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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 08-1 refers to the first Bulletin issued in calendar year 2008; Bulletin 09-1 refers to the first Bulletin issued in calendar year 2009. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 09-1 refers to January 2009; Volume No. 09-2 refers to February 2009; and so forth. Example: The Bulletin published in January 2009 is cited as Volume 09-1. The December 2008 Bulletin is cited as Volume 08-12.*

## **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.*

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

## **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**.*

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## 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 "-", (38-0501-0901). 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. 38-0501-0901"

"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).

"0901" denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rulemaking action published in calendar year 2009. A subsequent rulemaking on this same rule chapter in calendar year 2009 would be designated as "0902". The docket number in this scenario would be 38-0501-0902.

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 these rules." OR "...in accordance with Subsection 201.06.c. of these rules."

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 2009**

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
09-1	January 2009	<b>*November 14, 2008</b>	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
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09-9	September 2009	July 31, 2009	September 2, 2009	September 23, 2009
09-10	October 2009	<b>**August 28, 2009</b>	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

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2010**

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
10-1	January 2010	<b>*November 13, 2009</b>	January 6, 2010	January 27, 2010
10-2	February 2010	January 8, 2010	February 3, 2010	February 24, 2010
10-3	March 2010	February 5, 2010	March 3, 2010	March 24, 2010
10-4	April 2010	March 5, 2010	April 7, 2010	April 28, 2010
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10-10	October 2010	<b>**August 27, 2010</b>	October 6, 2010	October 27, 2010
10-11	November 2010	October 1, 2010	November 3, 2010	November 24, 2010
10-12	December 2010	November 5, 2010	December 1, 2010	December 22, 2010

***\*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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<b>IDAPA 42</b>	<b>Wheat Commission</b>

# IDAPA 05 - IDAHO DEPARTMENT OF JUVENILE CORRECTIONS

## 05.01.01- RULES GOVERNING CONTRACT PROVIDERS

DOCKET NO. 05-0101-1001

### NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is March 29, 2010.

**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 20-504(9), 20-504(11), and 20-531(4), Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 19, 2010.

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 rulemaking clarifies the obligations of contract providers to notify parents of juveniles in custody of the Idaho Department of Juvenile Corrections. Parents of juveniles in state custody are always notified when an incident occurs regarding their child. This rulemaking clarifies whether the contract providers must make immediate or emergency notification to a parent or whether they can notify the parent in a reasonable, but not immediate, period of time, i.e. within ten (10) days of the incident or occurrence.

**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:

This temporary rule is necessary to protect the safety and welfare of juveniles in state custody by clarifying the requirements for notification of parents of any incident that occurs regarding their child.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), Idaho Code, 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: None.

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

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rule change is to correct a conflict in existing rules and the need for temporary rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the temporary and proposed rule, contact the undersigned.

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 May 26, 2010.

DATED this 7th day of April, 2010.

Nancy S. Bishop  
Deputy Attorney General  
Idaho Dept. of Juvenile Corrections  
954 W. Jefferson St.  
PO Box 83720 , Boise, Idaho 83720-0285  
(208) 334-5100 Phone / (208) 334-5120 Fax

**THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 05-0101-1001**

**262. PROGRAM OPERATIONAL REQUIREMENTS AND CASE MANAGEMENT.**

**01. General Requirements. (4-6-05)**

**a.** Programs should provide vigorous programming that minimizes periods of idle time, addresses behavioral problems of juvenile offenders, and teaches and promotes healthy life choices. Programs should specifically address those factors in juvenile offenders' lives that contribute to delinquency and that can be realistically changed. (4-2-08)

**b.** Programs must be open to the community by encouraging appropriate telephone and mail contact between juvenile offenders and their families, by encouraging visitation, and by involving volunteers in support of the program. (4-2-08)

**c.** Contract providers must structure and document services offered in the program so that continuity in case planning is obvious. Health, mental health, substance abuse, social skills, educational, vocational, independent living, and other special needs identified in the assessment must be clearly addressed in the service implementation plan. Services provided to address those needs must be documented regularly. Progress on goals associated with those needs must be recorded in progress notes in a case file at least monthly and in a written progress report at least every two (2) months. Service needs remaining at the time of release from department custody or transfer must be accounted for in the reintegration plan for each juvenile offender. (4-2-08)

**d.** Without authorization from the Idaho Department of Health and Welfare and the department, a residential care contract provider shall not admit more juveniles into care than the number specified on the provider's license. Contract providers wishing to increase capacity are responsible for contacting the Idaho Department of Health and Welfare. A copy of the written confirmation to the contract provider from the Idaho Department of Health and Welfare for verbal approval to exceed the licensed capacity shall be forwarded to the department's clinical supervisor in the region and to the department's quality assurance staff. (4-6-05)

**e.** Programs may not, under any circumstances, involve juvenile offenders in plethysmographic assessments. The use of polygraphs for juvenile offenders adjudicated for or documented to have demonstrated sexually abusive behavior, shall only be undertaken by court order or with the specific written authorization of the department's regional clinical supervisor, and then only with the full, informed consent of the juvenile offender, and if the juvenile offender is a minor, parent or guardian. Contract providers shall not make treatment decisions solely on the results of a polygraph. Polygraphers used in this process must be able to provide documentation of specific training in the use of polygraphy with sexually abusive juvenile offenders. (3-29-10)

**02. Incidents Requiring Immediate Notice to Parent or Guardian and Department.** All notifications under this Section shall be made to the regional facility in the region where the contract provider is located. Out-of-state contract providers shall notify the Region 2 facility. Contract providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. If any of the following events occur, the contract provider must immediately notify the juvenile offender's parent or guardian, juvenile services coordinator, juvenile probation officer, and the department's regional facility by telephone (not by facsimile). A written incident report shall also be transmitted within twenty-four (24) hours to the juvenile offender's parent or guardian, juvenile services coordinator, and the juvenile probation officer, unless notification to the juvenile offender's parent or guardian would endanger the juvenile. Transmission may be electronic or by facsimile. ~~(3-29-10)~~(3-29-10)T

**a.** Health and mental health emergencies including, but not limited to: (3-29-10)T

**i.** ~~e~~Every instance of emergency room access; ~~or~~ (3-29-10)T

**ii.** ~~r~~Refusal of medications, ~~or~~ treatment recommended by a physician, or food for two (2) days;

~~(3-29-10)~~(3-29-10)T

**b.** Major incidents such as death of a juvenile offender, suicide, attempted suicide or threat of suicide, attempted escape, sexual misconduct among juvenile offenders or by staff including, but not limited to, incidents reportable under PREA, criminal activity resulting in arrest, detention, or filing a report with local law enforcement, or any relevant report made to the Idaho Department of Health and Welfare; (3-29-10)

**c.** Any incident of restraint which involves the use of medications, chemicals, or mechanical devices of any kind; (4-6-05)

~~**d.** Any use of separation or isolation for more than two (2) hours;~~ (4-6-05)

~~**ed.** Incidents of alleged or suspected abuse or neglect of juvenile offenders; and~~ (4-2-08)

~~**f.** Incidents involving the disclosure of criminal behavior by juvenile offenders.~~ (4-2-08)

~~**g.** The following incidents or activities jeopardize the safe operation of the facility and require the completion of a detailed incident report:~~ (3-29-10)

~~**i.** Instances of physical assault or fighting;~~ (3-29-10)

~~**ii.** Major misconduct by one (1) or more juvenile offenders or staff;~~ (3-29-10)

~~**iii.** Discovery of contraband that represents an immediate threat to safety and security, such as weapons or drugs; and~~ (3-29-10)

~~**iv.** Significant property damage resulting from misconduct, negligence, or from incidents such as explosions, fires, floods, or other natural disasters.~~ (3-29-10)

**e.** Incidents involving major disasters affecting location or well-being of the juveniles; (3-29-10)T

**03. Escapes Also Require Immediate Notice to Parent or Guardian and Department.** In all instances of escape, the contract provider must immediately notify the juvenile correctional center in Nampa first, followed by the regional facility, juvenile offender's parent or guardian, juvenile services coordinator, and juvenile probation officer by telephone (not by facsimile). A written incident report shall also be transmitted within twenty-four (24) hours to the juvenile offender's parent or guardian, juvenile services coordinator, and the juvenile probation officer, unless notification to the juvenile offender's parent or guardian would endanger the juvenile offender. Transmission may be electronic or by facsimile. Upon apprehension, all of the same parties must be notified immediately. ~~(3-29-10)~~(3-29-10)T

**a.** Clothing and other personal belongings shall be secured immediately and maintained in a secure place until returned to the department. (4-6-05)

**b.** The contract provider shall not transfer a juvenile offender at the time of an escape. The juvenile offender shall continue to be assigned to the program, although not physically present for up to forty-eight (48) hours. The program will be reimbursed for the days the juvenile offender was on escape status up to forty-eight (48) hours. Should the program choose to transfer the juvenile offender after returning, then the procedures outlined in Subsections 276.04 and 276.08, of these rules, shall apply. If the juvenile offender is apprehended, the contract provider shall contact the juvenile services coordinator to plan for transfer of the juvenile offender to a regional facility for an updated assessment and for a placement decision. (3-29-10)

**04. Incidents ~~Not~~ Requiring Immediate Notice to Department and Ten Day Notice to Parents or Guardian.** The following incidents require immediate notice to the department and other parties in the manner described in Subsection 262.02, and require notice within ten (10) days to parent or guardian of the juveniles involved. ~~(3-29-10)~~(3-29-10)T

**a.** Any use of separation or isolation for more than two (2) hours; (3-29-10)

- b.** Incidents involving the disclosure of criminal behavior by juvenile offenders; ~~(3-29-10)~~(3-29-10)T
- ~~e.~~ *The following incidents or activities jeopardize the safe operation of the facility and require the completion of a detailed incident report:* ~~(3-29-10)~~
- ~~ic.~~ Instances of physical assault or fighting; (3-29-10)
- ~~ii.~~ *Instances of lost keys, equipment, vehicles, or tools;* ~~(3-29-10)~~
- ~~iii.d.~~ Major misconduct by one (1) or more ~~juvenile offenders or~~ staff against a juvenile offender; ~~(3-29-10)~~(3-29-10)T
- ~~iv.e.~~ Discovery of contraband that represents an immediate threat to safety and security such as weapons or drugs; ~~and~~ ~~(3-29-10)~~(3-29-10)T
- ~~v.f.~~ Other than incidents described in Paragraph 262.02.e., Significant property damage resulting from misconduct, negligence, or from incidents such as explosions, fires, floods, or other natural disasters; ~~and~~ ~~(3-29-10)~~(3-29-10)T
- g.** Any pattern of restraint of a juvenile, which is defined as three (3) or more restraints within a twenty-four (24) hour period. ~~(3-29-10)~~T
- 05. Incidents Requiring Notice Within Ten Days to the Department.** ~~(3-29-10)~~(3-29-10)T
- a.** Contract providers must ensure that a detailed, written incident report is completed and signed by involved staff before the end of the shift during which the incident took place. A copy of the completed incident report must be submitted to the juvenile services coordinator no later than ten (10) business days after the incident. (4-6-05)
- b.** A detailed incident report is also required for each incident of juvenile offender misconduct that is not reportable under Subsection 262.02 and results in any type of: (3-29-10)
- ~~i.~~ *Any minor injury;* ~~(3-29-10)~~
- ~~ii.~~ *Any physical restraint that does not involve the use of medications, chemicals, or mechanical devices of any kind;* ~~(3-29-10)~~
- ~~iii.~~ *Refusal of program participation; or* ~~(3-29-10)~~
- ~~iv.~~ *Separation, isolation, or room confinement for less than two (2) hours.* ~~(3-29-10)~~
- i.** Instances of lost keys, equipment, or tools; (3-29-10)T
- ii.** Discovery of contraband not posing an immediate risk; or (3-29-10)T
- iii.** A pattern of refusal of program participation that rises to the point of raising questions about the appropriateness of the placement; (3-29-10)T
- c.** A detailed incident report is also required for each incident of staff misconduct relating to juvenile care that is not reportable under Subsection 262.02 and results in any type of: (3-29-10)
- ~~i.~~ *Suspension from work;* ~~(3-29-10)~~
- ~~ii.~~ *Termination of work;* ~~(3-29-10)~~
- ~~iii.~~ *Revocation or suspension of professional license; or* ~~(3-29-10)~~



- ~~iv.~~ Revocation or suspension of driver's license of any staff transporting juveniles. (3-29-10)
- i. Any physical restraint that does not involve the use of medications, chemicals, or mechanical devices of any kind; or (3-29-10)T
- ii. Separation, isolation, or room confinement for less than two (2) hours. (3-29-10)T
- d.** A detailed incident report is also required for each incident of staff misconduct relating to juvenile care that is not reportable under Subsection 262.02 and results in any type of: (3-29-10)T
  - i. Suspension from work; (3-29-10)T
  - ii. Termination from work; (3-29-10)T
  - iii. Revocation or suspension of professional license; or (3-29-10)T
  - iv. Revocation or suspension of driver's license of any staff who transports juveniles. (3-29-10)T
- 06. Incident Report Content.** Contract providers may elect to use the department's standard incident report form or may use another form as long as all of the following information is included: (4-6-05)
  - a. Juvenile offender's assigned unit; (4-2-08)
  - b. Date, location, and time of the incident; (4-2-08)
  - c. Witnesses and other staff and juvenile offenders involved; (4-2-08)
  - d. Persons notified with date and time of notice; (4-6-05)
  - e. Type of incident by category, such as assault on staff, assault on juvenile offender, injury or illness, property damage, contraband, suicide attempt or threat, escape or attempted escape, or other misconduct; (4-2-08)
  - f. Action taken by category, such as physical restraint, separation, isolation, or room confinement with times in and out, suicide precautions, or escape precautions initiated; (4-6-05)
  - g. Brief narrative description of the incident; (4-6-05)
  - h. Signature of staff and reviewing supervisor, which may be affixed electronically; (3-29-10)
  - i. Documentation of injury and medical attention provided; and (4-2-08)
  - j.** If the incident involves sexual misconduct, the incident report must include a description of action taken to:
    - i. Keep the alleged victim(s) safe from intimidation of further abuse and maintain confidentiality; (4-2-08)
    - ii. Address any immediate trauma, either physical or emotional; (4-2-08)
    - iii. Address long-term medical or mental health needs related to the alleged abuse; (4-2-08)
    - iv. Notify responsible licensing, regulatory, and law enforcement agencies and preserve evidence; (4-2-08)
    - v. Conduct an internal investigation of the incident and as necessary request that an external investigation be completed; and (4-2-08)

vi. Prevent repetition of the abusive situation. (4-2-08)

**07. Monitoring the Location of Juvenile Offenders.** The contract provider must have and strictly follow a comprehensive policy covering the supervision of juvenile offenders, including a plan for monitoring all movement of those juvenile offenders both in the facility and, as appropriate, within the community. Staff at the facility must be aware of the location of every juvenile offender assigned to that program at all times. (4-2-08)

**08. Nonresidential Absences.** Nonresidential programs shall make reasonable efforts to ensure that the juvenile offenders attend their program daily or as otherwise specified in the service implementation plan. The nonresidential program shall inform the juvenile services coordinator of daily attendance and all attendance problems. This information must be documented in at least monthly progress notes and must be reported in written progress reports every two (2) months. (4-2-08)

# IDAPA 13 - IDAHO FISH AND GAME COMMISSION

## 13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-0901

### 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. 13-0111-0901. The action is authorized pursuant to Sections 36-104(b) and 36-901, 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. 122, Section 201, "Fishing Methods And Gear," Subsection 201.11, "Use of Hands," only, as amended in Docket No. 13-0111-0901, is not consistent with legislative intent and has been rejected. In accordance with Senate Concurrent Resolution No. 122, the following changes are being made to the final rule:

Amendments made under Docket No. 13-0111-0901 in Subsection 201.11 have been rejected and are null, void and of no force and effect. The text of IDAPA 13.01.11, Subsection 201.11, will remain as currently codified.

The original text of the proposed rule was published in the October 7, 2009, Idaho Administrative Bulletin, Vol. Volume 09-10, Vol. 1, pages 273 through 282. The pending rule was published in the January 6, 2010, Idaho Administrative Bulletin, Vol. 10-1, page 76.

Section 201 of IDAPA 13.01.11 is being reprinted as codified following this notice. Any additional amendments made to this rule under this docket that were not affected by SCR No. 122 became final and effective upon adoption of SCR No. 122 and have been codified.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Sharon Kiefer (208) 287-2780.

DATED this 14th day of April, 2010.

W. Dallas Burkhalter  
Deputy Attorney General  
Natural Resources Division/Fish and Game  
600 S. Walnut  
P.O. Box 25, Boise, Idaho 83707

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### THE FOLLOWING IS THE FINAL TEXT FOR THE SECTION AFFECTED BY SCR 122

#### **201. FISHING METHODS AND GEAR.**

Unless modified by a regional exception, the following fishing methods and restrictions are applicable in all Idaho waters. (3-20-97)

**01. Archery and Spear Fishing.** Fishing with the use of bow and arrow, crossbow, spear or mechanical device, excluding firearms, is permitted for the taking of bullfrogs and unprotected nongame fish, and only in those waters during the season set for the taking of game fish. (7-1-99)

**02. Bait Restricted.** It is unlawful to fish with bait in waters designated as artificial flies and lures only, fly fishing only, or no bait. (3-30-07)

**03. Barbed Hooks.** It is unlawful to fish for sturgeon with barbed hooks. It is unlawful to fish for or take steelhead or Chinook salmon with barbed hooks in the Clearwater River drainage, Salmon River drainage, and Snake River drainage below Hells Canyon Dam. It is unlawful to fish in no bait waters with barbed hooks. (3-2-10)

**04. Fishing Gear.** It is unlawful to fish in any waters of Idaho with more than one (1) handline or pole with a line attached, except a person with a two (2) pole permit may use two (2) poles; or with more than five (5) lines while ice fishing; or by archery, spearfishing, snagging, hands, and netting except as permitted. Not more than five (5) hooks may be attached per line. The line or lines must be attended by the person fishing. In conjunction with the Angler Incentive Program, unlimited poles and lines may be used while fishing from a boat on Lake Pend Oreille. A sliding sinker must be used when fishing for sturgeon. (3-2-10)

**05. Fishing Shelters.** Any enclosure or shelter which is left unattended overnight on the ice of any waters of the state shall have the owner's name, telephone numbers, and current address legibly marked on two (2) opposing sides of the enclosure or shelter. (7-1-99)

**06. Gaff Hook.** It is unlawful to land fish of any species with a gaff hook except through a hole cut or broken in the ice in waters which have no length restrictions or harvest closures for that species. (3-20-97)

**07. Molesting Fish.** It is unlawful to molest any fish by shooting at it with a firearm or pellet gun, striking at it with a club, hands, rocks, or other objects, building obstructions for catching fish, or chasing fish up or downstream in any manner. (3-20-97)

**08. Snagging.** It is unlawful to snag game fish, unless otherwise stated by Commission rules/exceptions. Snagging of unprotected nongame fish species is permitted. (3-20-97)

**09. Trapping and Seining Minnows or Crayfish.** It is lawful to take unprotected nongame fish, crayfish, and yellow perch with a minnow net, seine, or up to five (5) traps, subject to the following restrictions: (3-2-10)

**a.** Unprotected nongame fish, yellow perch, and crayfish may be taken only in waters open to fishing; provided the seine or net does not exceed ten (10) feet in length or width and nets and seines must have three-eighths (3/8) inch square or smaller mesh; and the minnow or crayfish trap does not exceed two (2) feet in length, width or height. If the trap is of irregular dimension, but its volume does not exceed the volume of an eight (8) cubic foot trap, it is also lawful to use. (3-2-10)

**b.** Nets and seines may not be left unattended. Traps must be checked at least every forty-eight (48) hours. All game fish (except yellow perch) and protected nongame fish incidentally taken while trapping or seining must be immediately released alive. All fish so taken must immediately be killed except where stated otherwise. (3-2-10)

**c.** All traps must have a tag attached bearing the owner's name and address. (3-2-10)

**d.** Minnows and crayfish may only be taken during the season set for the taking of game fish in those waters. Crayfish may be taken alive to be used as bait ONLY on the water where captured. (3-2-10)

**10. Use of Bait.** It is unlawful to use live fish, leeches, frogs, salamanders, waterdogs or shrimp as bait, except that live crayfish and bull frogs may be used if caught on the body of water being fished. (5-8-09)

**11. Use of Hands.** It is lawful to take bull frogs and crayfish with the hands. (3-20-97)

**IDAPA 15 - OFFICE OF THE GOVERNOR**

**15.13.02 - HAZARDOUS SUBSTANCE RESPONSE RULES**

**DOCKET NO. 15-1302-0901**

**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. 15-1302-0901. This agency action for this final rulemaking is authorized pursuant to Section 39-7100, 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 49, Section 100, "Regional Response Teams, Designation, Location, Jurisdiction, Activation, Liability," Subsection 05, "Liability for Response Costs," only, as amended under Docket Number 15-1302-0901, is not consistent with legislative intent and has been rejected. In accordance with House Concurrent Resolution No. 49, the following changes are being made to the final rule:

Amendments made under Docket No. 15-1302-0901 in Subsection 100.05 have been rejected and are null, void and of no force and effect. The text of IDAPA 15.13.02, Subsection 100.05 will remain as currently codified.

The original text of the proposed rule was published in the October 7, 2009, Idaho Administrative Bulletin, Vol. Volume 09-10, Vol. 1, pages 292 through 303. The pending rule was published in the December 2, 2009, Idaho Administrative Bulletin, Vol. 09-12, page 84.

Section 100 of IDAPA 15.13.02 is being reprinted as codified following this notice. Any additional amendments made to this rule under this docket that were not affected by HCR 49 became final and effective upon adoption of HCR 49 and have been codified.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Bob Wells (208) 422-3041.

DATED this 14th day of April, 2010.

Robert A. Wells  
Special Assistant to the Director  
Idaho Bureau of Homeland Security  
4040 Guard Street, Boise, Idaho 83705  
(208) 422-3041 Fax 422-3044

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**THE FOLLOWING IS THE FINAL TEXT FOR THE SECTION AFFECTED BY HCR 49**

**100. REGIONAL RESPONSE TEAMS, DESIGNATION, LOCATION, JURISDICTION, ACTIVATION, LIABILITY (RULE 100).**

**01. Designation of Regional Response Teams.** There shall be Regional Response Teams designated by the state of Idaho, Military Division. Each regional response team shall be capable of responding to hazardous substance emergencies within their jurisdiction or, when approved by the state of Idaho, Military Division, Bureau of Homeland Security, in their region, or other state regions. (3-23-10)

**02. Location of Regional Response Teams.**

Area of Idaho	Primary Response Counties	Designation	Team Location – Headquarters
Region 1	Benewah, Bonner, Boundary, Kootenai, Shoshone	Regional Response Team 1(RRT1)	Kootenai County Fire and Rescue
		Spokane Bomb Squad	Spokane Police and Sheriff's Office
Region 2	Clearwater, Idaho, Latah, Lewis, Nez Perce	Regional Response Team 2 (RRT2)	Lewiston Fire Department
		Explosive response covered by Spokane and RBS3	
Region 3	Adams, Canyon, Gem, Owyhee, Payette, Washington, (Gem response may come from Boise for access time.)	Regional Response Team 3 (RRT3)	Nampa/Caldwell Fire Department
		Regional Bomb Squad 3 (RBS3)	Nampa Police Department
Region 4	Ada, Boise, Camas, Elmore, Valley, (Gem response for access time.)	Regional Response Team 4 (RRT4)	Boise Fire Department
		Regional Bomb Squad 4 (RBS4)	Boise Police Department
Region 5	Blaine, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls, (Minidoka and Cassia may come from Southeast for access time.)	Regional Response Team 5 (RRT5)	Magic Valley Emergency Response Team (Primary response apparatus housed in Jerome FD)
		Regional Bomb Squad 5 (RBS5)	Twin Falls Police Department
Region 6	Bannock, Bear Lake, Butte, Bingham, Caribou, Franklin, Oneida, Power, (Minidoka and Cassia responses for access time.)	Regional Response Team 6 (RRT6)	Pocatello Fire Department
		Explosive response covered by RBS5 and RBS7	
Region 7	Bonneville, Clark, Custer, Fremont, Jefferson, Lemhi, Madison, Teton.	Regional Response Team 7 (RRT7)	Idaho Falls Fire Department
		Regional Bomb Squad 7 (RBS7)	Idaho Falls Police Department

(3-23-10)

**03. Primary Jurisdiction of Regional Response Teams.** See Subsection 100.02 of these rules.

(3-23-10)

**04. Activation of Regional Response Teams.**

(3-23-10)

**a.** The party requesting the assistance must:

(3-23-10)

**i.** Contact State Communications at 1-800-632-8000, or (208-846-7610.

(3-23-10)

- ii. State their name; (3-23-10)
  - iii. State their location; (3-23-10)
  - iv. Provide a description of the incident; and (3-23-10)
  - v. Provide a description of the type of assistance requested. (3-23-10)
- b.** Regional Response Teams must be activated by the Military Division when responding outside their jurisdiction by calling Idaho State Communications Center at 800-632-8000, or (208) 846-7610. This will initiate a conference call, if appropriate, with the appropriate state and local agencies. (3-23-10)
- c.** If the request is for assistance with a drug lab response, the requester must call State Communications and provide the following: (3-23-10)
- i. That the request is for a drug lab response; (3-23-10)
  - ii. The location, which must include, at a minimum, the county and city; (3-23-10)
  - iii. The type of assistance requested; and (3-23-10)
  - iv. The nature of the chemicals released. (3-23-10)
- d.** State communications will then page the BHS Haz Mat Duty Officer, provide the information, and request authorization for the RRT to respond. Upon authorization, State Communications will notify the appropriate RRT of the request for assistance and the authorization to respond. (3-23-10)
- 05. Reimbursable Costs -- Hazardous Substances.** (3-23-10)
- a.** State emergency response teams and local emergency response agencies may submit claims within sixty (60) days of the termination of the incident, to the Military Division for reimbursement. Eligible documented costs, incurred as a result of their response to a hazardous substance incident, may be submitted. (3-23-10)
- b.** State emergency response teams and local emergency response agencies may submit claims within sixty (60) days of the termination of the incident, to the Military Division for reimbursement. The following documented costs, incurred as a result of their response to a hazardous substance incident may be submitted: (3-23-10)
- i. Disposable materials and supplies acquired, consumed and expended specifically for the purpose of the response; (3-23-10)
  - ii. Compensation of employees for the time and efforts devoted specifically to the response that are not otherwise provided for in the applicant's operating budget, (e.g., overtime pay for permanent fulltime and other than fulltime employees, recalled personnel or responding when out of jurisdiction); (3-23-10)
  - iii. Rental or leasing of equipment used specifically for the response (e.g., protective equipment or clothing, scientific and technical equipment); (3-23-10)
  - iv. Replacement costs for equipment owned by the applicant that is contaminated beyond reuse or repair, if the applicant can demonstrate that the equipment was a total loss and that the loss occurred as a result of the response (e.g., self contained breathing apparatus irretrievably contaminated during the response); (3-23-10)
  - v. Decontamination of equipment contaminated during the response; (3-23-10)
  - vi. Special technical services required for the incident response (e.g., costs associated with the time and efforts of local and state personnel to recover the costs of response, and of technical experts/specialists not

otherwise provided for by the local government); (3-23-10)

vii. Medical monitoring, treatment of response personnel, and rehabilitation costs as per 29 CFR 1910, 120; NFPA 1500; and NFPA 1584; and (3-23-10)

viii. Laboratory costs for purposes of analyzing samples taken during the response. (3-23-10)

c. Reimbursement for costs will not exceed the duration of the response. Reimbursements shall only be paid after the military division finds that the actions by the Regional Response Team, or the emergency response agency were taken in response to a hazardous substance incident as defined in this chapter. (3-23-10)

**06. Liability for Response Costs - Non-Hazardous Substances.** (3-23-10)

a. Liability for response costs for spills of non-hazardous substances shall be the responsibility of the spiller or transporter of such material when the spiller or transporter failed to comply with laws or regulations of the state or federal government which would have facilitated identification of the product as a non-hazardous substance. (3-23-10)

b. Liability for response costs to non-hazardous substances shall be the responsibility of the person or entity requesting assistance in all other instances. (3-23-10)



# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.02.06 - RULES GOVERNING QUALITY ASSURANCE FOR IDAHO CLINICAL LABORATORIES

DOCKET NO. 16-0206-1001

### 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 Section 56-1003, Idaho Code.

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

**THURSDAY, JUNE 3, 2010, 1:00 p.m.**

**Idaho Historical Society  
Public Meeting Room  
2205 Old Penitentiary Road  
Boise, ID**

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

**METHOD OF PARTICIPATION:** Persons wishing to participate in the negotiated rulemaking must do the following:

1. Attend the negotiated rulemaking meeting and participate in the negotiation process;
2. Provide oral or written recommendations, or both, at the negotiated rulemaking meeting;
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 Department is proposing to rewrite this chapter of rules. Negotiated rulemaking is being conducted by the Department in order to gather input from interested parties regarding certain key elements of this chapter.

Since the last major update of these rules in 1987, there have been significant technological changes that render much of the language in this chapter obsolete and outdated. Further, the rules do not reflect more recent changes in federal regulations, in the organizational structure of the Department's Idaho Bureau of Laboratories (IBL), and in IBL's current practices.

**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 David Eisentrager at (208) 334-2235 x245 or go to: <http://healthandwelfare.idaho.gov/Default.aspx?TabId=1281>.

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 4, 2010.

DATED this 29th day of March, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
450 W. State Street - 10th Floor

P.O. Box 83720  
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# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.02.13 - RULES GOVERNING CERTIFICATION OF IDAHO WATER QUALITY LABORATORIES

DOCKET NO. 16-0213-1001

### 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 56-1003 and 56-1007, Idaho Code.

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

**THURSDAY, MAY 20, 2010, 1:00 p.m.**

**Idaho Historical Society  
Public Meeting Room  
2205 Old Penitentiary Road  
Boise, ID**

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

**METHOD OF PARTICIPATION:** Persons wishing to participate in the negotiated rulemaking must do the following:

1. Attend the negotiated rulemaking meeting and participate in the negotiation process;
2. Provide oral or written recommendations, or both, at the negotiated rulemaking meeting;
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 Department is proposing to rewrite this chapter of rules. Negotiated rulemaking is being conducted by the Department in order to gather input from interested parties regarding certain key elements of this chapter.

This chapter is being rewritten to update the fees for the certification of drinking water laboratories and to update and realign the rules with the current practices of the Department's Idaho Bureau of Laboratories (IBL).

Specifically, this chapter of rules is being rewritten to be more consistent with the U.S. Environmental Protection Agency's *Manual for the Certification of Laboratories Analyzing Drinking Water, Criteria and Procedures Quality Assurance, Fifth Edition* (EPA 815-R-05-004). The rewritten rules will provide laboratories and the Department a clear and accurate description of the criteria and processes required for initiating, maintaining, downgrading, and revoking drinking water certification.

**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 Sandra Radwin at (208) 334-2235 x256 or go to: <http://healthandwelfare.idaho.gov/Default.aspx?TabId=1281>.

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 May 21, 2010.

DATED this 29th day of March, 2010.

Tamara Prisock  
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## IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0308-1001

#### NOTICE OF RULEMAKING - PROPOSED RULE

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code, 45 CFR Parts 260-265, and Public Law 111-118.

**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 May, 19, 2010.

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

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking. These rules were adopted as temporary rules with effective dates of December 19, 2009, and January 1, 2010. The temporary rule docket published in the April 7, 2010, Idaho Administrative Bulletin, Vol. 10-4, pages 16 through 21.

In order to better support and assist Idaho's low-income individuals in need of temporary assistance, the Department is amending these rules to align with federal regulations and other Department chapters on excluded resources and special immigrants. The U.S. Census that is conducted every ten years hires temporary employees to conduct this field work. The Department is excluding this temporary census income from countable income in order to treat income for TAFI the same as other benefit programs. Federal regulations updated the special immigrants length of eligibility and these rules are being amended to align with those updates.

The Department is removing barriers that have excluded participation under the Career Enhancement (CE) services to help participants obtain or maintain employment. These changes will align with Emergency Assistance services by: removing the requirement to have a job search assistance plan, removing the restriction from CE services for anyone who received emergency assistance payments in the past 12 months, and removing housing and utility costs from prohibited supportive service expenditures.

**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:

The Career Enhancement (CE) program is 100% federally funded and this rulemaking has no anticipated fiscal impact to the state general fund for excluding this temporary income for TAFI participants. The fiscal impact in federal funds is \$300,000 for CE benefits, and \$24,700 for special immigrants.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these changes provide a benefit and align Department rules with federal regulations.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the proposed rule, contact Genie Sue Weppner at (208) 334-5656.

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 May 26, 2010.

DATED this 29th day of March, 2010.

Tamara Prisock  
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**THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0308-1001**

**131. CITIZENSHIP AND QUALIFIED NON-CITIZEN CRITERIA.**

To be eligible, an individual must be a member of one (1) of the groups listed in Subsections 131.01 through 131.10 of this rule. (5-8-09)

- 01. U.S. Citizen.** A U.S. Citizen; or (3-20-04)
- 02. U.S. National, National of American Samoa or Swains Island.** A U. S. National, National of American Samoa or Swains Island; or (3-20-04)
- 03. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) currently on full-time active duty with the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard, or a spouse or unmarried dependent child of the U.S. Armed Forces member; or (3-20-04)
- 04. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) honorably discharged from the U.S. Army, U.S. Air Force, U.S. Marine Corps, U.S. Navy or U.S. Coast Guard for a reason other than their citizenship status or a spouse, including a surviving spouse who has not remarried, or an unmarried dependent child of the veteran; or (3-20-04)
- 05. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, and is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c); or (3-20-04)
- 06. Non-Citizen Entering on or After August 22, 1996.** A non-citizen who entered on or after August 22, 1996, and
  - a.** Is a refugee admitted into the U.S. under 8 U.S.C. 1157, and can be eligible for seven (7) years from their date of entry; or (3-20-04)
  - b.** Is an asylee granted asylum into the U.S. under 8 U.S.C. 1158, and can be eligible for seven (7) years from the date their asylee status is assigned; or (3-20-04)
  - c.** Is an individual whose deportation or removal from the U.S. has been withheld under 8 U.S.C. 1253 or 1231(b)(3) as amended by Section 305(a) of Division C of Public Law 104-208, and can be eligible for seven (7) years from the date their deportation or removal was withheld; or (3-20-04)
  - d.** Is an Amerasian immigrant admitted into the U.S. under 8 U.S.C. 1612(b)(2)(A)(i)(V), and can be eligible for seven (7) years from the date of entry; or (3-20-04)
  - e.** Is a Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act, and can be eligible for seven (7) years from their date of entry; or (3-20-04)
- 07. Qualified Non-Citizen Entering on or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), entering the U.S. on or after August 22, 1996, and who has had a qualified non-citizen status for at least five (5) years; or (3-20-04)

**08. Victim of Severe Form of Trafficking.** A victim of a severe form of trafficking in persons, as defined in 22 U.S.C. 7102(13); who meets one (1) of the following: (3-20-04)

- a. Is under the age of eighteen (18) years; or (3-20-04)
- b. Is certified by the U.S. Department of Health and Human Services as willing to assist in the investigation and prosecution of a severe form of trafficking in persons; and (3-20-04)
  - i. Has made a bona fide application for a temporary visa under 8 U.S.C. 1104(a)(15)(T), which has not been denied; or (3-20-04)
  - ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-20-04)

**09. Afghan Special Immigrants.** An Afghan special immigrant, as defined in Public Law ~~110-161~~ 111-118, who has special immigration status after December 26, 2007, is eligible ~~for eight (8) months~~ from the date they enter into the U.S. as a special immigrant or the date they convert to the special immigrant status. (3-11-09)F( )

**10. Iraqi Special Immigrants.** An Iraqi special immigrant, as defined in Public Law ~~110-181~~ 111-118, who has special immigration status after January 28, 2008, is eligible ~~for eight (8) months~~ from the date they enter the U.S. as a special immigrant or the date they convert to the special immigrant status. (5-8-09)( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**215. EXCLUDED INCOME.**  
The types of income listed in Subsections 215.01 through 215.378 of this rule, are excluded. (5-8-09)( )

- 01. Supportive Services.** Supportive services payments. (7-1-98)
- 02. Work Reimbursements.** Work-related reimbursements. (7-1-98)
- 03. Child's Earned Income.** Earned income of a dependent child, who is attending school. (7-1-98)
- 04. Child Support.** Child support payments assigned to the State and non-recurring child support payments received in excess of that amount. (7-1-98)
- 05. Loans.** Loans with a signed, written repayment agreement. (7-1-98)
- 06. Third Party Payments.** Payments made by a person directly to a third party on behalf of the family. (7-1-98)
- 07. Money Gifts.** Money gifts, up to one hundred dollars (\$100), per person per event, for celebrations typically recognized with an exchange of gifts. (7-1-98)
- 08. TAFI.** Retroactive TAFI grant corrections. (7-1-98)
- 09. Social Security Overpayment.** The amount withheld for a Social Security overpayment. Money withheld voluntarily or involuntarily to repay an overpayment from any other source is counted as income. (7-1-99)
- 10. Interest Income.** Interest posted to a bank account. (7-1-98)
- 11. Tax Refunds.** State and federal income tax refunds. (7-1-98)
- 12. EITC Payments.** EITC payments. (7-1-98)

13. **Disability Insurance Payments.** Taxes withheld and attorney's fees paid to secure disability insurance payments. (7-1-98)
14. **Sales Contract Income.** Taxes and insurance costs related to sales contracts. (7-1-98)
15. **Foster Care.** Foster care payments. (7-1-98)
16. **Adoption Assistance.** Adoption assistance payments. (7-1-98)
17. **Food Programs.** Commodities and food stamps. (7-1-98)
18. **Child Nutrition.** Child nutrition benefits. (7-1-98)
19. **Elderly Nutrition.** Elderly nutrition benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965. (7-1-98)
1981. 20. **Low Income Energy Assistance.** Benefits paid under the Low Income Energy Assistance Act of 1981. (7-1-98)
9101. 21. **Home Energy Assistance.** Home energy assistance payments under Public Law 100-203, Section 9101. (7-1-98)
22. **Utility Reimbursement Payment.** Utility reimbursement payments. (7-1-98)
23. **Housing Subsidies.** An agency or housing authority pays a portion of or all of the housing costs for a participant. (5-8-09)
24. **Housing and Urban Development (HUD) Interest.** Interest earned on HUD family self-sufficiency escrow accounts established by Section 544 of the National Affordable Housing Act. (7-1-98)
25. **Native American Payments.** Payments authorized by law made to people of Native American ancestry. (7-1-98)
26. **Educational Income.** Educational income, except that AmeriCorps living allowances, stipends, and AmeriCorps Education Award minus attendance costs are earned income. (7-1-98)
27. **Work Study Income of Student.** College work study income. (7-1-98)
28. **VA Educational Assistance.** VA Educational Assistance. (7-1-98)
29. **Senior Volunteers.** Senior volunteer program payments to individual volunteers under the Domestic Volunteer Services Act of 1979, 42 U.S.C. Sections 4950 through 5085. (7-1-98)
30. **Relocation Assistance.** Relocation assistance payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (7-1-98)
31. **Disaster Relief.** Disaster relief assistance paid under the Disaster Relief Act of 1974 and aid provided under any federal statute for a President-declared disaster. Comparable disaster assistance provided by states, local governments, and disaster assistance organizations. (7-1-98)
32. **Radiation Exposure Payments.** Payments made to persons under the Radiation Exposure Compensation Act. (7-1-98)
33. **Agent Orange.** Agent Orange settlement payments. (7-1-98)
34. **Spina Bifida.** Spina bifida allowances paid to children of Vietnam veterans. (7-1-99)

- 35. Japanese-American Restitution Payments.** Payments by the U.S. Government to Japanese-Americans, their spouses, or parents (or if deceased to their survivors) interned or relocated during World War II. (3-30-01)
- 36. Vista Payments.** Volunteers in Service to America (VISTA) payments. (3-30-01)
- 37. Subsidized Employment.** Employment for which the employer receives a subsidy from public funds to offset a portion or all of the wages and costs of employing an individual. This type of employment is a short-term placement, pays prevailing wage, and a specific skill is acquired. The employment is prescribed through a memorandum of agreement with no guarantee of permanent employment for the participant. (5-8-09)
- 38. Temporary Census Income.** All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten (10) year U.S. Census. ( )

**(BREAK IN CONTINUITY OF SECTIONS)**

**369. CAREER ENHANCEMENT SERVICE PLAN.**

All individuals receiving Career Enhancement Assistance must have a written Career Enhancement Service Plan ~~or a Food Stamp Job Search Assistance Program Plan (JSAPP).~~ (5-3-03)( )

**370. CAREER ENHANCEMENT ASSISTANCE ELIGIBILITY CRITERIA.**

The individual must meet the criteria in Subsections 370.01 through 370.14. (5-3-03)

**01. Application and Service Plan.** An application form must be completed for Career Enhancement Assistance, unless the family already receives services from the Food Stamp Medicaid, Idaho Child Care or Child Support Services programs. A Career Enhancement service plan must be completed for all eligible individuals. (5-3-03)

**02. Verification of Career Enhancement Eligibility.** SSN must be verified. Other eligibility criteria are verified at the discretion of the Department. (3-30-01)

**03. Eligible Individual.** The individual must not have failed, without good cause, to comply with a previous Career Enhancement Service Plan. The individual must be a parent or a caretaker relative with a dependant child in the home, a pregnant woman; or a non-custodial parent legally responsible to provide support for a dependant child who does not reside in the same home. (5-3-03)

**04. Need for Work-Related Services.** The individual must be in need of work-related services to maintain employment or participate in work programs. The individual must participate in meeting the need to the extent possible. This requires the individual to meet a portion of the need if possible, and to explore other resources available to meet the need. (3-15-02)

**05. Income Limit.** The family must meet the income limit for only the first month of the service to receive Career Enhancement Assistance. The family's income must be below two hundred percent (200%) of the federal poverty guidelines, or the family must be eligible for Food Stamps, Medicaid or ICCP. For non-custodial parents, the family's income must be below four hundred percent (400%) of the federal poverty guidelines, or the family must be eligible for Food Stamps or Medicaid. (5-3-03)

**06. Citizenship and Legal Non-Citizen.** The individual must be a citizen or must meet the legal non-citizenship requirements of Section 131. (7-1-99)

**07. SSN.** An SSN, or proof of application for an SSN, must be provided for the individual. (3-30-01)

**08. Residence.** The individual must live in the state of Idaho and must not be a resident of another state. (7-1-99)

**09. Duplication of Services.** Career Enhancement Assistance must not be provided for a need already met by Emergency Assistance under IDAPA 16.06.01, "Rules Governing Family and Children's Services," or by a one-time TAFI cash payment. (5-3-03)

**10. TANF Restrictions.** The family must not be receiving TANF or TAFI benefits or be serving a TAFI sanction. Participants must not receive Career Enhancement Assistance if they have received five (5) years of TANF benefits. The family must not be receiving TANF Extended Cash Assistance. ~~If the participant received an Emergency Assistance to Needy Families with Children payment within the past twelve (12) months, the participant cannot receive Career Enhancement Assistance.~~ The participant cannot receive Career Enhancement Assistance if they have received it within the past twelve (12) months. (~~5-3-03~~)(\_\_\_\_)

**11. Controlled Substance Felons.** Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use or distribution of a controlled substance can receive Career Enhancement Assistance when they comply with the terms of a withheld judgment, probation or parole. The felony must have occurred after August 22, 1996. (5-3-03)

**12. Fleeing Felons.** Felons who are fleeing to avoid prosecution, custody or confinement after conviction of a felony or an attempt to commit a felony cannot receive Career Enhancement Assistance. (5-3-03)

**13. Probation or Parole Violation.** Felons who are violating a condition of probation or parole imposed for a federal or state felony cannot receive Career Enhancement Assistance. (5-3-03)

**14. Fraud.** Individuals convicted in a federal or state court of fraudulently misrepresenting residence to get TANF, AABD, Food Stamps, Medicaid, or SSI, from two (2) or more states at the same time, cannot receive Career Enhancement Assistance for ten (10) years from the date of conviction. (5-3-03)

**(BREAK IN CONTINUITY OF SECTIONS)**

**376. PROHIBITED SUPPORTIVE SERVICE EXPENDITURES.**

Supportive Service expenditures must not be authorized for the following types of expenses: (5-3-03)

**01. Child Care.** Child care of any type. (5-3-03)

**02. Medical Services.** Medical services, including medical exams. (5-3-03)

**03. Vehicles.** Motorized vehicle purchases, and down payments, ~~and payment arrearages.~~ (~~5-3-03~~)(\_\_\_\_)

~~**04. Housing and Utility Costs.** Security deposits, payments on arrearages, current monthly payments, and future monthly payments.~~ (~~5-3-03~~)

**054. Services for Children.** Services or payments for a child, such as counseling, clothing, and school supplies. (5-3-03)

**065. Credit Card Accounts.** Payments on charge cards. (5-3-03)

**076. Household Items.** Furniture and major home appliances. (5-3-03)

**087. Fines.** Any type. (5-3-03)

**098. Professional Union or Trade Dues.** Any type. (5-3-03)

**109. Any Service.** Available through another resource. (5-3-03)



**IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

**16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-1001**

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

**EFFECTIVE DATE:** The effective date of the temporary rule is January 1, 2010.

**AUTHORITY:** In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code, and 42 CFR 441.303(e).

**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 May 19, 2010.

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

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

In order to safeguard the provision of services under the HCBS waiver programs, the current rules are being aligned with both federal regulations and the CMS-approved HCBS waiver requirements.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since it is necessary to protect the public health, safety, or welfare.

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

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

There is no anticipated fiscal impact to the state general fund related to this rulemaking.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the rule changes are being made to align the rules with federal regulations and requirements.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary and proposed rule, contact Susan Scheuerer at (208) 287-1156.

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 May 26, 2010.

DATED this 1st day of April, 2010.

Tamara Prisock  
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THE FOLLOWING IS THE TEMPORARY AND PROPOSED TEXT FOR DOCKET NO. 16-0310-1001

**020. PARTICIPATION IN THE COST OF WAIVER SERVICES.**

**01. Waiver Services and Income Limit.** A participant is not required to participate in the cost of Home and Community Based (HCBS) waiver services unless: (3-19-07)

**a.** The participant's eligibility for medical assistance is based on approval for and receipt of a waiver service; and (3-19-07)

**b.** The participant's ~~income exceeds the eligibility requirement under the HCBS income limit contained in~~ is eligible for Medicaid if he meets the conditions referred to under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)," Section 787. (~~3-19-07~~)(1-1-10)T

**02. Waiver Cost-Sharing.** Participation in the cost of HCBS waiver services is determined as described in IDAPA 16.03.18, "Medicaid Cost-Sharing." (3-19-07)

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

**DOCKET NO. 16-0612-1001**

**NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-202, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than May 19, 2010.

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 was adopted as a temporary rule with an effective date of January 1, 2010. The temporary rule docket published in the April 7, 2010, Idaho Administrative Bulletin, Vol. 10-4, pages 23 and 24.

The U.S. Census is conducted every ten years and the census for 2010 requires the Census Bureau to hire employees to conduct this field work. The State of Idaho has received approval from the Centers for Medicare and Medicaid Services to exempt temporary income earned by individuals temporarily working for the Census Bureau on the 2010 Census. The Department is aligning this chapter of rules with other Department rules to exclude the temporary census income from countable income in order to treat income for ICCP the same as other benefit programs. For ICCP participants, the temporary employment income cannot exceed a time period of six months.

**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 program is 100% federally funded and this rulemaking has no anticipated fiscal impact to the state general fund for excluding this temporary income for ICCP participants. The estimated impact to federal funds is \$168,600.

**NEGOTIATED RULEMAKING:** Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this change provides a benefit.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Annie Dalgetty at (208) 334-5686.

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 May 26, 2010.

DATED this 29th day of March, 2010.

Tamara Prisock  
DHW - Administrative Procedures Section  
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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0612-1001

**302. EXCLUDED INCOME.**

The following sources of income are not counted as family income. (4-2-08)

**01. Earned Income of a Dependent Child.** Income earned by a dependent child under age eighteen (18) is not counted, unless the child is a parent who is seeking or receiving child care benefits. (4-2-08)

**02. Income Received for Person Not Residing With the Family.** Income received on behalf of a person who is not living in the home. (4-2-08)

**03. Educational Funds.** All educational funds including grants, scholarships, an AmeriCorps Education Award, and federal and state work-study income. (4-2-08)

**04. Assistance.** Assistance to meet a specific need from other organizations and agencies. (4-2-08)

**05. Lump Sum Income.** Non-recurring or lump sum income is excluded as income if it is used to pay medical bills resulting from accident or injury, or used to pay funeral or burial costs. When lump sum income, minus exclusions, exceeds current income limits for a family of the same size, the family is not eligible to receive child care benefits. The period of ineligibility is computed by dividing the lump sum payment by the family's monthly income limit. In no case will the period of ineligibility exceed twelve (12) months. (4-2-08)

**06. Loans.** Loans with written, signed repayment agreements. (4-2-08)

**07. TAFI and AABD Benefits.** TAFI and AABD benefits. (4-2-08)

**08. Foster Care Payments.** Foster care payments. (4-2-08)

**09. AmeriCorps/VISTA Volunteers.** Living allowances, wages and stipends paid to AmeriCorps or VISTA volunteers under 42 U.C.S. 5044, P.L. 93-113, Title IV, Section 404(g) are excluded as income. (4-2-08)

**10. Income Tax Refunds and Earned Income Tax Credits.** Income tax refunds and earned income tax credits are excluded as income. (4-2-08)

**11. Travel Reimbursements.** Reimbursements from employers for work-related travel. (4-2-08)

**12. Tribal Income.** Income received from a tribe for any purpose other than direct wages. (4-2-08)

**13. Foster Parents' Income.** Income of licensed foster parents is excluded when determining eligibility for a foster child. Income is counted when determining eligibility for the foster parent's own child(ren). (4-2-08)

**14. Adoption Assistance.** Adoption assistance payments are excluded from income. (4-2-08)

**15. Child Support Payments.** Court-ordered child support payments made by the parent(s) who receive the child care benefits are deducted from income used to determine eligibility. Both the legal obligation to pay child support and the actual amount paid must be verified. (4-2-08)

**16. Temporary Census Income.** All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten-year U.S. Census. ( )

# **IDAPA 18 - DEPARTMENT OF INSURANCE**

## **18.01.53 - CONTINUING EDUCATION**

### **DOCKET NO. 18-0153-0901**

#### **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. 18-0153-0901. The action is authorized pursuant to Sections 41-211 and 41-1013, 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 61, Section 024, "Credit for Individual Study Programs," Subsection 01, "Requirements for Credit of Independent Study Programs," only, is not consistent with legislative intent and has been rejected. In accordance with House Concurrent Resolution No. 61, the following changes are being made to the final rule:

Amendments made under Docket No. 18-0153-0901 to Subsection 024.01 have been rejected and are null, void and of no force and effect. The text of IDAPA 18.01.53.024, Subsection 01 will remain as currently codified.

The original text of the proposed rule was published in the October 7, 2009, Idaho Administrative Bulletin, Vol. Volume 09-10, Vol. 2, pages 80 through 85. The pending rule was published in the December 2, 2009, Idaho Administrative Bulletin, Vol. 09-12, page 101.

Section 024 of IDAPA 18.01.53 is being reprinted as codified following this notice. Any additional amendments made to this rule under this docket that were not affected by HCR 61 became final and effective upon adoption of HCR 61 and have been codified.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Jim Genetti, 208-334-4250.

DATED this 14th day of April, 2010.

Jim Genetti  
Bureau Chief  
Idaho Department of Insurance  
700 W. State Street 3rd Floor  
P.O. Box 83720  
Boise ID 83720-0043  
Phone: 208/334-4250  
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E-mail: jim.genetti@doi.idaho.gov

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#### **THE FOLLOWING IS THE FINAL TEXT FOR THE SECTION AFFECTED BY HCR 61**

#### **024. CREDIT FOR INDIVIDUAL STUDY PROGRAMS.**

**01. Requirements for Credit of Independent Study Programs.** All approved correspondence courses or independent study programs must include an examination which requires a score of seventy percent (70%)

or better to earn a certificate of completion. For each approved course, the sponsoring organization shall maintain multiple tests (two (2) or more) sufficient to maintain the integrity of the testing process. A written explanation of test security and administration methods shall accompany the course examination materials. The examinations shall be administered, graded, and the results recorded by the organization to which approval was originally granted. Completed tests shall be retained by the sponsoring organization and shall not be returned to any licensee. (7-1-93)

**02. Prior Approval Required for Independent Study Programs.** All correspondence courses or individual study programs must be submitted for approval and must be approved prior to being offered to licensees for continuing education credit. (7-1-93)

**03. Time Period for Credit.** Credit will be allowed only in the renewal period in which the course is completed. (7-1-93)

## IDAPA 20 - DEPARTMENT OF LANDS

### 20.03.04 - THE REGULATION OF BEDS, WATERS, AND AIRSPACE OVER NAVIGABLE LAKES IN THE STATE OF IDAHO

DOCKET NO. 20-0304-0901

#### 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. 20-0304-0901. The action is authorized pursuant to Section 58-104(6), 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. 125, Section 020, "Applications," Subsection 020.07.e, "Forms, Filing," Section 035, "Temporary Permits," Subsection 035.04, "Fee," and Section 065, "Assignments," Subsection 065.02, "Assignment Fee," only, are not consistent with legislative intent and have been rejected. In accordance with Senate Concurrent Resolution No. 125 the following changes are being made to the final rule:

Certain amendments made under Docket No. 20-0304-0901 in Sections 020, 035, and 065 have been rejected and are null, void and of no force and effect. The text of IDAPA 20.03.04, Subsections 020.07.e., 035.04, and 065.02 will remain as currently codified.

The original text of the proposed rule was published in the October 7, 2009, Idaho Administrative Bulletin, Vol. Volume 09-10, Vol. 2, pages 90 through 106. The pending rule was published in the January 6, 2010, Idaho Administrative Bulletin, Vol. 10-1, page 219 through 222.

Sections 020, 035, and 065 of IDAPA 20.03.04 are being reprinted as codified following this notice. Any additional amendments made to this rule under this docket that were not affected by SCR No. 125 became final and effective upon adoption of SCR No. 125 and have been codified.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Eric Wilson (208) 334-0261.

DATED this 14th day of April, 2010.

Eric Wilson  
Navigable Waters/Minerals Program Manager  
Idaho Department of Lands  
PO Box 83720, Boise, Idaho 83720  
(208) 334-0261/ Fax (208) 334-3698  
ewilson@idl.idaho.gov

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#### THE FOLLOWING IS THE FINAL TEXT FOR THE SECTIONS AFFECTED BY SCR 125

##### 020. APPLICATIONS.

**01. Encroachment Applications.** No person shall hereafter make or cause to be made any encroachment on, in or above the beds or waters of any navigable lake in the state of Idaho without first making application to and receiving written approval from the department. The placing of dredged or fill material, refuse or

waste matter intended as or becoming fill material, on or in the beds or waters of any navigable lake in the state of Idaho shall be considered an encroachment and written approval by the department is required. If demolition is required prior to construction of the proposed encroachment, then the application must describe the demolition activities and the steps that will be taken to protect water quality and other public trust values. No demolition activities may proceed until the permit is issued. (4-2-08)

**02. Signature Requirement.** Only persons who are littoral owners or lessees of a littoral owner shall be eligible to apply for encroachment permits. A person who has been specifically granted littoral rights or dock rights from a littoral owner shall also be eligible for an encroachment permit; the grantor of such littoral rights, however, shall no longer be eligible to apply for an encroachment permit. Except for waterlines or utility lines, the possession of an easement to the shoreline does not qualify a person to be eligible for an encroachment permit. (4-2-08)

**03. Other Permits.** Nothing in these rules shall excuse a person seeking to make an encroachment from obtaining any additional approvals lawfully required by federal, local or other state agencies. (9-13-90)

**04. Repairs, Reinstallation of Structures.** No permit is required to clean, maintain, or repair an existing permitted encroachment, but a permit is required to completely replace, enlarge, or extend an existing encroachment. Reinstalling the top or deck of a dock, wharf or similar structure shall be considered a repair; reinstallation of winter damaged or wind and water damaged pilings, docks, or float logs shall be considered a repair. Repairs that adversely affect the bed of the lake will be considered a violation of these rules. (4-2-08)

**05. Dock Reconfiguration.** (4-2-08)

**a.** Rearrangement of single-family and two-family docks will require a new application for an encroachment permit. (4-2-08)

**b.** Rearrangement of community docks and commercial navigational encroachments may not require a new application for an encroachment permit if the changes are only internal. The department shall be consulted prior to modifications being made, and shall use the following criteria to help determine if a new permit must be submitted: (4-2-08)

i. Overall footprint does not change in dimension or orientation; (4-2-08)

ii. No increase in the square footage, as described in the existing permit and in accordance with Paragraph 015.13.a., occurs. This only applies to community docks; (3-29-10)

iii. The entrances and exits of the facility do not change. (4-2-08)

**06. Redredging.** Redredging a channel or basin shall be considered a new encroachment and a permit is required unless redredging is specifically authorized by the outstanding permit. Water quality certification from the Idaho Department of Environmental Quality is required regardless of how redredging is addressed in any existing or future permit. (4-2-08)

**07. Forms, Filing.** Applications must be in writing on forms provided by the Department or copies. Applications and plans shall be filed in the local office of the Department, whose location is available on the internet at [www.idl.idaho.gov](http://www.idl.idaho.gov), or the director's office in Boise, together with filing fees and costs of publication when required by these rules. Costs of preparation of the application, including all necessary maps and drawings, shall be paid by the applicant. (4-2-08)

**a.** Plans shall include the following information on paper no larger than eight and one half by fourteen (8 1/2"x14") inches: (4-2-08)

i. Lakebed profile in relationship to the proposed encroachment. The lakebed profile shall show the summer and winter water levels. (4-2-08)

ii. Copy of most recent survey or county plat showing the full extent of the applicant's lot and the



- adjacent littoral lots. (4-2-08)
- iii. Proof of current ownership or control of littoral property or littoral rights. (4-2-08)
  - iv. A general vicinity map. (4-2-08)
  - v. Scaled air photos or maps showing the lengths of adjacent docks as an indication of the line of navigability, distances to adjacent encroachments, and the location and orientation of the proposed encroachment in the lake. (4-2-08)
  - vi. Total square footage of proposed docks and other structures, excluding pilings, that cover the lake surface. (4-2-08)
  - vii. Names and current mailing addresses of adjacent littoral landowners. (4-2-08)
- b.** Applications must be submitted or approved by the littoral owner or, if the encroachment will lie over or upon private lands between the natural or ordinary high water mark and the artificial high water mark, the application must be submitted or approved by the owner of such lands. When the littoral owner is not the applicant, the application shall bear the owner's signature as approving the encroachment prior to filing. (4-2-08)
- c.** If more than one (1) littoral owner exists, the application must bear the signature of all littoral owners, or the signature of an authorized officer of a designated homeowner's or property management association. (4-2-08)
- d.** Applications for noncommercial encroachments intended to improve waterways for navigation, wildlife habitat and other recreational uses by members of the public must be filed by any municipality, county, state, or federal agency, or other entity empowered to make such improvements. Application fees are not required for these encroachments. (4-2-08)
- e.** The following applications shall be accompanied by the respective nonrefundable filing fees together with a deposit toward the cost of newspaper publication, which deposit shall be determined by the director at the time of filing: (4-2-08)
- i. Nonnavigational encroachments require a fee of one thousand dollars (\$1,000); (4-2-08)
  - ii. Commercial navigational encroachments require a base fee of two thousand dollars (\$2,000). If the costs of processing an application exceed this amount, then the applicant may be charged additional costs as allowed by Title 58, Chapter 13, Section 58-1307, Idaho Code; (4-2-08)
  - iii. Community navigational encroachments require a fee of two thousand dollars (\$2,000); and (4-2-08)
  - iv. Navigational encroachments extending beyond the line of navigability require a fee of one thousand dollars (\$1,000). (4-2-08)
- f.** Applicants shall pay any balance due on publication costs before written approval will be issued. The Department shall refund any excess at or before final action on the application. (9-13-90)
- g.** Application for a single-family or two-family dock not extending beyond the line of navigability or a nonnavigational encroachment for bank stabilization and erosion control or for fisheries and wildlife habitat improvements shall be accompanied by a nonrefundable filing fee of two hundred fifty dollars (\$250). (4-2-08)
- h.** No publication cost is required for application for noncommercial navigational encroachment not extending beyond the line of navigability or for application for installation of buried or submerged water intake lines and utility lines. (9-13-90)
- i. Applications and plans shall be stamped with the date of filing. (7-1-98)

**j.** Applications that are incomplete, not in the proper form, not containing the required signature(s), or not accompanied by filing fees and costs of publication when required, shall not be accepted for filing. The department shall send the applicant a written notice of incompleteness with a listing of the application's deficiencies. The applicant will be given thirty (30) days from receipt of the notice of incompleteness to resubmit the required information. The deadline may be extended with written consent of the department. If the given deadline is not met, the department will notify the applicant that the application has been denied due to lack of sufficient information. The applicant may reapply at a later date, but will be required to pay another filing fee and publication fee, if applicable. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**035. TEMPORARY PERMITS.**

**01. Applicability.** Temporary permits are used for construction, temporary activities related to permitted encroachments, or other activities approved by the department. (4-2-08)

**02. Permit Term.** These permits are generally issued for less than one (1) year, but longer terms may be approved by the department and permits may be extended with department approval. (4-2-08)

**03. Bonding.** The department may require bonds for temporary permits. (4-2-08)

**04. Fee.** The board shall set fees for temporary permits, but the fees shall be no greater than the amounts listed for the respective permit types in Subsection 020.07. Fee information is available on the Internet at [www.idl.idaho.gov](http://www.idl.idaho.gov). (4-2-08)

**05. Processing.** These permits may be advertised if the department deems it appropriate, with the applicant paying the advertising fee as per Subsection 020.07. (4-2-08)

**(BREAK IN CONTINUITY OF SECTIONS)**

**065. ASSIGNMENTS.**

**01. Assignment of Encroachment Permit.** Encroachment permits may be assigned upon approval of the department provided that the encroachment conforms with the approved permit. The assignor and assignee must complete a department assignment form and forward it to the appropriate area office. (4-2-08)

**02. Assignment Fee.** The assignment fee shall be one hundred fifty dollars (\$150). The fee shall be paid at the time the assignment is submitted to the department. (4-2-08)

**03. Approval Required for Assignment.** An assignment is not valid until it has been approved by the department. (4-2-08)

**04. Assignment With New Permit.** Encroachments not in compliance with the approved permit may be assigned only if: (4-2-08)

**a.** An application for a new permit to correct the noncompliance is submitted at the same time. (4-2-08)

**b.** The assignee submits written consent to bring the encroachment permit into compliance. (4-2-08)

## IDAPA 20 - DEPARTMENT OF LANDS

### 20.03.14 - RULES GOVERNING GRAZING, FARMING, CONSERVATION, NONCOMMERCIAL RECREATION, AND COMMUNICATION SITE LEASES

DOCKET NO. 20-0314-0901

#### 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. 20-0314-0901. The action is authorized pursuant to Section 58-104(6), 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. 54, Section 010, "Definitions," deleted Subsection 010.12, "Herd Stock"; Section 020, "Applications and Processing," Subsection 020.01, "Eligible Applicant"; deleted Section 021, "Rights Reserved to the Department"; Section 040, "Rental," Subsection 040.01, "Rental Rates," and Subsection 010.02, "Special Uses"; Section 050, "Lease Cancellation," deleted Subsection 050.01, "NonCompliance with Lease Provisions"; deleted Section 054, "Cropland Lease Hardship Claims"; deleted Section 080, "Grazing Management Plans"; deleted Section 090, "Trespass"; Section 100, "Construction and Maintenance of Improvements," Subsection 100.02, "Maintenance"; Section 102, "Valuation of Improvements," Subsections 102.01, "Existing Improvements," and 102.02, "New Improvements"; and Section 111, "Noxious Weed Control," Subsection 111.02, "Responsibility," only, are not consistent with legislative intent and have been rejected. In accordance with House Concurrent Resolution No. 54, the following changes are being made to the final rule:

Certain amendments made under Docket No. 20-0314-0901 in Sections 010, 020, 021, 040, 050, 054, 080, 090, 100, 102, and 111 have been rejected and are null, void and of no force and effect. The affected parts of IDAPA 20.03.14, as referenced in the above paragraph, will remain as currently codified, as applicable.

The original text of the proposed rule was published in the August 5, 2009, Idaho Administrative Bulletin, Vol. Volume 09-8, pages 103 through 117. The pending rule was published in the December 2, 2009, Idaho Administrative Bulletin, Vol. 09-12, page 103 through 105.

The Sections of IDAPA 20.03.14 affected by this concurrent resolution are being reprinted as codified following this notice. Any additional amendments made to this rule under this docket that were not affected by HCR No. 54 became final and effective upon adoption of HCR No. 54 and have been codified.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Bob Brammer (208) 334-0239.

DATED this 14th day of April, 2010.

Bob Brammer  
Division Administrator  
Idaho Department of Lands  
300 N Sixth St. Suite 103  
P.O. Box 83720, Boise, ID 83720-0500  
Phone (208) 334-0239 / Fax (208) 334-3698

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THE FOLLOWING IS THE FINAL TEXT FOR THE SECTIONS AFFECTED BY HCR 54

**010. DEFINITIONS.**

**01. Amortization.** The purchase of Department authorized, lessee installed, lease improvements by the Department through allowance of credit to the lessee's annual lease payments. (3-13-02)

**02. Animal Unit Month (AUM).** The amount of forage necessary to feed one (1) cow or one (1) cow with one (1) calf under six (6) months of age or one (1) bull for one (1) month. One (1) yearling is considered seven tenths (.7) of an AUM. Five (5) head of sheep, or five (5) ewes with lambs are considered one (1) AUM. One (1) horse is considered one and one-half (1 1/2) AUM. (3-12-10)

**03. Assignment.** The Department approved transfer of all, or a portion of, a lessee's right to another person wherein the second person assumes the lease contract with the Department. (3-13-02)

**04. Board.** The Idaho State Board of Land Commissioners or such representatives as may be designated. (3-13-02)

**05. Conflict Application.** An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation or communication site use when one (1) or more applications have been submitted for the same parcel of state endowment trust land and for the same or an incompatible use. (3-12-10)

**06. Department.** The Idaho Department of Lands. (6-14-88)

**07. Director.** The Director of the Department of Lands, or such representative as may be designated by the Director. (3-13-02)

**08. Extension.** An approved delay in the due date of the rental owed on a farming lease without risk of loss of the lease. (3-12-10)

**09. Improvement Valuation.** The Land Board approved process or processes of estimating the value of Department authorized improvements associated with a lease. (3-12-10)

**10. Lease.** A written agreement between the Department and a person containing the terms and conditions upon which the person will be authorized to use state endowment trust land. (3-12-10)

**11. Herd Stock.** Livestock leased or managed, but not owned, by the lessee. (3-13-02)

**12. Lease Application.** An application to lease state endowment trust land for grazing, farming, conservation, noncommercial recreation, or communication site purposes. (3-12-10)

**13. Manageable Unit.** A unit of state endowment trust land designated by the Department, geographically configured and sufficiently large to achieve the proposed use. (3-12-10)

**14. Mortgage Agreement.** Department authorization for the lessee to obtain a mortgage on a state lease. (3-12-10)

**15. Person.** An individual, partnership, association, corporation or any other entity qualified to do business in the state of Idaho and any federal, state, county, or local unit of government. (3-13-02)

**16. Sublease.** An agreement in which the state lease holder conveys the right of use and occupancy of the property to another party on a temporary basis. (3-13-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**020. APPLICATIONS AND PROCESSING.**

**01. Eligible Applicant.** Any person may submit an application to lease state owned endowment land provided he has reached his eighteenth birthday, or if not eighteen (18) is married, is a citizen of the United States or has declared his intentions to become such, and is not indebted to the state of Idaho or delinquent on any payments to the state of Idaho. To be eligible for a grazing or cropland lease, an applicant must intend to use the land for domestic livestock grazing or for cropping purposes, and must certify such. (3-13-02)

**02. Application Process.** All lease applications must be submitted to the Department on the appropriate Department form. The applications must be signed by the applicant, must be submitted in such manner as determined by the Department, and must meet the following criteria: (3-12-10)

**a. Non-refundable Fee.** Each application for a lease shall be accompanied by a non-refundable application fee in the amount specified by the Board. (3-13-02)

**b. Application Deadline.** The deadline to apply to lease a parcel of state endowment trust land already covered by a lease shall be as established by the Department for the year the existing lease expires. Applications to lease unleased state endowment trust land may be submitted at any time, or at such time as designated by the Department. (3-12-10)

**c. Legal Description on Application.** All applications must include a legal description of the state endowment trust land applied on. The Department reserves the right to require an amendment of the legal description of state endowment trust lands identified in a lease application to ensure the parcel is a manageable unit or for any other reason deemed appropriate by the Department. If the applicant fails to provide an amended application, referencing a manageable unit as designated by the Department, the application shall be considered invalid. (3-12-10)

**d. Nonconflicted Applications.** (3-12-10)

**i.** If the current lessee is the only applicant and the Department does not have concerns with the lessee's current management of the leased state endowment trust land, a new lease will be issued. (3-12-10)

**ii.** If the current lessee is the only applicant and the Department has concerns with the lessee's current management of the state endowment trust lands, or if the only applicant is not the current lessee, the applicant shall meet with the Department to develop the terms and conditions of a proposed lease specific to the applicant's proposed use. (3-12-10)

**e. Conflicted Applications.** (3-12-10)

**i.** All applicants submitting conflict applications shall meet with the Department to develop the terms and conditions of a proposed lease specific to each applicant's proposed use. (3-12-10)

**ii.** The Department will provide all applicants for conflicted leases with the list of criteria that will be used to develop lease provisions. Among the factors to be addressed in the criteria are the following: (3-12-10)

(1) The applicant's proposed use and the compatibility of that use of the state endowment trust parcel with preserving its long-term leasing viability for purposes of generating maximum return to trust beneficiaries; i.e., the impact of the proposed use and any anticipated improvements on the parcel's future utility and leasing income potential. (3-12-10)

(2) The applicant's legal access to and/or control of land or other resources that will facilitate the proposed use and is relevant to generating maximum return to trust beneficiaries. (3-12-10)

(3) The applicant's previous management of land leases, land management plans, or other experience relevant to the proposed use or ability/willingness to retain individuals with relevant experience. (3-12-10)

(4) Potential environmental and land management constraints that may affect or be relevant to assessing the efficacy or viability of the proposed use. (3-12-10)

- (5) Mitigation measures designed to address trust management concerns such as: (3-12-10)
- (a) Construction of improvements at lessee's expense. (3-12-10)
- (b) Payment by lessee of additional or non-standard administrative costs where the nature of the proposed use and/or the applicant's experience raises a reasonable possibility that greater monitoring or oversight by the Department than historically provided will be necessary to ensure lease-term compliance. (3-12-10)
- (c) Bonding to ensure removal of any improvements installed for the lessee's benefit only and which would impair the future utility and leasing income potential of the state endowment trust land. (3-12-10)
- (d) Bonding to ensure future rental payments due under the lease in cases where the lessee is determined by the Department to pose a significant financial risk because of lack of experience or uncertain financial resources. (3-12-10)
- (6) Any other factors the Department deems relevant to the management of the state endowment trust parcel for the proposed use. (3-12-10)

**f.** Proposed Lease. Within ten (10) days of the final meeting with the applicant to discuss lease provisions, the Department will provide the applicant with a proposed lease containing those terms and conditions upon which it will lease the state endowment trust land. If the applicant does not accept in writing the lease as proposed by the Department within seven (7) days of receipt, the application will be rejected in writing by the Department. Within twenty (20) days of the date of mailing of the rejection notice, the applicant may appeal the Department's determination as to the lease's terms and conditions to the Land Board. No auction shall be held until the Land Board resolves any such appeal. (3-12-10)

**03. Expiring Leases.** Lease applications will be mailed by the Department to all holders of expiring leases no less than thirty (30) days prior to the application deadline. Signed applications and the application fee must be returned to the Department by the established deadline or postmarked no later than midnight of that date. It shall be the lessee's responsibility to ensure applications are delivered or postmarked by the deadline. (3-12-10)

**04. Rental Deposit.** (3-13-02)

**a.** Existing Lessee. If the existing lessee is the sole applicant, the lessee may submit the rental deposit at the normal due date. If a conflict application is also filed on the expiring lease and the existing lessee is awarded the lease by the Land Board, the lessee must deposit, with the Department, the estimated first year's rental for the lease at the time the lease is submitted to the Department with lessee's signature. (3-12-10)

**b.** New Applicants. (3-12-10)

**i.** Expiring Lease. New applicants for expiring leases must submit the estimated first year's rental to the Department at the time of the application's submission. (3-12-10)

**ii.** Unleased State Endowment Trust Land. All applicants for unleased state endowment trust land are deemed new applicants. If an applicant for unleased state endowment trust land is the sole applicant, the applicant may submit the rental deposit at the normal billing cycle, unless the time of application and desired time of use do not coincide with the normal billing cycle, in which case payment must be rendered at the direction of the Department. When more than one (1) application is received for unleased state endowment trust land, all applicants must deposit, with the Department, the estimated first year's rental for the lease prior to auction. (3-12-10)

**021. RIGHTS RESERVED TO THE DEPARTMENT.**

The Department expressly reserves the right: (3-13-02)

**01. Reservations.** To all mining rights, timber rights, water rights, easements and rights of way, and the fee title to the leased land. (3-13-02)

**02. Other Leases.** To maintain present, and to issue future mineral, oil and gas, geothermal and other subsurface leases as provided by Title 47, Idaho Code. Annual rental may be adjusted to reflect any utility loss to the lessee from such activities. (3-13-02)

**03. Grazing Restrictions.** To restrict or prohibit grazing on all, or portions of, the leased land to accommodate other resource management objectives. The lessee will be given one hundred eighty (180) days written notice, prior to turn out of livestock on the lands leased, of any such restrictions or termination of grazing use together with a map of the restricted area. The Department will work with lessee to find alternate forage sources on endowment lands to minimize the financial impact to the endowment. Annual rental will be adjusted to reflect any utility loss to the lessee from such activities should alternate sources of forage not be found. (3-13-02)

**04. Seed Harvest.** To harvest seed from plants on land not under a cropland lease. The Department will coordinate harvesting activities with lessee to minimize impacts on livestock operations. If loss of use occurs from harvesting activities the rental will be adjusted in the amount of lost use. (3-13-02)

**05. Entry.** To enter upon and inspect the lands leased at any reasonable time to insure protection of the Department's interest. (3-13-02)

**06. Easements.** To grant easements and rights of way across or upon the lands leased. The Department shall coordinate with the lessee before processing any easement applications on the leased land. Annual rental will be adjusted to reflect any utility loss to the lessee from any such easements or rights of way. Acreage of the lands described within the lease may be adjusted to reflect any such easements or rights of way that permanently remove such lands from grazing use. (3-13-02)

**07. Public Access.** To exclusively regulate public access on state lands. Grazing or cropland leases will not be considered exclusive use leases as described under Title 36, Chapter 16, Idaho Code. These rules do not authorize or purport to authorize trespass on private lands to reach state-owned lands. Use of state lands shall not be restricted without prior written approval of the Department. (3-13-02)

**08. Water Rights.** To all water rights appurtenant to state lands. Lessees may not appropriate any water rights that are appurtenant to state lands, including instream livestock use or stock watering rights. Any water right appropriated on state land shall be appropriated in the name of the state of Idaho. (3-13-02)

**09. Road Closures.** To close roads for road protection, wildlife protection or administrative purposes. Planned road closures will be reviewed with the lessee prior to action. The lessee will have the right of due process when decisions affect the lessee's use of the lease. (3-13-02)

**10. Special Leases.** To grant special leases upon the lands described in the grazing lease. If the special lease conflicts with the grazing use or makes consumptive use of forages, the grazing rental will be adjusted to reflect such loss of use. (6-14-88)

**11. Permanent Improvements.** To claim all permanent improvements placed upon the land remaining after six (6) months in cases of abandonment by the lessee or to take possession immediately in cases of cancellation upon breach of any of the conditions of the lease. No improvements will be disposed of by the Department until all appeals have been exhausted. (3-13-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**040. RENTAL.**

**01. Rental Rates.** Rental rates shall be determined by the Board. The rental rate for livestock grazing leases shall be based on the number of allowable AUMs. The rental rate for cropland leases shall be based on the number of acres used for crop production. (3-13-02)

**02. Special Uses.** Fees for special uses requested by the lessee and approved by the Department, including, but not limited to, concentrated feeding areas or structures/buildings enhancing management of the land, shall be determined by the Department. (3-13-02)

**03. Rental Due Date.** Lease rentals are due in accordance with the terms of the lease. (3-12-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**050. LEASE CANCELLATION.**

Leases may be cancelled by the Director for the following reasons: (3-13-02)

**01. Non-Compliance.** If the lessee is not complying with the lease provisions or management plan provisions or if resource damage attributable to the lessee's management is occurring to state land within a lease, the lessee shall be provided written notification of the violation by regular and certified mail. The letter shall set forth the reasons for the Department's cancellation of the lease and shall provide the lessee thirty (30) days notice of the cancellation. (3-13-02)

**02. Change in Land Use.** A lease may be cancelled in whole or in part upon one hundred eighty (180) days written notice by the Department if the state endowment trust lands are to be leased for any other use as designated by the Board or the Department and the new use is incompatible with the existing lease. In the event of early cancellation due to a change in land use, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-12-10)

**03. Land Sale.** The Department reserves the right to sell state endowment trust lands covered under the lease. The lessee will be notified that the state endowment trust lands are being considered for sale prior to submitting the sales plan to the Board for approval. The lessee will also be notified of a scheduled sale at least thirty (30) days prior to sale. In the event of early cancellation due to land sale, the lessee will be entitled to a prorated refund of the premium bid for a conflicted lease. (3-12-10)

**04. Mutual Agreement.** Leases may be cancelled by mutual agreement between the Department and the lessee. (3-13-02)

**(BREAK IN CONTINUITY OF SECTIONS)**

**054. CROPLAND LEASE HARDSHIP CLAIMS.**

**01. Crop Loss.** Adjustments in rental may be made because of unusual crop loss that occurs through no fault of the lessee. Such loss must be thoroughly substantiated by the lessee. (3-13-02)

**02. Conditions to Meet.** To qualify for a hardship claim the following conditions must be met: (3-13-02)

**a.** All requests for hardship claims must be submitted to the Department in writing immediately after the damage has occurred. (3-13-02)

**b.** Claims will be considered for the current growing season only. (6-14-88)

**c.** Any adjustments will be credited to next year's rental. (3-13-02)

**d.** Claims will only be approved for losses beyond the control of the lessee. (3-13-02)

**e.** The lessee will only receive a reduction in rental for yield losses that occur beyond the normal



variation expected for similar land in the situated county. Normal variation will be calculated from the Idaho Statistical Reporting Service records. (3-13-02)

**f.** Average yields used to calculate the rental on the subject lands will be used to determine any lease rental adjustments for this purpose. The lease rental will only be adjusted for losses that exceed thirty-five percent (35%) of the average crop yield. (3-13-02)

**g.** Adjustments will not be made for losses if lessee is compensated through another government program or crop insurance. (6-14-88)

**(BREAK IN CONTINUITY OF SECTIONS)**

**080. GRAZING MANAGEMENT PLANS.**

Prior to issuance of a lease, the lessee and the Department must agree to a written grazing management plan. (3-13-02)

**01. Federal Plan.** When state land is managed in conjunction with federal land, the management plan prepared for the federal land may be deemed by the Department, at its discretion, to satisfy the requirements of a management plan. (3-13-02)

**02. Modification of Plan.** The Department may review and modify any grazing management plan upon changes in conditions, laws, or regulations, provided that the Department shall give the lessee thirty (30) days notice of any such modifications prior to the effective date thereof. Modifications mutually agreeable to both the Department and lessee may be made at any time. (3-13-02)

**081. -- 089. (RESERVED).**

**090. TRESPASS.**

**01. Loss or Waste.** The lessee shall use the property within the lease in such manner as will best protect the state of Idaho against loss or waste. Unauthorized activities occurring on state land shall be considered trespass; these include dumping of garbage, constructing improvements without a permit, and other unauthorized actions. (3-13-02)

**02. Civil Action by Lessee.** The lessee is encouraged to take civil action against owners of trespass livestock on state lands to recover damages to the lessee for lost forage or other values incurred by the lessee. (3-13-02)

**03. Continuing Trespass.** When continued trespass causes resource damage, the Department will initiate proceedings to restrict further trespass and recover damages as necessary. (3-13-02)

**04. Trespass Claims.** Trespass claims initiated by the Department will be assessed as triple the current State AUM rate for forage taken. (3-13-02)

**091. -- 099. (RESERVED).**

**100. CONSTRUCTION AND MAINTENANCE OF IMPROVEMENTS.**

**01. Prior Written Approval.** The lessee must secure the written approval of the Department prior to constructing any improvements or buildings, or clearing any state endowment trust land. Failure to secure such approval shall eliminate any right to an improvement credit and may, at the Department's discretion, be deemed a material breach of the lease and cause for cancellation. Any arrangement for cost sharing or improvement crediting will be identified in the improvement permit. Routine farming practices identified in a farm plan will not require prior approval. (3-12-10)

**02. Maintenance.** All authorized improvements shall be maintained in functional condition by the lessee. The lessee may be required to remove or reconstruct improvements in poor or non-serviceable condition. Existing maintenance agreements on lands acquired from the federal government shall remain in effect until amended by the parties involved. If maintenance is not being accomplished, the Department shall provide a certified letter to the lessee informing the lessee of the rule violation. If work is not begun within thirty (30) days, the Department may contract repairs and add the amount to the annual rental. (3-13-02)

**03. Bond.** The Department may require the lessee to furnish a bond prior to constructing improvements as deemed necessary to protect endowment assets or to ensure performance under the lease. (3-12-10)

**(BREAK IN CONTINUITY OF SECTIONS)**

**102. VALUATION OF IMPROVEMENTS.**

Credited improvements will be valued on the basis of replacement cost, including lessee provided labor, equipment and materials, less depreciation based on loss of utility. Improvements cannot be appraised higher than current market value, regardless of lessee's cost. Any improvement amortization or cost limitations identified by the Department will be considered in determining a final value. (3-19-07)

**01. Applicant Review of Department Improvement Credit Valuation.** All applicants for a conflicted lease will be provided a copy of the Department's improvement credit valuation for review and a notice of objection form. Any applicant objecting to the appraisal will have twenty-one (21) days from the date of the valuation mailing to submit the notice of objection form to the Department. If no objections are received during the twenty-one (21) day review period, the lease auction will be scheduled and will proceed using the Department's improvement credit valuation. (3-19-07)

**02. Failure to File a Timely Notice of Objection.** Failure to submit a notice of objection within the specified twenty-one (21) day period will preclude any applicant from further administrative remedies and the auction will proceed using the Department's improvement credit valuation. (3-19-07)

**03. Notice of Objection.** Any applicant objecting to the Department improvement credit valuation must submit a complete and timely notice of objection form, and payment of two thousand five hundred dollars (\$2,500) or ten percent (10%) of the total Department improvement credit valuation whichever is greater, to pay for the services of an independent third party. Within five (5) days of receipt of the notice of objection, the Department will notify all applicants in writing that an objection has been received and provide them with a list of certified appraisers. (3-19-07)

**04. Selection of an Independent Third Party.** The applicants will have twenty-one (21) days from the date of the Department's notification of an objection to select by mutual agreement, one individual from the list of certified appraisers to serve as an independent third party. If the applicants cannot agree on an independent third party within the twenty-one (21) day time period, the Department will randomly select one individual from the list to serve as the independent third party. (3-19-07)

**05. Duties of the Independent Third Party.** The independent third party will review the Department improvement credit valuation and alternate valuations provided by the applicants. Following this review, the independent third party will select from among the Department valuation and alternate valuations, the one value that (s)he determines is the most accurate value of the improvements. The independent third party will notify the Department of this value in writing. (3-19-07)

**06. Notification of Final Improvement Value.** Within five (5) days of receiving the independent third party's final determination of improvement credit value, the Department will mail to each applicant an auction notice which shall reference the independent third party's determined value of improvements. The determination by the independent third party of the improvement value will be deemed final, and the appraised value of improvements will not be allowed as a basis for appeal of the auction. (3-19-07)

**(BREAK IN CONTINUITY OF SECTIONS)**

**111. NOXIOUS WEED CONTROL.**

**01. Weed Control.** The lessee shall cooperate with the Department, or any other authorized agency, to undertake programs for control or eradication of noxious weeds on state endowment trust land. The lessee shall take measures to control noxious weeds on the leased land in accordance with Title 22, Chapter 24, Idaho Code. (3-12-10)

**02. Responsibility.** The lessee will not be held responsible for the control of noxious weeds resulting from other land management activities such as temporary permits, easements, special leases and timber sales. Control of noxious weeds on state grazing lands shall be shared by the lessee and Department, with the Department's share subject to funds appropriated for that purpose. (3-13-02)

## IDAPA 20 - DEPARTMENT OF LANDS

### 20.03.17 - RULES GOVERNING LEASES ON STATE-OWNED SUBMERGED LANDS AND FORMERLY SUBMERGED LANDS

DOCKET NO. 20-0317-0901

#### 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. 20-0317-0901. The action is authorized pursuant to Section 58-104(6), 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. 125, Section 030, "Lease Application, Fee, and Procedure," Subsection 030.01, "Fee," and Section 055, "Assignments, Assignment Fee," Subsection 055.02, "Assignment Fee," only, are not consistent with legislative intent and have been rejected. In accordance with Senate Concurrent Resolution No. 125, the following changes are being made to the final rule:

Amendments made under Docket No. 20-0317-0901 in Subsection 030.01 and 055.02 have been rejected and are null, void and of no force and effect. The text of IDAPA 20.03.14, Subsections 030.01 and 055.02, will remain as currently codified.

The original text of the proposed rule was published in the October 7, 2009, Idaho Administrative Bulletin, Vol. Volume 09-10, pages 107 through 111. The pending rule was published in the January 6, 2010, Idaho Administrative Bulletin, Vol. 10-1, page 223.

Section 030 and 055 of IDAPA 20.03.14 are being reprinted as codified following this notice. Any additional amendments made to this rule under this docket that were not affected by SCR No. 125 became final and effective upon adoption of SCR No. 125 and have been codified.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Eric Wilson (208) 334-0261.

DATED this 14th day of April, 2010.

Eric Wilson  
Navigable Waters/Minerals Program Manager  
Idaho Department of Lands  
PO Box 83720  
Boise, Idaho 83720  
(208) 334-0261/ Fax (208) 334-3698  
ewilson@idl.idaho.gov

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#### THE FOLLOWING IS THE FINAL TEXT FOR THE SECTIONS AFFECTED BY SCR 125

##### 030. LEASE APPLICATION, FEE, AND PROCEDURE.

01. **Fee.** The lease application fee shall be one hundred fifty dollars (\$150). (3-26-08)

**02. Fee Shall Be Required.** A lease application and nonrefundable fee shall be required for new and existing encroachments. A lease application fee shall be required for leases that are renewed upon expiration. (3-26-08)

**03. Application to Lease and Fee.** The lease application and fee shall be submitted with the information from Subsections 030.03.a. through 030.03.c., in sufficient detail for the department to determine an appropriate lease rate based on numbers of slips, square footage, or other permit information: (3-26-08)

**a.** A letter of request stating the purpose of the lease. (3-26-08)

**b.** A scale drawing of the proposed lease area with plans detailing all intended improvements, including reference to the nearest known property corner(s). An encroachment permit may satisfy this requirement. (3-26-08)

**c.** The permit number of each existing applicable encroachment permit. (3-26-08)

**04. Submittal of Application to Lease and Fee.** The lease application and fee shall be filed in the local office of the department, whose location is available on the Internet at [www.idl.idaho.gov](http://www.idl.idaho.gov), or the director's office in Boise. (3-26-08)

**05. Notification of Approval or Denial.** The applicant shall be notified in writing if the lease application is approved or denied. The applicant shall also be notified of any additional requirements. (3-26-08)

**06. Request for Reconsideration.** Any applicant aggrieved with the director's determination of rent or denial of a lease application may request reconsideration by the Director. (7-1-97)

**(BREAK IN CONTINUITY OF SECTIONS)**

**055. ASSIGNMENTS, ASSIGNMENT FEE.**

**01. Assignment of Lease.** Leases may be assigned upon approval of the director provided that the lease conforms with Subsection 025.02 and all other provisions of these rules. The assignor and assignee must complete the Department's standard assignment form and forward it to any department office. (7-1-97)

**02. Assignment Fee.** The assignment fee shall be one hundred fifty dollars (\$150). (3-26-08)

**03. Permit Assignment.** The encroachment permit/stream alteration permit pertinent to a lease must be assigned to a purchaser simultaneously with a lease assignment. A lease assignment will not be approved unless the permit is assigned. (3-26-08)

**04. Approval Required for Assignment.** An assignment is not valid until it has been approved by the director. (7-1-97)

## IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD

### 32.01.01 - RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS

#### DOCKET NO. 32-0101-1001 (FEE RULE - NEW CHAPTER)

#### NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

**EFFECTIVE DATE:** The effective date of the temporary rule is March 30, 2010.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 57-728(2), Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Amendments to Section 57-728, Idaho Code, became effective April 17, 2009. The amendments require the Endowment Fund Investment Board (EFIB) to promulgate rules furthering the Credit Enhancement Program for School Districts. The new chapter of rules specifies the application procedure for school districts seeking to participate in the Credit Enhancement Program. 2010 Idaho Attorney General Opinion 01 concludes that the EFIB must charge fees to offset the costs of the Program to the Endowments. The rules specify the fees for the Program and allow the EFIB to continue offering guarantees to school districts.

**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:

The temporary rulemaking is necessary to confer a benefit by allowing the Program to provide guarantees to school districts.

**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:

Pursuant to Section 57-728, Idaho Code, and 2010 Attorney General Opinion 01, the rules impose an application fee calculated to reflect the overhead costs to the EFIB for processing an application. This fee allows the EFIB to more accurately allocate its overhead costs and will likely result in a minor reduction in the cost allocation to the Endowment Funds, the Judges' Retirement Fund, and the State Insurance Fund. Without the imposition of the fee, the other clients of the EFIB may bear the costs of Program administration through the EFIB's existing process of cost allocation. The rules also implement a guaranty or insurance fee authorized by the legislature as of April 17, 2009 and discussed in 2010 Idaho Attorney General Opinion 01. The fee, which would be deposited in the Public School Endowment Fund, allows the Public School Endowment to benefit from the issuance of the guaranties and reinforces the holding in Endowment Fund Investment Board v. Crane that the Program is a permissible investment for the Fund.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Larry Johnson, Manager of Investments, (208) 334-3312.

DATED this 12th day of April 2010.

Larry Johnson  
Manager of Investments  
Endowment Fund Investment Board  
816 W. Bannock St., Ste. 301  
P. O. Box 83720  
Boise, ID 83720-0046  
Phone: (208) 334-3312  
Fax: (208) 334-3786

**THE FOLLOWING IS THE TEMPORARY TEXT FOR DOCKET NO. 32-0101-1001**

**IDAPA 32**  
**TITLE 01**  
**CHAPTER 01**

**IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD**

**32.01.01 - RULES GOVERNING THE CREDIT ENHANCEMENT PROGRAM FOR SCHOOL DISTRICTS**

**000. LEGAL AUTHORITY.**

Section 57-728(2), Idaho Code, gives the Endowment Fund Investment Board authority to promulgate rules necessary to the discharge of the EFIB's duties for the administration of the Credit Enhancement Program. 2010 Idaho Attorney General Opinion 01 concludes that the EFIB must charge fees to offset the costs of the Credit Enhancement Program to the Endowments. (3-30-10)T

**001. TITLE AND SCOPE**

**01. Title.** These rules shall be cited as IDAPA 32, Title 01, Chapter 01, "Rules Governing the Credit Enhancement Program for School Districts." (3-30-10)T

**02. Scope.** These rules contain the provisions for implementation of the Credit Enhancement Program. (3-30-10)T

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at the EFIB's office. (3-30-10)T

**003. ADMINISTRATIVE APPEALS.**

The EFIB's determination to invest through the Credit Enhancement Program is a discretionary exercise of its fiduciary duties to the Endowments. This chapter does not provide for appeal of the requirements under the Credit Enhancement Program as contested cases pursuant to the provisions of Title 67, Chapter 52, Idaho Code. (3-30-10)T

**004. INCORPORATION BY REFERENCE.**

There are no documents that have been incorporated by reference into these rules. (3-30-10)T

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

The location and mailing address of the EFIB is 816 West Bannock Street, Suite 301, Boise, Idaho 83702. The offices are open daily from 8 a.m. to noon, and 1 p.m. to 5 p.m., except Saturday, Sunday, legal holidays, and when closed for mandatory leave without pay. The EFIB's telephone number is (208) 334-3311 and the facsimile number is (208) 334-3786. (3-30-10)T

**006. PUBLIC RECORDS ACT COMPLIANCE.**

This agency operates pursuant to the Idaho Public Records Act, Sections 9-337 through 9-348, Idaho Code. (3-30-10)T

**007. -- 009. (RESERVED).**

**010. DEFINITIONS AND REFERENCES.**

- 01. Administrative Fees.** Application Fees and Pass-through Fees charged to School Districts applying for and receiving guarantees under the Credit Enhancement Program. (3-30-10)T
- 02. Application Fee.** The amount determined by the EFIB and set forth in this chapter as the cost of reviewing applications to the Credit Enhancement Program and administering the Credit Enhancement Program. (3-30-10)T
- 03. Credit Enhancement Program.** The Credit Enhancement Program for School District Bonds established in Section 57-728, Idaho Code. (3-30-10)T
- 04. EFIB.** Endowment Fund Investment Board. (3-30-10)T
- 05. Endowments.** The trusts granted to the state of Idaho by the Idaho Admission Bill, 26 Statutory Laws 215, chapter 656 as amended. The Endowments include the Public School Endowment established by Idaho Admission Bill sections 4 and 13. (3-30-10)T
- 06. Guarantee Fee.** The amount determined by the EFIB and set forth in this chapter as the cost of guaranteeing a school bond under the Credit Enhancement Program. The cost of guaranteeing a school bond includes the difference in the investment return to the Public School Endowment projected by the EFIB to arise from the guarantee and additional costs to the Endowments arising from investment of the Public School Endowment in the Credit Enhancement Program. (3-30-10)T
- 07. Guaranty Program.** The Idaho School Bond Guaranty Program established in Title 33, Chapter 53, Idaho Code. (3-30-10)T
- 08. Pass-Through Fee.** A direct cost to the EFIB for reviewing an application to the Credit Enhancement Program or for issuing a note to pay a debt service payment under the Credit Enhancement Program. Direct costs include the costs billed to the EFIB by legal, accounting, and financial professionals. (3-30-10)T
- 09. School District.** Shall have the meaning provided in Section 33-5302, Idaho Code. (3-30-10)T
- 10. Total Debt Service.** The total amount to be repaid to bond purchasers over the stated maturity of the School District bond (principal plus interest). (3-30-10)T

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

**020. APPLICATION.**

- 01. Required Materials.** School Districts shall submit the following application materials to the EFIB: (3-30-10)T
- a.** Correspondence from the Idaho State Treasurer certifying that the School District has been approved to participate in the Guaranty Program and setting forth the maximum credit enhancement amount available to the School District within the limitations set forth in Section 57-728(8), Idaho Code. (3-30-10)T
  - b.** A fully completed application form as prescribed by the EFIB from time to time executed by a party authorized to bind the School District. (3-30-10)T
  - c.** Copies of the complete audited financial statements of the School District prepared pursuant to Section 33-701, Idaho Code, for the preceding three (3) fiscal years and the adopted budget for the current fiscal year. (3-30-10)T
  - d.** Upon request of the EFIB, documentation substantiating the information set forth in materials submitted pursuant to Subsection 020.01 of these rules. (3-30-10)T
- 02. Submission Deadlines.** School Districts may submit an application at any time. (3-30-10)T



**021. -- 029. (RESERVED).**

**030. FEES.**

**01. Guarantee Fee. (3-30-10)T**

**a.** Amount. School Districts shall remit to the EFIB a one-time fee equal to two one-hundredths of one percent (0.02% or two basis points) of the Total Debt Service. (3-30-10)T

**b.** When Paid. School Districts shall remit the Guarantee Fee to the EFIB within five (5) days of the sale of bonds guaranteed by the Credit Enhancement Program. (3-30-10)T

**c.** Use of Fee. The EFIB will deposit the Guarantee Fee in the Public School Endowment. (3-30-10)T

**02. Administrative Fees. (3-30-10)T**

**a. Application Fee. (3-30-10)T**

**i.** Amount. School Districts shall submit to the EFIB an Application Fee of five hundred dollars (\$500). (3-30-10)T

**ii.** When Paid. School Districts shall submit the Application Fee to the EFIB with the application materials. (3-30-10)T

**iii.** Use of Fee. The EFIB will use Application Fees to pay costs of reviewing applications and administering the Credit Enhancement Program. At the conclusion of each fiscal year, the EFIB will deposit unexpended Application Fees in the Public School Endowment. (3-30-10)T

**b. Pass-through Fee. (3-30-10)T**

**i.** Amount. The EFIB may incur a Pass-through Fee related to the review of an application in its discretion. The EFIB will not invoice a School District for Pass-through Fees related to the review of an application without the prior written approval of the School District. The EFIB may incur a Pass-through Fee related to the issuance of a note without prior approval of the School District. The EFIB will invoice School Districts for the full amount of any Pass-through Fees related to the issuance of a note. (3-30-10)T

**ii.** When Paid. School Districts shall remit each invoiced Pass-through Fee to the EFIB within thirty (30) days of invoice. (3-30-10)T

**iii.** Use of Fee. The EFIB will use a Pass-through Fee to pay the direct costs to the EFIB under the Credit Enhancement Program giving rise to the fee. (3-30-10)T

**031. -- 039. (RESERVED).**

**040. APPROVAL AND DENIAL OF APPLICATIONS.**

**01. Review Periods.** The EFIB will provide written approval or denial of an application within twenty (20) days of the submission of all required materials. If the Board requests substantiating documentation, the EFIB will provide written approval or denial of the application within twenty (20) days of the submission of the substantiating documentation. (3-30-10)T

**02. Delegation of Review and Approval. (3-30-10)T**

**a.** Staff Review. The EFIB may delegate review of applications to EFIB staff. (3-30-10)T

**b.** Experts. The EFIB may engage experts to review an application. Experts include legal, accounting,

and financial professionals. (3-30-10)T

**c.** Staff Approval. The EFIB may delegate approval of applications to the EFIB's manager of investments. (3-30-10)T

**03. Discretionary Investment.** The EFIB will invest in a School District bond issuance under the Credit Enhancement Program in its sole discretion and within its fiduciary responsibilities as trustees of the financial assets of the Endowments. The EFIB may deny an application for participation in the Credit Enhancement Program if the EFIB determines the investment is not in the best interests of one (1) or more of the Endowments. (3-30-10)T

**04. Denial of Application for Unpaid Fees.** The EFIB may deny an application for participation in the Credit Enhancement Program if a School District has not paid a fee under a pending application or a prior guarantee issued by the Credit Enhancement Program. (3-30-10)T

**041. -- 999. (RESERVED).**

# IDAPA 35 - IDAHO STATE TAX COMMISSION

## 35.01.02 - SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-0901

### 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. 35-0102-0901. This agency action for this final rulemaking is authorized pursuant to Sections 63-105, 63-3624, 63-3635, and 63-3039, 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. 45, Section 136 only, as amended in Docket No. 35-0102-0901, is not consistent with legislative intent and has been rejected. In accordance with House Concurrent Resolution No 45, the following changes are being made to the final rule:

Amendments made to Section 136 have been rejected and are null, void and of no force and effect. The text of Section 136 will remain as currently codified.

The original text of the proposed rule was published in the October 7, 2009, Idaho Administrative Bulletin, Vol. Volume 09-10, Vol. 2, pages 342-358. The pending rule was published in the January 6, 2010, Idaho Administrative Bulletin, Vol. 10-1, page 242.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Jim Husted at (208) 334-7544.

DATED this 12th day of March, 2010.

Jim Husted  
Tax Policy Specialist  
Idaho State Tax Commission  
800 Park Bl., Plaza IV  
P.O. Box 36, Boise, ID 83722-0410  
(208) 334-7544

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#### THE FOLLOWING IS THE FINAL TEXT FOR THE SECTION AFFECTED BY HCR 45

#### 136. REBATES PAID TO CERTAIN REAL ESTATE DEVELOPERS (RULE 136).

**01. Rebate of Sales Tax.** Section 63-3641, Idaho Code, provides for a rebate of sales taxes to be paid to real estate developers who build a qualifying retail complex at a cost of four million dollars (\$4,000,000) or more and who expend more than eight million dollars (\$8,000,000) for the installation of a highway interchange or for freeway interchange improvements on an interstate highway. For the purposes of this rule, the term “qualifying shopping center” shall mean a qualifying retail complex as specified by Section 63-3641, Idaho Code. (4-2-08)

**02. Qualifying Shopping Center Location.** Retailers that are located in a qualifying shopping center

must apply for a separate sellers' permit and file a separate sales tax return for that location. A retailer who ceases operation in a qualifying shopping center must notify the Tax Commission and cancel the sellers' permit for that location. (4-2-08)

**03. Confidential Information.** Information about an individual store's sales or aggregate sales for stores located in a qualifying shopping center is confidential and may not be released to the public. (4-2-08)

**04. Developer Responsibilities.** The developer of a qualifying shopping center must provide the names and taxpayer identification numbers of the stores located in the shopping center to the Tax Commission. The developer must also notify the Tax Commission whenever a new retailer begins operation or when a retailer ceases operations in a qualifying shopping center. (4-2-08)

**05. Certifying Expenditures Prior to Rebate Payment.** No rebate will be paid unless the Idaho Department of Transportation or an appropriate political subdivision of the state of Idaho has certified as to the amounts actually expended and that the expenditures were made for the purpose of constructing a highway interchange or for freeway interchange improvements. (4-2-08)

# IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

## 39.02.60 - RULES GOVERNING LICENSE PLATE PROVISIONS

DOCKET NO. 39-0260-0901

### 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. 39-0260-0901. This agency action for this final rulemaking is authorized pursuant to Section 49-201, 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. 121, Docket No. 39-0260-0901, Section 204, only, relating to Permanent Commercial Trailer - Business Logo Plates Provisions, is not consistent with legislative intent and is being amended accordingly. In accordance with Senate Concurrent Resolution No. 121, the following changes are being made to the final rule:

Section 204, a proposed new section, having been rejected by the Legislature is null, void and of no force and effect and will not be added to the rule. Since this would have been the final section in the 200 sequence, its rejection does not result in any renumbering of the remaining sections of the rule. Section 204 will remain a 'Reserved' Section as currently codified.

The original text of the proposed rule was published in the October 2, 2009, Book 2, Idaho Administrative Bulletin, Vol. 09-10, page(s) 447 through 452. The pending rule was published in the December 2, 2009, Idaho Administrative Bulletin, Vol. 09-12, page 166.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Amy Smith, Vehicle Services Manager, 334-8660.

DATED this 2nd day of April, 2010.

Linda L. Emry  
Office of Governmental Affairs  
Idaho Transportation Department  
3311 West State Street  
PO Box 7129  
Boise ID 83707-1129  
Phone - 208-334-8810  
FAX - 208-332-4107

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#### THE FOLLOWING IS THE FINAL TEXT FOR THE SECTION AFFECTED BY SCR 121

204. -- 299. (RESERVED).

**OFFICE OF THE ADMINISTRATIVE RULES COORDINATOR**

**IDAPA 41 - PUBLIC HEALTH DISTRICTS**

**41.01.01 - RULES OF IDAHO PUBLIC HEALTH DISTRICT #1**

**DOCKET NO. 41-0101-1001**

**HOUSE BILL 667A**

**NOTICE OF LEGISLATIVE ACTION - 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 House Bill 667a. The action is authorized pursuant to Section 39-416, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the action taken by the legislature affecting this final rule with an explanation of any changes:

Pursuant to House Bill 667a certain rules of the Public Health Districts promulgated under IDAPA 41.01.01, "Rules of Idaho Public Health District #1," have been found to violate the legislative intent of the statute under which the rules were adopted. Specifically, IDAPA 41.01.01, Section 100, "Water Quality Control," Subsections 100.02 and 100.06 and Section 901, "Appeal to the Board," only, shall be null, void and of no force and effect at the conclusion of the Second Regular Session of the Sixtieth Idaho Legislature.

These changes have been codified pursuant to House Bill 667a and Section 100 and 901 are being printed here as codified following this notice.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this notice of legislative action affecting a final rule, contact Dennis Stevenson, Administrative Rules Coordinator, at (208) 332-1820.

DATED this 14th day of April, 2010.

Dennis R. Stevenson  
Administrative Rules Coordinator  
Office of the Administrative Rules Coordinator  
Department of Administration  
650 W. State Street, Boise, ID 83720  
PO Box 83720, Boise, ID 83720-0306  
Phone (208) 332-1820  
Fax (208) 332-1896

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**THE FOLLOWING IS THE FINAL TEXT FOR THE SECTIONS AFFECTED BY HB 667a**

**100. WATER QUALITY CONTROL.**

**01. Sewage and Waste Disposal -- Political Subdivisions.** Any political subdivision within the District may enter into a sewage management plan agreement with the District, the purpose of which will be to establish permanent sewage disposal practices that will fulfill the needs and goals of the political subdivision and the responsibilities of the District. The Board shall have authority to enforce the provisions of sewage management plan agreements. (7-1-93)

**02. Sewage and Waste Disposal -- Private Sewage Disposal.** No residence, place of business, or other building where persons congregate, reside, or are employed shall hereafter be constructed or altered until the owner or builder or agent thereof shall have first been issued a permit to construct sanitary disposal facilities by the Health Officer. (7-1-93)

**a.** This rule shall not apply to any construction on a street or alley in which there is a public sanitary sewer or to any construction within two-hundred (200) feet of a public sanitary sewer where connection with such sewer is actually made. In such case, the residence, place of business, or other building shall connect to the sewer. (7-1-93)

**b.** The application for a permit to construct sanitary disposal facilities shall include all applicable information as set forth in the Idaho Department of Environmental Quality Rules for Individual and Subsurface Sewage Disposal Systems, and by a fee as set in the fee schedule. (3-27-07)

**c.** No drywells or drainfields deeper than four (4) feet below ground level shall be permitted for the disposal of domestic sewage waste. No sewage holding or retention tanks shall be allowed as a method of sewage disposal for residential purposes unless the operation and maintenance, including pumping of the facility, is conducted by or under the authority of a political subdivision as defined in Idaho Code. (7-1-93)

**d.** No dwelling or building shall be occupied until the sanitary disposal facilities have been constructed, inspected, and approved by the Health Officer or his agents. The sanitary disposal facilities shall not be covered with dirt or otherwise completed until inspected and approved. (7-1-93)

**03. Sewage and Waste Disposal -- Septage Disposal Site.** It shall be unlawful for any person engaged in the business, firm or corporation to clean any septic tank, sewage pit, or other means of sewage disposal, or to operate a septage disposal site within the limits of Panhandle Health District 1 without first having been issued a registration permit by the Health Officer. (7-1-93)

**a.** Application shall be made upon a form provided by the Health Officer and shall be accompanied by a fee as set in the fee schedule. The registration permit shall be issued yearly and shall be revocable for failure to comply with the rules governing sewage disposal. Each permit shall be only for the unexpired portion of the calendar year for which the permit is issued, and at the end of the calendar year all permits shall expire becoming void and of no further effect. (7-1-93)

**b.** Any person engaged in the business of removing and transporting sewage shall comply with all applicable rules governing removal, transportation, and disposal of sewage or sewage sludge issued by the Idaho State Department of Health and Welfare and with all applicable rules hereinafter adopted. (7-1-93)

**c.** All applications for permits to operate septage land disposal sites must be accompanied by a plan of operations which shall include details relative to application rates and methods, access control, odor control, control of surface water runoff, cropping, and vegetation. All land disposal sites must not be closer than three-hundred (300) feet from a property line, nor closer than one quarter (1/4) mile from a residence at the time the site is established. All disposal sites must provide access for all-weather operation. All land disposal sites established after the effective date of these rules may be required to have an engineering report prepared by a licensed engineer detailing such items as site topography, site boundaries, property boundaries, direction and distance to nearest residence(s), depth, and type of soil strata, depth to ground water, direction of prevailing winds, and such other information as may be deemed necessary by the Health Officer. All required information must be submitted to and approved by the Health Officer prior to the issuance of a permit. (7-1-93)

**04. Sewage and Waste Disposal -- Prohibited Conditions.** (7-1-93)

**a.** Domestic sewage, septage, sanitary sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to remain open to the atmosphere or on the surface of the ground in such a manner so as to be a source of noxious or offensive odors, to be dangerous to health, or to be a public nuisance. (7-1-93)

**b.** Domestic sewage, sanitary sewage, septage, industrial sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to endanger any source or supply of drinking water, or cause damage to any public or private property. (7-1-93)

**c.** Raw or untreated sewage, septage, or industrial waste, or agricultural waste shall not be allowed in any body of water, water course, or any underground water drain, any storm water drain, channel, or other surface water drain. (7-1-93)

**05. Sewage and Waste Disposal.** Authorization to Connect to an Installed System. (3-27-07)

**a.** This applies to connection to an approved drainfield installation that has never received wastewater flows. (3-27-07)

**b.** Application must be made, and an authorization to connect permit issued, to determine that the site has not been compromised and continues to meet the standards under which the original permit was issued. A fee for such inspection may be set by the Board. A drainfield that is installed, inspected and approved shall be valid to be connected to under the conditions of the original permit for which it was issued, for five (5) years from the date of permit application, provided that the site and its surroundings are not substantially modified. (7-1-09)

**(BREAK IN CONTINUITY OF SECTIONS)**

**901. (RESERVED).**



## HOUSE BILL NO. 667a

LEGISLATURE OF THE STATE OF IDAHO  
Sixtieth Legislature, Second Regular Session - 2010

IN THE HOUSE OF REPRESENTATIVES  
HOUSE BILL NO. 667A  
AS AMENDED BY WAYS AND MEANS COMMITTEE

AN ACT RELATING TO PUBLIC HEALTH DISTRICTS; AMENDING SECTION 39-416, IDAHO CODE, TO PROVIDE THAT CERTAIN RULES OF THE PUBLIC HEALTH DISTRICTS BE SUBMITTED FOR REVIEW AND COMMENT BY THE STATE BOARD OF ENVIRONMENTAL QUALITY, TO PROVIDE THAT SUCH RULES EXPIRE AT THE END OF A REGULAR SESSION OF THE LEGISLATURE IF NOT APPROVED BY CONCURRENT RESOLUTION AND TO PROVIDE LEGISLATIVE INTENT REGARDING CERTAIN RULES; DECLARING CERTAIN RULES NULL, VOID AND OF NO FORCE AND EFFECT AT THE END OF THE SECOND REGULAR SESSION OF THE SIXTIETH IDAHO LEGISLATURE; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 39-416, Idaho Code, be, and the same is hereby amended to read as follows:

39-416. RULES ADOPTED BY DISTRICT BOARD PROCEDURE. (1) The district board by the affirmative vote of a majority of its members may adopt, amend or rescind rules and standards as it deems necessary to carry out the purposes and provisions of this act.

(2) Every rule or standard adopted, amended, or rescinded by the district board shall be done in a manner conforming to the provisions of chapter 52, title 67, Idaho Code.

(3) At the same time that proposed rules and standards are transmitted to the director of legislative services, they shall be submitted for review and comment to the state board of health and welfare, and to the board of county commissioners of each county within the public health district's jurisdiction. The state board of health and welfare shall, within seventy-five (75) days of receipt of a district board's proposed rules, disapprove of the adoption of the rules if, on the advice of the attorney general, such rules would be in conflict with state laws or rules. The state board of health and welfare shall immediately advise the district board as to the reason for the disapproval.

(4) This section does not apply to measures adopted for the internal operation of the district board or for federal programs where the regulations are established by the federal government but shall apply to all measures affecting the public at large or any identifiable segment thereof.

(5) Public health districts shall have all proposed rules regarding environmental protection or programs administered by the department of environmental quality submitted for review and comment to the state board of environmental quality and such rules must be approved by adoption of a concurrent resolution by both houses of the legislature or such rules shall expire at the conclusion of a regular session of the legislature. It is the intent of the legislature that standards and rules relating to subsurface sewage systems, wastewater treatment, sewage systems and water quality be consistent statewide.

SECTION 2. That, having found that the following rules violate the legislative intent of the statute under which the rules were adopted, IDAPA 41.01.01.901; IDAPA 41.01.01.100.02; and IDAPA 41.01.01.100.06 shall be null, void and of no force and effect at the conclusion of the Second Regular Session of the Sixtieth Idaho Legislature.

SECTION 3. An emergency existing therefor, which emergency is hereby declared to exist, this act shall be in full force and effect on and after its passage and approval.

### STATEMENT OF PURPOSE RS19819

This amendment to Section 39-416 is an effort to bring a unified statewide plan forward in dealing with subsurface sewage systems, wastewater treatment, sewage systems and water quality issues.

With seven health districts in the state of Idaho, district rules can vary widely from district to district. This bill would make all existing district rules null, void, and of no force and effect. Thereafter public health districts shall have the approval of the Board of Environmental Quality to promulgate rules relating to subsurface sewage systems, wastewater treatment, sewage systems and water quality and such rules must be approved by both houses of the legislature.

**FISCAL NOTE**

There is no impact to the general fund.

Dated: March 29, 2010.

## HOUSE CONCURRENT RESOLUTION NO. 45

LEGISLATURE OF THE STATE OF IDAHO  
Sixtieth Legislature, Second Regular Session - 2010

IN THE HOUSE OF REPRESENTATIVES  
HOUSE CONCURRENT RESOLUTION NO. 45  
BY REVENUE AND TAXATION COMMITTEE

A CONCURRENT RESOLUTION STATING FINDINGS OF THE LEGISLATURE  
AND REJECTING A CERTAIN RULE OF THE TAX COMMISSION  
RELATING TO IDAHO SALES AND USE TAX ADMINISTRATIVE RULES.

Be It Resolved by the Legislature of the State of Idaho:

WHEREAS, the Legislature is vested with authority to reject executive agency rules under the provisions of Section 67-5291, Idaho Code, in the event that the Legislature finds that the rules are not consistent with legislative intent; and

WHEREAS, it is the finding of the Legislature that a certain rule of the Tax Commission relating to Idaho Sales and Use Tax Administrative Rules is not consistent with legislative intent and should be rejected.

NOW, THEREFORE, BE IT RESOLVED by the members of the Second Regular Session of the Sixtieth Idaho Legislature, the House of Representatives and the Senate concurring therein, that IDAPA 35.01.02, Rules Governing Idaho Sales and Use Tax Administrative Rules, Section 136, only, relating to Rebates Paid to Certain Real Estate Developers, Rules of the Tax Commission, adopted as a pending rule under Docket Number 35-0102-0901, be, and the same is hereby rejected and declared null, void and of no force and effect.

### Statement of Purpose / Fiscal Impact:

#### STATEMENT OF PURPOSE RS19595

This concurrent resolution would reject a section of a pending rule of the Tax Commission relating to the Idaho Sales and Use Tax Administrative Rules as being not consistent with Legislative intent. The effect of this resolution, if adopted by both houses, would be to prevent the amended language in the section from going into effect.

#### FISCAL NOTE

This concurrent resolution has no fiscal impact.

Adopted: March 4, 2010.











































































































