IS THE TEXT OF DOCKET NO. 58-0112-0801

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans." (3-30-01)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state loan program for providing financial assistance to eligible applicants ~~for the construction~~ of water pollution control projects. The U.S. Environmental Protection Agency provides a capitalization grant to the state of Idaho for this program. Financial assistance projects must be in conformance with the requirements of the Subchapter VI of the federal Clean Water Act (33 U.S.C. Sections 1381 et seq.) (3-30-01)()

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. (5-3-03)

~~996003.~~ **ADMINISTRATIVE APPEALS.**

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (5-3-03)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (3-30-01)()

02. Availability of Referenced Material. The “Wastewater Facilities Loan Handbook of Procedures” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. ()

~~005.~~ CONFIDENTIALITY.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.” (3-15-02)

~~0036.~~ POLICY.

It is the policy of the Idaho Board of Environmental Quality through the Idaho Department of Environmental Quality, to administer the Water Pollution Control Loan Program for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution. It is also the intent of the Board of Environmental Quality to assign a priority rating to those projects which will most significantly improve the quality of the waters of the state and most adequately protect the public health. (3-30-01)

~~0057.~~ DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

01. Applicant. Any qualifying entity/individual making application for water pollution control loan funds. See definition of qualifying entity/individual. ()

042. Best Management Practice. A practice or combination of practices, techniques or measures developed, or identified, by the designated agency and identified in the state water quality management plan which are determined to be the most cost-effective and practicable means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality needs. (3-30-01)

023. Board. The Idaho ~~State~~ Board of Environmental Quality. (12-31-91)()

034. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental ~~assessment~~ information document nor an environmental impact statement is required. (5-3-03)()

045. Close or Closing. The date on which the borrower issues and physically delivers to the Department the bond or note evidencing the loan to the borrower, specifically determining the principal, interest and fee amounts that shall be repaid and the schedule for payment. (3-19-07)

056. Collector Sewer. That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. (1-1-89)

067. Construction. The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment facilities, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary in the construction of wastewater treatment facilities; the inspection and supervision of the construction; and for projects funded with federal moneys the costs incurred during the one (1) year project certification period. (1-1-89)

078. Department. The Idaho Department of Environmental Quality. (1-1-89)

089. Director. The Director of the Idaho Department of Environmental Quality or his/her designee.

(5-3-03)

~~09. **Eligible Applicant.** A municipality or nonpoint source project sponsor which has the ability to establish and maintain a loan repayment source. Individuals and for-profit corporations are not eligible. (3-30-01)~~

10. Eligible Costs. Costs which are necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects. To be eligible, costs must be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)

11. Engineering Report. A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, or collection alternatives for the system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook. ()

12. Environmental Impact Statement (EIS). A document prepared by the ~~grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook~~ applicant, under the Department's direction, when the Department determines that the proposed construction project ~~will~~ may significantly affect the environment ~~as described in Appendix C of the Handbook~~. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. ~~The environmental review procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS.~~ (5-3-03)()

~~13. Environmental Information Document (EID).~~ Any written environmental assessment prepared by ~~an~~ the applicant ~~or consultant~~, under the Department's direction, describing the environmental impacts of a proposed wastewater construction project. This document will be of sufficient scope to enable the Department to assess the environmental impacts of the proposed project and ultimately determine if an ~~environmental impact statement~~ (EIS) is warranted. (5-3-03)()

~~14. Facility Plan.~~ ~~Systematic evaluation by a professional engineer of feasible treatment alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the scheduled alternative is cost effective.~~ A plan that describes the overall system, including collection, treatment processes and facilities, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrographic, and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook. (5-3-03)()

145. Financial Management System. Uniform method of recording, summarizing and analyzing financial information about the water pollution control loan applicant. (3-30-01)

156. Finding of No Significant Impact (FONSI). A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an ~~environmental impact statement~~ (EIS) will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. (5-3-03)()

167. Handbook. "Wastewater Facilities Loan ~~Account~~ Handbook of Procedures." (5-3-03)()

178. Implementation Plan. Completed project implementation plan or work plan provides detailed documentation of the proposed project including list of tasks, schedule of tasks, agency/contractor/entity responsible

for implementation of the project tasks, adequate time schedules for completion of all budget tasks, and the anticipated results of the project. (3-30-01)

189. Ineligible Costs. Costs which are described in Section 041.05. (5-3-03)

~~1920.~~ **Interceptor Sewer.** That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. (1-1-89)

~~20. Municipality. Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project. (3-30-01)~~

21. National Pollutant Discharge Elimination System. Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (3-30-01)

22. Nondomestic Wastewater. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (5-3-03)

23. Nonpoint Source Pollution. Water pollution that ~~comes~~ enters the waters of the state from varied, nonspecific, and diffuse sources and ~~can be associated with the general~~ is the result of runoff, precipitation, drainage, seepage, hydrological modification or land disturbing ~~activity activities that causes the pollution.~~ (3-30-01)()

24. Nonpoint Source Project Sponsor. Any ~~county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof~~ qualifying entity/individual applying for water pollution control loan funds for a nonpoint source pollution project. (3-30-01)()

25. O & M Manual. For wastewater treatment facilities, a guidance and training manual outlining the optimum operation and maintenance of the wastewater treatment facility or its components. For nonpoint source water pollution control projects, a plan that incorporates applicable sections of the Natural Resources Conservation Service Field Office Technical Guide, for implementation of best management practices. (3-30-01)

26. Plan of Operation. A schedule of specific actions and completion dates for construction, start-up and operation of the wastewater treatment facility or for implementation of water pollution control projects. (5-3-03)

27. Point Source. Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged to the waters of the state. This term as used in these rules does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (3-30-01)()

28. Pollutant. Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. (1-1-89)

29. Priority List. An integrated list of proposed wastewater treatment facility and nonpoint source pollution control projects rated as described in Section 020. (5-3-03)

30. Qualifying Entity/Individual. Any individual, city, county, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, which owns and operates a wastewater treatment facility or applies for loan funds for a water pollution control project. For-profit corporations are not qualifying entities. A qualifying entity/individual must have the ability to establish and maintain a loan repayment source. ()

301. Rehabilitation. The repair or replacement of limited segments of interceptor or collector sewers.

(5-3-03)

342. Reserve Capacity. That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-89)

323. Sewer Use Ordinance/Sewer Use Resolution. An ordinance ~~adopted pursuant to Title 42, Chapter 32, Idaho Code, or other applicable law~~ or resolution which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. (~~1-1-89~~)()

344. State. The state of Idaho. (12-31-91)

345. Supplemental Grants. A grant awarded ~~to a municipality~~ in conjunction with a loan from the water pollution control loan account. (~~3-30-01~~)()

356. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (1-1-89)

367. Unified Watershed Assessment. Federal watershed assessment that encompasses the State list of impaired waters. (3-30-01)

378. Termination. An action by the Director to permanently terminate a loan contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (1-1-89)

389. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the installed equipment or structures. (3-30-01)

3940. Wastewater. A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. (1-1-89)

401. Wastewater Treatment Facility. Any facility, including land, equipment, furnishings and appurtenances thereof, used for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems, land disposal systems; a sewage treatment plant. (1-1-89)

442. Water Pollution Control Project. Any project that contributes to the removal, curtailment, or mitigation of pollution of the surface waters or groundwater of the state, or the restoration of the quality of said waters, and conforms to any applicable planning document which has been approved and/or adopted such as the State Water Quality Management Plan. This includes the planning, design, construction/implementation or any other distinct stage or phase of a project. (3-30-01)

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

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

~~006.~~—009. (RESERVED).

010. FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for projects unless the applicant has demonstrated and certified that it has the legal, technical, managerial, and financial capabilities as provided for in these rules to ensure construction, operation and maintenance, and to repay principal and interest which would be due on a loan. (5-3-03)

01. Information Needed. Before an application will be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with ~~an analysis of that information substantiating documentation~~. The information ~~shall~~ may include, but not be limited to, demographic information of the applicant, estimated construction or implementation costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project; ~~and~~. ~~(3-30-01)(____)~~

02. Incorporated Nonprofit Applicants. (7-1-93)

a. In addition to all other information required to be submitted by these rules, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that: (3-30-01)

~~and~~ i. The corporation is nonprofit and lawfully incorporated pursuant to Chapter 3, Title 30, Idaho Code; ~~(1-1-89)(____)~~

ii. The corporation is authorized to incur indebtedness to construct, improve or repair wastewater treatment facilities and/or implement water pollution control projects; ~~and~~ ~~(3-30-01)(____)~~

iii. The corporation is authorized to secure indebtedness by pledging corporation property, including any revenues raised through a user charge system; ~~and~~ ~~(1-1-89)(____)~~

iv. The corporation exists either perpetually or for a period long enough to repay a wastewater treatment facility loan or water pollution control project loan; and (3-30-01)

v. The corporation is capable of raising revenues sufficient to repay a loan. (3-30-01)

b. The Department may impose conditions on the making of a wastewater treatment facility loan or water pollution control project to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and the provisions of Chapter 36, Title 39, Idaho Code. (3-30-01)

03. Cost Allocation. An applicant proposing ~~to construct wastewater treatment facilities~~ a point source or nonpoint source water pollution control project designed to serve two (2) or more ~~qualifying~~ entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information: ~~(1-1-89)(____)~~

a. The basis upon which the costs are allocated; ~~and~~ ~~(1-1-89)(____)~~

b. The formula by which the costs are allocated; and (1-1-89)

c. The manner in which the cost allocation system will be implemented. (1-1-89)

04. Waivers. The requirement in Subsection 010.03 may be waived by the Department if the applicant can demonstrate: (12-31-91)

a. Such an agreement is already in place; ~~or~~ ~~(1-1-89)(____)~~

b. There is documentation of a service relationship in the absence of a formal agreement; or (1-1-89)

c. ~~The entity providing wastewater treatment~~ An applicant exhibits sufficient financial strength to continue the project if one (1) or more of the ~~entities supplying wastewater~~ applicants fails to participate. ~~(1-1-89)(____)~~

011. -- 019. (RESERVED).

020. INTEGRATED PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. Limited loan funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health and water quality criteria. (5-3-03)

01. Purpose. An integrated priority rating system shall be utilized by the Department to annually allot available funds to water quality projects determined eligible for funding assistance under the water pollution control loan program in accordance with these rules. (5-3-03)

~~**02. Water Quality Project Ranking.** Under the integrated priority rating system, point source and eligible nonpoint source water pollution control projects shall first be primarily ranked based on the following factors:~~ (3-30-01)

~~**a.** Project eliminates an officially declared or designated water-borne public health hazard or public health emergency.~~ (3-30-01)

~~**b.** Project addresses watershed restoration as identified in the Unified Watershed Assessment and Restoration Priorities for Idaho.~~ (3-30-01)

~~**c.** Project addresses watershed protection as identified in the Rules of the Department of Environmental Quality, IDAPA 58.01.02, "Water Quality Standards," or IDAPA 58.01.11, "Ground Water Quality Rule."~~ (3-30-01)

~~**d.** Project addresses preventing watershed degradation.~~ (3-30-01)

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system wherein each succeeding prevention, compliance, control or abatement need is weighted less heavily than the preceding need. Priority criteria, listed herein in descending numerical weight, shall contain the following points (with a maximum allowable point total of one hundred and fifty (150)): ()

a. Public health emergency or hazard certified by the Idaho Board of Environmental Quality, the Department, a District Health Department or by a District Board of Health – one hundred and fifty (150) points. ()

b. Regulatory compliance issues -- one hundred (100) points. ()

c. Watershed restoration -- one hundred (100) points. ()

d. Watershed protection from impacts -- one hundred (100) points. ()

e. Preventing impacts to uses (nonpoint source pollution projects) -- one hundred (100) points. ()

f. Secondary incentives (e.g. readiness to proceed, financial ability) -- fifty (50) points. ()

03. Department Guidelines. Secondary ranking under each factor in Subsection 020.02 will be established by Department guidelines, which will be approved and advertised each year. The additional ranking will include but not be limited to the following: nexus/benefit to the municipality; project water quality effectiveness; readiness to proceed; cost effectiveness; etc. (3-30-01)()

04. Integrated Priority List. A list shall be developed annually from projects rated according to Subsection 020.02 and 020.03. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval. (5-3-03)

a. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (1-1-89)

b. Priority Target Date. An eligible applicant whose project is on the approved priority list, and for which funding is available, will be contacted by the Department and a target date for submission of a completed loan application will be established. (5-3-03)

c. Project Bypass. A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest ranking project(s) that is ready to proceed. A project that is bypassed will be notified in writing of the reasons for being bypassed. (3-30-01)

05. Amendment of Integrated Priority List. The Director may amend the Integrated Priority List as set forth in Section 995 of these rules. ()

021. SUPPLEMENTAL GRANTS.

In conjunction with loans, the Department may award supplemental grants, not to exceed ninety percent (90%) of total eligible costs, to ~~municipalities~~ applicants in the following manner: (3-30-01)()

01. Projects Not Funded by Loans. Planning and design projects may receive grant assistance up to ninety percent (90%) funding of eligible costs not funded by a loan; and (1-1-89)

02. Costs in Excess of Financial Ability. (3-30-01)

a. ~~Municipalities~~ Applicants may receive supplemental grant assistance for eligible costs that exceed the amount a loan recipient is able to pay. In order to qualify for a supplemental grant, a loan recipient must have the following: (3-30-01)()

i. ~~A median household income that does not exceed eighty percent (80%)~~ An annual cost per household which exceeds one and one-half percent (1 1/2%) of the ~~statewide nonmetropolitan~~ median household income from the most recent census data. If the applicant's service area is not within the boundaries of a municipality, the applicant may use the census data for the county in which it is located or may use an income survey approved by the Department; and (3-30-01)()

ii. ~~An annual cost of wastewater service for residential customers which exceeds two percent (2%) of the median household income.~~ The annual cost includes all operating, maintenance, replacement and debt service costs, both for the existing system and for upgrades, being financed with state revolving funds. (3-30-01)()

b. If an applicant meets the requirement of Subsections 021.02.i. and 021.02.ii., a supplemental grant may be made for the amount of the project that causes the annual cost of wastewater service per household to exceed ~~two~~ one and one-half percent (~~2~~ 1 1/2%) of the median household income, subject to available funds. (3-30-01)()

03. Accrued Interest on Loans with Supplemental Grants. Interest will not be accrued during the design and construction phases on loan projects that also have a supplemental grant. (3-30-01)

022. -- 029. (RESERVED).

030. PROJECT FUNDING.

01. Nonpoint Source Implementation Funding. Eligible nonpoint source water pollution control projects may be funded when all of the following criteria are met: (3-30-01)

a. Consistent with and implements the Idaho Nonpoint Source Management Plan. (3-30-01)

b. Data is used to substantiate a nonpoint source pollutant problem or issue exists and is described or directly referenced. (3-30-01)

c. Completed project implementation plan or work plan. (3-30-01)

d. Project commitment documentation through demonstrated ability for loan repayment. (3-30-01)

e. The project includes documentation that the project owner(s), manager(s), or the sponsoring agency will maintain the project for the life of the project (~~i.e.~~, Maintenance Agreement). (3-30-01)

f. The project provides adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project. (3-30-01)

g. The project demonstrates nexus/benefit to municipality through a letter of support from one (1) or more affected municipalities. (3-30-01)

02. Wastewater Treatment Facility Funding. Projects may be funded in steps: (3-30-01)

a. Step 1. Facility plan or engineering report prepared in accordance with the Handbook. ~~(5-3-03)~~(____)

b. Step 2. Design which includes the preparation of the detailed engineering plans and specifications necessary for the bidding and construction of the project. (1-1-89)

c. Step 3. Construction, which includes bidding and actual construction of the project. (1-1-89)

d. Step 4. A combination of Step 2 and Step 3. (1-1-89)

e. Combination Step Funding. Projects may be funded in any combination of the steps with the approval of the Department. Separate loans may be awarded for Step 1 or Step 2 projects. If a Step 1 or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not proceed to construction, outstanding Step 1 and Step 2 loans will be amortized and a repayment schedule prepared by the Department. (1-1-89)

f. Cost Effective Requirement. Step 2, Step 3 or Step 4 loans will not be awarded until a final cost effective alternative has been selected by the Step 1 facility plan as approved by the Department. The cost effective alternative may be selected based on the comment received from at least one (1) public hearing attended by affected users within the jurisdiction of the eligible applicant and conducted in accordance with state law. (5-3-03)

g. Funding For Reserve Capacity. Funding for reserve capacity of a treatment plant will not exceed a twenty (20) year population growth and funding for reserve capacity of an interceptor will not exceed a forty (40) year population growth as determined by the Department. (1-1-89)

(BREAK IN CONTINUITY OF SECTIONS)

032. LOAN FEE.

01. Loan Fee. The Department may elect to impose a loan fee when necessary to offset the costs of administering the loan program, to provide planning assistance, or to otherwise facilitate the operation of the Clean Water Act State Revolving Fund (CWSRF) effort. The Department may impose a loan fee on loans scheduled to close after January 4, 2006. The loan fee shall not exceed one percent (1%) of the unpaid balance of the loan at the time each loan payment is due. ~~(3-19-07)~~(____)

02. Determination of Loan Fee. The Department shall determine the amount of the loan fee on a yearly basis and shall charge the same loan fee on all loans closed during any one fiscal year. The amount of the loan fee shall be included in the Intended Use Plan, as described by Section 606(c) of the Clean Water Act. In determining the amount of the loan fee, the Department shall consider: (3-19-07)

a. The Department's anticipated costs of administering the loan program for the upcoming fiscal year,

including salaries and overhead; (3-19-07)

b. Any Department costs related to providing technical assistance for the loan program for the upcoming fiscal year; ~~and~~ (3-19-07)(____)

c. The amount of money generated from loan fees in previous fiscal years available for use in the upcoming fiscal year; and (3-19-07)

d. The anticipated demand for planning assistance to supplement regular appropriations and other related needs to support the CWSRF loan program. (____)

03. **Effect on Loan Interest Rate.** The loan interest rate, as described in Subsection 050.05, will be reduced by the corresponding percentage of the loan fee. (3-19-07)

04. **Payment of Loan Fee.** The loan fee shall be due and payable concurrently with scheduled loan principal and interest repayments over the repayment period. (3-19-07)

033. -- 039. (RESERVED).

040. LOAN APPLICATION AND REVIEW.

01. **Submission of Application.** Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. (5-3-03)

02. **Application Requirements.** Applications shall contain the following documentation, as applicable: (5-3-03)

a. A lawful resolution passed by the governing body authorizing an elected official or officer of the ~~qualifying entity~~ applicant to execute a loan contract and sign subsequent loan disbursement requests; ~~(5-3-03)~~(____)

b. Contracts for engineering or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041; ~~(5-3-03)~~(____)

c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. Be procured for design and/or services during construction or previously procured for planning services through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; ~~and~~ ~~(5-3-03)~~(____)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; ~~and~~ ~~(5-3-03)~~(____)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. of these rules. A certification of liability insurance shall be included in the application; ~~and~~ ~~(5-3-03)~~(____)

d. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041; ~~and~~ ~~(5-3-03)~~(____)

e. A demonstration that the obligation to pay the costs for which funding is requested is the result or

will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, ~~50-344~~ 59-1026, and 42-3212, Idaho Code; ~~(5-3-03)(_____)~~

f. Step 1 -- ~~Facility Planning. Plan of study.~~ Scope of work describing the work tasks to be performed in the facility plan if required in accordance with Subsection 030.02, a schedule for completion of the work tasks and an estimate of man hours and costs to complete the work tasks; ~~(5-3-03)(_____)~~

g. Step 2 -- Design, or Step 4 -- Design and Construction: (1-1-89)

i. Facility plan or engineering report, including a final environmental document and decision in accordance with Section 042; ~~and~~ ~~(5-3-03)(_____)~~

ii. Financial and management capability analysis as provided in Subsection 010.01; and (12-31-91)

iii. Intermunicipal service agreements between all ~~qualifying~~ entities within the scope of the project, if applicable; ~~and~~ ~~(1-1-89)(_____)~~

h. Step 3 -- Construction: (1-1-89)

i. Documented evidence of all necessary easements and land acquisition; ~~and~~ ~~(5-3-03)(_____)~~

ii. Biddable plans and specifications of the approved wastewater treatment facility alternative; ~~and~~ (1-1-89)(_____)

iii. A plan of operation and project schedule; ~~and~~ ~~(1-1-89)(_____)~~

iv. A user charge system, sewer use ordinance and financial management system; and (1-1-89)

v. A staffing plan and budget; ~~(1-1-89)(_____)~~

i. Step 4 -- Design and Construction. Loan applicants must submit all documentation specified in Subsection 040.02.h. prior to advertising for bids on construction contracts; ~~(5-3-03)(_____)~~

j. Nonpoint Source Implementation Funding; ~~(5-3-03)(_____)~~

i. Information demonstrating that the project is consistent with and implements the Idaho Nonpoint Source Management Plan; ~~(5-3-03)(_____)~~

ii. Data that substantiates a nonpoint source pollution problem or issue exists; ~~(5-3-03)(_____)~~

iii. A project implementation plan or workplan; ~~(5-3-03)(_____)~~

iv. Project commitment documentation that demonstrates the ability for loan repayment; ~~(5-3-03)(_____)~~

v. Documentation that the project owner, manager or sponsoring agency will maintain the project for the life of the project; ~~(5-3-03)(_____)~~

vi. A demonstration that there will be adequate tracking and evaluation of the effectiveness of the water quality improvements being funded by either the project owner/manager or the sponsoring agency throughout the life of the project; and ~~(5-3-03)(_____)~~

vii. A description of the nexus/benefit to a municipality and a letter of support from one (1) or more affected municipalities. (5-3-03)

03. Determination of Completeness of Application. The Department shall review the application to

determine whether it includes all of the information required by Subsection 040.02. (5-3-03)

04. Notification of Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation will be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

05. Reapplication for Loan. The action of disapproving, recalling or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. (1-1-89)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary for planning, designing and/or constructing wastewater treatment facilities or implementation of water pollution control projects; (5-3-03)

b. Reasonable; and (5-3-03)

c. Costs that are not ineligible as described in Subsection 041.05. (5-3-03)

02. Necessary Costs. The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning, the facility plan for design and construction of wastewater treatment facilities, the project implementation plan or work plan for nonpoint source projects, and any other relevant information in the application that describes the scope of the project to be funded. (5-3-03)

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements for construction and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, ~~50-341~~ 59-1026, and 42-3212, Idaho Code. (5-3-03)(____)

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the ~~qualified entity~~ applicant incurs in the project except ordinary operating expenses of local government, such as salaries and expenses of ~~a~~ mayors, city council members, ~~or a city~~ attorneys, commissioners, board members, or managers; (5-3-03)(____)

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)

c. Professional and consulting services utilizing a lumpsum contract, a negotiated hourly rate contract, a time and materials contract, or cost plus a fixed fee contract; (5-3-03)

d. Planning directly related to the water pollution control projects; (5-3-03)

e. Sewer system evaluations; (5-3-03)

f. Financial and management capability analysis; (5-3-03)

g. Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)

- h.** Landscaping; (5-3-03)
- i.** Removal and relocation or replacement of utilities for which the ~~qualifying entity~~ applicant is legally obligated to pay; (~~5-3-03~~)()
- j.** Material acquired, consumed, or expended specifically for the project; (5-3-03)
- k.** A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)
- l.** Preparation of an operation and maintenance manual; (5-3-03)
- m.** Preparation of a plan of operation; (5-3-03)
- n.** Start-up services; (5-3-03)
- o.** Project identification signs; (5-3-03)
- p.** Public participation for alternative selection; (5-3-03)
- q.** Development of user charge and financial management systems; (5-3-03)
- r.** Development of sewer use ordinance; (5-3-03)
- s.** Staffing plans and budget development; (5-3-03)
- t.** Certain direct and other costs as determined eligible by the Department; (5-3-03)
- u.** Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)
- v.** Costs of complying with the Federal Water Pollution Control Act (P.L. 92-500) as amended, 33 USC Section 1251 et seq., loan requirements applied to specific projects; and (5-3-03)
- w.** Site acquisition costs, including sewer right of way, sewage treatment plant site, wastewater land application sites and sludge disposal areas. (5-3-03)
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: (5-3-03)

 - a.** Basin or area wide planning not directly related to the project; (5-3-03)
 - b.** Bonus payments not legally required for completion of construction before a contractual completion date; (5-3-03)
 - c.** Personal injury compensation or damages arising out of the project; (5-3-03)
 - d.** Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
 - e.** Costs outside the scope of the approved project; (5-3-03)
 - f.** Ordinary operating expenses of local government, such as salaries and expenses of ~~a~~ mayors, city council members, ~~or city~~ attorneys, commissioners, board members, or managers; (~~5-3-03~~)()
 - g.** Construction of privately owned wastewater treatment facilities; (5-3-03)

- h. Cost of land in excess of that needed for the proposed project; (5-3-03)
- i. Cost of refinancing existing indebtedness; and (5-3-03)()
- j. Reserve funds. (5-3-03)()

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department shall notify the applicant if certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Loan Offer. The loan offer shall reflect those costs determined by the Department to be eligible costs. The loan offer, however, may include estimates of some eligible costs that have not yet been set, such as construction costs. Actual eligible costs may differ from such estimated costs set forth in the loan offer. In addition, loan disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (5-3-03)

042. ENVIRONMENTAL REVIEW.
Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. ()

01. Environmental Documentation. ~~For eligible nonpoint source projects funded solely with non-federal funds, see Subsection 042.08. The applicant shall consult with the Department during facility planning to determine the required level of environmental review. The Department will assess the possible environmental impacts associated with the project and will notify the applicant of the type of environmental documentation which will be required. Based upon the Department's determination, the applicant shall~~ Projects may be a nonpoint source activity or a wastewater treatment facility or other point source facility. For eligible nonpoint source projects funded solely with non-federal funds (i.e. State Revolving Loan Fund repayments), see Subsection 042.10. For eligible point source projects, the applicant shall complete an environmental review as part of and in conjunction with an engineering report or facility plan. The applicant shall consult with the Department at an early stage in the loan process to determine the required level of environmental review. Based on review of existing information, and assessment of environmental impacts, the applicant shall complete one (1) of the following per the Department's instruction: (5-3-03)()

- a. Submit a request for ~~e~~Categorical ~~e~~Exclusion (CE) with supporting backup documentation as specified by the Department; (1-1-89)()
- b. Prepare an ~~e~~Environmental ~~i~~Information ~~d~~ocument (EID) in a format specified by the Department; or (1-1-89)()
- c. Prepare an ~~e~~Environmental ~~i~~mpact ~~s~~tatement (EIS) in a format specified by the Department. (1-1-89)()

02. ~~Review of Request~~ Categorical Exclusions. If an applicant requests a ~~ategorical exclusion~~ CE, the Department shall review the request and, based upon ~~project~~ the supporting documentation submitted by the applicant, shall take one (1) of the following actions: (1-1-89)()

- a. ~~Issue notice of categorical exclusion;~~ Determine if the action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper in the geographical area of the proposed project to inform the public of this action, following which the engineering report or facility plan can be approved and the loan award can proceed; or (1-1-89)()
- b. ~~Notify the applicant of need for preparation of an environmental information document; or~~ Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If a CE is not issued, the Department shall notify the applicant to prepare an EID. (1-1-89)()
- e. ~~Notify the applicant of need for preparation of an environmental impact statement.~~ (1-1-89)

03. Environmental Information Document Requirements. ~~If~~ When an *environmental information document* EID is required, the ~~Department shall~~ applicant shall prepare the EID in accordance with the following Department procedures: (1-1-89)(____)

a. ~~Conduct an environmental assessment based upon the applicant's environmental information document and issue.~~ Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders: (1-1-89)(____)

i. ~~A draft finding of no significant impact; or~~ (1-1-89)

ii. ~~A notice of need for preparation of an environmental impact statement.~~ (1-1-89)

b. ~~Allow a thirty (30) day public comment period, following public notice, for all projects receiving a draft finding of no significant impact. If negative impacts are found during the public process, the Department will reassess the project to determine whether an environmental impact statement will be required. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources; and~~ (1-1-89)(____)

c. ~~Issue a final finding of no significant impact if no new information is received requiring a reassessment~~ The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a "finding of no significant impact" (FONSI). (1-1-89)(____)

04. Final Finding of No Significant Impact. The Department shall publish the draft FONSI in a local newspaper in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department shall assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the preliminary engineering report or facility plan. (____)

045. Environmental Impact Statement (EIS) Requirements. If an *environmental impact statement* (EIS) is required, the applicant shall: (1-1-89)(____)

a. ~~Contact~~ Consult with all affected federal and state agencies, and other interested parties, to determine the required scope of the document; ~~and~~ (1-1-89)(____)

b. Prepare and submit a draft *environmental impact statement* EIS to all affected interested agencies, and other interested parties, for review and comment; ~~and~~ (1-1-89)(____)

c. Conduct a public hearing which may be in conjunction with an engineering report or facility plan hearing; and (1-1-89)(____)

d. Prepare and submit a final *environmental impact statement* EIS incorporating all agency and public input for Departmental review and approval. (1-1-89)(____)

~~05. Approval of Requirements. Upon completion by the applicant and approval by the Department of all requirements listed in Subsection 042.04.d., the Department will issue a record of decision documenting the mitigative measures which will be required of the applicant. The loan agreement will be conditioned upon such mitigative measures.~~ (5-3-03)

06. Federal Environmental Review Use. If a federal environmental review for the project has been conducted, the Department may, in its discretion, adopt the document of the federal agency and issue its own determination. **Final Environmental Impact Statement (EIS).** Upon completion of the EIS by the applicant and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigation measures which shall be required of the applicant. The loan agreement can be

completed once the final EIS has been approved by the Department. (1-1-89)()

07. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a drinking water system may be justified in advance of all environment review requirements for the remainder of the system. The Department shall approve partitioning the environment review in accordance with established procedures. ()

08. Use of Environmental Reviews Conducted by Other Agencies. If environmental review for the project has been conducted by another state, federal, or local agency, the Department may, at its discretion, issue its own determination by adopting the document and public participation process of the other agency. ()

079. Validity of Review. Environmental reviews are valid for five (5) years. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Department ~~will~~ shall reevaluate the project, environmental conditions and public views and ~~will~~ shall: (1-1-89)()

a. Reaffirm the earlier decision; or (1-1-89)

b. Require supplemental information to the earlier ~~environmental impact statement~~ EIS, ~~environmental information document~~ EID, or request for ~~ategorical exclusion~~ CE. Based upon a review of the updated document, the Department ~~will~~ shall issue and distribute a revised notice of ~~ategorical exclusion~~ CE, ~~finding of no significant impact~~ FONSI, or record of decision. (1-1-89)()

108. Exemption From Review. Loan projects funded solely with CWSRF repayment monies or with state ~~moneys are~~ monies may be exempt from ~~the environmental review process described in this rule. Notice of such exemption will be provided to the loan applicant/recipient by the Department~~ certain federal crosscutting authorities at the discretion of the Department. (5-3-03)()

043. -- 049. (RESERVED).

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers will be delivered to successful applicants by representatives of the Department or by registered mail. (1-1-89)

02. Acceptance of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period the loan funds may be offered to the next project of priority. (1-1-89)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director and upon signature by the authorized representative of the eligible applicant, the loan offer shall become a contract. Upon accepting a loan offer a eligible applicant becomes a loan recipient. The disbursement of funds pursuant to a loan contract is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. (5-3-03)

04. Estimate of Reasonable Cost. All loan contracts will include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (1-1-89)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Title 39, Chapter 36, Idaho Code; ~~and~~ (5-3-03)()

- b. Special clauses as determined necessary by the Department for the successful investigation, design, construction and management of the project; ~~and~~ (1-1-89)(____)
- c. Terms consistent with applicable state and federal laws pertaining to engineering reports, design and construction, including the Public Works Contractors License Act and the Public Contracts Bond Act, Chapter 19, Title 54, Idaho Code, and the federal Clean Water Act requirements for projects funded with loan moneys of federal origin; ~~and~~ (1-1-89)(____)
- d. Requirement for the prime engineering firm(s) and their principals retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases, whether or not such services or phases are state funded, until the certification of project performance is accepted by the Department; ~~and~~ (5-3-03)(____)
- e. The project shall be bid, contracted and constructed according to the current edition of Idaho Standards for Public Works Construction unless the ~~qualifying entity~~ applicant has approved and adopted acceptable public works construction standards approved by the Department; ~~and~~ (5-3-03)(____)
- f. The loan interest rate for loans made during the state fiscal year beginning July 1 will be established by the Director. The interest rate will be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; ~~and~~ (3-30-01)(____)
- g. The loan fee pursuant to Section 032; ~~and~~ (3-19-07)(____)
- h. All loans must be fully amortized within a period not to exceed twenty (20) years after project completion, ~~unless the project qualifies for extended financing (Section 603(d)(2) of the Clean Water Act (33 U.S.C. 1383(d)(2)).~~ The loan contract will contain a schedule of loan repayments stating the due dates and the amount due. The borrower may elect for either a schedule of semi-annual or annual repayments at the time the loan is finalized; ~~and~~ (3-30-01)(____)
- i. Repayment default will occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (5-3-03)

051. ACCOUNTING AND AUDITING PROCEDURES.

~~Municipalities~~ Applicants receiving loans must maintain project accounts in accordance with ~~government generally accepted~~ accounting principles ~~issued by the Government Accounting Standards Board (GASB).~~ Eligible nonpoint source water pollution control implementation funding project sponsors ~~will~~ may be audited on an annual basis according to government auditing standards issued by the U.S. General Accounting Office (~~GAO~~). (3-30-01)(____)

(BREAK IN CONTINUITY OF SECTIONS)

995. WAIVERS OF REQUIREMENTS AND AMENDMENT OF INTEGRATED PRIORITY LIST.

The Director may amend the Integrated Priority List and grant a ~~Waiver~~ waiver from the requirements of these ~~regulations may be granted by the Department rules~~ on a case-by-case basis upon full demonstration by the loan applicant/~~recipient~~ requesting the waiver that the following conditions exist. See also Subsection 020.05 of these rules.

01. **Health Hazard.** A significant public health hazard exists; ~~or~~ (1-1-89)(____)
02. **~~Ground~~Water Contamination.** A significant ~~ground~~water contamination problem exists; ~~or~~ (1-1-89)(____)

03. Pollution. A significant point source of pollution exists causing a violation of Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards"; ~~or~~ (1-1-89)(____)

04. Affordability Criteria Exceeded. The project will exceed affordability criteria adopted by the Department in the event the waiver is not granted; or (1-1-89)

05. Availability of Federal Funds. The waiver will not affect the availability of federal funds for the project where such funding is required by the ~~entity~~ applicant requesting the waiver. (1-1-89)(____)

Section 996 has been moved to Section 003

~~997. INCLUSIVE GENDER-~~

~~As used in these rules, the masculine, feminine, or neuter gender, and the singular or plural number, will each be deemed to include the others whenever the context so requires.~~ (1-1-89)

Section 998 has been moved to Section 005

~~999. SEVERABILITY-~~

~~Idaho Department of Environmental Quality Rules, IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans," are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of the chapter.~~ (3-30-01)

996. -- 999. (RESERVED).

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.

*The written comment deadline is June 25, 2008, unless otherwise listed.
(Temp & Prop) indicates the rule is both temporary and proposed.
** Indicates that a public hearing has been scheduled.*

IDAPA 01 - IDAHO BOARD OF ACCOUNTANCY PO Box 83720, Boise, ID 83720-0002

01-0101-0801, Idaho Accountancy Rules. (Temp & Prop) Complies with HB 379 by removing notice and fee requirements for out-of-state licensees to practice in Idaho; updates national standards incorporated by reference; clarifies client record confidentiality and the Board's ability to share disciplinary investigations with other Accountancy Boards; and defines a requirement for an ethics component in continuing education.

IDAPA 08 - STATE BOARD OF EDUCATION/DEPT OF EDUCATION PO Box 83720, Boise, ID 83720-0037

08-0111-0801, Out-of-State Institutions, In-State Non-Accredited Institutions and Correspondence or Private Courses. (Temp & Prop) Chapter repeal.

08-0111-0802, Registration of Postsecondary Educational Institutions and Proprietary Schools. (Temp & Prop) Chapter rewrite requires that postsecondary institutions must register with the Board to ensure they are legitimate degree granting institutions and that proprietary schools are legitimate and sets the criteria for evaluating these institutions and schools.

****08-0202-0801, Rules Governing Thoroughness.** (Temp & Prop) States that all coursework commencing prior to 9/1/08 will be accepted for recertification, and specifies the availability of an appeal procedure.

08-0203-0802, Rules Governing Uniformity. (Temp & Prop) The Idaho Alternative Assessment Extended Content Standards for Language Arts, Mathematics and Science are revised in alignment with the Idaho Content Standards as updated in 2006, and the name of standards is changed to the Idaho Extended Content Standards to better reflect the parallel alignment to the Idaho Content Standards.

IDAPA 11 - IDAHO STATE POLICE PO Box 700, Meridian, ID 83680-0700

11-1105-0801, Rules of the Idaho Peace Officer Standards and Training Council for Idaho Department of Juvenile Corrections Direct Care Staff. (Temp & Prop) New chapter establishes training and certification requirements for Department of Juvenile Corrections direct care staff.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE PO Box 83720, Boise, ID 83720-0036

16-0303-0801, Rules Governing Child Support Services. Establishes a process to collect a \$25 annual fee for each enforced child support case, that has never participated in a cash assistance program, once \$500 in support payments has been collected on each case, each year.

16-0304-0801, Rules Governing the Food Stamp Program in Idaho. Allows an applicant's actual income and actual expenses to be used in the calculation of self-employment income when determining eligibility for benefits.

16-0308-0801, Rules Governing Temporary Assistance for Families in Idaho. (Temp & Prop) Aligns methodologies used to calculate income for self-employed individuals who apply for the ICCP with those used in other Department rules by simplifying the process for determining income for self-employed individuals in one or more programs, and by reducing the errors that may occur when different methods are used.

16-0612-0801, Rules Governing the Idaho Child Care Program (ICCP). (Temp & Prop) Aligns methodologies used to calculate income for self-employed individuals who apply for the ICCP with those used in other Department rules by simplifying the process for determining income for self-employed individuals in one or more programs, and by reducing the errors that may occur when different methods are used.

**IDAPA 29 - IDAHO POTATO COMMISSION
PO Box 1670, Eagle, ID 83616**

29-0102-0801, Rules Governing Payment of Tax and Usage of Certification Marks and Trademarks. (Temp & Prop) Changes clarify IPC tax calculation and reporting methods.

**IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY
1410 N. Hilton, Boise, ID 83706-1255**

58-0112-0801, Rules for Administration of Water Pollution Control Loans. Revises definitions to help address nonpoint source water pollution; utilizes federal allowances that allow for flexibility in requiring federal consultations for certain loans; expands the use of wastewater loan fees to allow fees to supplement planning grants; allows for, in certain cases, 30 year repayment periods when DEQ purchases or refinances existing debt obligations; adopts existing state wastewater planning grant priority list scoring process so that the planning grants and the loans can be scored by the same criteria; aligns definitions of "Point Source" and "Nonpoint Source Pollution" to clarify how loan applications should be classified; and revises Section 995 to include a process for amending an integrated priority list. Comment by: 7-2-08.

NEGOTIATED RULEMAKING MEETINGS ARE SCHEDULED FOR THE FOLLOWING:

DEPARTMENT OF AGRICULTURE

02-0427-0801, Rules Governing Deleterious Exotic Animals

DEPARTMENT OF HEALTH AND WELFARE

16-0602-801, Rules Governing Standards for Child Care Licensing

DEPARTMENT OF ENVIRONMENTAL QUALITY

58-0103-0801, Individual/Subsurface Sewage Disposal Rules

58-0108-0802, Idaho Rules for Public Drinking Water Systems

Please refer to the Idaho Administrative Bulletin, **June 4, 2008, Volume 08-6** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact information.

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Copies of the Administrative Bulletin and other rules publications are available for purchase. For subscription information and ordering see our website or call (208) 332-1820 or write the Office of Administrative Rules, Department of Administration, 650 W. State St., Room 100, Boise, ID 83720-0306. Visa and MasterCard accepted for most purchases.

The Idaho Administrative Bulletin and Administrative Code are available on-line at: www.adm.idaho.gov/adminrules/

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