

IDAHO ADMINISTRATIVE BULLETIN

October 6, 2010 -- Volume 10-10

Idaho Department of Administration
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IDAHO ADMINISTRATIVE BULLETIN

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Preface

The Idaho Administrative Bulletin is a monthly publication of the Office of the Administrative Rules Coordinator, Department of Administration, pursuant to Section 67-5203, Idaho Code. The Bulletin is a compilation of all administrative rulemaking documents in Idaho. All official rulemaking notices, official rule text, executive orders of the Governor, all legislative documents affecting rules, and any other documents required by law are published in the Bulletin.

State agencies are required to provide public notice of all proposed rulemaking actions and must invite public input once proposed rulemaking has been initiated. The public receives notice of proposed rulemaking actions through the Idaho Administrative Bulletin and a Public Notice (legal notice) that publishes in specific newspapers throughout the state. The legal notice provides reasonable opportunity for the public to participate when a proposed rule publishes in the Bulletin. Interested parties can submit written comments to the agency or request public hearings of the agency if none have been scheduled. Such submissions or requests must be presented to the agency within the time and manner specified in the individual "Notice of Rulemaking" for each proposed rule that is published in the Bulletin. After the comment period closes, the agency considers fully all information submitted regarding the proposed rule. Comment periods and public hearings are not provided for when the agency adopts a temporary or pending rule.

CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN

The Bulletin is cited by year and issue number. For example, Bulletin **09-1** refers to the first Bulletin issued in calendar year **2009**; Bulletin **10-1** refers to the first Bulletin issued in calendar year **2010**. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. **10-1** refers to January 2010; Volume No. **10-2** refers to February 2010; and so forth. Example: The Bulletin published in January 2010 is cited as Volume **10-1**. The December 2009 Bulletin is cited as Volume **09-12**.

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.

THE DIFFERENT RULES PUBLISHED IN THE ADMINISTRATIVE BULLETIN

Idaho's administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises 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 - Negotiated Rulemaking” in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed or temporary rule, or both.

PROPOSED RULEMAKING

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

- a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority 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) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided, however, that notwithstanding Section 67-5231, Idaho Code, the absence or accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or enforceability of the rule.
- d) the text of the proposed rule prepared in legislative format;
- e) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;
- f) 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;
- g) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and
- h) the deadline for public (written) comments on the proposed rule.

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

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

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 (terminate) a rulemaking after the publication of a proposed rule if it decides, for whatever reason, not to proceed further to finalize the rulemaking. The publication of a “Notice of Vacation of Proposed Rulemaking” in the Bulletin officially stops the formal rulemaking process.

TEMPORARY RULEMAKING

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

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

If a rulemaking meets one or more of the above legal criteria and the governor finds it is necessary that a rule become effective before it has been submitted to the legislature for review and approval and without allowing for any public input, the agency may proceed and adopt a temporary rule. The law allows that agency to make a temporary rule immediately effective upon adoption. However, a temporary rule that imposes a fee or charge may be adopted only if the governor finds that the fee or charge is necessary to avoid 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 extended by concurrent resolution, is replaced by a final rule, or expires under its own terms.

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, will rescind the temporary rule.

PENDING RULEMAKING

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

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

- a) a statement giving the reasons for adopting the rule;
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;
- c) the date the pending rule will become final and effective and a statement that the pending rule may be rejected, amended or modified by concurrent resolution of the legislature;
- d) an identification of any portion of the rule imposing or increasing a fee or charge and a statement that this portion of the rule shall not become final and effective unless affirmatively approved by concurrent resolution of the legislature;
- (e) the specific statutory authority for the rulemaking including a citation to the specific section of the Idaho Code that has occasioned the rulemaking, or the federal statute or regulation if that is the basis of authority or requirement for the rulemaking; and
- (f) a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year when the pending rule will become effective; provided however, that notwithstanding section 67-5231, Idaho Code, the absence or

accuracy of a fiscal impact statement provided pursuant to this subsection shall not affect the validity or the enforceability of the rule.

Agencies are required to republish the text of the 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

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

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

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

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

HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN

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

IDAPA 38.05.01.200.02.c.ii.

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

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

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

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

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

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

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

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

DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a “DOCKET NUMBER.” The “Docket Number” is a series of numbers separated by a hyphen “-”, (**38-0501-1001**). 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. 38-0501-1001”

“**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**).

“**1001**” 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 2010**. A subsequent rulemaking on this same rule chapter in calendar year 2010 would be designated as “**1002**”. The docket number in this scenario would be 38-0501-**1002**.

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 2010

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
10-1	January 2010	*November 13, 2009	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 25, 2010
10-4	April 2010	March 5, 2010	April 7, 2010	April 28, 2010
10-5	May 2010	April 2, 2010	May 5, 2010	May 26, 2010
10-6	June 2010	May 7, 2010	June 2, 2010	June 23, 2010
10-7	July 2010	June 4, 2010	July 7, 2010	July 28, 2010
10-8	August 2010	July 2, 2010	August 4, 2010	August 25, 2010
10-9	September 2010	July 30, 2010	September 1, 2010	September 22, 2010
10-10	October 2010	**August 27, 2010	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

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2011

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
11-1	January 2011	*November 19, 2010	January 5, 2011	January 26, 2011
11-2	February 2011	January 14, 2011	February 2, 2011	February 23, 2011
11-3	March 2011	February 11, 2011	March 2, 2011	March 23, 2011
11-4	April 2011	March 4, 2011	April 6, 2011	April 27, 2011
11-5	May 2011	April 8, 2011	May 4, 2011	May 25, 2011
11-6	June 2011	May 6, 2011	June 1, 2011	June 22, 2011
11-7	July 2011	June 3, 2011	July 6, 2011	July 27, 2011
11-8	August 2011	July 8, 2011	August 3, 2011	August 24, 2011
11-9	September 2011	August 5, 2011	September 7, 2011	September 28, 2011
11-10	October 2011	**August 31, 2011	October 5, 2011	October 26, 2011
11-11	November 2011	October 7, 2011	November 2, 2011	November 23, 2011
11-12	December 2011	November 4, 2011	December 7, 2011	December 28, 2011

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

*****Last day to submit a proposed rule in order to have the rulemaking completed and submitted for review by legislature.***

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IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.01.04 - RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-1001

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 22-112, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The non-food product qualifications will be changed to be more consistent with the processed food product qualifications which were revised in 2008. Currently, processed food products require that the ingredients be 20% agricultural content by weight grown or raised in Idaho and that the product must be processed in Idaho. Yet the non-food category, such as soaps and compost, must have 50% agricultural content from product grown or raised in Idaho. In addition, the qualifications for processed pork products will be changed to allow for ground pork or sausage to be produced from hogs over one year of age.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [July 7, 2010 Idaho Administrative Bulletin, Volume 10-7, page 15](#). A total of three industry meetings were held. Consensus was only reached on a portion of the proposed changes to the pork and pork products qualifications. Therefore, the only rule changes moving forward are a change to the non-food product qualifications and a change to the age of the animal for ground pork or sausage.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Leah Clark, Trade Specialist, at (208) 332-8684.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0104-1001

200. PRODUCT QUALIFICATION.

01. Authority of Determination. The Director shall have the sole authority in determining the eligibility of a product for participation in the program. (3-16-04)

02. General Product Qualifications. Except as specified in this chapter, or by written order of the Director, products must meet or exceed the following criteria: (3-16-04)

a. Fresh produce and commodities bearing the Idaho Preferred® logo shall be one hundred percent (100%) Idaho grown or raised. (4-2-08)

b. Processed foods and beverages shall contain a minimum of twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho and shall be processed in the state of Idaho. (4-2-08)

c. Non-food agricultural products must be at least ~~fifty~~ twenty percent (~~50~~20%) agricultural content by weight ~~and~~ that ~~agricultural content must have~~ has been grown or raised in Idaho and processing must occur in Idaho. (~~3-16-04~~)()

03. Potatoes. Only certification marks owned or administered by the Idaho Potato Commission may be branded on potatoes grown in Idaho unless prior Idaho Potato Commission approval in writing is secured and granted for the use of additional words or designs. Any person or participant applying to the Idaho Preferred® program, with the intention to promote Idaho-grown potatoes or products made from Idaho-grown potatoes, shall provide proof of such permission prior to making application with the Department. (3-30-07)

04. Wine. Wines shall contain a minimum of ninety-five percent (95%) Idaho grapes. (4-6-05)

05. Nursery Stock. Nursery stock shall have been grown in Idaho a minimum of one (1) growing season or growing cycle. (4-6-05)

06. Beef and Beef Products. Beef and beef products shall come from cattle that: (4-6-05)

a. Were born, raised and harvested in the United States. No cattle that originate from outside the United States may qualify for the Idaho Preferred® logo. (3-30-07)

b. Reside in Idaho at least twelve (12) months prior to harvest. The twelve (12) months need not be contiguous, but must be verifiable. (4-6-05)

c. Reside their entire lives in Idaho if harvested prior to twelve (12) months of age. (4-6-05)

d. Are processed in federally inspected plants and meet marbling and age requirements for USDA grade Select or better. (4-6-05)

07. Lamb and Lamb Products. Lamb and lamb products shall come from sheep that: (5-8-09)

a. Are born, raised and harvested in the United States. No lambs that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. (5-8-09)

b. Have grazed or been fed in Idaho at least three (3) months prior to harvest. The three (3) months need not be contiguous, but must be verifiable. (5-8-09)

c. Are processed at approximately one (1) year of age or less and qualify as lamb or carcasses from older animals, identified as mutton by USDA inspectors, may qualify if they have met requirements in Subsection

- 200.07.b. (5-8-09)
- 08. Pork and Pork Products.** Pork and pork products shall come from hogs that: (5-8-09)
- a.** Are born, raised and harvested in the United States. No hogs that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. (5-8-09)
- b.** Are raised in or processed in Idaho. (5-8-09)
- c.** Are processed at less than one (1) year of age unless used exclusively for ground pork or sausage products, and are processed in a federally inspected plant. ~~(5-8-09)~~()
- 09. Poultry and Poultry Products.** Poultry and poultry products shall come from fowl that: (5-8-09)
- a.** Are hatched, raised and harvested in the United States. No fowl that originate from, or reside for any portion of their life outside the United States may qualify for the Idaho Preferred® logo. (5-8-09)
- b.** Are raised and processed in Idaho. Fertile eggs, also known as hatching eggs, or chicks less than three (3) days of age that originate outside of Idaho, but are raised and processed in Idaho, may qualify for Idaho Preferred®. (5-8-09)
- c.** Are processed in a facility that is approved through a District Health Department for retail sales, or in a federally inspected plant. (5-8-09)
- 10. Game Meat.** Game meat shall: (5-8-09)
- a.** Come from domestic elk that are born, raised and processed in Idaho and originate from a facility licensed by the Idaho State Department of Agriculture. (5-8-09)
- b.** Come from domestic buffalo that are born, raised and processed in Idaho. (5-8-09)
- c.** Be processed in a federally inspected plant. (5-8-09)
- 11. Apicultural Products.** Products produced by honey bees including raw honey, wax, pollen, and propolis shall be one hundred percent (100%) Idaho origin. Processed honey shall be eighty percent (80%) Idaho origin. (4-6-05)
- 12. Exceptions.** The Director shall have the authority to establish product qualification requirements specific to individual products and commodities by written order. (3-16-04)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.02.14 - RULES FOR WEIGHTS AND MEASURES

DOCKET NO. 02-0214-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 71-111, Idaho Code.

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

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [August 4, 2010 Idaho Administrative Bulletin, Vol. 10-8, pages 16 and 17.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kevin Merritt, Section Manager at (208) 332-8692.

DATED this 26th day of August, 2010.

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

DOCKET NO. 02-0214-1001 - ADOPTION OF PENDING RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, Volume 10-8, August 4, 2010, pages 16 and 17.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2011 Idaho State Legislature for final adoption.

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.19 - RULES GOVERNING DOMESTIC CERVIDAE

DOCKET NO. 02-0419-1001

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 25-3704, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The purpose of this proposed rulemaking is to clarify the collection of the annual per head fee on domestic cervidae and to propose ranch management plans as a method of administering the domestic cervidae program more efficiently and provide cost savings to the domestic cervidae producer.

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

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

NEGOTIATED RULEMAKING: A Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [May 6, 2009 Idaho Administrative Bulletin, Volume 09-5, page 20](#). Rulemaking meetings were held with members of the Idaho Elk Breeders Association and the Idaho Sportsmen's Caucus Advisory Council. In addition, all Idaho cervidae producers were given the opportunity to provide written and verbal comments by mail, e-mail and phone. Consensus on the proposed rule changes was not reached.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0419-1001

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference and copies of these documents may be obtained from the Idaho State Department of Agriculture central office ~~and the state Law Library.~~ (4-2-03)()

01. Bovine Tuberculosis Eradication, Uniform Methods and Rules, Effective January 22, 1999. This document can be viewed at http://www.aphis.usda.gov/animal_health/animal_diseases/tuberculosis/downloads/bovtbumr.pdf. (4-2-03)

02. Code of Federal Regulations, Title 9, Part 161, January 1, 2004. This document can be viewed at http://www.access.gpo.gov/nara/cfr/waisidx_04/9cfrv1_04.html. (4-6-05)

03. Code of Federal Regulations, Title 9, Part 55, January 1, 2004. This document can be viewed at http://www.access.gpo.gov/nara/cfr/waisidx_04/9cfrv1_04.html. (4-6-05)

04. Code of Federal Regulations, Title 9, Subchapter A, Part 1 and 2, January 1, 2004. This document can be viewed at http://www.access.gpo.gov/nara/cfr/waisidx_04/9cfrv1_04.html. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records and are available for inspection and copying at the ISDA central office ~~and the State Law Library.~~ (4-2-03)()

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Accredited Veterinarian. A veterinarian approved by the Administrator and USDA/APHIS/VS, in accordance with Title 9, Part 161, CFR, January 1, 2004, to perform functions required by cooperative state-federal animal disease control and eradication programs. (4-6-05)

02. Administrator. Administrator of the Division of Animal Industries or his designee. (4-2-03)

03. Approved Laboratory. NVSL, an AAVLD accredited laboratory that is qualified to perform CWD diagnostic procedures, or a laboratory designated by the Administrator to perform CWD diagnostic procedures. (4-2-03)

04. Approved Slaughter Establishment. A USDA inspected slaughter establishment at which ante-mortem and post-mortem inspection is conducted by USDA inspectors. (4-2-03)

05. Area Veterinarian in Charge. The USDA/APHIS/VS veterinary official who is assigned to supervise and perform official animal health activities in Idaho. (4-2-03)

06. Breed Associations and Registries. Organizations maintaining permanent records of ancestry or pedigrees of animals, individual animal identification records and records of ownership. (4-2-03)

07. Certificate. An official document issued by a state or federal animal health official or an accredited veterinarian at the point of origin of a shipment of cervidae, which contains information documenting the age, sex, species, individual identification of the animals, the number of animals, the purpose of the movement, the points of origin and destination, the consignor, the consignee, the status of the animals relative to official diseases, test results

and any other information required by the state animal health official for importation or translocation. (4-2-03)

08. Cervid Herd. One (1) or more domestic cervidae or groups of domestic cervidae maintained on common ground or under common ownership or supervision that may be geographically separated but can have interchange or movement. (4-2-03)

09. Cervidae. Deer, elk, moose, caribou, reindeer, and related species and hybrids including all members of the cervidae family and hybrids. (4-2-03)

10. Chronic Wasting Disease. A transmissible spongiform encephalopathy of cervids, which is a nonfebrile, transmissible, insidious, and degenerative disease affecting the central nervous system of cervidae. (4-2-03)

11. Commingling. Within the last five (5) years, the animals have had direct contact with each other, had less than thirty (30) feet of physical separation, or shared management equipment, pasture, or surface water sources, except for periods of less than forty-eight (48) hours at sales or auctions when a state or federal animal health official has determined such contact presents minimal risk of CWD transmission. (4-2-03)

12. Custom Exempt Slaughter Establishment. A slaughter establishment that is subject to facility inspection by USDA, but which does not have ante-mortem and post-mortem inspection of animals by USDA inspectors. (4-2-03)

13. CWD-Adjacent Herd. A herd of domestic cervidae occupying premises that border a premises occupied by a CWD positive herd, including herds separated by roads or streams. (4-6-05)

14. CWD-Exposed Animal. A cervid animal that is not exhibiting any signs of CWD, but has had contact within the last five (5) years with cervids from a CWD-positive herd or the animal is a member of a CWD-exposed herd. (4-2-03)

15. CWD-Exposed Herd. A herd of cervidae in which no animals are exhibiting signs of CWD, but: (4-2-03)

a. An epidemiological investigation indicates that contact with CWD positive animals or contact with animals from a CWD positive herd has occurred in the previous five (5) years; or (4-2-03)

b. A herd of cervidae occupying premises that were previously occupied by a CWD positive herd within the past five (5) years as determined by the designated epidemiologist; or (4-2-03)

c. Two (2) herds that are maintained on a single premises even if they are managed separately, have no commingling, and have separate herd records. (4-6-05)

16. CWD-Positive Cervid. A domestic cervid on which a diagnosis of CWD has been confirmed through positive test results on any official cervid CWD test by an approved laboratory. (4-2-03)

17. CWD-Positive Herd. A domestic cervidae herd in which any animal(s) has been diagnosed with CWD, based on positive laboratory results, from an approved laboratory. (4-2-03)

18. CWD-Suspect Cervid. A domestic cervid for which laboratory evidence or clinical signs suggests a diagnosis of CWD. (4-2-03)

19. CWD-Suspect Herd. A domestic cervidae herd in which any animal(s) has been determined to be a CWD-suspect. (4-2-03)

20. Department. The Idaho State Department of Agriculture. (4-2-03)

21. Death Certificate. A form, approved by the administrator, provided by the Division for the reporting of cervidae deaths and for reporting sample submission for CWD testing. (4-6-05)

22. **Designated Epidemiologist.** A state or federal veterinarian who has demonstrated the knowledge and ability to perform the functions required under these rules and who has been selected by the Administrator to fulfill the epidemiology duties relative to the state domestic cervidae disease control program. (4-2-03)
23. **Director.** The Director of the Idaho State Department of Agriculture, or his designee. (4-2-03)
24. **Disposal.** Final disposition of dead cervidae. (4-2-03)
25. **Division.** Idaho State Department of Agriculture, Division of Animal Industries. (4-2-03)
26. **Domestic Cervidae.** Fallow deer (*Dama dama*), elk (*Cervus elaphus*) or reindeer (*Rangifer tarandus*) owned by a person. (4-2-03)
27. **Domestic Cervidae Ranch.** A premises where domestic cervidae are held or kept, including multiple premises under common ownership. (4-6-05)
28. **Electronic Identification.** A form of unique, permanent individual animal identification such as radio frequency identification tag, radio frequency identification implant, or other forms approved by the Administrator. (4-6-05)
29. **Escape.** Any domestic cervidae located outside the perimeter fence of a domestic cervidae ranch and not under the immediate control of the owner or operator of the domestic cervidae ranch. (4-2-03)
30. **Federal Animal Health Official.** An employee of USDA/APHIS/VS who is authorized to perform animal health activities. (4-6-05)
31. **Herd of Origin.** A cervid herd, on any domestic cervidae ranch or other premise, where the animals were born, or where they were kept for at least one (1) year prior to date of shipment. (4-2-03)
32. **Herd Status.** Classification of a cervidae herd with regard to CWD. (4-2-03)
33. **Intrastate Movement Certificate.** A form approved by the Administrator, and available from the Division, to document the movement of domestic cervidae between premises within Idaho. (4-2-03)
34. **Individual CWD Herd Plan.** A written herd management agreement and testing plan developed by the herd owner and approved by the Administrator to identify and eradicate CWD from a positive, source, suspect, exposed, or adjacent herd. (~~4-2-03~~) ()
35. **Limited Contact.** Incidental contact between animals of different herds in separate pens off of the herd's premises at fairs, shows, exhibitions and sales. (4-2-03)
36. **Official CWD Test.** A test approved by the Administrator and conducted at an approved laboratory to diagnose CWD. (4-2-03)
37. **Official Identification.** Identification, approved by the Administrator, that individually, uniquely, and permanently identifies each cervid. (4-2-03)
38. **Operator.** A person who has authority to manage or direct a domestic cervidae ranch. (4-2-03)
39. **Owner.** The person that has legal title to, or has financial control of, any domestic cervidae or domestic cervidae ranch (4-2-03)
40. **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, or any legal entity, which is recognized by law as the subject of rights and duties. (4-2-03)

41. Premises. The ground, area, buildings, and equipment utilized to raise, propagate, control, or harvest domestic cervidae. (4-2-03)

42. Quarantine. An order issued on authority of the Administrator, by a state or federal animal health official or accredited veterinarian, prohibiting movement of cervids from any location without a written restricted movement permit. (4-2-03)

43. Quarantine Facility. A confined area where selected domestic cervidae can be secured and isolated from all other cervidae and livestock. (4-2-03)

44. Ranch Management Plan. A written plan for a domestic cervidae ranch that sets forth best management practices that mitigates the introduction or dissemination of disease among domestic cervidae. ()

445. Reidentification. The identification of a domestic cervid which had been officially identified, as provided by this chapter, but which has lost the official identification device, or the tattoo or official identification device has become illegible. (4-2-03)

456. Restrain. The immobilization of domestic cervidae in a chute, other device, or by other means for the purpose of efficiently, effectively, and safely inspecting, treating, vaccinating, or testing. (4-2-03)

467. Restricted Movement Permit. An official document that is issued by the Administrator, AVIC, or an accredited veterinarian for movement of animals from positive, suspect, or exposed herds. (4-2-03)

478. Source Herd. A herd from which at least one (1) cervid has originated within the previous five (5) years and that cervid has been diagnosed CWD positive. (4-2-03)

489. State Animal Health Official. The Administrator, or his designee. (4-2-03)

490. Status Date. The date on which the Administrator approves in writing a herd status change with regard to CWD. (4-2-03)

501. Trace Back Herd. An exposed herd in which at least one (1) CWD positive animal resided within any of the previous sixty (60) months prior to diagnosis with CWD. (4-2-03)

512. Trace Forward Herd. A herd that has received exposed animals from a positive herd within sixty (60) months prior to the diagnosis of CWD in the positive herd or from the identified point of entry of CWD into the positive herd. (4-2-03)

523. Traceback. The process of identifying the movements and the herd of origin of CWD positive, or exposed animals, including herds that were sold for slaughter. (4-2-03)

534. Wild Cervidae. Any cervid animal not owned by a person. (4-2-03)

545. Wild Ungulate. Any four (4) legged, hoofed herbivore, including cervids and other ruminants, not owned by a person. (4-6-05)

556. Wild Ungulate Cooperative Herd Plan. A plan, developed cooperatively by the owner of the domestic cervidae ranch, the ISDA, and the Idaho Department of Fish and Game to determine the disposition of any wild ungulates that are found to be located on a domestic cervidae ranch. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

021. OFFICIAL IDENTIFICATION.

All domestic cervidae shall be individually, permanently, and uniquely identified, with two (2) types of official identification approved by the Administrator. (4-2-03)

01. Reporting of Identification. The unique individual identification number, type of identification, and the name, address, and telephone number of the owner of each animal identified shall be reported to the Administrator, in writing, by the owner or operator. (4-2-03)

02. Identification Assigned. Official identification, once assigned to an individual animal, shall not be changed or transferred to another animal. Animals that lose identification devices shall be re-identified in accordance with Section 0231. (~~4-2-03~~)()

03. Progeny. All progeny of domestic cervidae shall be officially identified by December thirty-first of the year of birth, upon sale or transfer of ownership, or upon leaving the domestic cervidae ranch, whichever is earlier. (4-2-03)

04. Visible Identification. At least one (1) of the official types of identification used shall be visible from one hundred and fifty (150) feet. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

090. FEES.

A fee, not to exceed five dollars (\$5) per head per year on elk or three dollars (\$3) per head per year on fallow deer and reindeer, is to be assessed on all domestic cervidae in the state to cover the cost of administering the program covered in these rules. The fee shall include all domestic cervidae present at the ranch as of December 31 and all domestic cervidae imported from outside of the state that die during the same calendar year. This fee is due January first of each year. (~~4-2-08~~)()

(BREAK IN CONTINUITY OF SECTIONS)

209. RANCH MANAGEMENT PLAN.

01. Voluntary Ranch Management Plan. A domestic cervidae ranch may apply, on a form prescribed by the Administrator, to enter into a voluntary ranch management plan. The ranch management plan will be developed cooperatively by the owner or authorized agent and the Administrator. For the ranch management plan, the Administrator will conduct a risk assessment considering the factors in Subsection 209.03. A voluntary ranch management plan may, notwithstanding other rule requirements to the contrary, establish inventory verification requirements and CWD sampling requirements specific for a domestic cervidae ranch. Failure to adhere to an approved voluntary ranch management plan is a violation of these rules. ()

02. Mandatory Ranch Management Plan. A domestic cervidae ranch shall be required to develop and implement an approved ranch management plan if the ranch is found in violation of Sections 060, 204 or 500 of these rules. The ranch management plan must be completed and implemented within six (6) months of the disposition of the violation. For the ranch management plan, the Administrator will conduct a risk assessment considering the factors in Subsection 209.03. Failure to comply with the mandatory ranch management plan is a violation of these rules. This requirement will become effective July 1, 2012. ()

03. Risk Assessment for Ranch Management Plans. The Administrator will conduct a risk assessment for each ranch management plan. A ranch management plan will not include a double fencing requirement but may require that double gates be installed. The Administrator will consider the following factors when conducting a risk assessment at a domestic cervidae ranch: ()

a. Risk of egress. The risk of egress may be evaluated based on, but not limited to, history of domestic cervidae escape during the previous five (5) years, recovery rate of escaped domestic cervidae, length of time domestic cervidae were outside of the perimeter fence, annual average precipitation, topography, altitude and tree

density. ()

b. Risk of ingress. The risk of ingress may be evaluated on, but not limited to, history of ingress during the previous five (5) years, annual average precipitation, topography, altitude, tree density and proximity to wildlife migration corridors. ()

c. Compliance with CWD sample submission. The Administrator may, based on a risk based assessment, waive up to twenty percent (20%) of the tissue sample submissions required under this rule. The waiver will be based on, but not limited to, the following: ()

i. The domestic cervidae on the ranch have not had contact with any animals of unknown CWD status. ()

ii. The domestic cervidae ranch must be in compliance with all requirements of Title 25, Chapter 35, Idaho Code, and these rules. ()

iii. The domestic cervidae ranch must have no documented cases of ingress of wild cervids or egress of domestic cervidae within eighteen (18) months of the request for a waiver. ()

~~209~~10. -- 249. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

500. SURVEILLANCE FOR CWD.

01. Slaughter Surveillance. Brain tissue from one hundred percent (100%) of all domestic cervidae sixteen (16) months of age or older that are slaughtered at approved slaughter establishments or custom exempt slaughter establishments shall be submitted by the owner of the slaughtered cervidae to official laboratories to be tested or examined for CWD as provided for in these rules. (4-2-08)

02. Domestic Cervidae Ranch Surveillance. Unless a domestic cervidae ranch is operating with a ranch management plan approved by the Administrator, brain tissue from one hundred percent (100%) of all domestic cervidae sixteen (16) months of age or older that die or are harvested on domestic cervidae ranches shall be submitted by the owner or operator of the domestic cervidae ranch to official laboratories to be tested or examined for CWD, as provided for in these rules, except Reindeer and fallow deer unless the Reindeer or fallow deer are part of a CWD positive, exposed, trace, source or suspect herd or part of an elk herd. In the event a domestic cervidae ranch cannot submit a viable brain sample, the domestic cervidae ranch shall submit, on a form approved by the Administrator, a waiver request within forty eight (48) hours of determining that a viable brain sample cannot be submitted. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

505. DURATION OF CWD QUARANTINE.

Quarantines imposed because of CWD in accordance with this chapter shall remain in effect until one (1) of the following criteria are met: (4-2-03)

01. CWD Positive Herds. The quarantine may be released after the herd is completely depopulated as provided in Subsection 505.07, or after five (5) years of compliance with an individual herd CWD plan and all provisions of these rules, during which there was no evidence of CWD. (4-2-03)()

02. CWD Suspect Herds. The quarantine may be released after the herd is completely depopulated as provided in Subsection 505.07, or after a minimum of five (5) years of compliance with an individual CWD herd plan

and all provisions of these rules and during which there was no evidence of CWD, or an epidemiologic investigation determines that there is no evidence CWD exists in the herd as determined by the Administrator. (4-2-03)()

03. Source Herds and Herds of Origin. The quarantine may be released after a minimum of five (5) years of compliance with an individual **CWD** herd plan and all provisions of these rules and during which there was no evidence of CWD, or an epidemiologic investigation determines that there is no evidence CWD exists in the herd and that the herd is not the source of infection as determined by the Administrator. (4-2-03)()

04. Exposed Herds. The quarantine may be released after the herd is completely depopulated as provided in Subsection 505.07, or after a minimum of five (5) years of compliance with an individual **CWD** herd plan and all provisions of these rules and during which there was no evidence of CWD, or an epidemiologic investigation determines that there is no evidence CWD exists in the herd as determined by the Administrator. (4-2-03)()

05. Adjacent Herds. The quarantine may be released when directed by the Administrator based upon an epidemiological investigation and in consultation with the designated epidemiologist. (4-6-05)

06. Fencing Requirements. Any owner of a domestic cervidae ranch who chooses to remain under quarantine for five (5) years shall construct a second perimeter fence that meets the requirements for perimeter fence, as provided in Section 102, such that no domestic cervidae on the domestic cervidae ranch can get within ten (10) feet of the original exterior perimeter fence or as approved by the Administrator. (4-2-03)

07. Complete Depopulation. The quarantine may be released after: (4-2-03)

a. Complete depopulation of all cervidae on the premises as directed by the Administrator; and (4-2-03)

b. The premises have been free of all livestock as specified in an individual **CWD** herd plan approved by the Administrator; and (4-2-03)()

c. The soil and facilities have been cleaned, treated, decontaminated, or disinfected as directed by the Administrator. (4-2-03)

08. Disposal of Positive or Exposed Cervidae. All CWD positive or exposed domestic cervidae shall be disposed of as directed by the Administrator. (4-2-03)

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.21- RULES GOVERNING THE IMPORTATION OF ANIMALS
DOCKET NO. 02-0421-1002
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 25-207, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The USDA-APHIS has issued a Federal Order suspending enforcement of 9 CFR Section 77.10 in Modified Accredited Advanced (MAA) States or Zones relative to tuberculosis in cattle. As a result there will be no federal testing requirement for movement of cattle or bison from MAA states or zones. USDA-APHIS intends to promulgate new rules for tuberculosis testing of cattle originating in MAA states or zones. USDA-APHIS anticipates the rulemaking process will take at least two years to complete.

This chapter currently has tuberculosis testing requirements for cattle leaving MAA states or zones that mirror the federal requirements in 9 CFR Section 77.10. IDAPA 02.04.21, Section 240.03 of this rule requires that cattle over 15 months of age be tested for tuberculosis prior to import into Idaho from an MAA state or zone. Due to USDA-APHIS suspending enforcement of federal regulations, Idaho is one of only two states that require tuberculosis testing of this class of cattle for import purposes.

Additionally, proposed changes to IDAPA 02.04.29, " Rules Governing Trichomoniasis," require changes to this chapter to maintain consistency among the rules. Proposed changes related to trichomoniasis include lowering the age of virgin bulls for import into Idaho from twenty-four (24) months of age or less to less than twelve (12) months of age. The exemption for testing of rodeo bulls is clarified. A testing exemption has been included for bulls imported for exhibition purposes. The age of rodeo stock required to be tested for tuberculosis prior to import is clarified.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. However, informal negotiated rulemaking was conducted. Proposed changes to the rule were discussed with members of the Idaho Cattle Association at their mid-year meeting in June, 2010, and with members of the Trichomoniasis Task Force at their annual meeting in June, 2010. Both organizations support the rulemaking.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, Idaho 83701-0790
Phone: (208) 332-8500
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0421-1002

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records available for inspection and copying at the Central Office of the Idaho State Department of Agriculture, ~~and the State Law Library.~~ (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

240. TUBERCULOSIS TEST REQUIREMENTS.

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

01. Tuberculosis Accredited Free State or Zone. Cattle and bison that originate from a bovine tuberculosis accredited free state or zone, as defined by USDA in Title 9, Part 77, CFR, in which there are no animals or herds infected with or exposed to tuberculosis may be imported upon meeting the following requirements: (4-11-06)

a. Cattle of beef breeds may enter the state without a tuberculosis test. (4-11-06)

b. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, shall be officially identified and tested negative for tuberculosis, within sixty (60) days prior to entry into the state of Idaho except intact male and female cattle of dairy breeds consigned directly to a feedlot approved for finish feeding of cattle for slaughter only relative to tuberculosis may enter by permit without a tuberculosis test provided the cattle have been individually identified on a certificate of veterinary inspection. (4-2-08)

c. All sexually intact male and female cattle, six (6) months of age and older, of dairy breeds, may enter Idaho for the purpose of participating in shows or exhibitions, by permit, without a tuberculosis test. (4-11-06)

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

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

a. Steers, spayed heifers, and intact heifers of beef breeds that are less than fifteen (15) months of age, which are consigned for grazing, or steers, spayed heifers, and intact heifers of beef breeds that are consigned directly

to a feedlot approved for finish feeding of cattle or bison relative to tuberculosis, may enter without individual identification or testing for tuberculosis; and (3-20-04)

b. All other cattle and bison, except those moving on grazing permits issued by the Administrator under the provisions of Section 220 and those consigned for immediate slaughter at an approved slaughter establishment, shall be tested for tuberculosis with negative results within sixty (60) days prior to entry into Idaho. (3-20-04)

c. Tuberculosis testing requirements in Subsection 240.03 may be waived, with administrator approval, for feeder animals of beef breeds and bison originating from a modified accredited advanced state or zone previously classified as accredited free if the state of origin has had no laboratory confirmed case or other epidemiological evidence of tuberculosis in the previous twelve (12) months and the herd of origin is not under hold order, quarantine, or epidemiological investigation for tuberculosis. ()

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

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

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

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

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

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

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

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

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

07. Rodeo Stock. All cattle six (6) months of age or older imported into Idaho for rodeo or timed events must have been tested negative for bovine tuberculosis within twelve (12) months prior to importation into Idaho. (~~4-2-08~~)()

(BREAK IN CONTINUITY OF SECTIONS)

260. TRICHOMONIASIS.

The Certificate of Veterinary Inspection for bulls imported into Idaho shall contain a statement certifying that trichomoniasis is not known to exist in the herd of origin, and: (5-3-03)

01. Virgin Bulls Less Than ~~Twenty-Four~~ **Twelve Months of Age.** The virgin bull(s) are less than ~~twenty-four~~ **twelve** (~~24~~**12**) months of age and have not serviced a cow; or (5-3-03)()

02. Tested Bulls. The bull(s) have been tested by culture or PCR for trichomoniasis within thirty (30) days of shipment, were negative to the test, and have not been exposed to female cattle since the test sample was collected. (4-2-08)

03. Exceptions. Exceptions to certification and testing: (5-3-03)

a. Bulls consigned directly to slaughter at an approved slaughter establishment; or (5-3-03)

b. Bulls consigned directly to an approved feedlot; or (5-3-03)

c. Bulls consigned directly to a specifically approved livestock market; or (5-3-03)

d. Rodeo bulls imported by an Idaho based rodeo producer, with an approved rodeo bull lot as described in IDAPA 02.04.29, "Rules Governing Trichomoniasis," Section 400 or rodeo bulls imported to perform at specific rodeos in Idaho. (5-3-03)()

e. Bulls imported for exhibition at livestock shows, provided the bull will be returned to its state of origin, will not be exposed to female cattle, and will not be offered for sale. ()

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.04.29 - RULES GOVERNING TRICHOMONIASIS

DOCKET NO. 02-0429-1001

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 25-207, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Changes include lowering the age of a virgin bull for import purposes from 24 months of age or less to less than 12 months of age, requiring a hot iron T brand be applied to test positive animals rather than an orange paint T brand, removing the allowance for rodeo producers to purchase non-tested bulls that were intended to be sold to slaughter only and requiring culture positive animals to be confirmed positive by Polymerase Chain Reaction.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted. However, informal negotiated rulemaking was conducted. Proposed changes to the rule were discussed with members of the Idaho Cattle Association at their mid-year meeting in June, 2010 and with members of the Trichomoniasis Task Force at their annual meeting in June, 2010. Both organizations support the rulemaking.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The official Idaho "Protocol for Trichomonas foetus Diagnosis in Cattle" is being incorporated. This document provides the ISDA Animal Health Laboratory's sampling and testing protocols to provide quality assurance in trichomoniasis testing.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0429-1001

004. INCORPORATION BY REFERENCE.

01. **Incorporated Document.** IDAPA 02.04.29 incorporates by reference the official Idaho “Protocol for ~~Culture of Trichomoniasis, 2007~~, Trichomonas foetus Diagnosis in Cattle” which can be viewed at http://www.idahoag.us/Categories/Animals/Documents/trich_protocol.pdf. (4-2-08)()

02. **Availability of Document.** Copies of this document may be obtained from the Idaho State Department of Agriculture. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

As used in these rules the following terms have the following meanings: (3-30-07)

01. **Administrator.** The administrator of the Division of Animal Industries, Idaho State Department of Agriculture or his designee. (3-30-07)

02. **Cattle.** All bovidae. (3-30-07)

03. **Department.** The Idaho State Department of Agriculture. (3-30-07)

04. **Division of Animal Industries.** Idaho State Department of Agriculture, Division of Animal Industries. (3-30-07)

05. **Exposed Cattle.** Any cattle that have been in contact with cattle infected with, or affected by Trichomoniasis. (3-30-07)

06. **Federal Animal Health Official.** An employee of the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services who is authorized to perform animal health activities. (3-30-07)

07. **Herd.** A herd is any group of cattle maintained on common ground for any purpose, or two (2) or more groups of cattle under common ownership or supervision, geographically separated, but which have an interchange or movement of cattle without regard to whether they are infected with or exposed to Trichomoniasis. (3-30-07)

08. **Hold Order.** A hold order is a form of quarantine that may be used to restrict the movement of cattle while the Trichomoniasis status is being investigated. (3-30-07)

09. **Infected Cattle.** Any cattle determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as infected. (3-30-07)

10. **Infected Herd.** Any herd in which any cattle have been determined by an official test or diagnostic procedure to be infected with Trichomoniasis or diagnosed by a veterinarian as being infected. (3-30-07)

11. **Negative.** Cattle that have been tested with official test procedures and found to be free from infection with Trichomoniasis. (3-30-07)

12. **Positive.** Cattle that have been tested with official test procedures and found to be infected with

Trichomoniasis. (3-30-07)

13. Quarantine. A written order, or a verbal order followed by a written order, executed by the Administrator, to confine or hold cattle on a premises or any other location, and to prevent movement of cattle from a premises or any other location when the Administrator has determined that the cattle have been found or are suspected to be exposed to or infected with Trichomoniasis, or the owner is not in compliance with the provisions of this chapter. (3-30-07)

14. Quarantined. Isolation of all cattle diseased or exposed thereto, from contact with healthy cattle and exclusion of such healthy cattle from enclosures or grounds where said diseased or exposed cattle are, or have been kept. (3-30-07)

15. Registered Veterinarians. Veterinarians registered with, and approved by the Division of Animal Industries to collect Trichomoniasis samples for official Trichomoniasis culture testing. (3-30-07)

16. Restrain. The confinement of cattle in a chute, or other device, for the purpose of efficient, effective, and safe testing approved by the Administrator. (3-30-07)

17. State Animal Health Official. The Administrator, or his designee, responsible for disease control and eradication activities. (3-30-07)

18. T Brand. A two inch by three inch (2" x 3") single-character **hot iron T paint** brand, applied **with orange paint** to the left of the tail-head of a bull, signifying that the bull is infected with trichomoniasis. (4-2-08)()

19. Trichomoniasis. A venereal disease caused by the organism *Tritrichomonas foetus*. (4-2-08)

011. – 099. (RESERVED).

100. TRICHOMONIASIS CONTROL AND ERADICATION PROGRAM.

The Trichomoniasis testing season shall begin on September 1 of each year and continue until August 31 of the succeeding year. All bulls within the state of Idaho shall be tested negative for Trichomoniasis before being allowed to come into contact with female cattle or by April 15 of each Trichomoniasis testing season, whichever occurs first, except: (3-30-07)

01. Bulls in Public Grazing Allotments. Bulls that are to be turned out on public grazing allotments shall be tested for Trichomoniasis by April 15 of each Trichomoniasis testing season or forty-five (45) days prior to turnout on a public grazing allotment, which ever occurs first. (3-30-07)

02. Virgin Bulls. All bulls, **native to Idaho that are less than** twenty-four (24) months of age **or less**, which have never serviced a cow shall be exempt from the Trichomoniasis testing requirements. (3-30-07)()

a. Such bulls shall be identified by a registered veterinarian with an official Trichomoniasis bangle tag of the correct color for the current testing season and the identification recorded on a Trichomoniasis Test and Report Form. (3-30-07)

b. If sold, such bulls shall be accompanied by a certificate signed by the owner or his representative attesting that they are virgin bulls. (3-30-07)

03. Dairy Bulls. All dairy bulls in dry lot operations shall be exempt from the Trichomoniasis testing requirements. Dairy bulls that are pastured or grazed must meet the Trichomoniasis testing requirements. (3-30-07)

04. Bulls Consigned to Slaughter or to an Approved Feedlot. Bulls consigned directly to slaughter at an approved slaughter establishment or to an approved feedlot for finish feeding for slaughter are exempt from testing requirements. (3-30-07)

05. Bulls in Northern Idaho. Bulls located in the area of Idaho north of the Salmon River are exempt

from the annual testing requirement, except: (3-30-07)

- a. Non-virgin breeding bulls that are purchased or sold shall be Trichomoniasis tested. (3-30-07)
- b. Non-virgin breeding bulls that are imported into Northern Idaho shall meet the importation requirements of Section 210 of this rule. (3-30-07)
- c. Bulls in Northern Idaho that cross into the area of Idaho south of the Salmon River shall be tested negative to a Trichomoniasis culture test within thirty (30) days prior to entering Southern Idaho and shall have had no contact with female cattle from the time of test to the time that they enter Southern Idaho, unless consigned directly to slaughter at an approved slaughter establishment or to an approved feedlot for finish feeding for slaughter. (3-30-07)

06. Extension of Testing Deadline. The Administrator may grant an extension of time beyond April 15 to accomplish Trichomoniasis testing after the owner submits a written request for extension of time to the Division of Animal Industries. (3-30-07)

- a. The written request shall outline the reasons for the extension request and the length of extended time being requested. (3-30-07)
- b. The herd of bulls shall be put under Hold Order until the owner furnishes documentation that the bulls have been tested. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

200. BULLS FOR SALE.

Bulls presented for sale at specifically approved livestock markets, shows, special sales, or by private contract in Idaho shall be accompanied by a certificate of negative test and a statement signed by the owner certifying "Trichomoniasis has not been diagnosed in the herd of origin;" or (3-30-07)

- 01. Returned to Home Premises.** Such bulls shall be returned to home premises for official testing; or (4-2-08)
- 02. Sold Directly to Slaughter.** Such bulls shall be sold directly to slaughter at an approved slaughter establishment, an Idaho approved feedlot, as defined in IDAPA 02.04.20, "Rules Governing Brucellosis;" ~~or a rodeo producer without test;~~ or (3-30-07)()
- 03. Placed Under a Hold Order.** Such bulls shall be placed under Hold Order by the livestock market veterinarian or a private veterinarian and shall have three (3) consecutive negative Trichomoniasis culture tests. The samples for each test shall be collected at least seven (7) days apart and cultured for Trichomoniasis to be eligible to receive a certificate of negative test; or (3-30-07)
- 04. Virgin Bulls.** Virgin bulls; native to Idaho that are less than twenty-four (24) months of age ~~or less,~~ which have never serviced a cow shall be identified with an official Trichomoniasis bangle tag of the correct color for the current testing season. (3-30-07)()
- 05. Period of Validity.** For resident breeding bulls sold in Idaho, the negative test shall be valid for up to ninety (90) days provided the bull(s) has had no contact with female cattle from the time of test to the time of sale. (3-30-07)
- 06. Contact with Female Cattle.** Bulls that have had contact with female cattle subsequent to testing must be retested prior to sale. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

210. IMPORTED BULLS.

01. Non-Virgin Bulls. Non-virgin breeding bulls may be imported into the state of Idaho provided they meet the following requirements: (3-30-07)

a. If the bull originates from a herd of bulls wherein all bulls have tested negative for Trichomoniasis since being removed from cows, the bull shall have been tested negative to a Trichomoniasis culture test within thirty (30) days prior to import and shall have had no contact with female cattle from the time of test to the time of import; or (3-30-07)

b. If the bull originates from a herd where one (1) or more bulls or cows have been found infected with Trichomoniasis, the bull shall have three (3) consecutive negative Trichomoniasis culture tests. The samples for each test shall be collected at least seven (7) days apart and cultured for Trichomoniasis, the last test being within thirty (30) days prior to import into Idaho; or (3-30-07)

c. If the bull is a single bull with no prior herd test history or originates from a herd of bulls that is still with cows or that has not been tested for Trichomoniasis since being removed from cows, the bull shall have three (3) consecutive negative Trichomoniasis culture tests. The samples for each test shall be collected at least seven (7) days apart and cultured for Trichomoniasis, the last test being within thirty (30) days prior to import into Idaho. (3-30-07)

d. Upon arrival at their destination in Idaho, all imported bulls shall be identified with an official Trichomoniasis bangle tag of the correct color for the current testing season, except imported dairy bulls that will be in a dry lot operation are not required to be identified with an official Trichomoniasis tag upon arrival at their destination. (3-30-07)

02. Virgin Bulls. Bulls ~~twenty-four (24)~~ imported into Idaho that are less than twelve (12) months of age ~~or less than which~~ have never serviced a cow are not required to be Trichomoniasis tested prior to import into Idaho, provided that: (3-30-07)()

a. Such bulls shall be accompanied by a certificate signed by the owner or the owner's representative attesting that the animals are virgin bulls and have never serviced a cow; and (3-30-07)

b. Upon arrival at their destination in Idaho, such bulls shall be identified by an Idaho accredited veterinarian with an official Trichomoniasis bangle tag of the correct color for the current testing season. (3-30-07)

03. Bulls for Grazing. Bulls that are entering Idaho for grazing purposes shall meet the Trichomoniasis test requirements of Section 100 of this rule. A copy of the certificate of negative Trichomoniasis test shall accompany the grazing permit application. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

310. INFECTED BULLS AND HERDS.

Any bull or cow that is positive to a Trichomoniasis culture test shall be considered infected. A herd in which one (1) or more bulls or cows are found infected with Trichomoniasis shall be considered infected. (3-30-07)

01. Confirmatory Testing of Culture Positive Bulls. Any culture positive bull must be confirmed positive for Trichomonas foetus by Polymerase Chain Reaction (PCR) test unless the animal is destined directly to slaughter. The positive culture specimen shall be submitted to a qualified laboratory, approved by the Administrator, in accordance with the qualified laboratories submission requirements. The culture positive specimen must arrive at the laboratory within forty eight (48) hours after being found to contain trichomonad organisms. ()

a. If polymerase chain reaction (PCR) determines the bull is positive or inconclusive for *Trichomonas foetus*, the bull will be considered positive for trichomoniasis. ()

b. If polymerase chain reaction (PCR) determines the bull is negative for *Trichomonas foetus*, the bull will be considered negative for trichomoniasis. ()

022. **Quarantine of Infected Herds.** Any veterinarian that discovers an infected herd shall immediately place the herd under a Hold Order, and notify the Division of Animal Industries within forty-eight (48) hours that the test was positive. Upon notification of an infected Trichomoniasis herd, a state or federal animal health official shall conduct an epidemiological investigation of the infected herd and issue a quarantine. The quarantine may include a provision requiring all breeding age female cattle in the infected herd to be held in isolation from all bulls for a period of up to one hundred twenty (120) days as determined by the Administrator. (3-30-07)

023. **Exposed Herds.** Herds identified as exposed through an epidemiological investigation shall be placed under a Hold Order. (3-30-07)

a. Bulls in exposed herds shall be tested as determined by the Trichomoniasis epidemiologist. (3-30-07)

b. All bulls tested in exposed herds and all purchased and home raised additions to the bull herd, including virgin bulls, shall be individually identified with an official Trichomoniasis bangle tag of the correct color for the current testing season and the tag number and status of the bull shall be recorded on an official Trichomoniasis test and report form. (3-30-07)

034. **Testing of Infected Herds.** Bulls in infected herds shall be tested negative for Trichomoniasis three (3) consecutive times before the quarantine can be released. Each of the tests shall be at least seven (7) days apart. The samples for each test shall be collected at least seven (7) days apart and cultured for Trichomoniasis to be eligible to receive a certificate of negative test. (3-30-07)

a. All bulls tested in the infected herd and all purchased and home raised additions to the bull herd, including virgin bulls, shall be individually identified with an official Trichomoniasis bangle tag of the correct color for the current testing season and the tag number and status of the bull shall be recorded on an official Trichomoniasis test and report form. (3-30-07)

b. Bulls that have three (3) consecutive negative Trichomoniasis culture tests conducted at least seven (7) days apart shall be considered negative to Trichomoniasis and can be so certified. (3-30-07)

045. **Identifying Infected Bulls.** All bulls testing positive for trichomoniasis shall, within seven (7) days of diagnosis, be identified with a hot iron T brand applied to the left of the tail-head indicating that the bull is positive for trichomoniasis. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

330. OFFICIAL LABORATORIES.

Only laboratories approved by the Division of Animal Industries as official laboratories shall test official Trichomoniasis samples. (3-30-07)

01. Protocols. Official laboratories shall operate in accordance with the ~~“Official Idaho “Protocol for Culture of Trichomoniasis; *Trichomonas foetus* Diagnosis in Cattle.” 2007.~~ (4-2-08)()

02. Check Test. Official laboratories ~~shall~~ personnel responsible for conducting trichomoniasis testing must be trained and certified by ISDA in the detection of trichomonad organisms and must pass ~~an annual~~ certifying check test administered by the Division of Animal Industries. (3-30-07)()

331. OFFICIAL TRICHOMONIASIS TESTS.

01. Official Culture Tests. An official test is one in which the sample is received in the official laboratory, in good condition, within forty-eight (48) hours of collection and such sample is tested according to the “Official Idaho Protocol for *Culture of Trichomoniasis Trichomonas foetus Diagnosis in Cattle*.” Samples in transit for more than forty-eight (48) hours will not be accepted for official testing and shall be discarded. Samples, which have been frozen or exposed to high temperatures, shall also be discarded. (3-30-07)()

02. Polymerase Chain Reaction. Polymerase Chain Reaction is accepted as an official test when completed by a qualified laboratory, approved by the Administrator, and the sample is received by the laboratory within forty-eight (48) hours of collection. (4-2-08)

03. Other Official Tests. Other tests for Trichomoniasis may be approved by the Division of Animal Industries, as official tests, after the tests have been proven effective by research, have been evaluated sufficiently to determine efficacy, and a protocol for use of the test has been established. (3-30-07)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 25-2710, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Update the incorporation by reference section to reflect the 2011 Official Publication of the Association of American Feed Control Officials; Provide information regarding online availability and purchase of documents incorporated by reference; Housekeeping (correct punctuation and typos, correct references and add omitted words for clarity); Add clarity to the definition of "Primary Display Panel" to include front, back and side of packaging; Add clarity to the proper method for listing feed ingredients on commercial feed labels; Allow the use of a guaranteed analysis with an ingredient statement in the labeling of customer-formula feeds; and Clarify that a violation of a Stop Sale, Use, or Removal Order is a violation of Title 25, Chapter 27, Idaho Code, and/or the Rules promulgated thereunder.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendments.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2) (a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Association of American Feed Control Officials (AAFCO) Official Publication is the recognized and primary reference book of approved feed terms and ingredient definitions and policies used by the feed industry and all state and Federal feed control officials and regulators.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rick Killebrew, Program Manager at (208) 332-8697.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0602-1001

004. INCORPORATION BY REFERENCE.

Copies of these documents may be viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.02 incorporates by reference: (3-30-07)

01. The Association of American Feed Control Officials (AAFCO) Official Publication. The Terms, Ingredient Definitions and Policies as published in the “2010~~1~~ Official Publication” of AAFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 25, Chapter 27, Idaho Code, and any rule promulgated thereunder. The AAFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAFCO website at: www.aafco.org. (~~3-29-10~~)()

02. The Merck Index. The “2006 Merck Index,” 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. at: <http://www.merckbooks.com/mindex/index.html>. (~~3-30-07~~)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS AND TERMS.

The Idaho State Department of Agriculture adopts the definitions set forth in Section 25-2703, Idaho Code. In addition as used in this chapter: (3-30-07)

01. All Life Stages. Gestation/lactation, growth, and adult maintenance life stages. (3-30-07)

02. Family. A group of products, which are nutritionally adequate for any or all life stages based on their nutritional similarity to a lead product, which has been successfully test-fed according to an AAFCO feeding protocol(s). (3-30-07)

03. Hay. The aerial portion of grass or herbage especially cut, cured and baled or stacked for animal feeding, without further processing. (4-6-05)

04. Immediate Container. The unit, can, box, tin, bag, or other receptacle or covering in which a pet food or specialty pet food is displayed for sale to retail purchasers, but does not include containers used as shipping containers. (3-30-07)

05. Ingredient Statement. A collective and contiguous listing on the label of the ingredients of which the pet food or specialty pet food is composed. (3-30-07)

06. Principal Display Panel. The part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale and may include the front, back, or side panels of the package. (~~3-30-07~~)()

07. Viable Noxious Weed Seed. Any seed or propagule of a noxious weed, as identified or listed by Title 22, Chapter 24, Idaho Code, or any rules promulgated thereunder, that has not been ground fine enough or otherwise treated to destroy the ability to germinate. (3-30-07)

011. -- 049. (RESERVED).

050. LABEL FORMAT.

01. Label Format. Commercial feeds shall be labeled with the information prescribed in this rule on the principal display panel of the product and in the following general format. (8-16-71)

a. Net Weight. (8-16-71)

b. Product name and brand name if any. (8-16-71)

c. If a drug is used: (8-16-71)

i. The word "Medicated" shall appear directly following and below the product name in type size, no smaller than one-half (1/2) the type size of the product name. (8-16-71)

ii. The purpose of medication (claim statement). (8-16-71)

iii. An active drug ingredient statement listing the active drug ingredients by their established name and the amounts in accordance with Subsection 150.04. (8-16-71)

iv. The required directions for use and precautionary statements or reference to their location if the detailed feeding directions and precautionary statements required by Sections 250 and 300 appear elsewhere on the label. (8-16-71)

d. The guaranteed analysis of the feed as required under the provisions of Section 25-2705(1)(c) of the Commercial Feed Law include the following items, unless exempted in Subsection 050.01.d.viii., and in the order listed: (3-30-07)

i. Minimum percentage of crude protein. (8-16-71)

ii. Maximum or minimum percentage of equivalent protein from non-protein nitrogen as required in Subsection 150.05. (8-16-71)

iii. Minimum percentage of crude fat. (8-16-71)

iv. Maximum percentage of crude fiber. (8-16-71)

v. Minerals, to include, in the following order: minimum and maximum percentages of calcium (Ca), minimum percentage of phosphorus (P), minimum and maximum percentages of salt (NaCl), and other minerals. (8-16-71)

vi. Vitamins in such terms as specified in Subsection 150.03. (8-16-71)

vii. Total sugars as invert on dried molasses products or products being sold primarily for their sugar content. (8-16-71)

viii. Exemptions. Guarantees for minerals are not required when there are no specific label claims and when the commercial feed contains less than six and one-half percent (6 1/2%) of Calcium, Phosphorus, Sodium, ~~and~~ or Chloride. Guarantees for vitamins are not required when the commercial feed is neither formulated for nor represented in any manner as a vitamin supplement. Guarantees for crude protein, crude fat, and crude fiber are not required when the commercial feed is intended for purposes other than to furnish these substances or they are of minor significance relating to the primary purpose of the product, such as drug premixes, mineral or vitamin supplements, and molasses. (~~8-16-71~~)()

e. Feed ingredients, collective terms for the grouping of feed ingredients, or appropriate statements as provided under the provisions of Section 25-2705(1)(d) of the Commercial Feed Law: ~~shall be listed in decreasing order of predominance by weight:~~ (~~3-30-07~~)()

i. The name of each ingredient as defined in the Official Publication of the Association of American

Feed Control Officials, common or usual name, or one approved by the Director. (8-16-71)

ii. Collective terms for the grouping of feed ingredients as defined in the Official Definitions of Feed Ingredients published in the Official Publication of the Association of American Feed Control Officials in lieu of the individual ingredients; provided that when a collective term for a group of ingredients is used on the label, individual ingredients within that group shall not be listed on the label. The manufacturer shall provide the feed control official, upon request, with a list of individual ingredients within a defined group, that are or have been used at manufacturing facilities distributing in or into the state. (8-16-71)

iii. The registrant may affix the statement, "ingredients as registered with the State" in lieu of the ingredient list on the label. The list of ingredients must be on file with the Director. This list shall be made available to the feed purchaser upon request. (8-16-71)

f. Name and principal mailing address of the manufacturer or person responsible for distributing the feed. The principal mailing address shall include the street address, city, state, and zip code; however, the street address may be omitted if it is shown in the current city directory or telephone directory. (8-16-71)

g. The information required in Section 25-2705 of the Commercial Feed Law must appear in its entirety on ~~one (1) side of the label or on one (1) side~~ the principal display panel of the container. ~~(3-30-07)()~~

02. Customer Formula Invoice and Tag Requirements. (8-16-71)

a. Bulk shipments of customer-formula feed shall be accompanied by an invoice, delivery slip or other shipping documents identifying the shipment as customer-formula feed and the name and address of the customer to whose order it is made. (8-16-71)

b. Bagged customer-formula feed will be labeled with a tag identifying each bag as such. The total bags in each customer's shipment will be segregated from other bagged feed and identified with the name and address of the customer to whose order it is made. (8-16-71)

c. Nutritional guarantees and guarantees of other analytes, and a list of ingredients, in descending order of predominance by weight, of a customer-formula feed may be used in lieu of specific weights or volumes of each ingredient, as required in Section 25-2705(2)(d), Idaho Code, when so ordered by the customer. ()

051. -- 099. (RESERVED).

100. BRAND AND PRODUCT NAMES.

01. Intended Use. The brand or product name must be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith. A mixture labeled "Dairy Feed," for example, must be suitable for that purpose. (8-16-71)

02. Listings. Commercial, registered brand or trade names are not permitted in guarantees ~~of~~ or ingredient listings and only in the product name of feeds produced by or for the firm holding the rights to such a name. ~~(8-16-71)()~~

03. Name of Feed. The name of a commercial feed shall not be derived from one (1) or more ingredients of a mixture to the exclusion of other ingredients and shall not be one representing any components of a mixture unless all components are included in the name: Provided, that if any ingredient or combination of ingredients is intended to impart a distinctive characteristic to the product which is of significance to the purchaser, the name of that ingredient or combination of ingredients may be used as part of the brand name or product name if the ingredient or combination of ingredients is quantitatively guaranteed in the guaranteed analysis, and the brand or product name is not otherwise false or misleading. (8-16-71)

04. Protein. The word "protein" shall not be permitted in the product name of a feed that contains added non-protein nitrogen. (8-16-71)

05. Percentage Value. When the name carries a percentage value, it shall be understood to signify protein and/or equivalent protein content only, even though it may not explicitly modify the percentage with the word “protein”: Provided, that other percentage values may be permitted if they are followed by the proper description and conform to good labeling practice. Digital numbers shall not be used in such a manner as to be misleading or confusing to the customer. (8-16-71)

06. Single Ingredient. Single ingredient feeds shall have a product name in accordance with the designated definition of feed ingredients as recognized by the Association of American Feed Control Officials unless the Director designates otherwise. (8-16-71)

07. Vitamin. The word “vitamin,” or a contraction thereof, or any word suggesting vitamin can be used only in the name of a feed which is represented to be a vitamin supplement, and which is labeled with the minimum content of each vitamin declared, as specified in Subsection 150.03. (8-16-71)

08. Mineralized. The term “mineralized” shall not be used in the name of a feed except for “TRACE MINERALIZED SALT.” When so used, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition. (8-16-71)

09. Meat and Meat By-Products. The term “meat” and “meat by-products” shall be qualified to designate the animal from which the meat and meat by-products is derived unless the meat and meat by-products are made from cattle, swine, sheep and goats. (8-16-71)

101. -- 149. (RESERVED).

150. EXPRESSION OF GUARANTEES.

01. Percentage by Weight. The guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, crude fiber and mineral guarantees (when required) will be in terms of percentage by weight. (8-16-71)

02. Commercial Feeds. Commercial feeds containing six and one-half percent (6 1/2%) or more Calcium, Phosphorus, Sodium ~~and~~ or Chloride shall include in the guaranteed analysis the minimum and maximum percentages of calcium (Ca), the minimum percentage of phosphorus (P), and if salt is added, the minimum and maximum percentage of salt (NaCl). Minerals, except salt (NaCl) shall be guaranteed in terms of percentage of the element. When calcium and/or salt guarantees are given in the guaranteed analysis such shall be stated and conform to the following: ~~(8-16-71)~~ ()

a. When the minimum is five percent (5%) or less, the maximum shall not exceed the minimum by more than one (1) percentage point. (8-16-71)

b. When the minimum is above five percent (5%), the maximum shall not exceed the minimum by more than twenty percent (20%) and in no case shall the maximum exceed the minimum by more than five (5) percentage points. (8-16-71)

03. Vitamin Content. Guarantees for minimum vitamin content of commercial feeds and feed supplements, when made, shall be stated on the label in milligrams per pound of feed except that: (8-16-71)

a. Vitamin A, other than precursors of vitamin A, shall be stated in International or USP units per pound. (8-16-71)

b. Vitamin D, in products offered for poultry feeding, shall be stated in International Chick Units per pound. (8-16-71)

c. Vitamin D for other uses shall be stated in International or USP units per pound. (8-16-71)

d. Vitamin E shall be stated in International USP units per pound. (8-16-71)

e. Guarantees for vitamin content on the label of a commercial feed shall state the guarantee as true vitamins, not compounds, with the exception of the compounds, Pyridoxine Hydrochloride, Choline Chloride, Thiamine, and d-Pantothenic Acid. (8-16-71)

f. Oils and premixes containing vitamin A or vitamin D or both may be labeled to show vitamin content in terms of units per gram. (8-16-71)

04. Drugs. Guarantees for drugs shall be stated in terms of percent by weight, except: (8-16-71)

a. Antibiotics present at less than two thousand (2,000) grams per ton (total) of commercial feed shall be stated in grams per ton of commercial feed. (8-16-71)

b. Antibiotics present at two thousand (2,000) or more grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed. (8-16-71)

c. Labels for commercial feeds containing growth promotion and/or feed efficiency levels of antibiotics, which are to be fed continuously as the sole ration, are not required to make quantitative guarantees except as specifically noted in the Federal Food Additive Regulations for certain antibiotics, wherein, quantitative guarantees are required regardless of the level or purpose of the antibiotic. (8-16-71)

d. The term "milligrams per pound" may be used for drugs or antibiotics in those cases where a dosage is given in "milligrams" in the feeding directions. (8-16-71)

05. Non-Protein Nitrogen. Commercial feeds containing any added non-protein nitrogen shall be labeled as follows: (8-16-71)

a. For ruminants: (8-16-71)

i. Complete feeds, supplements, and concentrates containing added non-protein nitrogen and containing more than five percent (5%) protein from natural sources shall be guaranteed as follows:

Crude Protein, minimum, ____%
(This includes not more than ____% equivalent non-protein nitrogen.) (8-16-71)

ii. Mixed feed concentrates and supplements containing less than five percent (5%) protein from natural sources may be guaranteed as follows:

Equivalent Crude Protein from Non-Protein Nitrogen, minimum ____%. (8-16-71)

iii. Ingredient sources of non-protein nitrogen such as Urea, Di-Ammonium Phosphate, Ammonium Polyphosphate Solution, Ammoniated Rice Hulls, or other basic non-protein nitrogen ingredients defined by the Association of American Feed Control Officials shall be guaranteed as follows:

Nitrogen, minimum ____%
Equivalent Crude Protein from Non-Protein Nitrogen, minimum ____% (8-16-71)

b. For non-ruminants: (8-16-71)

i. Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, added as such, shall be labeled as follows:

Crude protein, minimum ____%

(This includes not more than ____% equivalent crude protein which is not nutritionally available to species of animal for which feed is intended.) (8-16-71)

ii. Premixes, concentrates or supplements intended for non-ruminants containing more than one and

twenty-five hundredths percent (1.25%) equivalent crude protein from all forms of non-protein nitrogen, added as such, must contain adequate directions for use and a prominent statement: "WARNING: This feed must be used only in accordance with directions furnished on the label." (8-16-71)

06. Mineral Phosphate Materials. Mineral phosphatic materials for feeding purposes shall be labeled with the guarantee for minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine. (8-16-71)

151. -- 199. (RESERVED).

200. INGREDIENTS.

01. Name. The name of each ingredient or collective term for the grouping of ingredients, when required to be listed, shall be the name as defined in the Official Definitions of Feed Ingredients as published in the Official Publication of [the Association of American Feed Control Officials](#), the common or usual name, or one approved by the Director. (~~8-16-71~~)()

02. Same Size. The name of each ingredient must be shown in letters or type of the same size. (8-16-71)

03. Quality or Grade. No reference to quality or grade of an ingredient shall appear in the ingredient statement of a feed. (8-16-71)

04. Dehydrated. The term "dehydrated" may precede the name of any product that has been artificially dried. (8-16-71)

05. Single Ingredient. A single ingredient product defined by the Association of American Feed Control Officials or by the Director is not required to have an ingredient statement. (8-16-71)

06. Tentative Definitions. Tentative definitions for ingredients shall not be used until adopted as official, unless no official definition exists or the ingredient has a common accepted name that requires no definition, (e.g. sugar). (8-16-71)

07. Iodized. When the word "iodized" is used in connection with a feed ingredient, the feed ingredient shall contain not less than seven thousandths percent (0.007%) iodine, uniformly distributed. (8-16-71)

(BREAK IN CONTINUITY OF SECTIONS)

475. PET FOOD AND SPECIALTY PET FOOD.

01. Label Format and Labeling. (3-30-07)

a. Pet food and specialty pet food shall be labeled with the following information prescribed in this rule: (3-30-07)

i. Product name and brand name, if any, on the principal display panel as stipulated in Subsection 475.02: (3-30-07)

ii. A statement specifying the species name of pet or specialty pet for which the food is intended, conspicuously designated on the principal display panel; (3-30-07)

iii. Quantity statement, as defined in [AAFCO Model Bill Section 3\(v\) Section 25-2705\(1\)\(a\), Idaho Code](#), on the principal display panel; (~~3-30-07~~)()

- iv. Guaranteed Analysis as stipulated in Subsection 475.03; (3-30-07)
- v. Ingredient statement as stipulated in Subsection 475.04.a.; (3-30-07)
- vi. A statement of nutritional adequacy or purpose if required under Subsection 475.06; (3-30-07)
- vii. Feeding directions if required under Subsection 475.07; and (3-30-07)
- viii. Name and address of the manufacturer or distributor as stipulated in Subsection 475.10. (3-30-07)
- b.** When a pet food or specialty pet food enclosed in an outer container or wrapper is intended for retail sale, all required label information shall appear on the outer container or wrapper. (3-30-07)
- c.** A vignette, graphic, or pictorial representation on a pet food or specialty pet food label shall not misrepresent the contents of the package. (3-30-07)
- d.** The use of the word “proven” in connection with a label claim for a pet food or specialty pet food is not permitted unless the claim is substantiated by scientific or other empirical evidence. (3-30-07)
- e.** No statement shall appear upon the label or labeling of a pet food or specialty pet food which makes false or misleading comparisons between that product and any other product. (3-30-07)
- f.** A personal or commercial endorsement is permitted on a pet food or specialty pet food label provided the endorsement is not false or misleading. (3-30-07)
- g.** A statement on a pet food or specialty pet food label stating “improved,” “new,” or similar designation shall be substantiated and limited to six (6) months production. (3-30-07)
- h.** A statement on a pet food or specialty pet food label stating preference or comparative attribute claims shall be substantiated and limited to one (1) year production, after which the claim shall be removed or re-substantiated. (3-30-07)
- 02. Brand and Product Names.** (3-30-07)
 - a.** The words “one hundred percent (100%),” or “all,” or words of similar designation shall not be used in the brand or product name of a pet food or specialty pet food if the product contains more than one (1) ingredient, not including water sufficient for processing, decharacterizing agents, or trace amounts of preservatives and condiments. (3-30-07)
 - b.** An ingredient or a combination of ingredients may form a part of the product name of a pet food or specialty pet food: (3-30-07)
 - i. When the ingredient(s) derived from animals, poultry, or fish constitutes at least ninety-five percent (95%) of the total weight of the product. Water sufficient for processing may be excluded when calculating the percentage; however, the ingredient(s) shall constitute at least seventy percent (70%) of the total product weight. (3-30-07)
 - ii. When any ingredient(s) constitutes at least twenty-five percent (25%) of the weight of the product, provided that:
 - (1) Water sufficient for processing may be excluded when calculating the percentage, however, the ingredients(s) shall constitute at least ten percent (10%) of the total product weight; and (3-30-07)
 - (2) A descriptor is used with the ingredient name(s). This descriptor shall imply other ingredients are included in the product formula. Examples of descriptors include “dinner,” “platter,” “entree,” “formula,” and “recipe”; and (3-30-07)

- (3) The descriptor shall be in the same size, style, and color print as the ingredient name(s). (3-30-07)
- iii. When a combination of ingredients which are included in the product name in accordance with Subsection 475.02.b. meets all of the following: (3-30-07)
- (1) Each ingredient constitutes at least three percent (3%) of the product weight, excluding water sufficient for processing; (3-30-07)
- (2) The names of the ingredients appear in the order of their respective predominance by weight in the product; and (3-30-07)
- (3) All such ingredient names appear on the label in the same size, style, and color print. (3-30-07)
- c. When the name of any ingredient appears in the product name of a pet food or elsewhere on the product label and includes a descriptor such as “with” or similar designation, the named ingredient(s) must each constitute at least three percent (3%) of the product weight exclusive of water for processing. If the names of more than one (1) ingredient are shown, they shall appear in their respective order of predominance by weight in the product. The three percent (3%) minimum level shall not apply to claims for nutrients, such as, but not limited to vitamins, minerals, and fatty acids, as well as condiments. The word “with,” or similar designation, and named ingredients shall be in the same size, style, color and case print and be of no greater size than:

Panel Size	Max “with claim” Type Size
< 5 sq. in.	1/8”
5-25 sq. in.	1/4”
25-100 sq. in	3/8”
100-400 sq. in	1/2”
400 sq. in +	1”

(3-30-07)

- d. A flavor designation may be included as part of the product name or elsewhere on the label of a pet food or specialty pet food when the flavor designation meets all of the following: (3-30-07)
- i. The flavor designation: (3-30-07)
- (1) Conforms to the name of the ingredient as listed in the ingredient statement; or (3-30-07)
- (2) Is identified by the source of the flavor in the ingredient statement; and (3-30-07)
- ii. The word “flavor” is printed in the same size type and with an equal degree of conspicuousness as the name of the flavor designation; and (3-30-07)
- iii. Substantiation of the flavor designation, the flavor claim, or the ingredient source is provided upon request. (3-30-07)
- e. The product name of the pet food or specialty pet food shall not be derived from one (1) or more ingredients unless all ingredients are included in the name, except as specified by Subsection 475.04.a. or 475.04.b.; provided that the name of an ingredient or combination of ingredients may be used as a part of the product name if: (3-30-07)
- i. The ingredient or combination of ingredients is present in sufficient quantity to impart a distinctive characteristic to the product or is present in amounts which have a material bearing upon the price of the product or upon acceptance of the product by the purchaser thereof; or (3-30-07)

ii. It does not constitute a representation that the ingredient or combination of ingredients is present to the exclusion of other ingredients. (3-30-07)

f. Contractions or coined names referring to ingredients shall not be used in the brand name of a pet food or specialty pet food unless it is in compliance with Subsections 475.04.b., 475.04.c., or 475.04.d. (3-30-07)

03. Expression of Guarantees. (3-30-07)

a. The Guaranteed Analysis shall be listed in the following order and format unless otherwise specified in these rules: (3-30-07)

i. A pet food or specialty pet food label shall list the following required guarantees; (3-30-07)

(1) Minimum percentage of crude protein; (3-30-07)

(2) Minimum percentage of crude fat; (3-30-07)

(3) Maximum percentage of crude fat, if required by Subsection 475.09; (3-30-07)

(4) Maximum percentage of crude fiber; (3-30-07)

(5) Maximum percentage of moisture; and (3-30-07)

(6) Additional guarantees shall follow moisture. (3-30-07)

ii. When ash is listed in the guaranteed analysis on a pet food or specialty pet food label, it shall be guaranteed as a maximum percentage and shall immediately follow moisture. (3-30-07)

iii. A dog or cat food label shall list other required or voluntary guarantees in the same order and units of the nutrients in the AAFCO Dog (or Cat) Food Nutrient Profiles. Guarantees for substances not listed in the AAFCO Dog (or Cat) Food Nutrient Profiles, or not otherwise provided for in these rules, shall immediately follow the listing of the recognized nutrients and shall be accompanied by an asterisk referring to the disclaimer "not recognized as an essential nutrient by the AAFCO Dog (or Cat) Food Nutrient Profiles." The disclaimer shall appear immediately after the last such guarantee in the same size type as the guarantees. (3-30-07)

iv. A specialty pet food label shall list other required or voluntary guarantees as required by ~~AAFCO Model Regulation 3(a)(4)(X)~~ Subsection 475.01 of this rule. (~~3-30-07~~)()

b. The sliding scale method of expressing a guaranteed analysis on a pet food or specialty pet food label (for example, "Minimum crude protein fifteen to eighteen percent (15-18%)") is prohibited. (3-30-07)

c. The label of a pet food or a specialty pet food which is formulated as and represented to be a mineral supplement shall include: (3-30-07)

i. Minimum guarantees for all minerals from sources declared in the ingredient statement and established by an AAFCO-recognized nutrient profile, expressed as the element in units specified in the nutrient profile; or (3-30-07)

ii. Minimum guarantees for all minerals from sources declared in the ingredient statement expressed as the element in units specified in ~~AAFCO Model Regulation 4(b)~~ Section 150 of this rule when no species-specific nutrient profile has been recognized by AAFCO; and provided that: (~~3-30-07~~)()

iii. Mineral guarantees required by Subsections 475.03.c.i. and 475.03.c.ii. may be expressed in milligrams (mg) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and (3-30-07)

- iv. A weight equivalent (e.g., one (1) fl. oz. = twenty-eight (28) grams) for liquid products. (3-30-07)
- d.** The label of a pet food or a specialty pet food which is formulated as and represented to be a vitamin supplement shall include: (3-30-07)
- i. Minimum guarantees for all vitamins from sources declared in the ingredient statement and established by an AAFCO-recognized nutrient profile, expressed in units specified in the nutrient profile; or (3-30-07)
- ii. Minimum guarantees for all vitamins from sources declared in the ingredient statement expressed in units specified in ~~AAFCO Model Regulation 4(e)~~ Section 150 of this rule when no species-specific nutrient profile has been recognized by AAFCO; and provided that: ~~(3-30-07)~~ ()
- iii. Vitamin guarantees required by Subsections 475.03.d.i. and 475.03.d.ii., may be expressed in approved units (e.g., IU, mg, g) per unit (e.g., tablets, capsules, granules, or liquids) consistent with those employed in the quantity statement and directions for use; and (3-30-07)
- iv. A weight equivalent (e.g., one (1) fl. oz. = twenty-eight (28) grams) for liquid products. (3-30-07)
- e.** When the label of a pet food or specialty pet food includes a comparison of the nutrient content of the food with levels established by an AAFCO-recognized nutrient profile, such as a table of comparison, a percentage, or any other designation referring to an individual nutrient or all of the nutrient levels, the following apply: (3-30-07)
- i. The product shall meet the AAFCO-recognized nutrient profile; and (3-30-07)
- ii. The statement of comparison shall be preceded by a statement that the product meets the AAFCO-recognized profile: however, the statement that the product meets the AAFCO-recognized nutrient profile is not required provided that the nutritional adequacy statement as per Subsections 475.06.a.i. or 475.06.b.ii.(1) appears elsewhere on the product label; and (3-30-07)
- iii. The statement of comparison of the nutrient content shall constitute a guarantee, but need not be repeated in the guaranteed analysis; and (3-30-07)
- iv. The statement of comparison may appear on the label separate and apart from the guaranteed analysis. (3-30-07)
- f.** The maximum moisture declared on a pet food or specialty pet food label shall not exceed seventy-eight percent (78%) or the natural moisture content of the ingredients, whichever is higher. However, pet food and specialty pet food such as, but not limited to, those consisting principally of stew, gravy, sauce, broth, aspic, juice, or a milk replacer, and which are so labeled, may contain moisture in excess of seventy-eight percent (78%). (3-30-07)
- g.** Guarantees for crude protein, crude fat, and crude fiber are not required when the pet food or specialty pet food is intended for purposes other than to furnish these substances or they are of minor significance relative to the primary purpose of the product, such as a mineral or vitamin supplement. (3-30-07)
- h.** Guarantees for microorganisms and enzymes shall be stated in the format as stipulated in AAFCO Model Regulations 4(g) and (h). (3-30-07)
- 04. Ingredients.** (3-30-07)
- a.** Each ingredient of a pet food or specialty pet food shall be listed in the ingredient statement as follows: (3-30-07)
- i. The names of all ingredients in the ingredient statement shall be shown in letters or type of the same size; (3-30-07)

ii. The ingredients shall be listed in descending order by their predominance by weight in non-quantitative terms; (3-30-07)

iii. Ingredients shall be listed and identified by the name and definition established by AAFCO; and (3-30-07)

iv. Any ingredient for which no name and definition have been so established shall be identified by the common or usual name of the ingredient. (3-30-07)

b. The ingredients “meat” or “meat by-products” shall be qualified to designate the animal from which the meat or meat by-products are derived unless the meat or meat by-products are derived from cattle, swine, sheep, goats, or any combination thereof. For example, ingredients derived from horses shall be listed as “horsemeat” or “horsemeat by-products.” (3-30-07)

c. Brand or trade names shall not be used in the ingredient statement. (3-30-07)

d. A reference to the quality, nature, form, or other attribute of an ingredient shall be allowed when the reference meets all of the following: (3-30-07)

i. The designation is not false or misleading; (3-30-07)

ii. The ingredient imparts a distinctive characteristic to the pet food or specialty pet food because it possesses that attribute; and (3-30-07)

iii. A reference to quality or grade of the ingredient does not appear in the ingredient statement. (3-30-07)

05. Drugs and Pet Food Additives. (3-30-07)

a. An artificial color may be used in a pet food or specialty pet food only if it has been shown to be harmless to pets or specialty pets. The permanent or provisional listing of an artificial color in the United States Food and Drug regulations as safe for use, together with the conditions, limitations, and tolerances, if any, incorporated therein, shall be deemed to be satisfactory evidence that the color is, when used pursuant to such regulations, harmless to pets or specialty pets. (3-30-07)

b. Evidence may be required to prove the safety and efficacy or utility of a pet food or specialty pet food which contains additives or drugs, when used according to directions furnished on the label. Satisfactory evidence of the safety and efficacy of a pet food or specialty pet food may be established: (3-30-07)

i. When the pet food or specialty pet food contains such additives, the use of which conforms to the requirements of the applicable regulation in the Code of Federal Regulations, Title 21, or which are “prior sanctioned” or “informal review sanctioned” or “generally recognized as safe” for such use; or (3-30-07)

ii. When the pet food or specialty pet food itself is a drug or contains a drug as defined in Section 3 (g) of the Model Bill and is “generally recognized as safe and effective” for the labeled use or is marketed subject to an application approved by the Food and Drug Administration under Title 21, U.S.C. 360(b). (3-30-07)

c. When a drug is included in a pet food or specialty pet food, the format required by Model Regulation 3(a)(2) for labeling medicated feeds shall be used. (3-30-07)

06. Nutritional Adequacy. (3-30-07)

a. The label of a pet food or specialty pet food which is intended for all life stages of the pet or specialty pet may include an unqualified claim, directly or indirectly, such as “complete and balanced,” “perfect,” “scientific,” or “100% nutritious” if at least one (1) of the following apply: (3-30-07)

i. The product meets the nutrient requirements for all life stages established by an AAFCO-

recognized nutrient profile; or (3-30-07)

ii. The product meets the criteria for all life stages as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocol(s); or (3-30-07)

iii. The product is a member of a product family which is nutritionally similar to a lead product which contains a combination of ingredients that has been fed to a normal animal as the sole source of nourishment in accordance with the testing procedures established by AAFCO for all life stages, provided that: (3-30-07)

(1) The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO; and (3-30-07)

(2) The family product meets the criteria for all life stages; and (3-30-07)

(3) Under circumstances of reasonable doubt, the Director may require the manufacturer to perform additional testing of the family product in order to substantiate the claim of nutritional adequacy. (3-30-07)

b. The label of a pet food or specialty pet food which is intended for a limited purpose or a specific life stage, but not for all life stages, may include a qualified claim such as “complete and balanced,” “perfect,” “scientific,” or “100% nutritious” when the product and claim meets all of the following: (3-30-07)

i. The claim is qualified with a statement of the limited purpose or specific life stage for which the product is intended or suitable, for example, “complete and balanced for puppies (or kittens).” The claim and the required qualification shall be juxtaposed on the same label panel and in the same size, style and color print; and (3-30-07)

ii. The product meets at least one (1) of the following: (3-30-07)

(1) The nutrient requirements for the limited purpose or specific life stage established by an AAFCO-recognized nutrient profile; or (3-30-07)

(2) The criteria for a limited purpose or a specific life stage as substantiated by completion of the appropriate AAFCO-recognized animal feeding protocol(s); or (3-30-07)

(3) The requirements of a product family which is nutritionally similar to a lead product which contains a combination of ingredients which, when fed for such limited purpose, will satisfy the nutrient requirements for such limited purpose and has had its capabilities in this regard demonstrated by adequate testing; and provided that: (3-30-07)

(a) The nutritional similarity of the family product can be substantiated according to the Procedures for Establishing Pet Food Product Families developed by AAFCO; and (3-30-07)

(b) The family product meets the criteria for such limited purpose; and (3-30-07)

(c) Under circumstances of reasonable doubt, the Director may require the manufacturer to perform additional testing for the family product to substantiate the claim of nutritional adequacy. (3-30-07)

c. Dog and cat food labels shall include a statement of nutritional adequacy or purpose of the product except when the dog or cat food is clearly and conspicuously identified on the principal display panel as a “snack” or “treat.” The statement shall consist of one (1) of the following: (3-30-07)

i. A claim that the dog or cat food meets the requirements of one (1) or more of the recognized categories of nutritional adequacy: gestation/lactation, growth, maintenance, and all life stages. The claim shall be stated verbatim as one (1) of the following: (3-30-07)

(1) “(Name of product) is formulated to meet the nutritional levels established by the AAFCO Dog (or Cat) Food Nutrient Profiles for _____.” (Blank is to be completed by using the stage or stages of the pet's life, such

as, gestation/lactation, growth, maintenance or the words “all life stages”); or (3-30-07)

(2) “Animal feeding tests using AAFCO procedures substantiate that (Name of Product) provides complete and balanced nutrition for ____.” (Blank is to be completed by using the stage or stages of the pet's life tested, such as, gestation/lactation, growth, maintenance or the words “All Life Stages”); or (3-30-07)

(3) “(Name of Product) provides complete and balanced nutrition for ____.” (Blank is to be completed by using the stage or stages of the pet's life, such as gestation, lactation, growth, maintenance or the words “all life stages”) and is comparable in nutritional adequacy to a product which has been substantiated using AAFCO feeding tests.” (3-30-07)

ii. A nutritional or dietary claim for purposes other than those listed in Subsections 475.06.a. or 475.06.b. if the claim is scientifically substantiated; or (3-30-07)

iii. The statement: “This product is intended for intermittent or supplemental feeding only,” if a product does not meet the requirements of Subsections 475.06.a. or 475.07.b. or any other special nutritional or dietary need and so is suitable only for limited or intermittent or supplementary feeding. (3-30-07)

d. A product intended for use by, or under the supervision or direction of a veterinarian shall make a statement in accordance with Subsections 475.06.c.i. or 275.06.c.iii. (3-30-07)

e. A signed affidavit attesting that the product meets the requirements of Subsections 475.07.a. or 475.06.b.ii. shall be submitted to the Director upon request. (3-30-07)

f. If the nutrient content of a product does not meet those nutrient requirements established by an AAFCO-recognized nutrient profile, or if no requirement has been established by an AAFCO recognized nutritional authority for the life stage(s) of the intended species, the claimed nutritional adequacy or purpose of the product shall be scientifically substantiated. (3-30-07)

g. The following AAFCO-recognized nutritional authority, nutrient profile, and/or animal feeding protocol shall be acceptable as the basis for a claim of nutritional adequacy: (3-30-07)

i. As an AAFCO-recognized nutrient profile or nutritional authority: (3-30-07)

(1) For dogs, the AAFCO Dog Food Nutrient Profiles; (3-30-07)

(2) For cats, the AAFCO Cat Food Nutrient Profiles; (3-30-07)

(3) For specialty pets, the nutrient recommendations approved by the Committee on Animal Nutrition of the National Research Council of the National Academy of Sciences, provided that, this nutrient recommendation is recognized only for the specific specialty pet for which the profile is intended. (3-30-07)

ii. As an AAFCO-recognized animal feeding protocol(s), the AAFCO Dog and Cat Food Feeding Protocols. (3-30-07)

07. Feeding Directions. (3-30-07)

a. Dog or cat food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in Subsection 475.06.c.i., except those pet foods labeled in accordance with [Regulation PF7\(d\) Subsection 475.06 of this rule](#), shall list feeding directions on the product label. These directions shall be consistent with the intended use(s) indicated in the nutritional adequacy statement, unless a limited use or more limited life stage designation is declared elsewhere (e.g., “adult formula”). These directions shall be expressed in common terms and shall appear prominently on the label. Feeding directions shall, at a minimum, state, “feed (weight/unit of product) per (weight only) of dog (or cat).” The frequency of feeding shall also be specified. ~~(3-30-07)~~ ()

b. When a dog or cat food is intended for use by or under the supervision or direction of a veterinarian, the statement: “use only as directed by your veterinarian” may be used in lieu of feeding directions.

(3-30-07)

c. Specialty pet food, including snacks or treats, labeled as complete and balanced for any or all life stages, as provided in Subsection 475.06.a., shall list feeding directions on the product label. These feeding directions shall be adequate to meet the nutrient requirements of the intended species of specialty pet as recommended by the AAFCO-recognized nutritional authority. These directions shall be expressed in common terms and shall appear prominently on the label. The frequency of feeding shall also be specified. (3-30-07)

08. Statements of Calorie Content. (3-30-07)

a. Except as required in Subsection 475.09, the label of a dog or cat food may bear a statement of calorie content when the label meets all of the following: (3-30-07)

i. The statement shall be separate and distinct from the Guaranteed Analysis and shall appear under the heading "Calorie Content"; (3-30-07)

ii. The statement shall be measured in terms of metabolizable energy (ME) on an "as fed" basis and must be expressed as "kilocalories per kilogram" ("kcal/kg") of product, and may also be expressed as kilocalories per familiar household measure (e.g., cans, cups, pounds); and (3-30-07)

iii. The calorie content is determined by one (1) of the following methods: (3-30-07)

(1) By calculation using the following "Modified Atwater" formula: (3-30-07)

(a) $ME(kcal/kg) = 10[(3.5 \times CP) + (8.5 \times CF) + (3.5 \times NFE)]$ (3-30-07)

(b) Where: ME = Metabolizable Energy:

CP = % crude protein "as fed"
CF = % crude fat "as fed"
NFE = % nitrogen-free extract (carbohydrate) "as fed" and the percentages of CP and CF are the arithmetic averages from proximate analyses of at least four production batches of the product, and the NFE is calculated as the difference between one hundred (100) and the sum of CP, CF, and the percentages of crude fiber, moisture and ash (determined in the same manner as CP and CF); or

(3-30-07)

(2) In accordance with a testing procedure established by AAFCO. (3-30-07)

iv. An affidavit shall be provided upon request to the Department substantiating that the calorie content was determined by: (3-30-07)

(1) Subsection 475.08.a.iii.(1) in which case the results of all the analyses used in the calculation shall accompany the affidavit; or (3-30-07)

(2) Subsection 475.08.a.iii.(2) in which case the summary data used in the determination of calorie content shall accompany the affidavit. (3-30-07)

v. The calorie content statement shall appear as one (1) of the following: (3-30-07)

(1) The claim on the label or other labeling shall be followed parenthetically by the word "calculated" when the calorie content is determined in accordance with Subsection 475.08.a.iii.(1); or (3-30-07)

(2) The value of calorie content stated on the label which is determined in accordance with Subsection 475.08.a.iii.(2) shall not exceed or understate the value determined in accordance with Subsection 475.08.a.iii.(1) by more than fifteen percent (15%). (3-30-07)

b. Comparative claims shall not be false, misleading, or given undue emphasis and shall be based on the same methodology for the products compared. (3-30-07)

09. Descriptive Terms. (3-30-07)

a. Calorie Terms: (3-30-07)

i. "Light"; (3-30-07)

(1) A dog food product which bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall: (3-30-07)

(a) Contain no more than three thousand one hundred (3,100) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two thousand five hundred (2,500) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than nine-hundred (900) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and (3-30-07)

(b) Include on the label a calorie content statement: (3-30-07)

(i) In accordance with the format provided in Subsection 475.08; and (3-30-07)

(ii) Which states no more than three-thousand one-hundred (3,100) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two-thousand five-hundred (2,500) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than nine hundred (900) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and (3-30-07)

(c) Include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use. (3-30-07)

(2) A cat food product which bears on its label the terms "light," "lite," "low calorie," or words of similar designation shall: (3-30-07)

(a) Contain no more than three thousand two hundred fifty (3,250) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two thousand six hundred fifty (2,650) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five (65%) moisture, and no more than nine-hundred fifty (950) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and (3-30-07)

(b) Include on the label a calorie content statement: (3-30-07)

(i) In accordance with the format provided in Subsection 475.08; and (3-30-07)

(ii) Which states no more than three thousand two hundred fifty (3,250) kcal ME/kg for products containing less than twenty percent (20%) moisture, no more than two thousand six hundred fifty (2,650) kcal ME/kg for products containing twenty percent (20%) or more but less than sixty-five (65%) moisture, and no more than nine-hundred fifty (950) kcal ME/kg for products containing sixty-five percent (65%) or more moisture; and (3-30-07)

(c) Include on the label feeding directions which reflect a reduction in calorie intake consistent with the intended use. (3-30-07)

ii. "Less" or "Reduced Calories"; (3-30-07)

(1) A dog or cat food product which bears on its label a claim of "less calories," "reduced calories," or

words of similar designation, shall include on the label: (3-30-07)

(a) The name of the product of comparison and the percentage of calorie reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears; and (3-30-07)

(b) The comparative statement printed in type of the same color and style and at least one-half (1/2) the type size used in the claim; and (3-30-07)

(c) A calorie content statement in accordance with the format provided in Subsection 475.08; and (3-30-07)

(d) Feeding directions which reflect a reduction in calories compared to feeding directions for the product of comparison. (3-30-07)

(2) A comparison between products in different categories of moisture content (i.e., less than twenty percent (20%), twenty percent (20%) or more but less than sixty-five percent (65%), sixty-five percent (65%) or more) is misleading. (3-30-07)

b. Fat Terms. (3-30-07)

i. "Lean"; (3-30-07)

(1) A dog food product which bears on its label the terms "lean," "low fat," or words of similar designation shall: (3-30-07)

(a) Contain no more than nine percent (9%) crude fat for products containing less than twenty percent (20%) moisture, no more than seven percent (7%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than four percent (4%) crude fat for products containing sixty-five percent (65%) or more moisture; (3-30-07)

(b) Include on the product label in the Guaranteed Analysis: (3-30-07)

(i) A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Subsection 475.03.a.i.; and (3-30-07)

(ii) A maximum crude fat guarantee which is no more than nine percent (9%) crude fat for products containing less than twenty percent (20%) moisture, no more than seven percent (7%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than four percent (4%) crude fat for products containing sixty-five percent (65%) or more moisture. (3-30-07)

ii. A cat food product which bears on its label the terms "lean," "low fat," or words of similar designation shall: (3-30-07)

(a) Contain a maximum percentage of crude fat which is no more than ten percent (10%) crude fat for products containing less than twenty percent (20%) moisture, no more than eight percent (8%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than five percent (5%) crude fat for products containing sixty-five percent (65%) or more moisture; and (3-30-07)

(b) Include on the product label in the Guaranteed Analysis: (3-30-07)

(i) A maximum crude fat guarantee immediately following the minimum crude fat guarantee in addition to the mandatory guaranteed analysis information as specified in Regulation PF4(a)(1); and (3-30-07)

(ii) A maximum crude fat guarantee which is no more than ten percent (10%) crude fat for products containing less than twenty percent (20%) moisture, no more than eight percent (8%) crude fat for products containing twenty percent (20%) or more but less than sixty-five percent (65%) moisture, and no more than five

percent (5%) crude fat for products containing sixty-five percent (65%) or more moisture. (3-30-07)

iii. "Less" or "Reduced Fat"; (3-30-07)

(1) A dog or cat food product which bears on its label a claim of "less fat," "reduced fat," or words of similar designation, shall include on the label: (3-30-07)

(a) The name of the product of comparison and the percentage of fat reduction (expressed on an equal weight basis) explicitly stated and juxtaposed with the largest or most prominent use of the claim on each panel of the label on which the term appears; and (3-30-07)

(b) The comparative statement printed in type of the same color and style and at least one-half (1/2) the type size used in the claim; and (3-30-07)

(c) A maximum crude fat guarantee in the Guaranteed Analysis immediately following the minimum crude fat guarantee in addition to the mandatory Guaranteed Analysis information as specified in Subsection 475.03.a.i. (3-30-07)

(2) A comparison on the label between products in different categories of moisture content (i.e., less than twenty percent (20%), twenty percent (20%) or more but less than sixty-five percent (65%), sixty-five percent (65%) or more) is misleading. (3-30-07)

10. Manufacturer or Distributor; Name and Address. (3-30-07)

a. The label of a pet food or specialty pet food shall specify the name and address of the manufacturer or distributor. The statement of the place of business shall include the street address, city, state, and zip code; however, the street address may be omitted if such street address is shown in a current city directory or telephone directory for the city listed on the label. (3-30-07)

b. When a person manufactures or distributes a pet food or specialty pet food in a place other than the principal place of business, the label may state the principal place of business in lieu of the actual place where each package of such pet food or specialty pet food was manufactured or packaged or from where each package is to be distributed. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

600. DETAINED COMMERCIAL FEEDS.

01. Stop Sale, Use, or Removal. Any commercial feed or identified lot of commercial feed that is the subject of a "stop sale, use, or removal" order under Section 25-2711(1), Idaho Code, may be released from such an order by the following means: ~~(3-30-07)~~()

a. A commercial feed detained for nutritional violation(s) may be: (4-21-92)

i. Remanufactured, using ingredients listed on the approved label, to meet label guarantees. The remixed feed shall be resampled and analyzed to ensure compliance prior to its return to sale. (4-21-92)

ii. Relabeled to reflect actual values, upon approval of a new label and registration, provided that these values are appropriate for their intended use. (4-21-92)

iii. Returned to the manufacturer if the seller and manufacturer are not the same. (4-21-92)

iv. Diverted to an alternate use such as inclusion into another feed, or feeding to the manufacturer's own livestock, provided that it is appropriate for the diverted use and that it does not conflict with labeling or other

- State or Federal requirements for the diverted use. (4-21-92)
- v. Destroyed. (4-21-92)
 - b.** A commercial feed detained for a drug or antibiotic violation may be: (4-21-92)
 - i. Remanufactured to meet label guarantees. The remixed feed shall be resampled and analyzed prior to its return to sale. (4-21-92)
 - ii. Returned to the manufacturer if the seller and manufacturer are not the same. (4-21-92)
 - iii. Diverted to an alternate use, provided that it is appropriate for the diverted use labeling or other State or Federal requirements for the diverted use. (4-21-92)
 - iv. Destroyed. (4-21-92)
 - c.** A commercial feed deemed to be adulterated under Section 25-2707(1), Idaho Code, or which cannot safely be remanufactured, relabeled, or diverted to an alternate use may be: (3-30-07)
 - i. Returned to the manufacturer if the seller and manufacturer are not the same. (4-21-92)
 - ii. Destroyed. (4-21-92)

02. Appropriate Compliance Procedure. The Department shall indicate which of the above listed compliance procedures are appropriate for the particular “withdrawal from sale” order. The seller shall indicate which procedure is to be followed and, upon approval from the Department, shall carry out the procedure within thirty (30) days. Other procedures may be considered upon application by the state inspector or seller to the Chief, Bureau of Feeds and Plant Services, Idaho Department of Agriculture, Boise, Idaho. (4-21-92)

03. Violation of Stop Sale, Use, or Removal Order. Any violation of the terms or conditions of a Stop Sale, Use, or Removal Order shall be considered a prohibited act. ()

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.10 - RULES GOVERNING THE PALE CYST NEMATODE (*GLOBODERA PALLIDA*)

DOCKET NO. 02-0610-0901 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 22-2013, Idaho Code, and is based on and parallels a USDA interim rule published in the Federal Register Volume 72, No. 176, September 12, 2007, pages 51975-51988. As amended by the final rule published in the Federal Register Vol. 74, No. 81, April 29, 2009, pages 19374-19382.

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

This rule addresses areas and fields already under regulation by USDA and ISDA. The rule incorporates by reference the changes listed in the final Federal rule and makes some technical corrections. By maintaining and enforcing this rule, which parallels the federal rule, the department avoids having the entire state put under a federal quarantine, which would affect the potato industry along with several other agricultural industries. This pending rule makes a change in section 02.06.10.014 of the proposed rule by adding an exemption that allows pale cyst nematode host plants to be planted on an infested field as a part of the USDA / Idaho State Department of Agriculture eradication program.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the [December 2, 2009 Idaho Administrative Bulletin, Vol. 9-12, pages 38 through 41](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael E. Cooper, Bureau Chief at (208) 332-8620.

DATED this 18th day of August, 2010.

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

DOCKET NO. 02-0610-0901 - ADOPTION OF PENDING RULE

Substantive changes have been made to the pending rule.
Italicized text is new text that has been added to the pending rule.

Only those sections or subsections that have changed from the original proposed text are printed in this Bulletin following this notice.

The text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 09-12, December 2, 2009, pages 38 through 41.](#)

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2011 Idaho State Legislature for final adoption.

THE FOLLOWING IS THE AMENDED PENDING RULE TEXT FOR DOCKET NO. 02-0610-0901

014. RESTRICTIONS.

01. Movement from a Non-Quarantined Area. Movement of regulated articles from a non-quarantined area is subject to inspection by an inspector. Permits and certifications are not required. (10-1-09)T

02. Movement from a Quarantined Area. Movement of regulated articles from a quarantined area is subject to the provision of Section 015 of this rule. (10-1-09)T

03. Other Restrictions. No potatoes, tomatoes, eggplants, or any other known host crops may be planted in the infested fields. Soil must not be moved from the infested fields. Any equipment leaving the infested fields must be sanitized and certified using USDA APHIS approved protocols. (10-1-09)T

04. Seed Potatoes. Seed potatoes may not be grown in a quarantined area. (10-1-09)T

Subsection 014.05

05. Exemptions. *Host plant material may be planted in infested fields under the authorization and supervision of the USDA and Idaho State Department of Agriculture eradication program.* ()

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW
DOCKET NO. 02-0612-1001
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Update the incorporation by reference section to reflect the 2011 Official Publication of the Association of American Plant Food Control Officials; basic housekeeping (punctuation correction); provide information regarding online availability and purchase of documents incorporated by reference; permit "net volume" guarantees on liquid fertilizer labels; correct references to "Brand" registration as brands are no longer required to be registered; prohibit sliding-scale guarantees (i.e. Total Nitrogen 15-18%) on fertilizer labels; and allow multi-use labeling of fertilizers.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendments.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Association of American Plant Food Control Officials (AAPFCO) Official Publication is the recognized and primary reference book of approved fertilizer terms, ingredient definitions and policies used by the fertilizer industry and all state and Federal fertilizer control officials and regulators.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rick Killebrew, Program Manager at (208) 332-8697.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0612-1001

004. INCORPORATION BY REFERENCE.

Copies of these documents may be ~~obtained from~~ viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.12 incorporates by reference: ~~(3-30-01)~~()

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the “2010~~1~~ Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 6, Idaho Code, and any rule promulgated thereunder; ~~or~~ The AAPFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAPFCO website at: www.aapfco.org/publication_order_form.pdf. ~~(3-29-10)~~()

02. The Merck Index. The “2006 Merck Index,” 14th Edition as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. at: <http://www.merckbooks.com/mindex/index.html>. ~~(4-2-08)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. FERTILIZER REGISTRATION.

Each ~~brand and~~ separately identifiable fertilizer product ~~under each brand~~ shall be registered pursuant to Section 22-605, Idaho Code. ~~(3-30-01)~~()

(BREAK IN CONTINUITY OF SECTIONS)

030. FERTILIZER LABELS.

The following information, in the format presented, is the minimum required for all fertilizer labels. For packaged products, this information shall either appear on the package, or be printed on a tag and attached to the package. This information shall be in a readable and conspicuous form. For bulk products, this same information in written or printed form shall accompany delivery and be supplied to the purchaser at time of delivery. (3-30-01)

01. Net Weight or Net Volume. If Liquid. Weight per gallon shall be included on the label of liquid fertilizers if net volume is stated. ~~(3-30-01)~~()

02. Brand. (3-30-01)

03. Grade. Grade (provided that the grade shall not be required when no primary nutrients are claimed). (3-30-01)

04. Guaranteed Analysis. A fertilizer label must contain the results of the guaranteed analysis. Zero (0) guarantees should not be made and shall not appear in any statement except in nutrient guarantee itemizations. The sliding scale method of expressing a guaranteed analysis on fertilizer labels (for example, “Available Phosphate fifteen to eighteen percent (15-18%)” is prohibited. If chemical forms of nitrogen are claimed or required, said form shall be set forth on the label. Nutrients other than nitrogen, phosphate and potash shall be set forth, on an elemental basis, as required by Subsection 011.01. The results of the guaranteed analysis required by this rule shall be in the following form:

Total Nitrogen	(N). _____%
_____%	Ammoniacal Nitrogen
_____%	Nitrate Nitrogen
_____%	Water Insoluble Nitrogen
_____%	Urea Nitrogen
_____%	(Other recognized and determinable forms of N)
Available Phosphate (P ₂ O ₅)	_____%
Soluble Potash (K ₂ O)	_____%
(Other nutrients, elemental basis)	_____%

(4-2-08)(____)

- 05. Sources.** Sources of nutrients shall be listed below the completed guaranteed analysis statement. (3-30-01)
- 06. Name and Address.** Name and address of manufacturer, guarantor or registrant. (4-2-08)
- 07. Specialty Fertilizers.** For specialty fertilizers distributed to the end user, the label shall set forth adequate directions for use. Such directions may include, but are not limited to: (3-30-01)
- a.** The recommended application rate or rates in units of weight or volume per unit of area coverage (where application rates are given in volume, the manufacturer shall provide the bulk density for the product on the label); (3-30-01)
 - b.** Proper seasonal times and minimum intervals to apply the product when plants can rapidly utilize nutrients and loss to the environment can be minimized; and (3-30-01)
 - c.** The statement “Apply Only As Directed” or a statement of similar designation. (3-30-01)
- 08. Packaging.** Refer to Idaho Department of Agriculture rules, IDAPA 02.02.14, “Rules for Weights and Measures,” for the specific requirements relating to product identity, declaration of quantity and prescribed units. (3-30-01)

~~031. MULTI-LABELING.~~

~~The labeling of a fertilizer as a plant nutrient and as a product appropriate for another use, as well as including directions for use and grade guarantees for other than the contents of the container, a practice known as “multi-labeling,” is prohibited. (3-30-01)~~

~~032~~1. -- 034. (RESERVED).

~~035. BRAND AND PRODUCT REGISTRATION.~~

- 01. Brand Registration.** All fertilizer companies, including companies engaged in custom-formula mixing of dry or liquid fertilizers, shall comply with the ~~brand and~~ product registration requirements of the Idaho Fertilizer Act of 2000, Section 22-605, Idaho Code, subject to the provisions of this chapter. (3-30-01)(____)
- 02. Alteration From Original State.** When a fertilizer is mixed, added to, or in any way changed from

its original grade or its content of secondary or minor nutrients, it is a different product, and must be registered as provided under Section 22-605, Idaho Code. (3-30-01)

03. Registering -- Altered ~~Brands~~ Fertilizers. When a registered ~~brand-or~~ grade is altered by any commercial fertilizer manufacturer or ultimate dealer, such manufacturer or ultimate dealer, shall register the altered ~~brand-or~~ grade as provided under Section 22-605, Idaho Code. (3-30-01)()

04. Brand Name. The addition of another prominent name or graphic design to the ~~registered~~ brand displayed on the label, other than descriptive words associated with the grade, shall constitute a different brand and thus, must be registered as provided under Section 22-605, Idaho Code. For example, changing "Rose Bud 5-10-5" to "Kilmer's Rose Bud 5-10-5" would constitute a change in brand. (3-30-01)()

05. Sale of Fertilizer. When a commercial fertilizer is removed from the package or vehicle in which it was placed by the original registrant and then offered for sale by a person other than the original registrant, it is a different product and shall be registered in accordance with Section 22-605, Idaho Code, except that it shall not be subject to an additional inspection fee as provided under Section 22-608, Idaho Code, provided that said fee was paid on the product by the original or prior registrant. (3-30-01)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.16 - CROP RESIDUE DISPOSAL RULES

DOCKET NO. 02-0616-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-4801, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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: Repeal the rule in its entirety because the 2008 Legislature moved the Crop Residue Burning program from the Idaho State Department of Agriculture to the Division of Environmental Quality, who developed new rules for Crop Residue Burning, thereby leaving 02.06.16 obsolete.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the 2008 Legislature moved the Crop Residue Burning program from the Idaho State Department of Agriculture to the Division of Environmental Quality, who developed new rules for Crop Residue Burning, thereby leaving 02.06.16 obsolete.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lloyd B. Knight, Administrator, at (208) 332-8620.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd.
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

IDAPA 02.06.16 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.33 - ORGANIC FOOD PRODUCT RULES

DOCKET NO. 02-0633-1001

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 22-1103, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 non-technical explanation of the substance and purpose of the proposed rulemaking:

This rulemaking will incorporate by reference the June 25, 2010 version of the National Organic Program Regulations, 7 CFR Part 250. The Idaho State Department of Agriculture ("ISDA") will no longer offer certification seal stickers for certified organic products in order to prevent the misuse of the certification seal. All references of "gross organic income" will be changed to "gross organic sales" in order to clarify the fee requirements in the Rules.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rule changes. The United State Department of Agriculture requires that ISDA follow the National Organic Program Regulations in order for ISDA to be an accredited agent. ISDA will no longer offer certification seal stickers in order to protect the integrity of the organic certification. This rulemaking also corrects confusing references to clarify the fee requirements.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

All accredited agents must follow the National Organic Program Regulations in 7 CFR Part 205.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Brandon Lamb, Agricultural Program Manager, 208-332-8675.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road
P.O. Box 790
Boise, ID 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0633-1001

004. INCORPORATION BY REFERENCE.

The ~~October 21, 2007~~ Code of Federal Regulations, (~~CFR~~) Title 7, ~~CFR~~ Part 205, ~~Subchapter M-Organic Foods Production Act Provisions~~ National Organic Program Regulations (July 7, 2010), except sections 205.620 through 205.642, is incorporated by reference and can be viewed at <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=37e82b8975625fa42c381cd0fbb522d8&rgn=div5&view=text&node=7:3.1.1.9.32&idno=7>. Copies of this document may be obtained from the Idaho State Department of Agriculture (ISDA), 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701 ~~and are also available at the state law library.~~ (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

200. IDAHO ORGANIC CERTIFICATION SEAL.

01. Description of Seal. The Idaho seal must replicate the form and design of the example in Figure 1 and must be printed legibly and conspicuously.

FIGURE 1



(4-2-03)

02. Utilization of Seal. The Idaho organic certification seal as approved by the director and as shown in Figure 1, may be imprinted or affixed on labels, packages or products, or used in advertising in any manner, shall signify that the standards and rules developed in accordance with the provisions of this rule and all other conditions of the provisions of this chapter have been met. (4-2-03)

a. Any container manufacturer may apply for authorization to imprint facsimiles of the ISDA organic certification seal on containers of organic products. (4-2-03)

b. Authorization granted to imprint facsimile seals shall be subject to review by the director on an annual basis, or more frequently if necessary. (4-2-03)

~~**e.** Seals are available at the Department at the cost of two and one-half cents (\$.025) each plus Idaho sales tax.~~ (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

301. CERTIFICATION REQUIREMENTS, DEADLINES AND FEES.

01. Certification Requirements and Deadlines. All applicants applying for certification with the Department, shall submit the application to the Department on forms prescribed by the Department by July 1st of each year. (3-29-10)

a. All organic food producers/handlers in Idaho with annual gross organic sales of more than five thousand dollars (\$5,000) shall be certified with the Department, unless certified by agents other than the Department accredited under the National Organic Program. (3-19-07)

b. Producers/handlers with annual gross organic *income sales* of five thousand dollars (\$5,000) or less may select certification in place of registration. (~~3-19-07~~)()

c. All organic food producers and organic handlers certifying with the Department are subject to an annual on-site inspection. (3-19-07)

d. Livestock producer and handler applications will be accepted throughout the year. (3-19-07)

02. Certification Fees. (3-29-10)

a. Organic producers/handlers with annual gross organic *income sales* of more than five thousand dollars (\$5,000) up to fifteen thousand dollars (\$15,000) or producers with annual gross income of five thousand dollars (\$5,000) or less requesting certification - One hundred twenty-five dollars (\$125). (~~3-19-07~~)()

b. Organic producer/handler with annual gross organic *income sales* of more than fifteen thousand dollars (\$15,000) –Two hundred dollars (\$200). (~~3-19-07~~)()

c. A person who produces and handles their own organic food products shall pay only one (1) annual certification fee based on gross annual organic sales. (3-19-07)

03. Certification Inspection Fees. (3-19-07)

a. The hourly rate is thirty-five dollars (\$35) including travel time. (3-19-07)

b. Travel time from an inspector's normal duty station to the inspection site and return to normal duty station will be compensable time charged to the applicant. (3-19-07)

c. There will be a minimum charge of thirty-five dollars (\$35) plus mileage for any inspection. (3-19-07)

d. A mileage rate as approved by the Board of Examiners will be included in the inspection fees. (3-19-07)

e. The costs for chemical residue analysis of soil or organically grown food products may be assessed against the producer or handler. (3-19-07)

f. Inspections conducted on weekends, holidays, or after normal office hours will be charged at an hourly rate of forty-seven dollars and fifty cents (\$47.50) including travel time with a minimum charge of one (1) hour plus mileage. (3-19-07)

g. Upon approval by the Department, private inspectors may be utilized. The applicant shall bear the total cost of the private inspection. (3-29-10)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.41 - RULES PERTAINING TO THE IDAHO SOIL AND PLANT AMENDMENT ACT OF 2001

DOCKET NO. 02-0641-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5220(2), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 22-2204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Update the incorporation by reference section to reflect the 2011 Official Publication of the Association of American Plant Food Control Officials; provide information regarding online availability and purchase of documents incorporated by reference; permit a guaranteed analysis of plant nutrients on labels of potting soils, landscape and garden soils that contain only levels of fertilizer sufficient to initiate growth; and permit multi-use labeling of soil amendment and plant amendment products.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed amendments.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The Association of American Plant Food Control Officials (AAPFCO) Official Publication is the recognized and primary reference book of approved fertilizer terms and ingredient definitions and policies used by the fertilizer industry and all state and Federal fertilizer control officials and regulators.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Rick Killebrew, Program Manager at (208) 332-8697.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Rd
P.O. Box 790
Boise, Idaho 83701
Phone: (208) 332-8503
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 02-0641-1001

004. INCORPORATION BY REFERENCE.

Copies of these documents may be ~~obtained from~~ viewed at the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701. IDAPA 02.06.41 incorporates by reference: ~~(4-6-05)~~()

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The terms, ingredient definitions and policies as published in the “2010~~1~~ Official Publication” of AAPFCO where those terms and ingredient definitions, and policy statements do not conflict with terms and ingredient definitions, and policy statements adopted under Title 22, Chapter 22, Idaho Code, and any rule promulgated thereunder. The AAPFCO Official Publication is a copyrighted publication and not available in electronic format. A copy may be purchased online from the AAPFCO website at: www.aapfco.org/publication_order_form.pdf. ~~(3-29-10)~~()

02. The Merck Index. The “2006 Merck Index,” 14th Edition, as published by Merck Research Laboratories Division of Merck & Co., Incorporated. The Merck Index is a copyrighted publication and not available in an electronic format. A copy may be purchased online from Merck & Co., Inc. at: <http://www.merckbooks.com/mindex/index.html>. ~~(4-2-08)~~()

(BREAK IN CONTINUITY OF SECTIONS)

030. SOIL AMENDMENT AND PLANT AMENDMENT LABELS.

01. Ingredient List. The label shall state the name of each ingredient in decreasing amounts present. (3-15-02)

02. Declaration of Ingredient Percentage Exemptions. The labeling requirements of the Idaho Soil and Plant Amendments Act of 2001, Section 22-2207(c), Idaho Code, requiring that soil and plant amending ingredients and other ingredients shall be stated in terms of percentage is required except in the following cases: (3-15-02)

a. Horticultural growing media. (3-15-02)

b. Compost. (3-15-02)

03. Nutrient Claims and the Use of the Term “Fertilizer.” (3-15-02)

a. The term “fertilizer” and like terms shall not be used in labeling or literature to describe a soil amendment or plant amendment. (3-15-02)

b. Nutrient claims do not change the primary intended use of a soil or plant amendment product. Any nutrient claim shall be provided on the labeling and literature as an estimated range and shall be stated as a percentage. Nutrient claims and estimates must be supported by lab analysis or documentation acceptable by the ISDA. (3-15-02)

c. Labeling or literature that makes nutrient claims or estimates is required to contain the following statement: “This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed.” (3-15-02)

d. At the discretion of the registrant, labeling or literature that does not make nutrient claims or estimates may contain the following statement: “This product is recognized for its soil amendment characteristics. It is recognized that it has nutrient value. Any nutrient claims, verbal or written, are estimates and not guaranteed.”

(3-15-02)

e. A guaranteed analysis of plant nutrients will be permitted on potting soils, landscape and garden soils, and related amendment products containing only levels of fertilizer sufficient to initiate growth. ()

04. Microbiological Product. If the soil amendment or plant amendment is a microbiological product intended as an inoculum, the product label shall include an expiration date and state the number and kind of viable organisms per milliliter or, if the product is other than liquid, state the number and kind of viable organisms per gram. However, if the soil amendment or plant amendment is derived from a microbiological process or culture but is not intended as an inoculum, then the product label shall state that the product is not a viable culture. (3-15-02)

05. Ninety-Five Percent Rule. When a soil amendment or plant amendment is labeled as a specific material, such as peat moss or leaf mold, the product shall consist of not less than ninety-five percent (95%) of that specific material. (3-15-02)

06. Other Ingredients. When the name of an ingredient(s) appears on the label of a soil amendment or plant amendment and is not one of the ingredients required to be listed, the percentage of that ingredient(s) shall appear prominently in print of the same size and color. (3-15-02)

07. Warning or Caution Statements. The ISDA may require a registrant to include a warning or caution statement to ensure safety to handlers, crops, and the environment. (3-15-02)

~~**031. MULTI LABELING.**~~

~~*The labeling of a soil amendment or plant amendment as an amendment and as a product appropriate for another use, as well as including directions for use and guarantees for other than the contents of the container, a practice known as "multi labeling," is prohibited.*~~ (3-15-02)

~~031.~~ -- 048. (RESERVED).

IDAPA 03 - STATE ATHLETIC COMMISSION

03.01.01 - RULES OF THE STATE ATHLETIC COMMISSION

DOCKET NO. 03-0101-1001 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 16, 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 54-416, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Based upon the passage of House Bill 684 last year, the State Athletic Commission is establishing application, initial review and annual review fees for amateur sanctioning organizations. These rules also reflect changes to the statute and add requirements that will help protect the public, including clarifying the non-payment of amateurs, establishing and clarifying health insurance requirements for combatants and clarifying the requirement for a bond or other security.

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

The 2010 legislature passed House Bill 684 which allows the Commission to set fees for application, initial review and annual review of amateur sanctioning organizations by rule. These rules reflect changes to the statute and add requirements that will help protect the public.

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:

Rule 109 is adding an initial/annual application fee of \$250 and an initial/annual approval fee of \$500 for amateur sanctioning organizations.

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

There could be a positive impact on dedicated funds of approximately \$1500.00 per year based on the two approved organizations.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are due to amendment in statute and were discussed in an open, noticed meeting.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at 208 334-3233

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 25th day of August, 2010.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
FOR FEE DOCKET NO. 03-0101-1001**

010. DEFINITIONS.

- 01. Bureau.** The Bureau of Occupational Licenses, as prescribed in Section 67- 2602, Idaho Code. (3-26-08)
- 02. Champion.** A person who has been formally acknowledged supreme in a branch of athletics or game of skill and who is ready to contend with any qualified challenger. (3-3-94)
- 03. Combatant.** Any boxer, kickboxer, martial artist, or wrestler who takes part as a competitor in an event ~~under the jurisdiction of the commission~~. A “combatant” sometimes is referred to as a “contestant” in these rules. ~~(3-29-10)~~(8-16-10)T
- 04. Commission.** The Idaho Athletic Commission created under Title 54, Chapter 4, Idaho Code, or designated agent. (3-26-08)
- 05. Commissioner.** The state athletic commissioner, as prescribed in Section 54-401, Idaho Code. (3-26-08)
- 06. Event.** A program of one (1) or more unarmed combat contests or exhibitions. (3-29-10)
- a.** An “amateur event” is an event in which the only combatants are amateur combatants. (3-29-10)
- b.** A “professional event” is an event in which the only combatants are professional combatants. (3-29-10)
- c.** A “pro-am” is an event in which combatants include professional combatants and amateur combatants. Professional combatants may not compete against amateur combatants in “pro-am” events. (3-29-10)
- 07. Main Event.** The headline or marquee contest or exhibition scheduled to occur at an event. (3-29-10)
- 08. Mixed Martial Arts (MMA).** A full contact sport that allows a wide variety of unarmed combat techniques from a mixture of martial arts traditions to be used in competitions. (5-8-09)
- 09. Physician.** A physician licensed by the Idaho Board of Medicine. (5-8-09)
- 10. Ring Official.** Ring officials include referees, judges, timekeepers and glovers. (5-8-09)
- 11. Stub.** That part of the ticket retained by a person entering the arena in which an event is held after the ticket has been collected. (3-26-08)

12. **Ticket.** That document issued by the promoter allowing a person's entrance and attendance at an event and may include that part of the ticket retained by the promoter documenting a person's entrance to an event. (3-26-08)

(BREAK IN CONTINUITY OF SECTIONS)

109. AMATEUR ATHLETIC SANCTIONING ~~AUTHORITIES~~ ORGANIZATIONS.

The Commission may approve an entity as an officially recognized amateur ~~athletic~~ sanctioning ~~authority~~ ~~organization~~ that may sanction amateur events. The Commission is the final authority on whether an entity may be an amateur ~~athletic~~ sanctioning ~~authority~~ ~~organization~~. ~~(3-29-10)~~(8-16-10)T

01. Application for Approval. In order to be considered for approval as an officially recognized, amateur athletic sanctioning ~~authority~~ ~~organization~~ under Section 54-406(3)(b)(iii), Idaho Code, an entity must: ~~(3-29-10)~~(8-16-10)T

a. Meet the Criteria for Eligibility set forth in Subsection 109.02 of these rules; (3-29-10)

b. Submit to the Bureau a completed application form, supplied by the Commission, on which the person signing the application verifies under oath that he is an officer or other person authorized to sign on behalf of the entity, that the information on the application and submitted with the application is true and correct, and that the entity meets the Criteria for Eligibility set forth in Subsection 109.02 of these rules; (3-29-10)

~~c.~~ ~~Pay the appropriate fees, which are:~~ (8-16-10)T

~~i.~~ ~~Initial application processing fee: Two hundred fifty dollars (\$250); and~~ (8-16-10)T

~~ii.~~ ~~Initial approval fee: Five hundred dollars (\$500).~~ (8-16-10)T

~~ed.~~ Provide the Bureau with such documentation as the Bureau may request in the course of reviewing the application, and including, without limitation, a list of the entity's officers and persons claiming an ownership interest in the entity, any requested bylaws, constitution, medical forms, contracts, rules, policies, and procedures used by the entity; and (3-29-10)

~~de.~~ If requested, appear before the Commission to answer, to the Commission's satisfaction, any questions the Commission may have about the entity or the application, including, without limitation, any questions regarding whether the entity meets the Criteria for Eligibility set forth in Subsection 109.02 of these rules; (3-29-10)

02. Criteria for Eligibility. An entity is eligible for approval as an amateur athletic sanctioning ~~authority~~ ~~organization~~ if it demonstrates, to the Commission's satisfaction, that it meets the Commission's eligibility criteria. An approved entity's failure to consistently meet ~~this~~ ~~these~~ criteria may result in Commission action to suspend or revoke the entity's approved status. The criteria that must be met ~~is~~ ~~are~~: ~~(3-29-10)~~(8-16-10)T

a. The entity is incorporated or otherwise legally recognized under the law of its domicile; (3-29-10)

b. The entity, if not incorporated or otherwise domiciled in Idaho, is authorized to transact business in Idaho; (3-29-10)

c. The entity and its predecessor entity, if any, have never had an application for approval as an amateur sanctioning authority, organization, or similar body denied or disapproved, or an approval as an amateur sanctioning authority, organization, or similar body suspended, revoked, or restricted in any way, by any state, territory, country, or subdivision thereof. (3-29-10)

d. No officer or person having an ownership interest in the entity has had a license, of the types issued

by the Commission, suspended, revoked, or disciplined in any way by any state, territory, country, or subdivision thereof. (3-29-10)

e. All sanctioned events must be conducted in accordance with the sanctioning bodies' rules as approved by the Commission. The entity must adopt and consistently enforce rules that: (3-29-10)

i. Ensure that contests and exhibitions do not unreasonably endanger the health of combatants or other participants; (3-29-10)

ii. Provide for the medical safety and care of participants its events; (3-29-10)

iii. Exclude the medically unfit from the contests and exhibitions; (3-29-10)

iv. Require the presence of an ambulance and EMT's on site at all times, and the attendance of an Idaho-licensed medical doctor or osteopathic physician at ringside. (3-29-10)

v. Require the event promoter to obtain health insurance sufficient to cover the medical, surgical, and hospital care of all event participants, other than the promoter, for injuries sustained while participating in the event. The insurance obtained must meet the requirements specified in Section 299 of these rules. ~~(3-29-10)~~(8-16-10)T

vi. Require drug testing and blood testing consistent with the Commission's rules for events regulated by the Commission. The entity must submit the results of such testing to the Commission within forty-eight (48) hours after the event sanctioned by the entity ends. (3-29-10)

vii. Restrict the types of blows that can be delivered; (3-29-10)

viii. Exclude professional combatants from its contests and exhibitions, and require that combatants are not to receive any type of purse payment or compensation except as approved by the Commission; (3-29-10)

ix. Limit the time and frequency of contests and exhibitions, including, without limitation, the times specified in Section 54-407, Idaho Code; (3-29-10)

x. Require that the entity oversee weigh-ins, the hand wrapping, the glove placement after inspecting the gloves as required by the entity's rules as approved by the Commission; (3-29-10)

xi. Require that the entity inspect and approve the contest area before the contest starts; (3-29-10)

xii. Require prompt investigation and resolution of complaints for participants, interested persons, and the Commission; (3-29-10)

xiii. Have a system of review to ensure the entity fairly applies its rules, policies, and procedures; (3-29-10)

xiv. Require the identification of the entity on all advertisements, programs, or handbills issued, used, or distributed in Idaho; (3-29-10)

xv. Require cooperation with the Commission, including without limitation, at least thirty (30) days advance notification to the Commission of sanctioned events to occur in Idaho, and admission of Commission representatives and agents without charge to any sanctioned event, and to any portion of the event. (3-29-10)

xvi. Require that event participants, and the entity, report to the Commission any violations of the entity's rules arising out of a sanctioned event; (3-29-10)

xvii. Require all participants, officials, and the entity to appear at reasonable times before the Commission and truthfully answer any lawful inquiry of the Commission; (3-29-10)

xviii. Ensure that all ring officials, including, without limitation, all timekeepers, judges, referees, and

glovers, and all promoters who ask an entity to sanction an event, are licensed by the Commission; (3-29-10)

xix. Set an appropriate fee schedule for ring officials. (3-29-10)

xx. Require the event promoter to obtain a bond or other form of financial security, payable to the ~~entity~~ State of Idaho, and otherwise consistent with Section 300 of these rules. ~~(3-29-10)~~(8-16-10)T

xxi. Require the event promoter to obtain liability insurance for the event, which insurance must adequately cover the promoter, venue, entity, and the Commission. (3-29-10)

xxii. Otherwise require sufficient health and safety standards before, during and after contests and exhibitions to ensure the health, safety, and well-being of any participating amateur combatants. The entity's health and safety standards must be no less stringent than the Commission's health and safety standards for contests and exhibitions for which the Commission may issue a sanctioning permit under Title 54, Chapter 4, Idaho Code. Sections 731 through 799 of these rules establish the minimum safety requirements for MMA events in Idaho. The entity's health and safety standards for sanctioned MMA events must, at a minimum, comport with the Section 731 through 799 requirements. (3-29-10)

f. For each event to be sanctioned by the entity, the entity must ensure that true and correct copies of the following documents are presented to the Bureau at least thirty (30) days before the event: (3-29-10)

i. The event promoter's bond or other form of financial security as referenced in Subparagraph 109.02.e.xx. of these rules. (3-29-10)

ii. The health insurance certificate for health insurance obtained by the promoter as referenced in Subparagraph 109.02.e.v. The deductible amount, claims submission instructions, and insurer contact information must also be provided. (3-29-10)

iii. The liability insurance certificate for liability insurance obtained by the promoter as referenced in Subparagraph 109.02.e.xxii. of these rules. (3-29-10)

g. The entity does not sanction events where: (3-29-10)

i. Financial ties exist between the promoter and the entity, including, without limitation, when anyone serves as an officer, principal, or manager in both the entity and promotion company, or have an ownership interest in both the entity and the promotion company: (3-29-10)

ii. Any ring official, employee, or agent that works for both the promoter and the entity. (3-29-10)

iii. The entity or any of its officers, principals, managers, owners, or employees manages or trains any of the combatants. (3-29-10)

03. Violations. The Commission may suspend or revoke its approval of an amateur athletic sanctioning ~~authority~~ organization if the approved entity or its officers, owners, or agents engage in any conduct that violates or is inconsistent with any of the requirements of this Section or reflects serious discredit on the sport of boxing, or uses dishonest methods to affect the outcome of any contest. ~~(3-29-10)~~(8-16-10)T

04. Annual Review of Approval. An entity's approval to be an amateur athletic sanctioning ~~authority~~ organization automatically expires one (1) year after issuance. If the entity wishes to remain as an approved amateur sanctioning ~~authority~~ organization, the entity must submit a timely and complete review application on forms approved by the Commission, along with the appropriate fees. To be timely, a review application and any supporting documentation must be received by the at least thirty (30) days before the automatic expiration date. After receiving a timely review application, the Commission will evaluate the application using the process and criteria set forth in Subsections 109.01 and 109.02. If the Commission is satisfied that the applicant has satisfied all requirements, then the Commission will renew the applicant's approval for another year term. The fees to be paid are: ~~(3-29-10)~~(8-16-10)T

- a.** Annual application processing fee: Two hundred fifty dollars (\$250); and (8-16-10)T
- b.** Annual approval fee: Five hundred dollars (\$500). (8-16-10)T

(BREAK IN CONTINUITY OF SECTIONS)

208. PAYMENT OF PURSE.

- 01. Payment Made.** All payment of purses must be made: (3-3-94)
- a.** Immediately after the contest or exhibition; or (3-3-94)
- b.** If the combatant is to receive a percentage of the net receipts, immediately after that percentage is determined by a person designated by the Commission, unless otherwise ordered by the Commission. (3-26-08)
- 02. Signatures.** Immediately after the contest or exhibition, the person designated by the Commission will release the checks or cash to the entitled persons and will obtain their signatures on a list in which they acknowledge the payment. (3-3-94)
- 03. Reconciliation.** The promoter may withhold an amount of not more than ten percent (10%) of the purse for payment of expenses incurred by the combatant. A reconciliation of those expenses and payment of the undistributed portion of the purse must be made to the Commission on the Commission's form within seven (7) working days after the contest. The reconciliation must bear written approval of the combatant before it is submitted. If good cause is shown, the chairman of the Commission may grant an extension of the date for reconciliation for a period not to exceed thirty (30) days after the contest. (3-26-08)
- 04. Alternative Payment.** The Commission may permit a form of payment other than those specified in this section. A promoter who wishes to pay the purse by an alternative method of payment shall: (3-3-94)
- a.** Submit a written request to the Commission at least thirty (30) days before the contest. (3-26-08)
- b.** Describe in detail the alternative method of payment contemplated. (3-3-94)
- c.** Show good cause for a waiver of the provisions as outlined in Section 208 of this rule. (3-26-08)
- d.** Comply with all requirements of the Commission regarding the production of relevant information. (3-3-94)
- e.** Follow precisely the procedural directives of the Commission if the request is granted. (3-3-94)
- 05. Non-Payment of Amateurs.** Consistent with Section 54-402, Idaho Code, a promoter may not compensate any amateur for participating in or being associated in any way with the promoter's event. This ban absolutely bars a promoter from paying an amateur to sell tickets or merchandise or provide services related to an event. (8-16-10)T

(BREAK IN CONTINUITY OF SECTIONS)

210. -- ~~299~~. (RESERVED).

299. HEALTH INSURANCE.

An event promoter must obtain health insurance sufficient to cover the medical, surgical, and hospital care of all event participants, other than the promoter, for injuries sustained while participating in the event. The insurance shall

provide primary coverage for each such participant, and the minimum amount coverage per participant shall be ten thousand dollars (\$10,000). The participant may not be required to pay a deductible associated with care provided under this insurance. If a participant pays for the medical, surgical or hospital care, the insurance proceeds must be paid to the participant or the participant's beneficiaries for reimbursement for the payment. (8-16-10)T

300. SURETY BOND OR OTHER SECURITY.

01. Requirement. Every promoter who applies for a sanctioning permit shall furnish a surety bond or other form of financial security to the Commission consistent with Section 54-408, Idaho Code. The bond or other form of financial security shall be in an amount deemed by the Commission to be adequate to ensure guarantee payment of all taxes, fees, fines, and other moneys due and payable under Title 54, Chapter 4, Idaho Code and the Commission's rules, including reimbursement to the purchasers of tickets for the event. ~~(3-29-10)~~(8-16-10)T

02. Various Locations. The promoter may apply one (1) bond or other form of financial security to multiple locations if only one (1) of the covered locations is scheduled for an event on any given calendar date. (3-29-10)

03. Total Sum. Each bond or other form of financial security must be conditioned for the payment to the Commission of a sum equivalent to the total sale of tickets: (3-29-10)

a. If the main event is not held on the date advertised, unless the event is subsequently held on a date fixed by the Commission; and (3-3-94)

b. If the main event is neither held on the original date advertised nor on a subsequent date fixed by the Commission. (3-3-94)

04. Sum Due. The sum is due within fifteen (15) days after default, to ensure reimbursement to the purchasers of tickets for the event, if the reimbursement of ticket holders is ordered by the Commission. (3-3-94)

IDAPA 06 - BOARD OF CORRECTION

06.01.01 - RULES OF THE BOARD OF CORRECTION

DOCKET NO. 06-0101-1001

NOTICE OF PROCLAMATION OF RULEMAKING

EFFECTIVE DATE: In accordance with Section 20-212(1), Idaho Code, this rule will become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin by the Office of the Administrative Rules Coordinator. The effective date of this rule is November 5, 2010.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. Section 20-212, Idaho Code, requires the Idaho State Board of Correction to make rules. Pursuant to Section 20-212(1), Idaho Code, rules of the Idaho State Board of Correction are subject to review of the Idaho State Legislature pursuant to Sections 67-454, 67-5291, and 67-5292, Idaho Code, but no other provisions of chapter 52, title 67, Idaho Code, shall apply to the Board, except as otherwise specifically provided by statute.

PUBLIC HEARING SCHEDULE: Pursuant to Section 20-212(1), Idaho Code, public hearing(s) concerning this rulemaking will not be scheduled.

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

The proposed rulemaking is necessary to reflect current Idaho Department of Correction (IDOC) practices, standards, policies, procedures, and directives. Board of Correction rule changes are summarized by sections as follows:

000. Legal Authority - Amendment is necessary to add the legal authority given to the IDOC pursuant to Section 20-101D, Idaho Code. Section 20-101D is titled "Meritorious Reduction of Sentence."

114. Inmate Funds Receipt and Maintenance - This new section was previously section 410. Renumbering is required to better align with Idaho Department of Correction policy numbering. No changes are being made to this rule.

136. Sentence Administration - This new section is necessary to allow the IDOC to fully implement section 20-101D, Idaho Code. Section 20-101D is titled "Meritorious Reduction of Sentence."

402. Correspondence with Inmates - Amendment is necessary to make subsection 02 consistent with the definition for legal mail currently being used in IDOC standard operating procedure.

410. Inmate Funds Receipt and Maintenance - This section only requires renumbering to section 114 as indicated above.

FEE SUMMARY: There is no increase in fees imposed with this rulemaking.

FISCAL IMPACT: There is no fiscal impact on general funds for this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because Section 20-212(1) exempts the Idaho State Board of Correction from conducting negotiated rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lorenzo Washington, Policy Coordinator, at (208) 658-2133.

DATED this 27th day of August, 2010.

Lorenzo Washington
Policy Coordinator
Idaho Department of Correction
1299 N Orchard St Suite 110
Boise, ID 83706
Ph: (208)658-2133; Fax: (208)327-7404

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 06-0101-1001

000. LEGAL AUTHORITY.

01. Sections 9-340B and 9-347, Idaho Code. Pursuant to Section 9-340B, Idaho Code, the Board shall adopt rules that identify certain department records to be exempt from public disclosure. Pursuant to Section 9-347, Idaho Code, the Board shall adopt guidelines that identify the general subject matter of all public records kept or maintained by the department, the custodian and the physical location of such documents. (7-6-01)

062. Section 18-2510, Idaho Code. Pursuant to Section 18-2510, Idaho Code, it is a crime to convey articles, letters, or things into and out of Department facilities contrary to Department procedures, directives and Section 510. (11-5-99)

03. Section 20-101D, Idaho Code. Pursuant to Section 20-101D, Idaho Code, the Board shall adopt rules for meritorious conduct sentence reduction. ()

024. Section 20-209, Idaho Code. Pursuant to Section 20-209, Idaho Code, the Board shall have control, direction and management of all correctional facilities and property used in connection with correctional facilities. (11-5-99)

035. Section 20-212, Idaho Code. Pursuant to Section 20-212, Idaho Code, the Board shall make all rules necessary to carry out the provisions of Title 20, Chapter 2, Idaho Code, not inconsistent with express statutes or the state constitution. (11-5-99)

046. Section 20-217A, Idaho Code. Pursuant to Section 20-217A, Idaho Code, the director shall assume all the authority, powers, functions and duties as may be delegated to him by the Board. (11-5-99)

057. Section 20-244, Idaho Code. Pursuant to Section 20-244, Idaho Code, the Board shall make and adopt such rules as they may deem necessary for the government and discipline of the correctional facilities. (11-5-99)

(BREAK IN CONTINUITY OF SECTIONS)

111. -- 1153. (RESERVED).

410114. INMATE FUNDS RECEIPT AND MAINTENANCE.

01. Account Established in Inmate Name. The Department shall establish an account in each inmate's name at the time of admission to a facility. All monies in the inmate's possession at admission, all monies earned from institutional employment and all monies sent to the inmate from outside sources, other than money

which is contraband, shall be placed in this account. The Department shall develop guidelines for the withdrawal of funds by the inmate or to satisfy the inmate's financial obligations. (11-5-99)

02. Employers of Work Center Inmates. Any person employing an inmate housed in a community work center shall send the inmate's pay directly to the Department for deposit in the inmate's account. (11-5-99)

115. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

136. MERITORIOUS REDUCTION OF SENTENCE.

01. Intent of the Board. It is the intent of the Board that eligible offenders be considered for a meritorious conduct reduction of their sentence by the Director. ()

02. Eligibility. In order to be considered for a meritorious conduct reduction of sentence, an offender must meet the following criteria: ()

a. Have been convicted of an offense against the state, which was committed on or after July 1, 1986; ()

b. Is confined in an IDOC operated or contract facility for a term other than a life sentence; ()

c. Has completed an extraordinary act of heroism at risk to his or her own life; or for outstanding service to the state of Idaho which results in the saving of lives, prevention of destruction of major property loss during a riot; or the prevention of an escape from a correctional facility. ()

03. Procedure. Any offender who meets the eligibility criteria for a meritorious conduct reduction may be referred to the Director for consideration of a meritorious conduct reduction of his or her sentence. The decision to award a meritorious conduct reduction shall be at the complete discretion of the Director after due consideration to the facts and circumstances giving rise to the referral, together with any other factors the Director deems appropriate. ()

04. Limitations. ()

a. The number of days awarded for a meritorious conduct reduction may not exceed fifteen (15) days for each month of the offender's sentence. ()

b. The Director may withdraw an award of meritorious conduct reduction at his discretion based on an offender's serious misconduct, escape, or commission of a new crime. An offender shall be entitled to a hearing prior to any withdrawal of an award of meritorious conduct reduction. ()

c. Nothing herein shall create any right or entitlement of an offender to receive a meritorious conduct reduction of sentence. ()

1367. -- 144. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

402. CORRESPONDENCE WITH INMATES.

01. Incoming Mail. All incoming mail shall be opened and inspected to ensure it does not contain

prohibited items as described in Section 402. Mail may be withheld subject to the provisions of Subsection 402.04 and 402.05. (10-5-07)

a. Books, magazines, newspapers, and other publications may only be received directly from a legitimate publisher or other legitimate business source. Legitimacy of the source shall be in the sole discretion of the facility head or designee. (10-31-08)

b. Any money order or cashier's check enclosed will be credited to the inmate's trust account, except that money or other forms of exchange hidden or concealed in the correspondence shall be considered contraband and confiscated. Unapproved items of value not otherwise contraband must be returned to the sender at the inmate's expense within forty-five (45) days or they will be considered contraband and confiscated. (10-31-08)

02. Legal Mail. Legal mail is confidential communication directly between an offender and an attorney (for the purposes of seeking or providing legal services only), an offender and the court, opposing parties for service of documents (pursuant to court rules), or ~~sheriff offices~~ third parties for service of documents (pursuant to court rules). (~~10-31-08~~)()

a. To be recognized and treated as legal mail, correspondence from a legal source must be clearly marked "Legal Mail" and display the name, title and address of the sender. (10-5-07)

b. Mail that does not meet the requirements of Section 402 shall be treated as regular mail. (10-5-07)

c. Legal mail should be opened in the presence of the inmate and may be scanned to ensure that it does not violate the provisions of Section 402, Department policies, or division standard operating procedures. (10-5-07)

d. Legal mail that violates the provisions of Section 402, Department policies, or division standard operating procedures may be withheld. (10-5-07)

e. Any sender of legal mail that violates the provisions of Section 402, Department policies, or standard operating procedures may, at the sole discretion of the division chief, have all incoming and outgoing mail treated as regular mail. (10-5-07)

f. Any sender of legal mail that continues to violate the provisions of Section 402, Department policies, or standard operating procedures (or in the case of mail that is a serious threat to the secure and orderly operation of any Department facility) may not, at the sole discretion of the division chief, have his mail delivered to the inmate, and the inmate may also be restricted or prohibited from sending or receiving mail. (10-5-07)

03. Confidential Mail. Confidential mail includes correspondence sent to or received from persons or entities such as the following: the President of the United States, the governor, the Idaho Legislature or U.S. Congress (except for bulk mailings), the Board, the director, IDOC chiefs and deputy chiefs, facility heads, public interest groups or government entities providing assistance for offenders, the Idaho Commission of Pardons and Parole or any member thereof, or the Consulate or Embassy of an offender who is a foreign national. (10-5-07)

a. Mail that does not meet the requirements of Section 402 shall be treated as regular mail. Confidential mail should be opened in the presence of the inmate and may be scanned to ensure that it does not violate the provisions of this section, Department policies, or division standard operating procedures. (10-5-07)

b. Confidential mail that violates the provisions of Section 402, Department policies, or division standard operating procedures may be withheld. (10-5-07)

c. Any sender of confidential mail that violates the provisions of Section 402, Department policies, or standard operating procedures may, at the sole discretion of the facility head, be restricted or prohibited from sending mail to or receiving mail from any inmate. (10-5-07)

d. Any sender of legal mail that continues to violate the provisions of Section 402, Department policies, or standard operating procedures (or in the case of mail that is a serious threat to the secure and orderly

operation of any Department facility) may not, at the sole discretion of the division chief, have his mail delivered to the inmate, and the inmate may also be restricted or prohibited from sending or receiving mail. (10-5-07)

04. Prohibited Mail. Mail, including a publication, which poses a threat to the penological interests of the Board or Department, may be withheld from the inmate. Contraband will always be withheld without regard to this section. The Board has determined that some types of mail always pose a threat to penological interests. The following types of materials are prohibited: (10-5-07)

- a.** Items in a letter or package not authorized by policy or division standard operating procedures; (10-5-07)
- b.** Packages without prior authorization; (10-5-07)
- c.** Publications or items that describe the manufacture of weapons, bombs, explosives, alcohol and drugs, drug paraphernalia, or escape materials; (10-5-07)
- d.** Role-playing games and related materials; (10-31-08)
- e.** Information related to the crime or identity of another offender; (10-5-07)
- f.** Promotional items such as fragrance packs, CDs, computer software, stickers, handbags, T-shirts, baseball caps, in publications, magazines, periodicals etc. (Promotional items will be destroyed and the publication will be forwarded so that the mail process is not delayed); (10-5-07)
- g.** Junk mail (mail that does not contain a typical Idaho Department of Correction [IDOC] offender mailing address [offender's name, IDOC number, facility, housing unit, etc.] and is similar to the following examples: direct marketing, mass mailings, sales flyers, credit card applications, coupons, etc.). Junk mail will be destroyed; (10-31-08)
- h.** More than one (1) subscription to the same periodical, magazine, etc.; (10-5-07)
- i.** Publications or items evidencing gang involvement or activities (enemy lists, constitutions, structures, codes, signs, symbols, photographs, drawings, training material, clothing, etc.); (10-5-07)
- j.** Publications or items advocating that any ethnic, racial, or religious group is inferior or that make such groups an object of ridicule and scorn. However, no publication will be withheld solely because of its appeal to a particular ethnic, racial, or religious group; (10-5-07)
- k.** Publications or items that encourage violence between recipients and members of another group; (10-5-07)
- l.** Publications not mailed direct from the publisher or a bookstore; (10-5-07)
- m.** Clippings from magazines, books, or newspapers; (10-5-07)
- n.** Postage stamps or envelopes. (Postage stamps are allowed at CWC facilities if the CWC does not have commissary services); (10-5-07)
- o.** Greeting cards that are padded, laminated, musical, or larger than eight inches by ten inches (8" x 10"); (10-5-07)
- p.** Photographs larger than five inches by eight inches (5" x 8") and instant photographs, for example, "Polaroid type" with layers. Photocopies are not photographs and may be on standard eight and one-half inches by eleven inches (8.5" x 11") paper; and (10-5-07)
- q.** Other materials, which in the opinion of the facility head, present a threat to penological interests. (10-5-07)

05. Prohibited Sexually Explicit and Pornographic Materials. Nudity, sexually explicit, and pornographic materials are prohibited. Written material of a sexual nature is permitted and is not included in this definition. Publications that do not feature nudity, but contain nudity illustrative of medical, educational, or anthropological content may be excluded from this definition. (10-5-07)

a. Prohibited materials include pictorial depictions in books, pamphlets, magazines, periodicals, any other graphic images, or any other publication or any personal pictures, drawings, or any other graphic depiction, or photocopies of any of these items. (10-5-07)

b. Publications, drawings, photocopies, and other pictorial materials that meet the description of nudity in this section, but the person has clothing or other covering that is transparent or virtually transparent are not permitted. (10-5-07)

i. Nudity means a pictorial or graphic images depicting male or female genitalia, anus, or where the nipples or areola of female breasts are exposed; (10-5-07)

ii. Feature means that a publication contains pictorial depictions of nudity or sexually explicit conduct on a routine or regular basis or promotes itself based upon such depictions in the case of individual one-time issues; and (10-5-07)

iii. Sexually explicit means a pictorial depiction of actual or simulated sexual acts including sexual intercourse, oral sex, or masturbation. (10-5-07)

06. Withholding of Prohibited Material. Any incoming mail suspected of containing any prohibited material defined in this section shall be withheld and reviewed by the facility head or designee to determine if it should be withheld or delivered to the inmate. If the facility head determines that the mail should be withheld, the offender will be given written notice. The offender may use the Department grievance procedure to contest the decision. (10-5-07)

(BREAK IN CONTINUITY OF SECTIONS)

Codified Section 410 has been moved to Section 114.

410. -- 502. (RESERVED).

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.03 - RULES OF ELECTRICAL LICENSING AND REGISTRATION - GENERAL

DOCKET NO. 07-0103-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 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 54-1006(5), 54-1007, and 54-1013, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 the 2009 legislative session, amendments were made to Sections 54-1007 and 54-1008, Idaho Code, whereby the duration of an electrical apprentice registration was extended from one (1) year to five (5) years. Amendments were also made that eliminated the requirement for an apprentice to annually verify his employment and instructional hours. The current rule requires amendment in order to come into alignment with these statutory changes. Additionally, apprentices who finish their schooling typically have to wait (often years) until completion of their work experience (8,000 hours) before taking the journeyman exam, thereby distancing the exam date from their participation in school which reduces the likelihood of passing and then requires continuation training. The proposed rule will require each apprentice to register for a period of five (5) years, and eliminate the requirement that such apprentices prove that they are employed and enrolled in an instructional program in order for the apprentice registration to be valid. Instead, the rule will provide that evidence of completion of the required number of employment and instructional hours must be provided to the Division of Building Safety in order for an apprentice to be eligible to take the journeyman exam. Additionally, it will permit an apprentice to take the journeyman examination upon the completion of three (3) years of work experience (6,000 hours) if they have completed their schooling. It also clarifies what a qualified apprenticeship program is for the purposes of the exemption to work experience categories.

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

The current state of the economy is impacting the ability of apprentices to complete their required on-the-job experience in the same time frame that they complete their required associated schooling. This resulting lag between the time the apprentice completes his schooling, and the time the apprentice is able to take their journeyman's exam negatively affects journeyman's exam results. The Electrical Board, the industry, and the educational providers feel that allowing apprentices to test upon completion of schooling will enhance the apprentices' ability to pass the exam, while preserving the integrity of the licensing process.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need to adopt a temporary rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
Boise, ID 83720-0048
Phone: (208) 332-8986
Fax: (208) 855-2164

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 07-0103-1001

012. APPRENTICE ELECTRICIAN.

01. Requirements for Apprentice Electrician. (5-3-03)

a. A person wishing to become an apprentice electrician shall register with the Division of Building Safety prior to going to work. Said person shall carry a current registration certificate on his person at all times and shall present it upon request to personnel of the Division of Building Safety for examination. Each apprentice shall ~~re-register prior to each July 31, furnishing proof of completion of~~ **for a period of five (5) years and pay the applicable fee. During the period of registration an apprentice must annually complete** a minimum of one hundred forty-four (144) hours of an organized sequence of instruction in technical subjects related to the electrical trade as approved by the Idaho Electrical Board and the Idaho State Board for Professional and Technical Education ~~and until a certificate of achievement is earned from the vocational institution attended. Each apprentice shall obtain~~ work experience ~~performed during the previous year period of registration as described in Paragraph 012.01.b. of these rules and provide the Division~~ with notarized letters from each employer ~~and a certificate of achievement from the vocational institution attended evidencing such work to be maintained in the apprentice's file with the Division. This requirement shall continue each year until the minimum requirements of Title 54, Chapter 10, Idaho Code, have been fulfilled. Any apprentice failing to register by August 1 of each year shall pay an additional fee of ten dollars (\$10) to revive his registration certificate.~~ Time **toward the work requirements detailed in Paragraph 012.01.b. of these rules** shall not be credited while the apprentice is inactive or not registered, ~~nor shall time be allowed for any year which is not accompanied by proof of required instruction for that year of apprenticeship.~~ **(5-3-03)(9-1-10)T**

b. In order to qualify to take the journeyman electrician examination an apprentice electrician shall **furnish proof of completion of four (4) years of related instruction for electrical apprentices as approved by the Idaho Electrical Board and the Idaho State Board for Professional-Technical Education, and** be required to work **at least four three (43) years**, defined as a minimum of ~~eight six~~ **thousand (86,000) hours** of work experience, under the constant on-the-job supervision of a journeyman electrician. ~~That~~ **Such** work **experience** shall include three (3) categories:

~~(5-3-03)~~(9-1-10)T

- i. Residential; (5-3-03)
- ii. Commercial; and (5-3-03)
- iii. Industrial installations. (5-3-03)

c. Successful completion of the journeyman examination does not eliminate the requirement to complete four (4) years of work experience, defined as eight thousand (8,000) hours, under the constant on-the-job supervision of a journeyman electrician in order to be issued a journeyman license. Successful completion of the Idaho state journeyman examination notwithstanding, no journeyman license shall be issued until proof of satisfaction of the requirements contained in Section 013 of these rules is furnished to the Division. (9-1-10)T

ed. Experience shall not exceed seventy-five percent (75%) of the work time in any one (1) category. The work requirements of Paragraph 012.01.b. of these rules shall not apply to an registered apprentice enrolled registered in an apprenticeship program accredited approved by the Electrical Bureau U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship. ~~(5-3-03)~~(9-1-10)T

de. An apprentice who has completed the required number of instructional hours and has not passed the journeyman's examination within two (2) years of completion of the required instructional training hours shall provide proof of continuation training in order to re-register as an apprentice. For the purposes of Section 012 of these rules, continuation training is defined as registration in a Board-approved fourth year apprenticeship class. (4-6-05)

ef. An apprentice who has not advanced in apprenticeship training for a period of two (2) years shall provide proof of successful completion of continuation training in order to re-register as an apprentice. For purposes of Section 012 of these rules, continuation training is registration in a Board-approved year of apprenticeship class for which the apprentice is eligible or a repeat of the most recent apprenticeship class attended. (4-6-05)

02. Direct Supervision. It shall be the responsibility of the employing electrical contractor to insure that the apprentice performs electrical work only under the constant on-the-job supervision of a journeyman electrician. Any contractor who employs more than two (2) apprentice electricians for each licensed journeyman electrician employed is presumed to be in violation of the direct supervision requirements of Section 54-1010, Idaho Code, and of the constant on-the-job supervision requirement of Section 54-1003A, Idaho Code. This presumption may be rebutted by a showing by the contractor that special circumstances exist which are peculiar to the work done by that contractor which allows for effective supervision by each journeyman electrician of more than two (2) apprentice electricians. Prior to employing more than two (2) apprentice electricians for each journeyman electrician, a contractor must obtain permission from the Electrical Bureau to do so. Failure to comply with this requirement will be grounds for suspension or revocation of the electrical contractor's license. (4-1-91)

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING
DOCKET NO. 07-0104-1001
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 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 54-1006, 54-1007, and 54-1013, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The proliferation of wind farms is creating a need for qualified individuals to install, maintain, and repair the supporting electrical installations. The proposed rules establish a specialty license category for outside wiremen.

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:

Many wind farms are currently being constructed or nearing construction in southern Idaho. Currently, licensed electricians must be utilized to perform all facets of the electrical installations. The Electrical Board has accepted the industry's arguments that properly trained outside wiremen are qualified to safely perform significant portions of the work, which will result in more efficient production and lower the costs of installation to the owners and ultimately consumers. Compliance with the current rule is a significant problem, and the Board and industry feel this rule will have a positive impact on bringing contractors into compliance with the electrical licensing provisions affecting the construction and operation of wind generation in Idaho.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: None.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need to adopt a temporary rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
Boise, ID 83720-0048
Phone: (208) 332-8986
Fax: (208) 855-2164

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 07-0104-1001

013. SPECIALTY EXPERIENCE REQUIREMENT.

01. Specialty Journeyman Electrician. An applicant for a specialty journeyman electrician license must have at least two (2) years experience or more as specified for the individual specialty, with the type of installation for which the license is being applied for, in compliance with the requirements of the state in which the experience was received, or as a specialty electrical trainee making electrical installations in accordance with the requirements as stated herein. ~~(4-5-00)~~(9-1-10)T

02. Specialty Electrical Trainee. A specialty electrical trainee shall be required to work not less than two (2) years, defined as a minimum of four thousand (4,000) hours of work experience, under the constant on-the-job supervision of a specialty journeyman electrician of the same specialty category to qualify for testing as a specialty journeyman electrician. A person wishing to become a specialty electrical trainee shall register with the Division of Building Safety prior to going to work. Said person shall carry a current registration certificate on his person at all times and shall present it upon request to personnel of the Division of Building Safety for examination. Each specialty electrical trainee shall re-register prior to each July 1, furnishing proof of work experience performed during the previous year and notarized letters from each employer. This requirement shall continue each year until the minimum requirements of Title 54, Chapter 10, Idaho Code, have been fulfilled. Any specialty electrical trainee failing to re-register by August 1 of each year, shall pay an additional fee of ten dollars (\$10) to receive his registration certificate. Time shall not be credited while the trainee is inactive or not registered. ~~(4-5-00)~~(9-1-10)T

014. ELECTRICAL SPECIALTIES REQUIRING A SPECIAL LICENSE.

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

(4-9-79)

01. Elevator, Dumbwaiter, Escalator, or Moving-Walk Electrical. Any person qualifying for and having in his possession a current elevator electrical license may install, maintain, repair, and replace equipment, controls, and wiring beyond the disconnect switch in the machine room of the elevator and pertaining directly to the operation and control thereof when located in the elevator shaft and machine room. He shall be employed by a licensed elevator electrical contractor and his installation shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty. (4-9-79)

02. Sign Electrical. Any person qualifying for and having in his possession a current sign electrical license may install, maintain, repair, and replace equipment, controls, and wiring on the secondary side of sign disconnecting means; providing the disconnecting means is located on the sign or within sight therefrom. He shall be employed by a licensed sign electrical contractor whose installations shall be limited to this category. The holder of such specialty license may not countersign a contractor's license application as supervising journeyman except for work within his specialty. (3-15-02)

03. Manufacturing or Assembling Equipment. (4-5-00)

a. A licensed specialty manufacturing or assembling equipment electrician must be employed by a licensed specialty manufacturing or assembling equipment contractor in order to work in this category. The holder of a specialty license in this category may not countersign a contractor's license application as supervising journeyman except for work within this specialty. (4-5-00)

b. Any person licensed pursuant to Paragraph 014.03.a. of these rules may install, maintain, repair, and replace equipment, controls, and accessory wiring, integral to the specific equipment, on the load side of the equipment disconnecting means. Electrical service and feeder are to be installed by others. The licensee may also install circuitry in modules or fabricated enclosures for the purpose of connecting the necessary components which individually bear a label from a nationally recognized testing laboratory when such equipment is designed and manufactured for a specific job installation. All wiring completed shall meet all requirements of Title 54, Chapter 10, Idaho Code, all rules promulgated pursuant thereto, and the most current edition of the National Electrical Code. (7-1-94)

c. Subsection 014.03 of these rules does not apply to a manufacturing or assembling equipment electrician installing electrical wiring, equipment, and apparatus in modular buildings as that term is defined in Section 39-4105, Idaho Code. Only journeyman electricians and electrical apprentices, employed by an electrical contractor, may perform such installations. (3-30-07)

04. Limited Energy Electrical License. (9-17-85)

a. Limited energy systems are defined as fire and security alarm systems, class 2 and class 3 signaling circuits, key card operators, nurse call systems, motor and electrical apparatus controls and other limited energy applications covered by the NEC. (7-1-99)

b. Limited energy systems do not include, and no license of any type is required for, the installation of landscape sprinkler controls or communication circuits, wires and apparatus that include telephone systems, telegraph facilities, outside wiring for fire and security alarm systems which are used for communication purposes, and central station systems of a similar nature, PBX systems, audio-visual and sound systems, public address and intercom systems, data communication systems, radio and television systems, antenna systems and other similar systems. (7-1-99)

c. Unless exempted by Section 54-1016, Idaho Code, any person who installs, maintains, replaces or repairs electrical wiring and equipment for limited energy systems in facilities other than one (1) or two (2) family dwellings shall be required to have a valid limited energy electrical license and must be employed by a licensed limited energy specialty electrical contractor or electrical contractor. The holder of a specialty license may only countersign a contractor's application as a supervising journeyman for work within his specialty. (7-1-98)

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

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

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

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

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

d. Individual residential wastewater pumping units. Install, maintain, repair and replace all electrical equipment, wires, and accessories from the pump motor up to and including the disconnecting device for systems that serve one-family, two-family, or three-family residential installations. (4-11-06)

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

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

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

c. Refrigeration, Air-Conditioning and Heating Systems (three (3) phase): install, maintain, and repair all electrical equipment and accessories up to the load side, including fuses, of the disconnecting device. Disconnecting device to be installed by others. (9-17-85)

08. Outside Wireman. All such installation, maintenance, and repair not exempt under the provisions of Section 54-1016, Idaho Code, performed by individuals under this subsection shall be done in accordance with the applicable provisions of the National Electrical Code. The licensee shall be employed by a licensed electrical contractor whose license shall be covered by this category. The holder of such specialty license may not countersign a contractor's license application as a supervising specialty journeyman except for work in his specialty. Applicants for this license class shall provide documentation of having completed an electrical lineman apprenticeship program or similar program approved by the U.S. Department of Labor, Office of Apprenticeship. Any person currently licensed in this category may perform the following types of installations: (9-1-10)T

a. Overhead distribution and transmission lines in excess of six hundred (600) volts. (9-1-10)T

b. Underground distribution and transmission lines in excess of six hundred (600) volts. (9-1-10)T

c. Substation and switchyard construction in excess of six hundred (600) volts. (9-1-10)T

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.07 - RULES GOVERNING CONTINUING EDUCATION REQUIREMENTS

DOCKET NO. 07-0107-1001

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 Sections 54-1006(5) and 54-1013, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Journeyman and master electricians are currently required to receive twenty-four (24) hours of continuing education unit (CEU) training in each three (3)-year license cycle. However, training related to general industry matters is not required as part of the CEU hours they must receive. Instead, they are required only to participate in a minimum of sixteen (16) hours of training related to National Electrical Code (NEC) updates. Consequently, such licensees are not required to receive training in potentially important industry-related matters beyond the code updates. The proposed changes will require each journeyman and master electrician to continue to receive a total of twenty-four (24) hours of continuing education training every three (3) years; however, it will specify that sixteen (16) hours of it shall be in code updates covering changes to the NEC, and eight (8) hours of it in industry-related training.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the changes being made to the rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August 2010.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
Boise, ID 83720-0048
Phone: (208) 332-8986
Fax: (208) 855-2164

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0107-1001

011. CONTINUING EDUCATION REQUIREMENTS.

Journeyman and master electricians must complete at least twenty-four (24) hours of continuing education instruction in every three (3) year period between updates of the National Electrical Code. The twenty-four (24) hours of instruction ~~will~~ shall consist ~~of a minimum~~ of sixteen (16) hours of code update covering changes included in the latest edition of the National Electrical Code, and eight (8) hours of industry-related training. The Idaho Electrical Board will establish criteria for approval of instruction and instructors, and courses and instructors will be approved by the Electrical Bureau. Proof of completion of these continuing education requirements must be submitted to the Bureau prior to or with the application for license renewal by any such licensee in order to renew a journeyman or master electrician license for the code change year. ~~(7-1-02)~~()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING

DOCKET NO. 07-0205-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 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 Section 54-2605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The current rule relating to the plumbing journeyman exam requires that practical work be performed on an actual job in-progress and does not permit examination in a laboratory setting. Given current economic conditions, there is a significant decrease in availability of jobs at which a journeyman applicant may take the practical exam. Additionally, laboratory settings have been established by several schools at which exams may be administered. Creating an additional option for applicants to take the practical exam in a laboratory, as well as creating an option of performing work in a residential or commercial application will provide more flexibility and make it easier for qualified apprentices to become a journeyman. The proposed rule will eliminate the requirement that the practical portion of the exam be performed exclusively on an actual job in-progress, and instead allows the exam to be performed in either a laboratory setting or on a job in-progress. The rule also clarifies that the practical portion of the exam shall consist of work performed in either a residential or commercial application on plumbing installations as determined by the Division of Building Safety.

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 lack of sufficient work in-progress within the industry given the current state of the economy, along with the availability of laboratory facilities in which to conduct the practical portion of the journeyman examinations provides journeyman applicants more flexibility in taking the exam.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the changes being made to the rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
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THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 07-0205-1001

012. JOURNEYMAN.

01. Qualifications for Journeyman Plumber. An applicant for a journeyman plumber's license must have at least four (4) years experience as an apprentice making plumbing installations under the constant on-the-job supervision of a qualified journeyman plumber, as provided by Section 54-2611, Idaho Code. Pipe fitting will not be accepted as qualifications for a journeyman plumber's license. The first step in obtaining a journeyman certificate of competency is to submit an application for examination and license. The application must be accompanied by proof the applicant has completed the minimum of four (4) years experience in the trade as provided in Section 011 of these rules. Exhibition of a current license or photostatic copy of it from another jurisdiction may be accepted as proof of experience. The examination fee shall be as prescribed by Section 54-2614, Idaho Code, and must accompany the application. (8-25-88)

02. Examination. The journeyman examination grade is based on answers to written questions and practical work performed on ~~a job in progress~~ plumbing installations as determined by the Division after successful completion of the written work. Time allowed for the written examination is four (4) hours. A passing grade is required on the written examination. The practical ~~work~~ portion of the exam may be performed on a job in-progress or in a laboratory setting and shall consist of work performed in either a residential or commercial application. The practical portion of the exam must pass with no violations. (~~8-25-88~~)(9-1-10)T

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.01 - RULES OF BUILDING SAFETY

DOCKET NO. 07-0301-1001

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 39-4109, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Section 39-4109, Idaho Code, provides the Building Code Board with the authority to adopt and amend specified building codes via administrative rule pursuant to the negotiated rule process. The 2009 editions of the International Residential Code (IRC) and the International Energy Conservation Code (IECC) were adopted by the Board and Legislature in 2010. Amendments to the IRC and IECC have been proposed by the public and adopted by the Board. Amendments to the IECC that address log homes are necessary in order for such homes to comply with the requirements of the 2009 edition. Without such amendment, log homes would not be able to comply with the IECC without significant modifications. The rule would amend the 2009 IRC by eliminating a provision which addresses live/work units in order to clarify that such do not require fire sprinkling; as well as amend provisions to address local jurisdictions' concerns as they relate to fences and prefabricated swimming pools. The rule would also amend the IECC by adding provisions which address the thermal envelope of log homes.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [March 3, 2010 Idaho Administrative Bulletin, Vol. 10-3, page 11](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The 2009 International Energy Conservation Code (IECC) has been adopted by the Idaho Building Code Board and the Idaho Legislature.

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

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August 2010.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0301-1001

004. ADOPTION AND INCORPORATION BY REFERENCE.

Under the provisions of Section 39-4109, Idaho Code, the codes enumerated in this Section are hereby adopted and incorporated by reference into IDAPA 07.03.01, "Rules of Building Safety," Division of Building Safety. The effective date of a 2009 edition of any of the codes adopted in this Section with any amendments identified thereto shall be January 1, 2011. Until such time, the 2006 edition of any such code enumerated in this Section without amendment will remain effective pursuant to Section 39-4109, Idaho Code. Copies of these documents may be reviewed at the office of the Division of Building Safety. The referenced codes may be obtained from International Code Council, 5360 Workman Mill Road, Whittier, California 90601-2298 or <http://www.iccsafe.org>. (3-29-10)

01. International Building Code. 2009 Edition. (3-29-10)

02. International Residential Code. 2009 Edition. (3-29-10)

a. Delete the exception contained under IRC section R101.2 - Scope. ()

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

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

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

e. IRC Table R302.1 Exterior Walls -- delete the figures contained in the last column of the table under the heading Minimum Fire Separation Distance, and replace with the following:

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

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

(3-29-10)

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

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

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

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

gi. Delete IRC section R322.2.2 paragraph 2.2, and replace with the following: The total net area of all openings shall be at least one (1) square inch (645 mm²) for each square foot (0.093 m²) of enclosed area, or the opening shall be designed and the construction documents shall include a statement that the design and installation of the openings will provide for equalization of hydrostatic flood forces on exterior walls by allowing the automatic entry and exit of floodwaters. (3-29-10)

03. **International Existing Building Code.** 2009 Edition. (3-29-10)

04. **International Energy Conservation Code.** 2009 Edition with the following amendments.
~~(3-29-10)~~()

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

b. Add the following section: 402.6 Residential Log Home Thermal Envelope. Residential log home construction shall comply with sections 401 (General), 402.4 (Air Leakage), 402.5 (Maximum Fenestration U-Factor and SHGC), 403.1 (Controls), 403.2.2 (Sealing), 403.2.3 (Building Cavities), sections 403.3 through 403.9 (referred to as the mandatory provisions), Section 404 (Electrical Power and Lighting Systems), and either Subparagraph 004.04.b.i., ii., or iii. as follows:
()

i. Sections 402.2 through 402.3, 403.2.1, 404.1 and Table 402.6; ()

ii. Section 405 Simulated Performance Alternative (Performance); or ()

iii. REScheck (U.S. Department of Energy Building Codes Program). ()

c. Add Table 402.6 Log Home Prescriptive Thermal Envelope Requirements By Component to be used only in accordance with Subparagraph 004.04.b.i. above to appear as follows:

TABLE 402.6
LOG HOME PRESCRIPTIVE THERMAL ENVELOPE REQUIREMENTS BY COMPONENT

For SI: 1 foot = 304.8 mm.

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

- a. The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration.
- b. R-5 shall be added to the required slab edge R-values for heated slabs.
- c. 90% AFUE natural gas or propane, 84% AFUE oil, or 15 SEER heat pump heating equipment (zonal electric resistance heating equipment such as electric base board electric resistance heating equipment as the sole source for heating is considered compliant with the high efficiency equipment path).
- d. "15/19" means R-15 continuous insulated sheathing on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. "10/13" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulated sheathing on the interior or exterior of the home. "10/13" means R-10 continuous insulated sheathing on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

()

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

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.01 - RULES OF BUILDING SAFETY

DOCKET NO. 07-0301-1002 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-4107, 39-4112, and 39-4113, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Division of Building Safety has recently implemented an electronic system of plan review called DOX, which allows its plan review staff to more efficiently process and review submitted plans. This has allowed DBS to change the responsibilities of plan review personnel and reduce expenditures to the plan review department. The result of which is the ability of DBS to reduce the price of its plan review fees for the majority of plans submitted by charging for such services on an hourly basis instead of as a percentage of the permit fee. Additionally, the current technical service and system submittal plan review fees do not accurately reflect the cost to DBS of providing such services. Finally, the permit fee schedule has not been updated in several years and currently does not appropriately establish a permit fee for construction work above one million dollars (\$1,000,000). The rule would establish that plans may be submitted to DBS in an acceptable format, including electronic, with sufficient clarity to determine conformity with applicable codes; amend the technical service and system submittal plan review fee to one commensurate with the cost of providing such services; provide a more specific fee schedule for construction work above one million dollars (\$1,000,000) and codifies the DBS permit fee refund policy; and, finally, provide that plan review fee services will be charged at an hourly rate with a minimum required fee.

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

The technical service fee will be increased from thirty-six dollars (\$36) to one hundred dollars (\$100) to reflect the actual cost of providing such service; and fees were added to the building permit fee schedule to reflect permit fees for projects over one million dollars (\$1,000,000). Plan review fees were adjusted from a percentage of the calculated building permit fee to an hourly rate. This is expected to reduce the price of its plan review fees for the majority of plans submitted. Statutory authority to charge permit fees and plan review fees are contained in Sections 39-4112 and 39-4113, Idaho Code, respectively.

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

Overall fiscal impact to the state is expected to be neutral.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the changes being made to the rules.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
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Phone: (208) 332-8986
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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0301-1002

028. PLAN REVIEW.

01. Jurisdiction. The Division shall have exclusive jurisdiction and authority to conduct plan reviews of the construction, additions, repairs, and occupancy of all state buildings regardless of the source of funding for such construction, addition, repair, or occupancy. (3-30-06)

02. Plans Specifications. ~~Plans~~ Construction documents shall be dimensioned and drawn ~~to scale and shall be on uniformly sized standard stock drawing sheets not to exceed thirty six (36) inches by sixty (60) inches upon suitable material.~~ Plans may be submitted electronically or in digital format as approved by the Division. Drawing format shall be equivalent to the paper format. Construction documents shall be of sufficient clarity to indicate the location, nature, and extent of the work proposed and show in detail that the installations will conform to the provisions of the building code and applicable laws, rules, and policies of the Division. ~~(3-30-06)(_____)~~

~~03. Plan Review Fees. Plan review fees shall be sixty five percent (65%) of the calculated building permit fee.~~ (3-30-06)

043. Plans Not Required. Plans shall not be required for group U occupancies of Type V conventional light-frame wood construction. (3-30-06)

054. Addenda and Change Orders. (3-30-06)

a. Documents enforcing changes or modifications. Addenda, contract change orders, changes-in-work requests, and other similar written documents enforcing changes or modifications to plans or specifications, already approved by the Division, which addenda, change orders, or change-in-work requests deal with structural or fire resistance changes, or such other changes affecting code conformance, shall be submitted to the Bureau for approval. The use of the terms “addenda,” “change orders,” and “changes-in-work requests” shall not be limited exclusively to such phraseology, but shall be inclusive of such other language used in the professions which essentially have the same meaning. (3-30-06)

b. Application provisions. The provisions of this Section shall apply to that work which will be accomplished. (3-30-06)

029. FEES.

The following fee schedule shall be applicable for the functions cited: (3-30-06)

01. Document Fees. (3-30-06)

a. The administrator shall charge such reasonable and suitable fees necessary for copies of any record, plan approval, permit, map, sketch, drawing or other instrument. (3-30-06)

b. Charges for copies of separate published documents shall be actual cost to the Division plus postage. (3-30-06)

02. Technical Service Fee. ~~Thirty-six~~ **One hundred** dollars (~~\$36~~**100**) per hour. (~~3-30-06~~)()

03. Modular Building Fees. Other than as herein specified in this Section, the fee schedule for modular buildings shall be as provided herein in Table 1-A, and such fees shall be based on the Freight On Board (FOB) cost to the dealer at the point of manufacture. (3-30-06)

~~**04. Systems Submittal Plan Review Fee.** For all systems, the plan approval fees shall be charged at thirty-six dollars (\$36) per hour. (3-30-06)~~

054. Insignia Tag Fee. In instances where building permit fees are not charged for modular buildings, a one hundred dollar (\$100) fee will be charged for an insignia. (3-30-06)

~~**065. Payment of Fees.** Fees shall be paid to and collected by the Division. (3-30-06)~~

~~**076. Commercial Coaches.** Other than as herein specified in this Section, the fee schedule for commercial coaches shall be as provided in Table 1-A, and such fees shall be based on the Freight On Board (FOB) cost to the dealer at the point of manufacture. (3-30-06)~~

~~**087. Building Permit Fees.** The building permit fee for each permit shall be as set forth in [Section 107-2 and Table 1-A of the Uniform Building Code, 1997 edition, as seen in](#) the following table. The determination of value or valuation shall be made by the administrator and shall be the total value of all construction work for which a permit is issued. (~~3-30-06~~)()~~

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

TABLE 1-A - BUILDING PERMIT FEES	
Total Valuation	Fee
\$1,000,001 and up to <u>\$5,000,000</u>	= \$5,608.75 for the first \$1,000,000 plus \$3.65 for each additional \$1,000, or fraction thereof, to and including \$5,000,000
<u>\$5,000,001 to</u> <u>\$10,000,000</u>	= <u>\$20,208.75 for the first \$5,000,000 plus \$2.75 for each additional \$1,000, or fraction thereof, to and including \$10,000,000</u>
<u>\$10,000,001 and up</u>	= <u>\$33,958.75 for the first \$10,000,000 plus \$2 for each additional \$1,000, or fraction thereof</u>

(3-30-06)()

~~098.~~ **Plan Review Fees.** Plan review fees shall be charged at an hourly rate of one hundred dollars (\$100) per hour up to a maximum of sixty-five percent (65%) of the calculated building permit fee with a minimum required fee of forty percent (40%) of the calculated building permit fee. All requests for plan review services shall at such time be accompanied by a payment in the amount of at least forty percent (40%) of the calculated building permit fee. Upon completion of the plan review, any additional fees, above the minimum required, shall be due to the Division by the requesting party. (3-30-06)()

~~409.~~ **Refund of Plan Review Fees.** There shall be no refund of plan review fees. (3-30-06)

10. Refund of Permit Fees. The Administrator may authorize a refund of any permit fee paid which was erroneously paid or collected. The Administrator may authorize a refund of not more than eighty percent (80%) of the permit fee paid when no work has been done under a permit issued in accordance with these rules. The Administrator shall not authorize a refund of any permit fee paid except upon written application filed by the original applicant not later than one hundred eighty (180) days after the date of permit issuance. ()

(BREAK IN CONTINUITY OF SECTIONS)

038. INTEGRATED DESIGN AND FUNDAMENTAL COMMISSIONING OF PUBLIC SCHOOL FACILITIES.

01. Definitions. The following definitions are intended to supplement, and should be read in conjunction with the definitions contained in Section 33-356, Idaho Code. (3-29-10)

a. Fundamental Commissioning. A quality-focused process for enhancing the delivery of a project. It makes use of a qualified third party employed directly by the building owner. (3-29-10)

b. Integrated Design. Integrated design refers to a collaborative design effort in which each of the individual architectural or engineering professionals focuses on the whole building approach, with an emphasis on optimizing the building's performance, environmental sustainability, and cost-savings, to include climate, use, loads and systems resulting in a more comfortable and productive environment, and a building that is more energy-efficient than would be realized using current best practices. (3-29-10)

02. Technical and Educational Information. Technical and educational information related to integrated design and fundamental commissioning in the form of the American Institute of Architects Integrated Project Delivery Guide; Portland Energy Conservation, Inc. (PECI) Commissioning Guides; ASHRAE Guideline 0-2005-The Commissioning Process; and the Northwest Energy Efficiency Alliance Integrated Design Special Focus on Energy Performance Guide is available at the Division office locations including 1090 E. Watertower St., Meridian, Idaho 83642, and 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814. A building commissioned under the prescriptive approaches defined by any of the above-named national organizations is deemed to have completed the Fundamental Commissioning process. (3-29-10)

03. Commissioning Agents. The Division has compiled and made available for public examination a list of all known third party building commissioning agents in Idaho and its contiguous states. The Division has ensured that all such commissioning agents appearing on this list have been certified by the Building Commissioning Association (BCA) or other similar certifying entity. (3-29-10)

04. Annual Optimization Review. (3-29-10)

a. A public school building which qualifies for the school building replacement value calculation pursuant to Section 33-356(5)(a), Idaho Code, shall undergo an annual optimization review each year following the first year of operations that the involved school district seeks to qualify such building for the building replacement value calculation. (3-29-10)

b. The systems within a building required to undergo annual optimization review, as well as any relevant measuring criteria for such systems, shall be formulated by the third party commissioning agent that performs the initial fundamental commissioning. The school district shall be provided with a written report from the commissioning agent identifying the systems which will be subject to the annual optimization review along with any other requirements. (3-29-10)

c. The report required above in Paragraph 038.03.b. of these rules shall include, but is not limited to, at least the following: (3-29-10)

i. Verification that the heating, ventilation, and air conditioning (HVAC) controls, dampers, valves, sensors and other equipment used to control the system are functioning as they were at the commissioning of the building. (3-29-10)

ii. Verification that the lighting controls are functioning as they were at the commissioning of the building. (3-29-10)

iii. The requirement that any changes made to any of the controls contained on the agent's list after the initial commissioning be re-set back to the commissioned settings unless it can be demonstrated that the new settings result in greater energy efficiency. (3-29-10)

d. The annual optimization review shall be performed by persons qualified to make the required determinations and adjustments. (3-29-10)

e. The school district shall submit to the Division written verification indicating that the systems identified by the commissioning agent, including those identified in this Section are functioning as they were at the initial commissioning. Such written verification shall also identify the persons performing the optimization and their qualifications. (3-29-10)

05. Commissioning Anniversary Date. The date upon which the commissioning agent provides the school district with the required written report described in Paragraph 038.03.b. of these rules shall be the commissioning anniversary date for purposes of this Section. If a school district seeks to qualify a building for the building replacement value calculation, the annual optimization review shall be performed within thirty (30) days of the annual commissioning anniversary date following the first year the building is in operation. The written verification required by Paragraph 038.03.e. of these rules shall be received by the Division not later than sixty (60) days after the annual commissioning anniversary date. (3-29-10)

06. Fundamental Building Commissioning Requirements. (3-29-10)

a. School districts seeking to qualify a building for the building replacement value calculation shall engage a building commissioning agent. (3-29-10)

b. The commissioning agent must document the owner's requirements for each commissioned system in the facility. All HVAC and controls systems, duct work and piping, renewable and alternative technologies, lighting controls and day lighting, waste heat recovery, and any other advanced technologies incorporated in the

building must be commissioned. Building envelope systems must also be verified. The owner's requirements for these systems may include efficiency targets and other performance criteria such as temperature and lighting levels that will define the performance criteria for the functional performance testing that occurs prior to acceptance.

(3-29-10)

c. The commissioning agent shall include commissioning requirements in the project construction documents. This includes the scope of commissioning for the project, the systems to be commissioned, and the various requirements related to schedule, submittal reviews, testing, training, O & M manuals, and warranty reviews.

(3-29-10)

d. The commissioning agent shall develop and utilize a commissioning plan. This plan must include an overview of the commissioning process for the project, a list of commissioned systems, primary commissioning participants and their roles, a communication and management plan, an outline of the scope of commissioning tasks, a list of work products, a schedule, and a description of any commissioning testing activities.

(3-29-10)

e. The commissioning agent must submit a report to the owner once the commissioning plan has been executed.

(3-29-10)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.03.11 - RULES GOVERNING MANUFACTURED/MOBILE HOME INDUSTRY LICENSING

DOCKET NO. 07-0311-1001

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 44-2104, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Initial and continuing education requirements were removed from the rules in 2010 because such requirements proved to be unnecessarily burdensome given the shortage of education providers as well as the impact the current economy has had on the industry. The manufactured housing industry instead wanted to formulate more appropriate education requirements given those realities, and have done so by requiring only installers (vice manufacturers, retailers and others) to receive initial and continuing education. This also is required to ensure that the federal HUD Department continues to allow Idaho to administer its own manufactured housing program. This rule would establish eight (8) hours of initial education and four (4) hours of continuing education requirements as a condition for original and renewal licensure respectively for those who install manufactured/mobile homes.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rule change.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
Boise, ID 83720-0048
Phone: (208) 332-8986
Fax: (208) 855-2164

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0311-1001

014. ~~(RESERVED)~~ PROOF OF EDUCATION REQUIRED.

01. Satisfactory Proof for Initial Application Submission. An application for a license as a manufactured/mobile home installer must include proof satisfactory to the Division that the applicant has completed the following number of hours of initial education in order to be approved: ()

a. Installers, and dealers who are installers: eight (8) hours. ()

b. The course of initial education must be approved by the Division and shall include information relating to the provisions of these rules, Title 44, Chapters 21 and 22, Idaho Code, and the Manufactured Housing Construction Safety Standards Act of 1974. ()

02. Satisfactory Proof for License Renewal. The Division shall not renew any installer license, or dealer license of any dealer who is also an installer, issued pursuant to Title 44, Chapters 21 or 22, Idaho Code, or these rules until the licensee has submitted proof satisfactory to the Division that he has, during one (1) year immediately preceding the renewal of the license, completed at least four (4) hours of continuing education. ()

03. Continuing Education Course. The course of continuing education must be approved by the Division and shall include information relating to the following: ()

a. Manufactured housing or mobile home parks which will enable a person to give better service to the members of the general public and tenants of manufactured/mobile home parks; ()

b. The construction, including components and accessories, rebuilding, servicing, installation, or sale of manufactured/mobile homes; ()

c. Legislative issues concerning manufactured/mobile home housing and manufactured/mobile home parks, including pending and recently enacted state or federal legislation; and ()

d. These rules, Title 44, Chapters 21 or 22, Idaho Code, and the Manufactured Housing Safety Standards Act of 1974. ()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.04.02 - SAFETY RULES FOR ELEVATORS, ESCALATORS, AND MOVING WALKS

DOCKET NO. 07-0402-1001

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 39-8605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 will clarify that equipment, components, or systems installed on an elevator, which are not expressly required by the currently adopted code, must function properly or be removed. This will avoid giving the false impression, particularly to emergency personnel, that certain devices or safety equipment are operational when they are not. Currently, when a non-functioning component is identified as a discrepancy, property owners are unwilling to address the matter because they feel it is not something required by code anyway. The Division of Building Safety wants to make it clear to the owners that they must remove such components or make them work properly. This rule will clarify that equipment, components, or systems installed on an elevator, which are not required by the currently adopted code, must function properly or be removed.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the changes being made to the rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.
P. O. Box 83720
Boise, ID 83720-0048
Phone: (208) 332-8986
Fax: (208) 855-2164

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0402-1001

011. INSPECTION REQUIREMENTS.

In order that a required inspection may take place: (4-9-09)

01. Access. All machine rooms and spaces shall be free of dirt and debris and any obstacles to access must be removed. (4-6-05)

02. Technician on Site. An elevator technician and fire alarm technician must be present on site to restore elevator and fire alarm systems. (4-6-05)

03. Installation. The elevator installation must be complete and safe for inspection. Equipment, components, or systems installed on the conveyance must function in accordance with design and code requirements. If equipment, components, or systems are installed that are not required by the currently adopted code, they must function properly or be removed. (4-6-05)()

04. Inspection Fees. Inspection fees for elevators shall be assessed and collected according to the schedule listed in Section 39-8616, Idaho Code, except that reinspection fees for all types of conveyances shall be one hundred dollars (\$100) for the first hour of inspection, or portion thereof, and one hundred dollars (\$100) for each hour of inspection thereafter. (4-9-09)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS, DIVISION OF BUILDING SAFETY

DOCKET NO. 07-0701-1001

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 Sections 54-5001 and 54-5005(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The applicable codes to which all heating, ventilation, and air conditioning installations must comply have been updated as of 2009. Currently, the state is still using an older edition of the HVAC codes. The proposed rules would adopt the 2009 editions with amendments of the International Mechanical Code (IMC), International Fuel Gas Code (IFGC), and International Residential Code (IRC), and would retain the previously adopted amendments thereto.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the changes being made to the rules.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The rules adopt and incorporate by reference updated editions of the following codes and amendments:

1. International Mechanical Code, 2009 Edition, and amendments;
2. International Fuel Gas Code, 2009 Edition, and amendments; and
3. International Residential Code for One (1)- and Two (2)-Family Dwellings, 2009 Edition, Part V (Mechanical) and Part VI (Fuel Gas), and amendments.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St.

P. O. Box 83720
Boise, ID 83720-0048
Phone: (208) 332-8986
Fax: (208) 855-2164

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 07-0701-1001

004. ADOPTION AND INCORPORATION BY REFERENCE OF THE INTERNATIONAL MECHANICAL CODE, 2003~~9~~ EDITION.

01. International Mechanical Code. The 2003~~9~~ Edition, including appendix “A,” (herein IMC) is adopted and incorporated by reference with the following amendments: (4-11-06)()

a. Where differences occur between the IMC and Title 54, Chapter 50, Idaho Code and IDAPA 07, Title 07, the provisions in Idaho Code and IDAPA rules shall apply. (4-11-06)

b. All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Plumbing Code (UPC) as adopted and amended by the Idaho State Plumbing Board. (4-11-06)

c. All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-11-06)

~~**d.** Section 101.2. Delete the Exception. The International Mechanical Code shall apply to detached one and two family dwellings and multiple single family dwellings (townhouses). (7-1-10)~~

~~**ed.** Section 109. Delete. (7-1-10)~~

~~**fe.** Section 312. Sizing requirements shall be as established by the authority having jurisdiction. (4-11-06)~~

f. Section 401.1 Scope. Add the following: Exception: The principles specified in ASHREA 62-2010 may be used as an alternative to this chapter to demonstrate compliance with required ventilation air for occupants. ()

02. Availability of the International Mechanical Code. The 2003~~9~~ Edition is available at the Division of Building Safety offices located at 1090 E. Watertower St., Meridian, Idaho 83642, ~~and~~ 1250 Ironwood Dr., Ste. 220, Coeur d’Alene, Idaho 83814, and 2055 Garrett Way, Ste. 7, Pocatello, Idaho 83201. (4-11-06)()

005. ADOPTION AND INCORPORATION BY REFERENCE OF THE INTERNATIONAL FUEL GAS CODE, 2003~~9~~ EDITION.

01. International Fuel Gas Code. The 2003~~9~~ Edition, including appendixes “A, B, C, and D,” (herein IFGC) is adopted and incorporated by reference with the following amendments: (4-11-06)()

a. Where differences occur between the IFGC and Title 54, Chapter 50, Idaho Code and IDAPA 07, Title 07, the provisions in Idaho Code and IDAPA rules shall apply. (4-11-06)

b. All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Plumbing Code (UPC) as adopted and amended by the Idaho State Plumbing Board. (4-11-06)

c. All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. (4-11-06)

~~**d.** Section 101.2. Delete the Exception. The International Fuel Gas Code shall apply to detached one and two family dwellings and multiple single family dwellings (townhouses). (7-1-10)~~

~~**ed.** Section 109. Delete. (7-1-10)~~

f. 405.1. Installation in Areas of Heavy Snowfall. In areas where heavy snowfall is anticipated, piping, regulators, meters, and other equipment installed in the piping system shall be protected from physical damage, including falling, moving, or migrating snow and ice. If an added structure is used for protection, it must provide access for service and comply with local building codes. (7-1-10)

g. 405.2. Point of Termination. Gas piping stubbed out for a meter or regulator connection shall be a minimum of three (3) feet horizontally from any building opening, and not less than five (5) feet horizontally from any source of ignition, opening to direct-vent (sealed combustion system) appliance, or mechanical ventilation air intakes. (7-1-10)

h. Section 406.4. Change the last sentence to: Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than two (2) times the test pressure nor lower than one and one-half (1.5) times the test pressure. (4-11-06)

i. Section 406.4.1. Test Pressure. Not less than twenty (20) psig (140kPa gauge) test pressure shall be required for systems with a maximum working pressure up to ten (10) inches water column. For systems with a maximum working pressure between ten (10) inches water column and ten (10) psig (70kPa gauge); not less than sixty (60) psig (420kPa gauge) test pressure shall be required. For systems over ten (10) psig (70kPa gauge) working pressure, minimum test pressure shall be no less than six (6) times working pressure. (4-11-06)

j. Section 406.4.2. The test duration shall not be less than twenty (20) minutes. (4-11-06)

k. Section 408.4. Sediment Trap. Delete the last sentence and replace it with the following: Illuminating appliances, ranges, clothes dryers, outdoor grills, decorative vented appliances for installation in vented fireplaces, and gas fireplaces need not be so equipped. ()

l. Section 505.1.1. Addition. An interlock between the cooking appliance and the exhaust hood system shall not be required for appliances that are of the manually operated type and are factory equipped with standing pilot burner ignition systems. (4-11-06)

20. Availability of the International Fuel Gas Code. The 2003~~9~~ Edition, is available at the Division of Building Safety offices located at 1090 E. Watertower St., Meridian, Idaho 83642, ~~and~~ 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Ste. 7, Pocatello, Idaho 83201. (4-11-06)()

006. (RESERVED) ADOPTION AND INCORPORATION BY REFERENCE OF PART V (MECHANICAL) AND PART VI (FUEL GAS) OF THE INTERNATIONAL RESIDENTIAL CODE FOR ONE (1)- AND TWO (2)-FAMILY DWELLINGS, 2009 EDITION.

01. Part V (Mechanical) and Part VI (Fuel Gas) of the International Residential Code for One (1)- and Two (2)-Family Dwellings. The 2009 Edition, including appendixes "A, B, C, and D," (herein IRC) is adopted and incorporated by reference with the following amendments: ()

a. Where differences occur between the IRC and Title 54, Chapter 50, Idaho Code, and IDAPA 07, Title 07, Chapter 01, the provisions in Idaho Code and IDAPA rules shall apply. ()

b. All references to the International Plumbing Code (IPC) shall be construed as referring to the Uniform Plumbing Code (UPC) as adopted and amended by the Idaho State Plumbing Board. ()

c. All references to the International Code Council Electrical Code (ICC EC) shall be construed as referring to the National Electrical Code (NEC) as adopted and amended by the Idaho State Electrical Board. ()

d. Section M1401.3. Sizing requirements shall be as established by the authority having jurisdiction. ()

e. Section G2417.4 (406.4). Change the last sentence to: Mechanical gauges used to measure test pressure shall have a range such that the highest end of the scale is not greater than two (2) times the test pressure nor

lower than one and one-half (1.5) times the test pressure. ()

f. Section G2417.4.1 (406.4.1). Test Pressure. Not less than twenty (20) psig (one hundred forty (140) kPa gauge) test pressure shall be required for systems with a maximum working pressure up to ten (10) inches water column. For systems with a maximum working pressure between ten (10) inches water column and ten (10) psig (seventy (70) kPa gauge), not less than sixty (60) psig (four hundred twenty (420) kPa gauge) test pressure shall be required. For systems over ten (10) psig (seventy (70) kPa gauge) working pressure, minimum test pressure shall be no less than six (6) times working pressure. ()

g. Section G2417.4.2 (406.4.2). The test duration shall not be less than twenty (20) minutes. ()

02. Availability of the International Residential Code for One (1)- and Two (2)-Family Dwellings. The 2009 Edition is available at the Division of Building Safety offices located at 1090 E. Watertower St., Meridian, Idaho 83642, 1250 Ironwood Dr., Ste. 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Ste. 7, Pocatello, Idaho 83201. ()

IDAPA 08 - STATE BOARD OF EDUCATION

08.01.11 - REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS AND PROPRIETARY SCHOOLS

DOCKET NO. 08-0111-1001

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The proposed changes to IDAPA 08.01.11 corrects references and provides general language clean up. Additionally, changes to Section 100 (Recognition of Accreditation Organizations) eliminates the listing of the specific regional accrediting entities that are recognized by both the United States Department of Education and the Council for Higher Education Accreditation, simplifying the language and stating that the Board recognizes regional and institutional accreditation organizations that are recognized by and in good standing with both of these entities.

Other changes eliminate the requirement for a new application should a postsecondary educational institution or proprietary school wish to add courses during the registration period, changing the requirement to a notification of the additional courses. Additionally, it will be required that all advertising material for proprietary schools must accurately represent the purpose of the school.

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

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the non-controversial nature of this rule. The proposed language was worked on by Board staff and is clean up or clarification of existing language. Clarifying language is a direct result of stakeholder input.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Tracie Bent
Chief Planning, Policy and HR Officer
State Board of Education
650 West State Street
PO Box 83720
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0111-1001

100. RECOGNITION OF ACCREDITATION ORGANIZATIONS.

~~Registration of Post-Secondary Educational Institutions.~~ For purposes of registration of post-secondary educational institutions, the Board recognizes the regional and institutional accreditation organizations ~~listed in Subsections 100.01 through 100.06, below. In addition, the Board recognizes institutional accreditation organizations which are also~~ that are recognized by and in good standing with both the United States Department of Education and by the Council for Higher Education Accreditation, and which accredit entire colleges or universities, and which do not accredit only courses or courses of study (such as specialized accreditation organizations). Further, the Board may recognize other accreditation organizations on a case-by-case basis. A request for recognition of other accreditation organizations for purposes of registration should be made to the Board's Chief Higher Education Academic Officer, who will review and evaluate the request with the input and advice of the Board's Committee on Academic Affairs and Programs (CAAP). The Board will make a final decision based on such evaluation and review. (4-9-09)()

~~01. Middle States Association of Schools and Colleges (MSA), Commission on Higher Education. Accredits institutions of higher education in Delaware, District of Columbia, Maryland, New Jersey, New York, Pennsylvania, Puerto Rico, and the U.S. Virgin Islands. (4-9-09)~~

~~02. New England Association of Schools and Colleges, Commission on Institutions of Higher Education (NEASC CIHE). Accredits institutions of higher education in Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. (4-9-09)~~

~~03. North Central Association of Colleges and Schools, The Higher Learning Commission (NCA-HLC). Accredits degree-granting institutions of higher education in Arizona, Arkansas, Colorado, Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, New Mexico, North Dakota, Ohio, Oklahoma, South Dakota, West Virginia, Wisconsin, and Wyoming, including schools of the Navaho Nation. (4-9-09)~~

~~04. Northwest Commission on Colleges and Universities (NWCCU). Accredits post-secondary educational institutions in Alaska, Idaho, Montana, Nevada, Oregon, Utah, and Washington. (4-9-09)~~

~~05. Southern Association of Colleges and Schools (SACS), Commission on Colleges. Accredits degree-granting institutions of higher education in Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas, and Virginia. (4-9-09)~~

~~06. Western Association of Schools and Colleges, Accrediting Commission for Senior Colleges and Universities (WASC ACSCU). Accredits senior colleges and universities in California, Hawaii, the United States territories of Guam and American Samoa, the Republic of Palau, the Federated States of Micronesia, the Commonwealth of the Northern Mariana Islands, and the Republic of the Marshall Islands. (4-9-09)~~

101. -- 199. (RESERVED).

200. REGISTRATION OF POST-SECONDARY EDUCATIONAL INSTITUTIONS.

01. Delegation. Section 33-2403, Idaho Code, provides that a ~~proprietary school~~ post-secondary educational institution must hold a valid certificate of registration issued by the Board. The Board delegates authority to its executive director, or his designee, and the Office of the State Board of Education to administer the registration of ~~proprietary schools~~ post-secondary educational institution, in accordance with Title 33, Chapter 24, Idaho Code, and this rule. (3-29-10)()

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

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

students on behalf of such institution, or advertise in this state, unless registered. (3-29-10)

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

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

03. Idaho Presence. An institution shall be deemed to have a presence in Idaho, or to be operating or purporting to be operating from a location within the state of Idaho, if it owns, rents, leases, or uses any office or other type of physical location in Idaho, including a mailing or shipping center, or if it represents in any way, such as on an electronic or Internet website, to have an Idaho street or mailing address, including a post office box in Idaho. (4-9-09)

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

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

b. Certain Idaho private, not for profit, post-secondary educational institutions. A private, nonprofit, post-secondary educational institution that is already established and operational as of the effective date of this rule and located within the state of Idaho, and that is accredited by an accreditation organization recognized by the Board, as set forth in Section 100 of this rule, shall not be required to register. A private, nonprofit, institution is located within the state of Idaho only if it has been lawfully organized in the state of Idaho and its principal place of business is located within the state of Idaho. (4-9-09)

05. Institutions that Must Register. (4-9-09)

a. Out-of-state public post-secondary educational institutions. A public institution that is supported primarily by taxation from another state, or from a local source not within the state of Idaho, must register as provided herein. (4-9-09)

b. Out-of-state private, nonprofit, post-secondary educational institutions. An out-of-state private, nonprofit, post-secondary educational institution must register as provided herein. (4-9-09)

c. Certain Idaho private, nonprofit, post-secondary educational institutions. A private, nonprofit, post-secondary educational institution that is located within the state of Idaho, but that is not exempt under Subsection 200.03.b. of this rule, must register as provided herein. (4-9-09)

d. For-profit post-secondary educational institutions. A post-secondary educational institution that operates for profit, or which is an operating subsidiary of a publicly or privately held corporation that operates for profit, must register as provided herein. (4-9-09)

06. Alternative to Registration Requirement for Certain Post-Secondary Institutions. (3-29-10)

a. A post-secondary educational institution that demonstrates to the satisfaction of the Board that its primary mission and objectives are to offer courses or courses of study that do not lead to the awarding of degrees, may instead register as a proprietary school, in accordance with Section 300 of this rule. (4-9-09)

b. A request to register as a proprietary school must be submitted in writing to the Board by the first business day of December preceding a registration year. A decision on such request will be issued by the Board within thirty (30) days after it is received. A request to register as a proprietary school must be made on an annual basis. (4-9-09)

07. Application. A post-secondary educational institution that is required to register under this rule

must submit to the Board office an application for registration (either an application for initial registration or renewal of registration, as applicable), on the form provided by the Board office. The application must include a list of each course, course of study, and degree the applicant institution intends to conduct, provide, offer, or sell in Idaho during the registration year. (3-29-10)

08. Registration Fees. The Board shall assess an annual registration fee for initial registration or renewal of registration of a post-secondary educational institution. The registration fee must accompany the application for registration, and shall be in the amount of one-half of one percent (.5%) of the gross Idaho tuition revenue of the institution during the previous registration year, but not less than one hundred dollars (\$100) and not to exceed five thousand dollars (\$5,000). The institution must provide financial documentation to substantiate the amount of revenue reported. Registration fees are not refundable. (~~3-29-10~~)()

09. Deadline for Registration. An initial application for registration may be submitted to the Board at anytime. An institution should expect the Board's review process for an initial registration to take approximately three (3) to five (5) months. An application for renewal of registration must be submitted to the Board on or before the first business day of May that precedes a registration year. (4-9-09)

10. Information Required. Such application must include the information requested on the application form, as well as the following information: (4-9-09)

a. If an institution that is required to register under this rule is accredited by an accreditation organization recognized by the Board in Section 100 of this rule, such institution must submit documentation demonstrating that it has received accreditation status, and that it will maintain its accreditation from such agency during the entire registration year. An institution that is so accredited qualifies for a streamlined registration process, and will not be required to submit information and/or documentation that documents compliance with Standards I through V, set forth in Section 201 of this rule. Such institution must submit the following information or documentation, or both, with its application for registration: (3-29-10)

- i. Copy of most recent accreditation ~~report~~ letter showing the period of approval; (~~4-9-09~~)()
- ii. Current list of chief officers - e.g. president, board chair, chief academic officer, chief fiscal officer; (4-9-09)
- ~~iii. Most recent copy of strategic plan; (4-9-09)~~
- ~~i+ii.~~ Enrollment data for current and past two (2) years; (4-9-09)
- ~~iv.~~ Copy of annual audited financial statement; (4-9-09)
- ~~v.~~ Any additional information that the Board may request. (4-9-09)

b. All other institutions applying for registration must submit information and/or documentation with its application for registration that documents compliance with all of the Standards I through V, set forth in Section 201 of this rule. (3-29-10)

c. The Board may, in connection with a renewal of registration; request that an institution only submit information that documents changes from the previous year, provided that the institution certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 200.08 of this rule, shall remain applicable. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

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

If the Board is unable to determine the nature and activities of an institution on the basis of the information provided by the institution under this rule, then the Board may notify the institution of additional information that it will be required to provide in connection with the application for registration. (4-9-09)

01. Verification of Information. The Board may verify the accuracy of submitted information by inspection, visitation, or any other means it considers necessary. The applicant institution shall be responsible for any costs the Board incurs, including travel, associated with this review. (4-9-09)

02. Criteria for Approval of Registration. To be approved for registration, the institution must demonstrate that it is in compliance with Chapter 24, Title 33, Idaho Code and this rule. An institution must remain in compliance for the registration year. (4-9-09)

03. Public Information. All information submitted to the Board in connection with the application is public information, and is subject to disclosure as set forth in the Public Records Act, Title 9, Chapter 3, Idaho Code. (4-9-09)

04. Certificate of Registration. ()

a. A certificate of registration will be issued to a post-secondary educational institution that has paid its registration fee and has been approved under this rule. A certificate evidencing initial registration will be effective the date it is issued, and continue through June 30 of the next succeeding year. A renewal certificate will be for the period July 1 through June 30 of the next succeeding year. No institution that is registered with the Board shall advertise or represent in any manner that it is accredited by the Board. An institution may only represent that it is "Registered with the Idaho State Board of Education." Registration is not an endorsement of the institution or any of its courses, courses of study, or degrees. (4-9-09)()

b. If a post-secondary educational institution wishes to offer additional courses, courses of study, or degrees during a registration year that were not included in its annual registration application to the Board, then the institution must submit a letter to the Board Office along with documentation of its accrediting agency's approval of those specific curriculum changes. ()

05. Disapproval and Appeal. If a post-secondary educational institution's request for initial registration, or renewal of registration, is disapproved by the Board, then the institution may appeal such decision in accordance with Chapter 52, Title 67, Idaho Code. The request must be in writing and made to the office within thirty (30) days of the date the institution is notified of the disapproval. (4-9-09)

06. Withdrawal of Approval. (4-9-09)

a. The Board may refuse to renew, or may revoke or suspend approval of, an institution's registration by giving written notice and the reasons therefore to the institution. The institution may request a hearing relating to such decision under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (4-9-09)

b. Withdrawal of approval may be for one (1) or more of the following reasons: (4-9-09)

i. Violation of Chapter 24, Title 33, Idaho Code or this rule; (4-9-09)

ii. Providing false, misleading, deceptive, or incomplete information to the Board; (4-9-09)

iii. Presenting to prospective or current students information about the institution which is false, fraudulent, misleading, deceptive, or inaccurate in a material respect; or (4-9-09)

iv. Refusing to allow reasonable inspection or to supply reasonable information after a written request by the Board Office has been received. (4-9-09)

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

(4-9-09)

(BREAK IN CONTINUITY OF SECTIONS)

301. APPROVAL STANDARDS FOR REGISTRATION OF PROPRIETARY SCHOOLS.

The Board and its designee accepts the responsibility for setting and maintaining approval standards for proprietary schools that plan to offer courses or a set of related courses in or from Idaho in order to protect consumers and to ensure quality educational programs are provided throughout the state. A school must meet all of the standards prior to issuance of a certificate of registration and the school must provide required evidence to document compliance with the standards as identified in the application form. A certificate of registration may be denied if all of the standards are not met. (4-9-09)

01. Standard I - Legal Status and Administrative Structure. The school must be in compliance with all local, state and federal laws, administrative rules, and other regulations applicable to proprietary schools. (4-9-09)

a. The school must have a clearly stated educational purpose that is consistent with the courses or a set of related courses under consideration for approval ~~by PTE.~~ (4-9-09)()

b. The ownership of the school, its agents, and all school officials must be identified by name and title. (4-9-09)

c. Each owner, agent, and school official must be appropriately qualified to ensure courses are of high quality and the rights of students are protected. (4-9-09)

d. Written Policies must ~~have been~~ be established to govern admissions and re-admission of dismissed students, hiring procedures, and working conditions; evaluation/assessment of all employees and instructional offerings; student and instructor rights and responsibilities; grievance procedures; approval of the curriculum and other academic procedures to ensure the quality of educational offerings. (4-9-09)()

e. Procedures for assessing/evaluating the effectiveness of instruction must be established. Evaluation and assessment results must be used to improve courses or courses of study. (4-9-09)

f. All advertising, pamphlets, and other literature used to solicit students and all contract forms must accurately represent the purpose of the school, its courses or courses of study, anticipated job opportunities, and other relevant information to assist students in making an informed decision to enroll. ()

02. Standard II - Courses or Courses of Study. Instruction must be the primary focus of the school, and all instructional activities must be clearly related to the achievement of the stated instructional objectives. All courses or courses of study must prepare students to enter employment upon completion of the program or prepare them for self-employment. (4-9-09)

a. The requirements for each course or courses of study must be defined clearly including applicable completion requirements or other requirements such as practicums and clinicals. Courses or courses of study will be designed using effective learning strategies for students, identifying and organizing all instructional materials and specialized facilities, identifying instructional assessment methods, and evaluating the effectiveness of the course offerings. (4-9-09)

b. Written course descriptions must be developed for all courses or courses of study including: course overview, learning objectives and outcomes, course content, assessment, and grading criteria. A written inventory must be maintained for all course descriptions and course descriptions must be provided to instructors. Instructors must be expected to follow course descriptions. A syllabus must be developed for each course and distributed to students at the beginning of the course. (4-9-09)

c. The school must assure that a course or courses of study will be offered with sufficient frequency to

enable students to complete courses or courses of study within the minimum time for completion. (4-9-09)

d. The school must clearly state the cost of each course or courses of study and identify the payment schedule. This information must be provided in written form to students, and the refund policy must also be given to students in writing. (4-9-09)

e. All advertising, pamphlets, and other literature used to solicit students and all contract forms must accurately represent the purpose of the school, its courses or courses of study, job opportunities, and other relevant information to assist students in making an informed decision to enroll. The school must provide to each prospective student, newly-enrolled student, and returning student, complete and clearly presented information indicating the school's current completion and job placement rate. (4-9-09)

03. Standard III - Student Support Services. The school must have clearly defined written policies that are distributed to students through a variety of print and electronic means. Policies must address students rights and responsibilities, grievance procedures, and define what services are available to support students. (4-9-09)

a. The school must develop a written admissions policy. The admission of students must be determined through an orderly process using published criteria which must be uniformly applied. Admissions must take into account the capacity of the student to undertake a course or courses of study and the capacity of the school to provide instructional and other support services the student needs to complete the program. (4-9-09)

b. There must be a clearly defined policy for the readmission of students dismissed from the school. The readmission of students dismissed under this policy must be consistent with the recognized standards of admission to the school. (4-9-09)

c. The school must establish and adhere to a clear and fair policy regarding due process in disciplinary matters, and publish this policy in a handbook, which must include other rights and responsibilities of the students and the grievance procedure. This handbook must be supplied to each student upon enrollment in the school. The school must provide the name and contact information for the individual who is responsible for dealing with student grievances and other complaints and for handling due process procedures. (4-9-09)

d. The school must provide written information to prospective students prior to enrollment to include the following: (4-9-09)

- i. Information describing the purpose, length, and objectives of the courses or courses of study; (4-9-09)
- ii. Completion requirements for the courses or courses of study; (4-9-09)
- iii. The schedule of tuition, fees, and all other charges and all expenses necessary for completion of the courses or courses of study; (4-9-09)
- iv. Cancellation and refund policies; (4-9-09)
- v. An explanation of satisfactory progress, including an explanation of the grading/assessment system; (4-9-09)
- vi. The calendar of study including registration dates, beginning and ending dates for all courses, and holidays; (4-9-09)
- vii. A complete list of instructors and their qualifications; (4-9-09)
- viii. A listing of available student services; and (4-9-09)
- ix. Other information about the courses or courses of study that are likely to affect the decision of the student to enroll in the school. (4-9-09)

e. Accurate and secure records must be kept for all aspects of the student record including, at minimum, admissions information, and the courses each student completed. (4-9-09)

04. Standard IV - Faculty Qualifications and Compensation. (4-9-09)

a. Instructor qualifications (training and experience) must be described and the assigned location for each instructor must be identified. (4-9-09)

b. There must be a sufficient number of full-time instructors to maintain the continuity and stability of courses. (4-9-09)

c. The ratio of instructors to students in each course must be sufficient to assure effective instruction. (4-9-09)

d. Commissions may not be used for any portion of the faculty compensation. (4-9-09)

e. Procedures for evaluating instructors must be established. Provisions for student evaluation are recommended. (4-9-09)

05. Standard V - Resources, Finance, Facilities, and Instructional Resources. (4-9-09)

a. Adequate financial resources must be provided to accomplish instructional objectives and to effectively support the instructional program, including teaching facilities, instructional materials, supplies and equipment, instructors, staff, library, and the physical and instructional technology infrastructure. (4-9-09)

b. The school must have sufficient resources so that, together with tuition and fees, it is able to complete its educational obligations to currently enrolled students. If the school is unable to fulfill its obligations to students, the school must make arrangements with another proprietary school to have students complete a comparable course or courses of study (a teach-out provision). (4-9-09)

c. Financial records and reports of the school must be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a school shall be kept in accordance recognized financial accounting methods. (4-9-09)

d. The school must have adequate instructional resource materials available to students, either on site or through electronic means. These materials must be housed in a designated area and be available for students and instructors with sufficient regularity and at appropriate hours to support achievement of course objectives or to promote effective teaching. (4-9-09)

e. If the school relies on other schools or entities to provide library resources or instructional resources, the school must demonstrate how these arrangements effectively meet the needs of students and faculty. These arrangements must be documented through written agreements. Student and faculty use must be documented and frequently evaluated to ensure quality services are being provided. (4-9-09)

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

If the Board is unable to determine the nature and activities of a school on the basis of the information provided by the school under this rule, then the Board may notify the school of additional information that it will be required to provide in connection with the application for registration. (3-29-10)

01. Verification of Information. The Board may verify the accuracy of submitted information by inspection, visitation, or any other means it considers necessary. The applicant school shall be responsible for any costs PTE incurs including travel, associated with this review. (3-29-10)

02. Criteria for Approval or Denial of Registration. To be approved for registration, the school must demonstrate that it is in compliance with Chapter 24, Title 33, Idaho Code and this rule, including all of the standards described in Section 301 of this rule. A school must remain in compliance for the registration year. (3-29-10)

03. Public Information. All information submitted to the Board is public information, and is subject to disclosure as set forth in the Public Records Act, Title 9, Chapter 3, Idaho Code. (3-29-10)

04. Certificate of Registration. (4-9-09)

a. A certificate of registration will be issued to a proprietary school that has paid its registration fee and been approved under this rule. A certificate evidencing initial registration will be effective the date it is issued, and continue through June 30 of the next succeeding year. A renewal certificate will be for the period July 1 through June 30 of the next succeeding year. No school that is registered with the Board shall advertise or represent in any manner that it is accredited by the Board. An institution may only represent that it is "Registered with Idaho *Division of Professional-Technical State Board of* Education." Registration is not an endorsement of the school. (3-29-10)()

b. If a school wishes to offer additional courses or courses of study during the course of a registration year that were not included in its application to the Board prior to issuance of the certificate of registration, then the school *may must* submit a *supplemental application letter* to the Board, *on a form approved by PTE, and pay any additional registration fees that are applicable. If approved, the Board will issue a revised certificate of registration evidencing such approval* *Office along with appropriate approval documentation by the applicable professional or trade board, council, or commission. This letter will be added to the school's registration file.* (3-29-10)()

05. Disapproval and Appeal. If a proprietary school's request for initial registration or a renewal of registration is disapproved by the Board, then the school may appeal such decision in accordance with Chapter 52, Title 67, Idaho Code. The request must be in writing and made to the Board within thirty (30) days of the date the school is notified of the disapproval. (3-29-10)

06. Withdrawal of Approval. (4-9-09)

a. The Board may refuse to renew, or may revoke or suspend approval of a school's registration by giving written notice and the reasons therefore to the school. The school may request a hearing under IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (3-29-10)

b. Withdrawal of approval may be for one (1) or more of the following reasons: (4-9-09)

i. Violation of Chapter 24, Title 33, Idaho Code or this rule. (4-9-09)

ii. Providing false, misleading, deceptive, or incomplete information to the Board. (3-29-10)

iii. Presenting to prospective or current students information about the school which is false, fraudulent, misleading, deceptive, or inaccurate in a material respect; or (4-9-09)

iv. Refusing to allow reasonable inspection or to supply reasonable information after a written request by the Board has been received. (3-29-10)

c. If any information contained in the application submitted by the school becomes incorrect or incomplete, then the registered school shall notify the Board of such change within thirty (30) days. A school that ceases operation during the course of a registration year shall immediately *notify provide written notice to* the Board of this event. (3-29-10)()

07. Agent's Certificate of Identification. Each proprietary school shall ensure that its agents have a valid certificate of identification, and that all of its agents are in compliance with Section 33-2404, Idaho Code. The school shall complete a criminal history check that includes, at a minimum, the State Bureau of Identification, and statewide sex offender registry for each agent having unsupervised contact with minors in the minor's home or at secondary schools, prior to making application for the agent's certificate of identification. The criminal history check shall be valid for five (5) years *and be kept on file by the school.* When an employee returns to any proprietary school after a break in service of six (6) months or more a new criminal history check must be obtained. When an employee changes employment between proprietary schools, a new criminal history check must be obtained *by the new*

employer.

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

a. The Board shall revoke any agent's certificate of identification issued or authorized under this Section and shall deny the application for issuance of a new certificate of identification of a person who pleads guilty to, or is found guilty of, notwithstanding the form of the judgment or withheld judgment, any of the following felony offenses against a child: (3-29-10)

i. The aggravated assault of a child, Section 18-905, Idaho Code, or the assault with intent to commit a serious felony against a child, Section 18-909, Idaho Code. (3-29-10)

ii. The aggravated battery of a child, Section 18-907, Idaho Code, or the battery with intent to commit a serious felony against a child, Section 18-911, Idaho Code. (3-29-10)

iii. The injury or death of a child, Section 18-1501, Idaho Code. (3-29-10)

iv. The sexual abuse of a child under sixteen (16) years of age, Section 18-1506, Idaho Code. (3-29-10)

v. The ritualized abuse of a child under eighteen (18) years of age, Section 18-1506A, Idaho Code. (3-29-10)

vi. The sexual exploitation of a child, Section 18-1507, Idaho Code. (3-29-10)

vii. Possession of photographic representations of sexual conduct involving a child, Section 18-1507A, Idaho Code. (3-29-10)

viii. Lewd conduct with a child under the age of sixteen (16) years, Section 18-1508, Idaho Code. (3-29-10)

ix. The sexual battery of a minor child sixteen (16) or seventeen (17) years of age, Section 18-1508A, Idaho Code. (3-29-10)

x. The sale or barter of a child for adoption or other purposes, Section 18-1511, Idaho Code. (3-29-10)

xi. The murder of a child, Section 18-4003, Idaho Code, or the voluntary manslaughter of a child, Section 18-4006 1., Idaho Code. (3-29-10)

xii. The kidnapping of a child, Section 18-4502, Idaho Code. (3-29-10)

xiii. The importation or exportation of a juvenile for immoral purposes, Section 18-5601, Idaho Code. (3-29-10)

xiv. The abduction of a person under eighteen (18) years of age for prostitution, Section 18-5610, Idaho Code. (3-29-10)

xv. The rape of a child, Section 18-6101 or 18-6108, Idaho Code. (3-29-10)

b. The general classes of felonies listed in Section 302 shall include equivalent laws of federal or other state jurisdictions. For the purpose of Subsection 302.07, "child" means a minor or juvenile as defined by the applicable state or federal law. (3-29-10)

08. Surety Bond. Each proprietary school shall comply with the provisions in Section 33-2406, Idaho Code, relating to a surety bond. (4-9-09)

a. The amount of the surety bond shall be not less than the total tuition and fees to be collected by the school from its students that covers the period from the beginning through completion of such students' instructional

program at the school during the upcoming registration year. This amount shall be based upon the tuition and fees collected by the school from its students covering such period during the previous registration year, subject to modification in the event a school is beginning operations and has no previous revenue or satisfactorily demonstrates that it expects significant changes in tuition and fee revenue during the upcoming year. The Executive Director shall determine the appropriate format and method by which this bond value is to be calculated and reported. (3-29-10)

b. Schools shall ensure that all bonds include “extended coverage” clauses to remain in effect for one hundred twenty (120) days after the date of closure. (3-29-10)

c. No party to the surety bond may cancel without one hundred twenty (120) day prior notice to all parties, including the Office of the State Board of Education. (3-29-10)

d. The Board shall be the beneficiary of the bond and shall oversee the distribution of funds to students who file claims. Schools shall provide proof of the required bond and submit said documentation with their registration applications. (3-29-10)

IDAPA 08 - STATE BOARD OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1002

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-105, 33-107, and 33-1614 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, no later than October 20, 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:

The proposed changes move the current technology requirements to a more logical location within the rule and add requirements for the Idaho Comprehensive Literacy assessment, bringing the rule into alignment with the statute.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the non-controversial nature of this rule. The proposed language was worked on by Board and Department staff with input from Idaho public colleges of education.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Tracie Bent
Chief Planning, Policy and HR Officer
State Board of Education
650 West State Street
PO Box 83720-0037
Boise, ID 83720-0037
(208) 332-1582 phone
(208) 334-2632 FAX

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1002

008. -- ~~0101.~~ (RESERVED).

~~011. TECHNOLOGY STANDARDS.~~

~~The proliferation of technology in our daily lives makes it essential that certificated educators are technologically literate. The State Board of Education has established a statewide goal that teachers and administrators be trained in the use of technology for education. (5-3-03)~~

~~01. Preservice Competency. All applicants for initial Idaho certification (Kindergarten through grade 12) from an Idaho approved teacher education program must demonstrate proficiency in relevant technology skills and practices to enhance classroom management and instruction as evidenced by the technology requirements of the teacher preparation program. (4-2-08)~~

~~02. Out of State Applicants. Out of state applicants will be reviewed by the hiring district for technology deficiencies and may be required to take technology courses to improve his technology skills. (4-2-08)~~

(BREAK IN CONTINUITY OF SECTIONS)

015. IDAHO INTERIM CERTIFICATE.

01. Issuance of Interim Certificate. The State Department of Education is authorized to issue a three-year (3) interim certificate to those applicants who hold a valid certificate/license from another state or other entity that participates in the National Association of State Directors of Teacher Education and Certification (NASDTEC) Interstate Agreement. An interim certificate is nonrenewable except under extenuating circumstances. (4-2-08)

a. Idaho Comprehensive Literacy Course. For all Idaho teachers working on interim certificates, alternate routes or coming from out of the state, completion of a state approved reading instruction course shall be a one-time requirement for full certification. ()

b. Technology. Out-of-state applicants will be reviewed by the hiring district for technology deficiencies and may be required to take technology courses to improve their technology skills. ()

02. Foreign Institutions. An educator having graduated from a foreign institution that is listed in the Accredited Degree-Granting Institutions section of the "Accredited Institutions of Postsecondary Education" and having a valid/current teaching certificate/license from the country or province in which the foreign institution is located, may be issued a non-renewable, three (3) year interim certificate. The applicant must also complete the requirements listed in Section 013 of these rules. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

017. CONTENT, PEDAGOGY AND PERFORMANCE ASSESSMENT FOR CERTIFICATION.

01. Assessments. State Board of Education approved content, pedagogy and performance area assessments shall be used in the state of Idaho to ensure qualified teachers are employed in Idaho's classrooms. The Professional Standards Commission shall recommend assessments and qualifying scores to the State Board of Education for approval. (4-2-08)

02. Out-of-State Waivers. An out-of-state applicant for Idaho certification holding a current certificate may request a waiver from the above requirement. The applicant shall provide evidence of passing a state approved content, pedagogy and performance area assessment(s) or hold current National Board for Professional Standards Teaching Certificate. (4-2-08)

03. Idaho Comprehensive Literacy Assessment. All applicants for initial Idaho certification (Kindergarten through grade 12) from an Idaho approved teacher education program must demonstrate competency in comprehensive literacy. Areas to be included as parts of the assessment are: phonological awareness, phonics, fluency, vocabulary, comprehension, writing, and assessments and intervention strategies. Each Idaho public higher education institution shall be responsible for the assessment of teacher candidates in its teacher preparation program. The assessment must measure teaching skills and knowledge congruent with current research on best literacy practices for elementary students or secondary students (adolescent literacy) dependent upon level of certification and English Language Learners. In addition the assessment must measure understanding and the ability to apply strategies and beliefs about language, literacy instruction, and assessments based on current research and best practices congruent with International Reading Association/National Council of Teachers of English standards, National English Language Learner's Association professional teaching standards, National Council for Accreditation of Teacher Education standards, and state accreditation standards. ()

04. Technology Assessment. All applicants for initial Idaho certification (Kindergarten through grade 12) from an Idaho approved teacher education program must demonstrate proficiency in relevant technology skills and practices to enhance classroom management and instruction. Each Idaho public higher education institution shall be responsible for the assessment of teacher candidates in its teacher preparation program. The assessment must measure understanding and the ability to apply strategies and beliefs about the integration of technology based on current research and best practices congruent with the International Society for Technology in Education professional teaching standards, the National Council for Accreditation of Teacher Education standards, and state accreditation standards. ()

IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1003

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-1254 and 33-1258, Idaho Code.

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

**Tuesday, October 12, 2010
3:00 - 5:00 p.m. MDT**

**Len B. Jordan Building
Second Floor
Lewis & Clark Conference Room
650 W. State Street, Boise, Idaho**

Individuals unable to be present in person will have the opportunity to make comments by calling into the public hearing (dial-in number: 1-888-767-9895; access code: 7349974) or via the State Department of Education website at <http://www.sde.idaho.gov/>

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing, to the agency address below.

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

The following content areas for pre-service teacher standards are incorporated by reference:

The Professional Standards Commission follows a Strategic Plan of annually reviewing twenty percent (20%) of the Idaho Standards for Initial Certification of Professional School Personnel. In 2010 the Idaho Standards for Elementary Education Teachers were reviewed by a committee of content experts.

The Professional Standards Commission follows a Strategic Plan of annually reviewing twenty percent (20%) of the Idaho Standards for Initial Certification of Professional School Personnel. In 2010 the Idaho Standards for Mathematics Teachers were reviewed by a committee of content experts. The standards were revised to better align with the National Council of Teachers of Mathematics (NCTM) standards, as well as the National Common Core Mathematics Standards, and the Idaho K-12 Mathematics Content Standards.

In the past, Idaho teacher technology skills were verified by a standardized technology assessment. Due to the rapidly evolving nature of technology competencies, the assessment was quickly antiquated and retired. Technology competence remains an important component of teacher preparation and must be assessed. The Professional Standards Commission charged the experts on the Online Teacher Endorsement committee to establish a comprehensive set of Pre-Service Technology Standards that all teachers must know and be able to do. Through much research and discussion, the Online Teacher Endorsement Committee and the Professional Standards Commission drafted the proposed Pre-Service Technology Standards.

The Standards are aligned to the K-12 Idaho Communication and Technology (ICT) Standards, as well as the International Society for Technology in Education (ISTE) Standards. These Pre-Service Technology Standards will be assessed during the teacher preparation program approval process.

The Professional Standards Commission follows a Strategic Plan of annually reviewing twenty percent (20%) of the Idaho Standards for Initial Certification of Professional School Personnel. In 2009 the Idaho Foundation Standards for Science Teachers and the Enhancement Standards (Biology, Chemistry, Earth and Space Science,

Natural Science, Physical Science, and Physics) were reviewed by a committee of content experts. The standards were revised to better align with national standards and best practices, then presented to the Professional Standards Commission for review.

The Professional Standards Commission follows a Strategic Plan of annually reviewing twenty percent (20%) of the Idaho Standards for Initial Certification of Professional School Personnel. In 2009 the Idaho Foundation Standards for Social Studies Teachers and the Enhancement Standards (Economics, Geography, Government and Civics, and History) were reviewed by a committee of content experts. The same committee also revised the Social Studies Endorsement in accordance with direction given from the US Department of Education, and brought forth changes to bring the integrated social studies endorsement into compliance with highly qualified status in all four of the core content areas.

The Professional Standards Commission is recommending for approval the proposed revisions as they are well aligned to national best practices and the needs of Idaho school districts.

The Professional Standards Commission follows a Strategic Plan of annually reviewing twenty percent (20%) of the Idaho Standards for Initial Certification of Professional School Personnel. In 2009 the Idaho School Social Work Standards were reviewed and revised by the School Social Work Association of Idaho (SSWAI). Members from the SSWAI presented their rationale and revisions to the Professional Standards Commission. The Professional Standards Commission would like to recommend for approval the proposed revisions as they are well aligned to national best practices.

The Professional Standards Commission follows a Strategic Plan of annually reviewing twenty percent (20%) of the Idaho Standards for Initial Certification of Professional School Personnel. In 2010 the Idaho Foundation Standards for Visual and Performing Arts Teachers and the Enhancement Standards (Visual Art, Drama, and Music) were reviewed by a committee of content experts. The standards were revised to better align with national standards and best practices.

004 - These proposed Operating Procedures for the Idaho Public Driver Education Programs manual are better aligned with national standards for Driver Education and Training programs compared to the current document. It specifies rules that have been unclear before, adds a few new rules that improve the service we offer Idaho teens and identifies the responsibilities of School Districts that contract with a commercial driver education company to provide driver education services to their students.

018- Currently, there is no requirement for a K-8 certified teacher to hold any type of endorsement or have content competency in another subject area outside of the Elementary core content. In most cases, this means that a K-8 certified teacher can only teach a self-contained elementary school class through 6th grade; which contradicts the purpose for Idaho continuing to support the K-8 certificate. Under the current federal requirements, holding only an elementary certificate does not give rural school districts the flexibility for which the K-8 certificate was designed. Also, in hard to fill positions, there are often not enough 6-12 certificated teachers to meet the needs of middle schools. Unfortunately, at this time K-8 certified teachers are not properly prepared to teach single subject classrooms. This change will assist districts in moving teachers between elementary and middle school as necessary by requiring an area of expertise that can be used in the middle grades. It will also provide newly prepared teachers with more options and greater flexibility.

022 - The Professional Standards Commission follows a Strategic Plan of annually reviewing twenty percent (20%) of the Idaho Standards for Initial Certification of Professional School Personnel along with the corresponding rubrics, endorsement requirements and Praxis exams. In 2010 the Idaho Foundation Standards for Visual and Performing Arts Teachers and the Enhancement Standards (Visual Art, Drama, and Music) with the corresponding endorsement requirements were reviewed by a committee of content experts. The endorsement requirements were revised to better align with national standards and best practices, and then presented to the Professional Standards Commission for review. The Professional Standards Commission has recommended for approval the committee's proposed revisions of the endorsements. This rule clarification is in response to the need for a more clearly stated intent of the endorsement language. There were no substantive changes made to the endorsement.

023 - At the request of school districts and superintendents throughout the State, the Professional Standards Commission has researched and is recommending that a Kindergarten through Twelfth grade (K-12) option be added

to the current Health (6-12) endorsement. The addition of the (K-12) option would allow for more flexibility in teaching assignments, especially for those teachers who already hold a Physical Education (K-12) endorsement.

In order to obtain the (K-12) endorsement, teachers must satisfy the requirements of the (6-12) endorsement and additionally complete coursework in Elementary Education methods and health content. The proposed revision of the standards reflects the intent of the proposed revision to the endorsement.

024 - This rule clarification is in response to the need for a more clearly stated intent of the endorsement language. There were no substantive changes made to the endorsement.

027 - This rule clarification is in response to the need for a more clearly stated intent of the endorsement language. This endorsement was reviewed and revised by a panel of experts in December of 2007 at which time they recommended that all candidates seeking the School Psychologist Endorsement shall undergo a minimum twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist regardless of which of the three optional routes they choose. This recommendation being in-line with current and best practices was approved by the Professional Standards Commission, the State Board of Education, and the Idaho Legislature.

The manner in which the endorsement language is worded, unfortunately, allows for interpretation that only candidates seeking Option C. of the endorsement are required to serve a 1,200 clock-hour internship. All Idaho institutions offering the School Psychologist Endorsement currently require every candidate to serve the 1,200 clock-hour internship in accordance with the endorsement. By making this revision to the endorsement language, the intent of the review panel and current and best practices will be more accurately reflected.

028 - Currently, the state is experiencing a shortage of special education teachers that hold the appropriate certification to teach in preschools. While the early childhood/blended certificate is meeting some of the need, districts have requested other options for certifying teachers, particularly to meet the needs of rural districts where university programs are not accessible.

University faculty of early childhood/blended certification programs were asked to provide solutions to the shortage, and are progressing toward making their traditional programs more accessible. However, after over two years of study, the Professional Standards Commission is recommending the addition of this endorsement to meet the stated need.

033 - The unprecedented demand for online teachers prompted the state to first create standards for those who teach online and have an optimal endorsement.

230- Last year the State Board of Education approved the revised Operating Procedures for Idaho Public Driver Education Programs. These changes were taken to public comment and revised before resubmitting to the State Board of Education for final approval. The Idaho Legislature did not approve the revisions resulting in the State Department of Education resubmitting these rules for approval at this time. The primary purpose cited for the Legislature not approving the Operating Procedures for Idaho Public Driver Education Programs was due to unclear guidelines relating to the relationship between commercial driving schools and the State Department of Education. The current draft of the Operating Procedures for Idaho Public Driver Education Programs addresses those concerns.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this proposed rule change was brought before the Standards Committee of the Professional Standards Commission. It was presented and discussed, amended, and revisited. The final version was then proposed to the entire Professional Standards Commission for a vote and received approval.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

IDAPA 08.02.02.004 incorporates Content Standards and Certification Standards into this rule. Copies of the Content Standards can be found at <http://www.boardofed.idaho.gov>.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Christina Linder at 332-6886 or cplinder@sde.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1003

004. INCORPORATION BY REFERENCE.

The State Board of Education adopts and incorporates by reference into its rules: (5-8-09)

01. ~~Incorporated Document.~~ The Idaho Standards for the Initial Certification of Professional School Personnel as approved on ~~June 18, 2009~~ August 11, 2010. (3-29-10)

02. ~~Document Availability.~~ Copies of this document can be found on the Office of the State Board of Education website at <http://www.boardofed.idaho.gov>. (3-29-10)()

03. ~~Incorporated Document.~~ The Standards for Idaho School Buses and Operations as approved on November 7, 2008. (5-8-09)

04. ~~Document Availability.~~ The Standards for Idaho School Buses and Operations are available at the Idaho State Department of Education, 650 W. State St., Boise Idaho, 83702 and can also be accessed electronically at <http://www.sde.idaho.gov>. (5-8-09)()

05. ~~Incorporated Document.~~ The Idaho Standards for Public School Driver Education and Training Operating Procedures for Idaho Public Driver Education Programs as approved on ~~August 1, 2004~~ August 11, 2010. (4-6-05)

06. ~~Document Availability.~~ The ~~Idaho Standards for Public School Driver Education and Training Operating Procedures for Idaho Public Driver Education Programs~~ are available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702 and can also be accessed electronically at <http://www.sde.idaho.gov>. (5-3-03)()

07. ~~Incorporated Document.~~ The Idaho Standards for Commercial Driving Schools as approved on

~~March 10, 2005.~~

~~(4-11-06)~~

~~08. Document Availability. The Idaho Standards for Commercial Driving Schools is available at the Idaho State Department of Education, 650 W. State St., Boise, Idaho, 83702. (3-14-05)~~

(BREAK IN CONTINUITY OF SECTIONS)

018. STANDARD ELEMENTARY CERTIFICATE.

A Standard Elementary Certificate makes an individual eligible to teach grades Kindergarten (K) through eight (8), and may be issued to any person who has a bachelor's degree from an accredited college or university and who meets the following requirements: (3-16-04)

01. General Education Requirements. Completion of the general education requirements at an accredited college or university is required. (3-30-07)

02. Professional Education Requirements. (3-30-07)

a. A minimum of twenty-four (24) semester credit hours, or thirty-six (36) quarter credit hours, in the philosophical, psychological, and methodological foundations and in the professional subject matter of elementary education, which shall include at least six (6) semester credit hours, or nine (9) quarter credit hours, in developmental reading and its application to the content area. (3-16-04)

b. At least six (6) semester credit hours, or nine (9) quarter credit hours, of elementary student teaching or two (2) years of satisfactory experience as a teacher in grades K-8. (3-16-04)

03. Additional Requirements. An institutional recommendation from an accredited college or university or verification of two (2) years of teaching experience in grades Kindergarten (K) through eight (8). (3-16-04)

04. ~~Ninth-Grade Area of Endorsement.~~ ~~If an~~ All individuals ~~with seeking~~ a Standard Elementary Certificate ~~shall complete~~ the requirements for a subject area endorsement as outlined under requirements for a Standard Secondary Certificate. ~~An endorsement allowing teaching of that subject through grade nine (9) may or a K-12 endorsement shall~~ be added to the Standard Elementary Certificate. ~~(3-16-04)()~~

05. Proficiency. Proficiency in areas noted above is measured by completion of the credit hour requirements provided herein. Additionally, each candidate shall meet or exceed the state qualifying score on approved elementary content area and pedagogy assessments. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

022. ENDORSEMENTS A - D.

01. Agriculture Science and Technology (6-12). (3-16-04)

a. Forty-five (45) semester credit hours including course work in each of the following areas: agriculture education; agriculture mechanics; agriculture business management; soil science; animal science; and plant science. (3-16-04)

b. Occupational teacher preparation coursework as provided in Sections 034 through 038. (3-16-04)

02. American Government /Political Science (6-12). Twenty (20) semester credit hours to include: a minimum of six (6) semester credit hours in American Government, six (6) semester credit hours in U.S. History

Survey, and a minimum of three (3) semester credit hours in Comparative Government. Remaining course work must be selected from Political Science. Course work may include three (3) semester credit hours in World History Survey. (4-11-06)

03. Art (K-12 or 6-12). Twenty (20) semester credit hours leading toward competency as defined by Idaho Standards for Visual Arts Teachers in the area of Art to include a minimum of nine (9) semester credit hours in: Foundation Art and Design. Additional course work must include at least two (2) Studio Areas and Secondary Arts Methods. To obtain an Art (K-12) endorsement, applicants holding a Secondary Certificate must complete an elementary methods course. ~~(4-11-06)~~(____)

04. Bilingual Education (K-12). Twenty (20) semester credit hours to include six (6) upper division credits in Modern Languages, including writing and literature; three (3) semester credit hours in cross-cultural or multi-cultural course work; three (3) semester credit hours in ENL/Bilingual Methods; three (3) semester credit hours in Linguistics; three (3) semester credit hours in Foundations, Federal and State Law, Theory, Testing/identification of Limited English Proficient Students; one (1) semester credit hour in Bilingual Practicum; and one (1) semester credit hour in Bilingual Field Experience. (3-30-07)

05. Biological Science (6-12). Twenty (20) semester credit hours to include at least six (6) semester credit hours of course work in each of the following areas: Botany and Zoology. (3-16-04)

06. Business Technology Education (6-12). (3-16-04)

a. Twenty (20) semester credit hours to include course work in each of the following areas: Intermediate or Advanced Keyboarding; Accounting; and Business/Office Procedures. (3-16-04)

b. Occupational teacher preparation as provided in Sections 034 through 038. (3-16-04)

07. Chemistry (6-12). Twenty (20) semester credit hours in the area of Chemistry. (3-16-04)

08. Communication (6-12). Follow one (1) of the following options: (3-16-04)

a. Option I: Twenty (20) semester credit hours to include Methods of Teaching Speech/Communications plus course work in at least four (4) of the following areas: Interpersonal Communication/Human Relations; Argumentation/Personal Persuasion; Group Communications; Nonverbal Communication; Public Speaking; and Drama/Theater Arts. (3-16-04)

b. Option II: Possess an English endorsement plus at least twelve (12) semester credit hours distributed among the following: Interpersonal Communication/Human Relations, Public Speaking, and Methods of Teaching Speech/Communication. (3-16-04)

~~**09. Communications/Drama (6-12).** Twenty (20) semester credit hours including a minimum of six (6) credit hours in each of the following areas: Communications and Drama. (3-16-04)~~

~~**10. Drama (6-12).** Follow one (1) of the following options: (4-11-06)~~

~~**a.** Twenty (20) semester credit hours leading toward competency as defined by Idaho Standards for Drama Teachers, including a minimum of sixteen (16) semester credit hours in Drama or Theater Arts, including course work in each of the following: Acting, Directing, and Technical Stage Production, and four (4) semester credit hours in Communications. To obtain a Drama (6-12) endorsement, applicants must complete a comprehensive methods course including the pedagogy of acting, directing and technical theatre. (3-30-07)(____)~~

~~**b.** Possess an endorsement in English plus a minimum of nine (9) semester credit hours including course work in each of the following: Acting, Directing, and Technical Stage Production. (4-11-06)~~

11. Driver Education (6-12). Two (2) semester credit hours in Basic Driver Education for Teachers and two (2) semester credit hours in any of the following: Advanced Driver Education; Driver Simulation Education; Traffic Engineering; General Safety Education; or Highway Transportation. Additionally, an individual must have

three (3) years of satisfactory driving experience immediately prior to endorsement as verified by the Motor Vehicle Division of the State Department of Transportation. (3-16-04)

023. ENDORSEMENTS E - L.

01. Earth Science (6-12). Twenty (20) semester credit hours including course work in each of the following: Earth Science, Astronomy, and Geology. (4-11-06)

02. Economics (6-12). Twenty (20) semester credit hours to include a minimum of three (3) semester credit hours of micro-economics, a minimum of three (3) semester credit hours of macro-economics, and a minimum of six (6) semester credit hours of Personal Finance/Consumer Economics/Economics Methods. Remaining course work may be selected from economics and finance course work in one (1) or more of the following areas: Agriculture Science and Technology, Business Education, Economics, Family and Consumer Science, or Marketing Education. (4-11-06)

03. English (6-12). Twenty (20) semester credit hours, including three (3) semester credit hours in Linguistics/Grammar, three (3) semester credit hours in American Literature, three (3) semester credit hours in English Literature, six (6) semester credit hours in Advanced Composition, excluding the introductory sequence designed to meet general education requirements. Remaining credits must be completed in the English Department, and must include some course work in Writing Methods for Teachers of Secondary Students. (3-16-04)

04. English as a New Language (ENL) (K-12). Twenty (20) semester credit hours to include four (4) semester credit hours in Modern Languages; three (3) semester credit hours in Cultural Diversity; three (3) semester credit hours in ENL Methods; three (3) semester credits in Linguistics; three (3) semester credit hours in Foundations, Federal and State Law, Theory, Testing/Identification of Limited English Proficient Students; one (1) semester credit in ENL Practicum or Field Experience; and three (3) semester credit hours in an ENL related elective. (3-30-07)

05. Family and Consumer Science (6-12). (3-16-04)

a. Thirty (30) semester credit hours to include coursework in each of the following: Child/Human Development; Human/Family Relations; Directed Laboratory Experience in Childcare; Clothing and Textiles, Cultural Dress, Fashion Merchandising, or Design Nutrition; Food Preparation, Food Production, or Culinary Arts; Housing, Interior Design, Home Management, or Equipment; Consumer Economics or Family Resource Management; Introduction to Family Consumer Sciences; and, Integration of Family Consumer Sciences or Family Consumer Science Methods. (3-16-04)

b. Occupational Teacher Preparation as provided in Sections 034 through 038. (3-16-04)

06. Foreign Language (6-12 or K-12). Twenty (20) semester credit hours in a specific foreign language including course work in two (2) or more of the following areas: Grammar, Conversation, Composition, Culture, and Literature; and course work in Foreign Language Methods. To obtain an endorsement in a specific foreign language (K-12), applicants holding a Secondary Certificate must complete an elementary methods course. (4-11-06)

07. Geography (6-12). Twenty (20) semester credit hours including course work in Cultural Geography and Physical Geography, and a maximum of six (6) semester credit hours in World History Survey. Remaining semester credit hours must be selected from Geography. (4-11-06)

08. Geology (6-12). Twenty (20) semester credit hours in the area of Geology. (3-16-04)

09. Gifted and Talented (K-12). Twenty (20) semester credit hours, to include a minimum of three (3) semester credits hours in each of the following: Foundations of Gifted and Talented Education; Creative/Critical Thinking Skills for Gifted and Talented Students; Social and Emotional Needs of Gifted and Talented Students; Curriculum and Instruction for Gifted and Talented Students; and Practicum and Program Design for Gifted and Talented Education. Remaining course work must be in the area of gifted education. (5-8-09)

10. Health (6-12 or K-12). Twenty (20) semester credit hours to include course work in Organization/

Administration/Planning of a School Health Program; Health and Wellness; **Secondary** Methods of Teaching Health; **Elementary methods of Teaching Health**; Mental/Emotional Health; Nutrition; Human Sexuality; Substance Use and Abuse; ~~and Theories of Behavior Changes~~. Remaining semester credits must be in health-related course work.

~~(3-30-07)~~()

11. History (6-12). Twenty (20) semester credit hours to include a minimum of six (6) semester credit hours of U.S. History Survey and a minimum of six (6) semester credit hours of World History Survey. Remaining course work must be in History. Course work may include three (3) semester credit hours in American Government. (4-11-06)

12. Humanities (6-12). An endorsement in English, History, Music, Visual Art, Drama, or Foreign Language and twenty (20) semester credit hours in one of the following areas or ten (10) semester credit hours in each of two (2) of the following areas: Literature, Music, Foreign Language, Humanities Survey, History, Visual Art, Philosophy, Drama, Comparative World Religion, Architecture, and Dance. (4-11-06)

13. Journalism (6-12). Follow one (1) of the following options: (3-16-04)

a. Option I: Twenty (20) semester credit hours to include a minimum of sixteen (16) semester credit hours in Journalism and four (4) semester credit hours in English. (3-16-04)

b. Option II: Possess an English endorsement with a minimum of six (6) semester credit hours in Journalism. (3-16-04)

14. Library Media Specialist (K-12). Twenty (20) semester credit hours in the field of Education Media or Library Science, including a minimum of: (5-8-09)

a. Collection Development/Materials Selection; (5-8-09)

b. Literature for Youth or Children; (5-8-09)

c. Organization of Information (Cataloging and Classification); (5-8-09)

d. School Library Administration/Management; and (5-8-09)

e. Library Information Technologies and Information Literacy. (5-8-09)

15. Literacy (K-12). Twenty (20) semester credit hours in the area of Literacy including a minimum of three (3) semester credit hours in each of the following areas: Foundations of Reading or Developmental Reading; Reading in the Content Area; Literature for Youth; Psycholinguistics or Language Development; Corrective/Diagnostic/Remedial Reading; and Teaching Writing. To obtain a Literacy endorsement, applicants must complete the Idaho Comprehensive Literacy Course or the Idaho Comprehensive Literacy Assessment. Remaining credits must be taken in the area of teaching literacy. (5-8-09)

024. ENDORSEMENTS M - Z.

01. Marketing Technology Education (6-12). (3-16-04)

a. Twenty (20) semester credit hours to include course work in each of the following areas: Marketing; Management; Economics; Coordination of Cooperative Programs; Merchandising/Retailing; and Curriculum and Materials Marketing, with remaining credit hours in the field of business. (3-16-04)

b. Occupational teacher preparation as provided in Sections 034 through 038. (3-16-04)

02. Mathematics - Basic (6-12). Twenty (20) semester credit hours in Mathematics including course work in Algebra, Geometry, and Trigonometry. Six (6) semester credit hours of computer programming may be substituted for six (6) semester credits in Mathematics. (3-16-04)

03. Mathematics (6-12). Twenty (20) semester credit hours including course work in each of the following areas: Geometry, Linear Algebra, Discrete Mathematics, Probability and Statistics, and a minimum of three (3) semester credit hours of Calculus. Statistics course work may be taken from a department other than the mathematics department. (4-11-06)

04. Music (6-12 or K-12). Twenty (20) semester credit hours leading toward competency as defined by Idaho Standards for Music Teachers to include course work in the following: Theory and Harmony; Aural Skills, Music History; Conducting; Applied Music; and Piano Proficiency (Class Piano or Applied Piano), and Secondary Music Methods/Materials. To obtain a Music K-12 endorsement, applicants ~~holding a Secondary Certificate~~ must complete an elementary music methods course. (4-11-06)()

05. Natural Science (6-12). ~~An endorsement in: Biological Science, Physical Science, Physics, Chemistry, Earth Science, Geology, or Agriculture Science and Technology. Twenty-four (24) semester credit hours are required in each endorsement area as follows:~~ Follow one (1) of the following options: (4-11-06)()

a. Option I: Must hold an existing endorsement in one of the following areas: Biological Science, Chemistry, Earth Science, Geology, or Physics; and complete a total of twenty-four (24) semester credit hours as follows: ()

a.i. Existing Biological Science Endorsement. Minimum of eight (8) semester credit hours in each of the following areas: Physics, Chemistry, and Earth Science or Geology. (4-11-06)()

a.ii. Existing Physics Endorsement. Minimum of eight (8) semester credit hours in each of the following areas: Biology, Chemistry, and Earth Science or Geology. (4-11-06)()

a.iii. Existing Chemistry Endorsement. Minimum of eight (8) semester credit hours in each of the following areas: Biology, Physics, and Earth Science or Geology. (4-11-06)()

a.iv. Existing Earth Science or Geology Endorsement. Minimum of eight (8) semester credit hours in each of the following areas: Biology, Physics, and Chemistry. (4-11-06)()

a. ~~Agriculture Science and Technology Endorsement. Minimum of four (4) semester credit hours in each of the following areas: Biology, Chemistry, Earth Science or Geology, and Physics. Remaining course work must be from the sciences: Biology, Chemistry, Earth Science or Geology, and Physics.~~ (4-11-06)

b. Option II: Must hold an existing endorsement in Agriculture Science and Technology; and complete twenty (20) semester credit hours with at least four (4) semester credit hours in each of the following areas: Biology, Chemistry, Earth Science or Geology, and Physics. ()

06. Physics (6-12). Twenty (20) semester credit hours in the area of Physics. (3-16-04)

07. Physical Education (PE) (6-12 or K-12). Twenty (20) semester credit hours to include course work in each of the following areas: Sport, Movement, and Outdoor Skills; Elementary PE Methods; Secondary PE Methods; Student Evaluation in PE; Administration of a PE Program; Safety and Prevention of Injuries; Fitness and Wellness; PE for Special Populations; Exercise Physiology; Kinesiology/Biomechanics; Sports Psychology or Sociology; Motor Behavior; and Current CPR and First Aid Certification. (3-30-07)

08. Physical Education/Health. Must have an endorsement in both physical education and health. (3-30-07)

09. Physical Science (6-12). Twenty (20) semester credit hours in the area of physical science to include a minimum of eight (8) semester credit hours in each of the following: Chemistry and Physics. (3-16-04)

10. Psychology. Twenty (20) semester credit hours in the area of Psychology. (3-16-04)

11. Social Studies (6-12). Must have an endorsement in History, American Government/Political Science, Economics, or Geography plus a minimum of twelve (12) semester credit hours in each of the remaining

core endorsements areas: History, Geography, Economics, and American Government/Political Science. (3-29-10)

12. Sociology (6-12). Twenty (20) semester credit hours in the area of Sociology. (3-16-04)

13. Sociology/Anthropology (6-12). Twenty (20) semester credit hours including a minimum of six (6) semester credit hours in each of the following: Anthropology and Sociology. (3-16-04)

14. Technology Education (6-12). (3-16-04)

a. Twenty (20) semester credit hours to include course work in each of the following areas: Communication Technology; Computer Applications; Construction Technology; Electronics Technology; Manufacturing Technology; Power, Energy and Transportation; and Principles of Technology. (3-16-04)

b. Occupational teacher preparation as provided in Sections 034 through 038. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

027. PUPIL PERSONNEL SERVICES CERTIFICATE.

Persons who serve as school counselors, school psychologists, speech-language pathologists, school social workers, school nurses and school audiologists are required to hold the Pupil Personnel Services Certificate, with the respective endorsement(s) for which they qualify. (3-16-04)

01. Counselor Endorsement (K-12). To be eligible for a Pupil Personnel Services Certificate endorsed Counselor K-12, a candidate must have satisfied the following requirements. The Pupil Personnel Services Certificate with a Counselor endorsement is valid for five (5) years. Six (6) semester credit hours are required every five (5) years in order to renew the endorsement. (5-8-09)

a. Hold a master's degree and provide verification of completion of an approved program of graduate study in school guidance and counseling from a college or university approved by the Idaho State Board of Education or the state educational agency of the state in which the program was completed. The program must include successful completion of seven hundred (700) clock hours of supervised field experience, seventy-five percent (75%) of which must be in a K-12 school setting. Substantial amounts of this K-12 experience must be in each of the following levels: elementary, middle/junior high, and high school. Previous school counseling experience may be considered to help offset the field experience clock hour requirement. (5-8-09)

b. An institutional recommendation is required for a Counselor K-12 Endorsement. (5-8-09)

02. School Psychologist Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. To be eligible for initial endorsement, a candidate must complete a minimum of sixty (60) graduate semester credit hours which must be accomplished through one (1) of the following options: (3-16-04)

a. Completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hours, master's degree in education or psychology and completion of an approved thirty (30) semester credit hour, or forty-five (45) quarter credit hour, School Psychology Specialist Degree program, and completion of a minimum of twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist. (3-16-04)()

b. Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour, master's degree program in School Psychology, and completion of a minimum of twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist. (3-16-04)()

c. Completion of an approved sixty (60) semester credit hour, or ninety (90) quarter credit hour,

School Psychology Specialist degree program which did not require a master's degree as a prerequisite, with laboratory experience in a classroom, which may include professional teaching experience, student teaching or special education practicum, and completion of a minimum twelve hundred (1,200) clock-hour internship within a school district under the supervision of the training institution and direct supervision of a certificated school psychologist. (5-8-09)

03. School Nurse Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement may be accomplished through completion of either requirements in Subsections 027.03.a. or 027.03.b. in addition to the requirement of Subsection 027.03.c. (3-29-10)

a. The candidate must possess a valid nursing (RN) license issued by the Idaho State Board of Nursing, and a bachelor's degree in nursing, education, or a health-related field from an accredited institution. (5-8-09)

b. The candidate must possess a valid professional nursing (RN) license issued by the Idaho State Board of Nursing and have completed nine (9) semester credit hours from a university or college in at least three (3) of the following areas: (5-8-09)

- i. Health program management; (5-8-09)
- ii. Child and adolescent health issues; (5-8-09)
- iii. Counseling, psychology, or social work; or (5-8-09)
- iv. Methods of instruction. (5-8-09)

c. Additionally, each candidate must have two (2) years' full-time (or part-time equivalent) school nursing, community health nursing, or any area of pediatric, adolescent, or family nursing experience. (5-8-09)

04. Interim Endorsement - School Nurse. This certificate will be granted for those who do not meet the educational and/or experience requirements but who hold a valid professional nursing (RN) license in Idaho. An Interim Certificate - will be issued for three (3) years while the applicant is meeting the educational requirements, and it is not renewable. (3-29-10)

05. Speech-Language Pathologist Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement will be issued to candidates who possess a master's degree from an accredited college or university in a speech/language pathology program approved by the State Board of Education, and who receive an institutional recommendation from an accredited college or university. (3-16-04)

06. Audiology Endorsement. This endorsement is valid for five (5) years. Six (6) credits are required every five (5) years in order to renew the endorsement. Initial endorsement will be issued to candidates who possess a master's degree from an accredited college or university in an audiology program approved by the State Board of Education, and who receive an institutional recommendation from an accredited college or university. (3-16-04)

07. School Social Worker Endorsement. This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years in order to renew the endorsement. Initial endorsement may be accomplished through possession of a social work certificate issued by the Idaho Bureau of Occupational Licenses, an institutional recommendation, and completion of one (1) of the following options: (3-16-04)

a. A master's degree in social work from an Idaho college or university approved by the State Board of Education, or a master's degree in social work from an out-of-state college or university. The program must be currently approved by the state educational agency of the state in which the program was completed. (3-16-04)

b. A master's degree in guidance and counseling, sociology, or psychology plus thirty (30) semester credit hours of graduate work in social work education, including course work in all the following areas:

understanding the individual; casework method; field placement; social welfare programs and community resources; and research methods. (3-16-04)

08. Interim Endorsement-Speech Language Pathologist. This certificate will be granted for those who do not meet the educational requirements but who hold a bachelor's degree in Speech language pathology and are pursuing a master's degree in order to obtain the pupil personnel services certificate endorsed in speech language pathology. An Interim Certificate will be issued for three (3) years while the applicant is meeting the educational requirements, and it is not renewable. (3-29-10)

028. EXCEPTIONAL CHILD CERTIFICATE.

Holders of this certificate work with children who have been identified as having an educational impairment. (3-16-04)

01. General Education Requirements. Completion of the general education requirements at an accredited college or university is required. (3-30-07)

02. Generalist Endorsement (K-12). The Generalist K-12 endorsement is non-categorical and allows one (1) to teach in any K-12 special education setting. This endorsement is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. Regardless of prior special education experience, all initial applicants must provide an institutional recommendation that an approved special education program has been completed. To be eligible for an Exceptional Child Certificate with a Generalist K-12 endorsement, a candidate must have satisfied the following requirements: (3-16-04)

- a.** Completion of a baccalaureate degree from an accredited college or university. (3-16-04)
- b.** Completion, in an Idaho college or university, of a program in elementary, secondary, or special education currently approved by the Idaho State Board of Education, or completion, in an out-of-state college or university, of a program in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed. (3-16-04)
- c.** Completion of thirty (30) semester credit hours in special education, or closely related areas, as part of an approved special education program. (3-16-04)
- d.** Each candidate must have a qualifying score on an approved core content assessment and a second assessment related to the specific endorsement requested. (3-16-04)

03. Early Childhood Special Education Endorsement (Pre-K-3). The Early Childhood Special Education (Pre-K-3) endorsement is non-categorical and allows one to teach in any Pre-K-3 special education setting. This endorsement may only be added to the Standard Exceptional Child Certificate in conjunction with the Generalist K-12 endorsement and is valid for five (5) years. Six (6) credit hours are required every five (5) years for renewal. To be eligible for an Exceptional Child Certificate with an Early Childhood Special Education (Pre-K-3) endorsement, a candidate must have satisfied the following requirements: ()

a. Completion of a program of a minimum of twenty (20) semester credit hours in the area of Early Childhood Education to include course work in each of the following areas: Child development and behavior with emphasis in cognitive-language, physical, social and emotional areas, birth through age eight (8); Curriculum and program development for young children ages three to eight (3-8); Methodology: planning, implementing and evaluating environments and materials for young children ages three to eight (3-8); Guiding young children's behavior: observing, assessing and individualizing ages three to eight (3-8); Identifying and working with atypical young children ages three to eight (3-8) Parent-teacher relations; and, Field work to include an internship and student teaching at the Pre-K - 3 grades. ()

034. Hearing Impairment Endorsement (K-12). Completion of a minimum of thirty (30) semester credit hours in the area of hearing impairment. An institutional recommendation specific to this endorsement is required. To be eligible for an Exceptional Child Certificate with a Hearing Impaired endorsement, a candidate must have satisfied the following requirements: (4-11-06)

- a. Completion of a baccalaureate degree from an accredited college or university; (4-11-06)
- b. Completion of a program from an Idaho college or university in elementary, secondary, or special education currently approved by the Idaho State Board of Education; or (4-11-06)
- c. Completion of a program from an out-of-state college or university in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed; (4-11-06)
- d. Completion of a program of a minimum of thirty (30) semester credit hours in the area of Hearing Impairment. Must receive an institutional recommendation specific to this endorsement from an accredited college or university. (4-11-06)

045. Visual Impairment Endorsement (K-12). Completion of a program of a minimum of thirty (30) semester credit hours in the area of visual impairment. An institutional recommendation specific to this endorsement is required. To be eligible for an Exceptional Child Certificate with a Visually Impaired endorsement, a candidate must have satisfied the following requirements: (4-11-06)

- a. Completion of a baccalaureate degree from an accredited college or university; (4-11-06)
- b. Completion of a program from an Idaho college or university in elementary, secondary, or special education currently approved by the Idaho State Board of Education; or (4-11-06)
- c. Completion of a program from an out-of-state college or university in elementary, secondary, or special education currently approved by the state educational agency of the state in which the program was completed; (4-11-06)
- d. Completion of a program of a minimum of thirty (30) semester credit hours in the area of Visual Impairment. Must receive an institutional recommendation specific to this endorsement from an accredited college or university. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

033. ~~(RESERVED)~~ ONLINE TEACHER ENDORSEMENT (PRE-K-12).

01. Online-Teacher Endorsement. To be eligible for an Online-Teacher Endorsement (Pre-K-12), a candidate must have satisfied the following requirements: ()

a. Meets states' professional teaching and/or licensure standards and is qualified to teach in his/her field of study. ()

b. Provides evidence of online experience or course time both as a student and as a learner, and demonstrates online learning and teaching proficiency. ()

c. Has completed (completes) an eight (8) week online teaching internship in a Pre-K-12 program, or have one (1) year of verifiable and successful experience as a teacher delivering curriculum online in grades Pre-K-12 within the past three (3) years. ()

d. Provides verification of completion of a state-approved program of at least twenty (20) semester credit hours of study in online teaching and learning at an accredited college or university or a state-approved equivalent. ()

02. Proficiency in Idaho Standards for Online Teachers. Demonstrates proficiency in the Idaho Standards for Online Teachers including the following competencies: ()

- a. Knowledge of Online Education and Human Development; ()
- b. Facilitate and Inspire Student Learning and Creativity; ()
- c. Design and Develop Digital-Age Learning Experiences and Assessments Standards; ()
- d. Model Digital-Age Work and Learning; Promote and Model Digital Citizenship and Responsibility Standards; and ()
- e. Engage in Professional Growth and Leadership. ()

(BREAK IN CONTINUITY OF SECTIONS)

230. DRIVER EDUCATION.

~~01. **Commercial Schools.** Pursuant to Section 004 of these rules, all driver education courses offered in Idaho commercial schools must be conducted in compliance with all the requirements in the *Idaho Standards for Commercial Driving Schools*, as incorporated. (4-11-06)~~

02. **Public Schools.** Pursuant to Section 004 of these rules, all public driver education courses offered in Idaho public schools must be conducted in compliance with all the requirements in the *Idaho Standards for Public School Driver Education and Training* Operating Procedures for Idaho Public Driver Education Programs, as incorporated. (4-6-05)()

IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1004

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 33-1201 and 33-1258, Idaho Code.

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

**Tuesday, October 12, 2010
3:00 - 5:00 p.m. MDT**

**Len B. Jordan Building
Second Floor
Lewis & Clark Conference Room
650 W. State Street, Boise, Idaho**

Individuals unable to be present in person will have the opportunity to make comments by calling into the public hearing (dial-in number: 1-888-767-9895; access code: 7349974) or via the State Department of Education website at <http://www.sde.idaho.gov/>.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing, to the agency address below.

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

The reason for this rule change relates to the twenty percent (20%) collective reduction imposed on the Math Initiative, Idaho Reading Initiative and ISAT Remediation programs for FY 2011. One of the major costs within the Math Initiative is the state's payment for college credits associated with those teachers and administrators who successfully complete the state-required Mathematical Thinking for Instruction (MTI) course. It would cost the state approximately \$700,000 in FY 2011 to pay for these credits, which would enable them to be reflected on the individual's college transcript. This cost is in addition to the cost of providing the course, which is already paid directly by the Math Initiative.

While there is no recertification requirement that the course be completed for credit (only that it be completed successfully), there is another requirement that teachers and administrators must complete at least three credits, reflected on an official transcript, in order to be recertified. This rule change would allow the Mathematical Thinking for Instruction course to count towards the three credit recertification requirement, regardless of whether the credits appear on an official college transcript. This would enable the teacher or administrator to enjoy all of the benefits of the course, insofar as recertification is concerned, without the state incurring unnecessary costs.

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 Legislature reduced funding for a group of programs by approximately 20%, including the Math Initiative, through which MTI course costs are paid. This rule change would allow the state to recognize successfully completed MTI courses for certification purposes, as if they had actually been taken for credit, even if the state is no longer able to pay for the cost of awarding the credits. This will give teachers some of the benefit of earning credits without the additional cost.

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

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

Not paying for credits associated with the MTI course would save the state roughly \$700,000 per year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule alteration brings us into line with federal program requirements.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rules, contact Niccole Bendixen at 208-332-6812.

Anyone may submit written comments regarding these proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

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

**THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
FOR DOCKET NO. 08-0202-1004**

016. IDAHO EDUCATOR CREDENTIAL.

The State Board of Education authorizes the State Department of Education to issue certificates and endorsements to those individuals meeting the specific requirements for each area provided herein. (Section 33-1201, Idaho Code)
(3-16-04)

01. Renewal Requirement - Mathematics In-Service Program. In order to recertify, the state approved mathematics instruction course titled "Mathematical Thinking for Instruction" shall be required. The "Mathematical Thinking for Instruction" course consists of three (3) credits (or forty-five (45) contact hours of in-service training). Teachers and administrators shall take one (1) of the three (3) courses developed that each teacher deems to be most closely aligned with their current assignment prior to September 1, 2014. Any teacher or administrator successfully completing said course shall be deemed to have met the requirement of Subsection 060.03.c. of this rule, regardless of whether such course is part of any official transcript. Successful completion of state approved mathematics instruction course shall be a one-time requirement for renewal of certification for those currently employed in an Idaho school district and shall be included within current requirements for continuing education for renewal. The following individuals listed in Subsection 016.01.a. through 016.01.e. shall successfully complete the "Mathematical Thinking for Instruction" course in order to recertify: ~~(3-29-10)~~(8-11-10)T

a. Each teacher holding an Early Childhood/Early Childhood Special Education Blended Certificate (Birth - Grade 3) who is employed in an elementary classroom (multi-subject classroom, K-8); (3-29-10)

- b.** Each teacher holding a Standard Elementary Certificate (K-8); (3-29-10)
 - c.** Each teacher holding a Standard Secondary Certificate (6-12) teaching in a math content classroom (grade six (6) through grade twelve (12)) including Title I classrooms; (3-29-10)
 - d.** Each teacher holding a Standard Exceptional Child Certificate (K-12); and (3-29-10)
 - e.** Each school administrator holding an Administrator Certificate (Pre K-12). (3-29-10)
- 02. Out-of-State Applicants.** Out-of-state applicants shall take the state approved mathematics instruction course titled “Mathematical Thinking for Instruction” as a certification requirement. The “Mathematical Thinking for Instruction” course consists of three (3) credits (or forty-five (45) contact hours of in-service training). (3-29-10)

IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1001

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 Sections 33-105, and 33-107, Idaho Code.

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

**Tuesday, October 12, 2010
3:00 - 5:00 p.m. MDT**

**Len B. Jordan Building
Second Floor
Lewis & Clark Conference Room
650 W. State Street, Boise, Idaho**

Individuals unable to be present in person will have the opportunity to make comments by calling into the public hearing (dial-in number: 1-888-767-9895; access code: 7349974) or via the State Department of Education website at <http://www.sde.idaho.gov/>.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing, to the agency address below.

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

Section 004 - Changes to this section incorporates the updated Limited English Proficiency Program Annual measurable Achievement Objective (AMAOs) and Accountability Procedures and the Idaho English Language Assessment (IELA) Achievement Standards as approved by the Board November 11, 2009.

In February 2009, the Board approved the changes to the Title III/Limited English Proficiency Accountability Plan. Following that approval, the Board office submitted the revised Accountability Plan to the US Department of Education (USDOE) for their approval. The USDOE responded in a letter that the amendment requests would not be approved unless Idaho altered the requirements slightly in one of the four components. This rule change brings Idaho into compliance with the USDOE request.

That change resulted in Idaho adopting the “n” size of 34 for Title III purposes, in order to maintain consistency with Title I. This ensures that districts with less than 34 LEP students would not be held to the same IELA accountability targets as those districts with more than 34 students. However, the USDOE determined that districts that received Title III funding through a special consortia grant application, even if they had less than 34 students, must not be exempt and still held accountable.

Changes to the Achievement Standards/Cut scores for the Idaho English Language Assessment (IELA) are based on The No Child Left Behind Act of 2001 mandates requiring all states to set achievement standards/cut scores for their assessments in order to determine the proficiency level and growth for every student each year. Idaho revised the achievement standards/cut scores for the IELA in July 2009.

A panel of 15 Idaho educators came together to determine new achievement standards/cut scores for the IELA. The panel members determined to minimally revise the standards/cut scores to be used. The raw cut scores were then translated into scale scores for the purpose of equating the IELA alternate year and grade level forms. The revised scale scores ensure consistent progression across grade spans, enabling educators to make decisions based on the students’ IELA proficiency level. The most significant changes are in the Early Fluent and Fluent categories.

Section 112 - Accountability is being updated to reflect US Department of Education (USDOE) requirements for the graduation rate formula. In April 2010 USDOE conducted a peer review of Idaho's graduation rate and target. Review findings indicated that Idaho would be allowed for the 2010-2011 school year to maintain the target of ninety percent (90%). The USDOE stated that Idaho would not be able to allow districts to use the alternate mechanism of "maintaining the target" from their previous year. The USDOE indicated that Idaho must amend its current graduation rules to require a school that did not meet the ninety percent (90%) target to make a "continuous and substantial improvement" from year to year. This continuous and substantial improvement is defined as at least two percent (2%). Therefore, Idaho is changing the IDAPA language (as noted below) to reflect this change, so that schools must increase their graduation rate by at least two percent (2%) each year when they do not meet the target of ninety percent (90%).

Additionally, The requirement to meet the target by 2014 is being removed. The new graduation rate target will be coded into the Adequate Yearly Progress (AYP) calculation system. These changes will clarify rules governing continuous enrollment and withdrawn status in reference to AYP calculations mandated by the US Department of Education. Specifically they will clarify which public entity creates and provides AYP calculations to schools and districts; clarify the affect of full expulsions on continuous enrollment status and; clarify the rules governing withdrawn status, specifically with regard to medical reasons, homebound status, expulsions, and for juveniles in the juvenile corrections system.

This docket was published as a temporary rule in the [January 6, 2010 Idaho Administrative Bulletin, Vol. 10-1, pages 56 through 60](#), with a temporary effective date of November 9, 2009.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule alteration brings us into line with federal program requirements.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

IDAPA 08.02.03.004 incorporates Limited English Proficiency Program and English Language Assessment. Copies of the Content Standards can be found at <http://www.sde.idaho.gov/site/assessment/IELA/relatedDocs.htm>.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Niccole Bendixen at 208-332-6812.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this September 30, 2010

Tom Luna
Superintendent of Public Instruction
State Department of Education
650 West State St, 2nd Floor
PO Box 83720
Boise, ID 83720-0027
phone: (208) 332-6812
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Pursuant to Section 67-5221(1) this docket is being published as a Proposed Rule.

This docket has been previously published as a Temporary Rule.
The temporary effective date is November 9, 2009.

The original text of the Temporary Rule was published in the Idaho Administrative Bulletin,
Volume 10-1, January 6, 2010, pages 56 through 60.

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 08-0203-1001

004. INCORPORATION BY REFERENCE.

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

01. The Idaho Content Standards. The Idaho Content Standards as adopted by the State Board of Education. Individual subject content standards are adopted in various years in relation to the curricular materials adoption schedule. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (3-29-10)

- a. Driver Education, as revised and adopted on August 21, 2008. (3-29-10)
- b. Health, as revised and adopted on April 17, 2009. (3-29-10)
- c. Humanities Categories: (3-29-10)
 - i. Art, as revised and adopted on April 17, 2009; (3-29-10)
 - ii. Dance, as revised and adopted on April 17, 2009; (3-29-10)
 - iii. Drama, as revised and adopted on April 17, 2009; (3-29-10)
 - iv. Interdisciplinary, as revised and adopted on April 17, 2009; (3-29-10)
 - v. Music, as revised and adopted on April 17, 2009; (3-29-10)
 - vi. World languages, as revised and adopted on April 17, 2009. (3-29-10)
- d. Language Arts, Part I: reading, as revised and adopted on August 21, 2008. (3-29-10)
- e. Language Arts, Part II: language arts, as revised and adopted on August 21, 2008. (3-29-10)
- f. Limited English Proficiency, as revised and adopted on August 21, 2008. (3-29-10)
- g. Mathematics, as revised and adopted on August 21, 2008. (3-29-10)
- h. Physical Education, as revised and adopted on April 17, 2009. (3-29-10)
- i. Science, as revised and adopted on April 17, 2009. (3-29-10)
- j. Social Studies, as revised and adopted on April 17, 2009. (3-29-10)

02. The Idaho English Language Development Standards. The Idaho English Language

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

03. The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures. The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on ~~August 10, 2006~~ **November 11, 2009**. Copies of the document can be found on the State ~~Board~~ **Department** of Education website at ~~<http://www.boardofed.idaho.gov>~~ <http://www.sde.idaho.gov/site/assessment/IELA/relatedDocs.htm>. (4-2-08)(____)

04. The Idaho English Language Assessment (IELA) Achievement Standards. The Idaho English Language Assessment (IELA) Achievement Standards as adopted by the State Board of Education on ~~August 10, 2006~~ **November 11, 2009**. Copies of the document can be found on the State ~~Board~~ **Department** of Education website at ~~<http://www.boardofed.idaho.gov>~~ <http://www.sde.idaho.gov/site/assessment/IELA/relatedDocs.htm>. (4-2-08)(____)

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

06. The Idaho Extended Content Standards. The Idaho Extended Content Standards as adopted by the State Board of Education on April 17, 2008. Copies of the document can be found at the State Board of Education website at <http://www.boardofed.idaho.gov>. (5-8-09)

07. The Idaho Alternative Assessment Extended Achievement Standards. Alternative Assessment Extended Achievement Standards as adopted by the State Board of Education on February 28, 2008. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (5-8-09)

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

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

(BREAK IN CONTINUITY OF SECTIONS)

112. ACCOUNTABILITY.

The provisions in this section apply for the purposes of meeting the “No Child Left Behind” Act and the state of Idaho accountability requirements. (3-20-04)

01. ISAT Student Achievement Levels. There are four (4) levels of student achievement for the ISAT: Below Basic, Basic, Proficient, and Advanced. Definitions for these levels of student achievement are adopted by reference in Subsection 004.05. (4-2-08)

02. IELA Language Proficiency Levels. There are five (5) levels of language proficiency for students testing on the Idaho English Language Assessment: beginning,” advanced beginning, intermediate, early fluent, and fluent. Definitions for these levels of language proficiency are adopted by reference in Subsections 004.02 and 004.04. (4-2-08)

03. Adequate Yearly Progress (AYP). (3-20-04)

a. Proficiency is defined as the number of students scoring proficient or advanced on the spring on-grade level ISAT. (3-20-04)

b. The State ~~Board~~ Department of Education will make AYP determinations for schools and districts each year. Results will be given to the districts at least one (1) month prior to the first day of school. (4-2-08)()

c. The baseline for AYP will be set by the Board and shall identify the amount of growth (percentage of students reaching proficiency) required for each intermediate period. (3-20-04)

04. Adequate Yearly Progress (AYP) Definitions. For purposes of calculating and reporting adequate yearly progress, the following definitions shall be applied. (3-20-04)

a. Full Academic Year (continuous enrollment). (3-20-04)

i. A student who is enrolled continuously in the same public school from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included in the calculation to determine if the school achieved AYP in proficiency. A student is continuously enrolled if he/she has not transferred or dropped-out of the public school. Students who are serving suspensions are still considered to be enrolled students. ~~Students who are expelled but return to another school in the same district are considered continuously enrolled to determine the district AYP.~~ (4-2-08)()

ii. A student who is enrolled continuously in the school district from the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the school district has achieved AYP. (4-2-08)

iii. A student who is enrolled continuously in a public school within Idaho from the end of the first eight (8) weeks or fifty-six (56) calendar days of the school year through the state approved spring testing administration period, not including the make-up portion of the test window, will be included when determining if the state has achieved AYP. (4-2-08)

b. Participation Rate. (3-20-04)

i. Failure to include ninety-five percent (95%) of all students and ninety-five percent (95%) of students in designated subgroups automatically identifies the school as not having achieved AYP. The ninety-five percent (95%) determination is made by dividing the number of students assessed on the Spring ISAT by the number of students reported on the class roster file for the Spring ISAT. (3-20-04)

(1) If a school district does not meet the ninety-five percent (95%) participation target for the current year, the participation rate can be calculated by the most current three (3) year average of participation. (4-6-05)

(2) Students who are absent for the entire state-approved testing window because of ~~a significant~~ medical ~~emergency~~ reasons or are homebound are exempt from taking the ISAT if such circumstances prohibit them from participating. Students who drop out, withdraw, or are expelled prior to the beginning of the final makeup portion of the test window are considered exited from the school. (4-6-05)()

ii. For groups of ten (10) or more students, absences for the state assessment may not exceed five percent (5%) of the current enrollment or two (2) students, whichever is greater. Groups of less than ten (10) students will not have a participation determination. (3-20-04)

c. Schools. (3-20-04)

i. An elementary school includes a grade configuration of grades Kindergarten (K) through six (6) inclusive, or any combination thereof. (3-20-04)

ii. A middle school is a school that does not meet the definition of an elementary school and contains grade eight (8) but does not contain grade twelve (12). (4-6-05)

- iii. A high school is any school that contains grade twelve (12). (3-20-04)
- iv. The accountability of public schools without grades assessed by this system (i.e., K-2 schools) will be based on the third grade test scores of the students who previously attended that feeder school. (3-20-04)
- d. Subgroups. Scores on the ISAT must be disaggregated and reported by the following subgroups: (3-20-04)
- i. Race/Ethnicity - Black/African American, Asian, Native Hawaiian/Pacific Islander, White, Hispanic/Latino Ethnicity, American Indian/Alaska Native. (3-20-04)
- ii. Economically disadvantaged - identified through the free and reduced lunch program. (3-20-04)
- iii. Students with disabilities - individuals who are eligible to receive special education services through the Individuals with Disabilities Education Act (IDEA). (3-20-04)
- iv. Limited English Proficient - individuals who score in the low range on the state-approved language proficiency test and meet one of the following criteria: (4-6-05)
- (1) Individuals whose native language is a language other than English; or (4-6-05)
- (2) Individuals who come from environments where a language other than English is dominant; or (4-6-05)
- (3) Individuals who are American Indian and Alaskan natives and who come from environments where a language other than English has had a significant impact on their level of English language proficiency, and who, by reason thereof, have sufficient difficulty speaking, reading, writing, or understanding the English language to deny such individuals the opportunity to learn successfully in classrooms, where the language of instruction is English. (4-6-05)
- e. Graduation Rate. The State Board of Education will establish a target for graduation. All high schools must maintain or make progress toward the target each year. The graduation rate will be disaggregated by the subpopulations listed in Subsection 112.03.d. in the event the “safe harbor” is invoked by the school/district. By 2014, the schools/districts must meet the target. (3-20-04)
- f. Additional Academic Indicator. The State Board of Education will establish a target for an additional academic indicator. All elementary and middle schools must maintain or make progress toward the additional academic indicator target each year. The additional academic indicator target will be disaggregated by the subpopulations listed in Subsection 112.03.d. in the event the “safe harbor” is invoked by the school/district. By 2014, the schools/districts must meet the target. (3-20-04)
- 05. Annual Measurable Achievement Objectives (AMAOs).** Local school districts are responsible for ensuring district progress of Limited English Proficient (LEP) students in their acquisition of English. Progress and proficiency are measured by the IELA and determined based on three (3) AMAOs: (4-2-08)
- a. Annual increases in the percent or number of LEP students making progress in acquiring English language proficiency; (4-2-08)
- b. Annual increases in the percent or number of LEP students attaining English language proficiency by the end of the school year; and (4-2-08)
- c. Each school district must make Adequate Yearly Progress for LEP students on the spring ISAT. (4-2-08)

IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1002

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 33-105, and 33-107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Currently IDAPA 08.02.03.105.03 states, if a student fails to achieve a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test (ISAT) school districts and LEAs shall provide an alternate mechanism, or plan, for graduation from high school if the student requests it and is qualified. There are no clear requirements, guidelines or procedures for districts/LEAs to follow in developing the plan and the plan is only required if the student requests it.

Changes to this rule will require school districts to notify all students who fail the 10th grade ISAT of the availability of an alternate route to graduation.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the non-controversial nature of this rule. The proposed language was worked on by Board and Department staff with input from local school districts.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Tracie Bent
Chief Planning, Policy and HR Officer
State Board of Education
650 West State Street
PO Box 83720
Boise, ID 83720-0037
phone: (208) 332-1582; FAX: (208) 334-2632

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 08-0203-1002

105. HIGH SCHOOL GRADUATION REQUIREMENTS.

A student must meet all of the requirements identified in this section before the student will be eligible to graduate from an Idaho high school. The local school district or LEA may establish graduation requirements beyond the state minimum. (5-8-09)

01. Credit Requirements. The State minimum graduation requirement for all Idaho public high schools is forty-two (42) credits. The forty-two (42) credits must include twenty-five (25) credits in core subjects as identified in Paragraphs 105.01.c. through 105.01.h. All credit-bearing classes must be aligned with state high school standards in the content areas for which standards exist. For all public school students who enter high school at the 9th grade level in Fall 2009 or later, the minimum graduation requirement will be forty-six (46) credits and must include twenty-nine (29) credits in core subjects as identified in Paragraphs 105.01.b. through 105.01.g. (3-29-10)

a. Credits. (Effective for all students who enter the ninth grade in the fall of 2010 or later.) One (1) credit shall equal sixty (60) hours of total instruction. School districts or LEA's may request a waiver from this provision by submitting a letter to the State Department of Education for approval, signed by the superintendent and chair of the board of trustees of the district or LEA. The waiver request shall provide information and documentation that substantiates the school district or LEA's reason for not requiring sixty (60) hours of total instruction per credit. (3-29-10)

b. Mastery. Students may also achieve credits by demonstrating mastery of a subject's content standards as defined and approved by the local school district or LEA. (3-29-10)

c. Secondary Language Arts and Communication. Nine (9) credits are required. Eight (8) credits of instruction in Language Arts. Each year of Language Arts shall consist of language study, composition, and literature and be aligned to the Idaho Content Standards for the appropriate grade level. One (1) credit of instruction in communications consisting of oral communication and technological applications that includes a course in speech, a course in debate, or a sequence of instructional activities that meet the Idaho Speech Content Standards requirements. (3-29-10)

d. Mathematics. Four (4) credits are required. Secondary mathematics includes Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and reasoning. For all public school students who enter high school at the 9th grade level in Fall 2009 or later, six (6) semester credits are required. For such students, secondary mathematics includes instruction in the following areas: (3-29-10)

i. Two (2) credits of Algebra I or courses that meet the Idaho Algebra I Content Standards as approved by the State Department of Education; (3-29-10)

ii. Two (2) credits of Geometry or courses that meet the Idaho Geometry Content Standards as approved by the State Department of Education; and (3-29-10)

iii. Two (2) credits of mathematics of the student's choice. (3-29-10)

iv. Two (2) credits of the required six (6) credits of mathematics must be taken in the last year of high school. (3-29-10)

e. Science. Four (4) credits are required, two (2) of which will be laboratory based. Secondary sciences include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. (3-29-10)

i. Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later, six (6) credits will be required. (3-29-10)

ii. Secondary sciences include instruction in the following areas: biology, physical science or chemistry, and earth, space, environment, or approved applied science. Four (4) credits of these courses must be laboratory based. (3-29-10)

f. Social Studies. Five (5) credits are required, including government (two (2) credits), United States history (two (2) credits), and economics (one (1) credit). Courses such as geography, sociology, psychology, and world history may be offered as electives, but are not to be counted as a social studies requirement. (3-29-10)

g. Humanities. Two (2) credits are required. Humanities courses include instruction in visual arts, music, theatre, dance, or world language aligned to the Idaho content standards for those subjects. Other courses such as literature, history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if the course is aligned to the Idaho Interdisciplinary Humanities Content Standards. (3-29-10)

h. Health/Wellness. One (1) credit is required. Course must be aligned to the Idaho Health Content Standards. (3-29-10)

02. Content Standards. Each student shall meet locally established subject area standards (using state content standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (3-29-10)

03. College Entrance Examination. (Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later.) A student must take one (1) of the following college entrance examinations before the end of the student's eleventh grade year: COMPASS, ACT or SAT. Scores must be included in the Learning Plan. (5-8-09)

04. Senior Project. (Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later.) A student must complete a senior project by the end of grade twelve (12). The project must include a written report and an oral presentation. Additional requirements for a senior project are at the discretion of the local school district or LEA. (3-29-10)

05. Middle School. If a student completes any required high school course with a grade of C or higher before entering grade nine (9), and if that course meets the same standards that are required in high school, then the student has met the high school content area requirement for such course. However, the student must complete the required number of credits in all high school core subjects as identified in Subsections 105.01.b. through 105.01.g. in addition to the courses completed in middle school. (3-29-10)

06. Proficiency. Each student must achieve a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test (ISAT) in math, reading and language usage in order to graduate. ~~For all public school students who enter high school at the 9th grade level in the Fall 2009 or later, each student must also achieve a proficient or advanced score on the science portion of the ISAT in order to graduate.~~ A student who does not attain at least a proficient score prior to graduation may appeal to the school district or LEA, and will be given an opportunity to demonstrate proficiency of the content standards through some other locally established mechanism plan. School districts or LEAs shall adopt an alternate plan and provide notice of that plan to all students who have not achieved a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test by the fall semester of the student's junior year. All locally established mechanisms alternate plans used to demonstrate proficiency ~~will~~ shall be forwarded to the State Board of Education for review and information. ~~Districts with alternate measures on file with the Board on the effective date of this rule must re-submit their plans to the Board.~~ Alternate mechanisms plans must be promptly re-submitted to the Board when ever changes are made in ~~their~~ such plans. (5-8-09)()

a. Before entering an alternate measure, the student must be: (4-2-08)

i. Enrolled in a special education program and have an Individual Education Plan (IEP); or (3-20-04)

ii. Enrolled in an Limited English Proficient (LEP) program for three (3) academic years or less; or (3-20-04)

iii. Enrolled in the fall semester of the senior year. (3-20-04)

- b. The ~~measure~~ alternate plan must ~~be~~: (5-8-09)()
- i. Contain multiple measures of student achievement: ()
- ii. Be Aligned at a minimum to tenth grade state content standards; (3-20-04)()
- iii. Be Aligned to the state content standards for the subject matter in question; (5-8-09)()
- ~~ii~~iv. Be Valid and reliable; and (5-8-09)()
- ~~iv~~. Ninety percent (90%) of the alternate plan criteria ~~of the measure, or combination of measures,~~ must be based on academic proficiency and performance. (3-20-04)()
- c. A student is not required to achieve a proficient or advanced score on the ISAT if: (5-8-09)
- i. The student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state's exit exam must approved by the State Board of Education and must measure skills at the tenth grade level and be in comparable subject areas to the ISAT; (5-8-09)
- ii. The student completes another measure established by a school district or LEA and received by the Board as outlined in Subsection 105.06; or (3-29-10)
- iii. The student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test; (5-8-09)
- iv. The student is considered an LEP student through a score determined on a language proficiency test and has been in an LEP program for three (3) academic years or less; (5-8-09)
- 07. Special Education Students.** A student who is eligible for special education services under the Individuals With Disabilities Education Improvement Act must, with the assistance of the student's Individualized Education Program (IEP) team, refer to the current Idaho Special Education Manual for guidance in addressing graduation requirements. (4-11-06)
- 08. Foreign Exchange Students.** Foreign exchange students may be eligible for graduation by completing a comparable program as approved by the school district or LEA. (4-11-06)

IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1003

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 33-1612, Idaho Code.

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

MATH AND ENGLISH LANGUAGE ARTS COMMON CORE HEARINGS	
Tuesday, October 5, 2010 6:00 p.m. Canyon Ridge High School, Room 301 201 Main Avenue West Twin Falls, ID 83301	Wednesday, October 6, 2010 6:00 p.m. Hillcrest High School, Library 2800 Owen Street Ammon, ID 83406
Thursday, October 7, 2010 6:00 p.m. ISU-SUB Heritage Room 921 S. 8th Avenue Pocatello, ID 83201	Tuesday, October 12, 2010 6:00 p.m. North Idaho College Student Union 501 E. Lakeside Avenue Coeur d'Alene, ID 83814
Tuesday, October 12, 2010 3:00 - 5:00 p.m. Len B. Jordan Building Second Floor Lewis & Clark Conference Room 650 W. State Street, Boise, ID	Wednesday, October 13, 2010 6:00 p.m. Lewis-Clark State College Sacajawea 112 500 8th Avenue, Lewiston, ID 83501
Tuesday, October 29, 2010 6:00 p.m. Mountain View High School, Lecture Hall 2000 S. Millennium Way, Meridian, ID 83642	
For additional details please call 332-6812; or visit the State Department of Education website at http://www.sde.idaho.gov/	

Individuals unable to be present in person will have the opportunity to make comments by calling into the public hearing (dial-in number: 1-888-767-9895; access code: 7349974) or via the State Department of Education website at <http://www.sde.idaho.gov/>.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing, to the agency address below.

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

Section 004-01 - The Common Core Standards have been developed as a joint effort between the Council of Chief State School Officers (CCSSO) and the National Governors Association (NGA). The goal of the work was to ensure that students graduating from high school are college and career ready. The development team vowed to make the standards clearer, higher, and fewer. This rule results in the adoption of the Idaho Content Standards for English Language Arts in grades K-12 for the 2013-2014 academic year to implement the Common Core standards.

Section 004-02 - The Idaho Student Information Technology Standards (ISITS) were originally created in 2001, and revised in 2003. Due to the seven year gap in revisions, significant changes occurred between the original and revised standards, including changing the name to Information and Communication Technology (ICT) Standards. A copy of the original ISITS is included.

The ISITS were not part of the Idaho Achievement or Idaho Content Standards; however, this rule would incorporate them into the Idaho Content Standards, complying with the “Enhancing Education Through Technology Act of 2001.” The revision committee chose to base the revisions upon the International Society for Technology in Education (ISTE) National Educational Technology Standards (NETS•S), which can be found online at:

http://www.iste.org/Content/NavigationMenu/NETS/ForStudents/2007Standards/NETS_for_Students_2007_Standards.pdf. Title has been updated to reflect today’s world. Revision includes grades 9-12.

Section 004-03 - The Common Core Standards have been developed as a joint effort between the Council of Chief State School Officers (CCSSO) and the National Governors Association (NGA). The goal of the work was to ensure that students graduating from high school are college and career ready. The development team vowed to make the standards clearer, higher, and fewer. This rule adopts the Idaho Content Standards for Math in grades K-12 for the 2013-2014 academic year to implement the Common Core standards.

Section 160-161 - The use of restraint and seclusion in schools has become a topic of national focus. In July 2009, as a result of testimony given to the US House of Representatives on the use of restraint and seclusion in schools and the significant consequences that occur from misuse and misapplication of these techniques, Secretary of Education Arne Duncan issued a letter to the Chief State School Officers encouraging every state to develop, review or revise state policies and guidelines regarding restraint and seclusion. At the state level, in May of 2009, Idaho’s Special Education Advisory Panel (SEAP) also sent a letter to Superintendent Luna recommending that a task force be formed to create policies, rules and/or laws to address the use of restraints, seclusion and other aversive techniques in Idaho public schools. Idaho currently does not have any laws, rules or policies governing the use of restraints, seclusion and aversive techniques in Idaho public schools. Data on the use of these techniques are not collected at the state level in Idaho. The proposed rules resulted from the Safe and Supportive Schools Task Force’s discussions, review and identified needs to address the use of restraints, seclusion and other aversive techniques.

In the proposed rule Section 160 Safe Environment and Discipline is being amended to require each school district to have a comprehensive district wide policy and procedure encompassing the use of restraint, seclusion and other aversive techniques. Districts are required to annually review policies listed under this section. Section 161 Use of Restraint, Seclusion and Other Aversive Techniques is a new section of rule. This section prohibits the use of restraint and seclusion except in an emergency and only to the extent necessary to preserve the safety of students and others. An emergency is defined in the rules as a situation in which a student’s behavior poses a believable and real threat of imminent, serious physical harm to the student or others. Subsections of the rule address definitions, components in the district wide policy required under section 160, procedures to be addressed in the district wide procedures, training for personnel and documentation of incidents.

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

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

Common Core standards in math and English language arts will require professional development and supplemental materials. All other rules have a fiscal impact of less than \$10,000.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this proposed rule is the result of meeting between teachers, administrators and experts.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

IDAPA 08.02.03.004.01 incorporates all Content Standards into one rule chapter. Copies of the Content Standards can be found at <http://www.boardofed.idaho.gov>.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Niccole Bendixen at 332-6812.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 08-0203-1003

004. INCORPORATION BY REFERENCE.

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

01. The Idaho Content Standards. The Idaho Content Standards as adopted by the State Board of Education. Individual subject content standards are adopted in various years in relation to the curricular materials adoption schedule. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (3-29-10)

- a. Driver Education, as revised and adopted on August 21, 2008. (3-29-10)
- b. Health, as revised and adopted on April 17, 2009. (3-29-10)
- c. Humanities Categories: (3-29-10)
 - i. Art, as revised and adopted on April 17, 2009; (3-29-10)
 - ii. Dance, as revised and adopted on April 17, 2009; (3-29-10)
 - iii. Drama, as revised and adopted on April 17, 2009; (3-29-10)
 - iv. Interdisciplinary, as revised and adopted on April 17, 2009; (3-29-10)
 - v. Music, as revised and adopted on April 17, 2009; (3-29-10)
 - vi. World languages, as revised and adopted on April 17, 2009. (3-29-10)
- d. English Language Arts, ~~Part I: reading~~, as revised and adopted on August ~~21, 2008~~ 11, 2010. (3-29-10)()
- ~~e. Language Arts, Part II: language arts, as revised and adopted on August 21, 2008. (3-29-10)~~
- ~~fe.~~ Limited English Proficiency, as revised and adopted on August 21, 2008. (3-29-10)
- ~~gf.~~ Mathematics, as revised and adopted on August ~~21, 2008~~ 11, 2010. (3-29-10)()

- hg.** Physical Education, as revised and adopted on April 17, 2009. (3-29-10)
- ih.** Science, as revised and adopted on April 17, 2009. (3-29-10)
- ji.** Social Studies, as revised and adopted on April 17, 2009. (3-29-10)
- i.** Information and Communication Technology, as revised and adopted on April 22, 2010. ()
- 02. The Idaho English Language Development Standards.** The Idaho English Language Development Standards as adopted by the State Board of Education on August 10, 2006. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)
- 03. The Limited English Proficiency Program Annual Measurable Achievement Objectives (AMAOs) and Accountability Procedures.** The Limited English Proficiency Program Annual Measurable Achievement Objectives and Accountability Procedures as adopted by the State Board of Education on ~~August 10, 2006~~ November 11, 2009. Copies of the document can be found on the State ~~Board~~ Department of Education website at <http://www.boardofed.idaho.gov> <http://www.sde.idaho.gov/site/assessment/IELA/relatedDocs.htm>. (~~4-2-08~~)()
- 04. The Idaho English Language Assessment (IELA) Achievement Standards.** The Idaho English Language Assessment (IELA) Achievement Standards as adopted by the State Board of Education on ~~August 10, 2006~~ November 11, 2009. Copies of the document can be found on the State ~~Board~~ Department of Education website at <http://www.boardofed.idaho.gov> <http://www.sde.idaho.gov/site/assessment/IELA/relatedDocs.htm>. (~~4-2-08~~)()
- 05. The Idaho Standards Achievement Tests (ISAT) Achievement Standards.** Achievement Standards as adopted by the State Board of Education on May 30, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)
- 06. The Idaho Extended Content Standards.** The Idaho Extended Content Standards as adopted by the State Board of Education on April 17, 2008. Copies of the document can be found at the State Board of Education website at <http://www.boardofed.idaho.gov>. (5-8-09)
- 07. The Idaho Alternative Assessment Extended Achievement Standards.** Alternative Assessment Extended Achievement Standards as adopted by the State Board of Education on February 28, 2008. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (5-8-09)
- 08. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Deaf or Hard of Hearing.** As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)
- 09. The Idaho Standards for Infants, Toddlers, Children, and Youth Who Are Blind or Visually Impaired.** As adopted by the State Board of Education on October 11, 2007. Copies of the document can be found on the State Board of Education website at <http://www.boardofed.idaho.gov>. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

160. SAFE ENVIRONMENT AND DISCIPLINE.

Each school district will have a comprehensive districtwide policy and procedure encompassing the following:

School Climate
Discipline
Student Health

Violence Prevention
Gun-free Schools
Substance Abuse - Tobacco, Alcohol, and Other Drugs
Suicide Prevention
Student Harassment
Drug-free School Zones
Building Safety including Evacuation Drills
<u>Use of Restraints, Seclusion and other Aversive Techniques</u>

Districts will conduct an annual review of these policies and procedures. (See Section 33-1612) ~~(4-1-97)~~()

161. USE OF RESTRAINT, SECLUSION AND OTHER AVERSIVE TECHNIQUES.

Restraint and seclusion are prohibited except in an emergency as defined in Section 161 and only to the extent necessary to preserve the safety of students and others. The use of other aversive techniques is prohibited. This section does not apply to the duties and responsibilities of law enforcement personnel. Nothing in this section shall be construed as limiting a person's right of self-defense under Idaho law or as limiting any immunity from civil or criminal liability granted under Idaho law to a person who has lawfully exercised force in the defense of self or another. ()

01. Definitions. The following definitions apply only to Section 161 of these rules. ()

a. Aversive technique. Physical, emotional or mental distress as a method of redirecting or controlling behavior. Education agencies are prohibited from using aversive techniques. ()

b. Crisis intervention. Implementation of a predetermined strategy to mitigate immediate harm to student, staff or property. ()

c. Education agency. Each school district, public agency, and governmental entity that is responsible for delivering public education, with the exception of the Department of Juvenile Corrections and Department of Corrections. ()

d. Emergency. A situation in which a student's conduct creates a reasonable belief in another person that the student's conduct has placed the student or a third person in imminent danger of serious bodily harm. ()

e. Positive behavioral interventions and supports. Application of a broad range of systematic and individualized strategies for achieving important social and learning outcomes, while preventing problem behaviors by making them irrelevant, inefficient, and ineffective. ()

f. Restraint. A chemical, manual method, physical or mechanical device, material, or equipment for the purpose of immobilizing or reducing an individual's freedom of movement for the purpose of preventing harm to students and others. The term does not include seatbelts and other safety equipment when used to secure students during transportation. ()

g. Seclusion. Involuntary confinement in a room or other space during which a student is prevented from leaving, or reasonably believes that he will be prevented from leaving, by means that include, but are not limited to, the following: ()

i. Manually, mechanically, or electrically locked doors that when closed cannot be opened from the inside; ()

ii. Blocking or other physical interference by staff; ()

iii. Coercive measures, such as the threat of restraint, sanctions, or the loss of privileges that the

student would otherwise have, used for the purpose of keeping the student from leaving the area of seclusion. ()

02. District Wide Policy. In accordance with Section 160 of these rules each education agency, must have a comprehensive district wide policy and procedure addressing the use of restraint and seclusion. Each education agency must provide training to staff members covering these policies and procedures. Any education agency's policy that permits the use of seclusion or restraint will include: ()

a. Circumstances under which seclusion or restraint will be applied; ()

b. Written procedures to be followed by staff in cases of seclusion or restraint; ()

c. Designation of school officials who will be informed of incidents when seclusion and physical restraint is used; ()

d. Process for notifying parents within twenty-four (24) hours of incident that includes contact information for education agency staff member to be contacted for further information; ()

e. Training of personnel in crisis intervention; ()

f. Preventative, alternative interventions to seclusion, restraint and other aversive techniques; ()

g. Reporting of incidents as required by state and federal regulations; ()

h. Observing and monitoring the use of seclusion and restraint; ()

i. Locations used for seclusion are safe and clean. ()

03. Procedures. Any education agency's policy and procedures that permits the use of seclusion or restraint will include at a minimum procedures for the following: ()

a. Observing and monitoring the use of seclusion and restraint includes continuous, direct visual contact with the student; ()

b. Documentation when seclusion and restraint are contraindicated due to the student's psychiatric, medical, or physical conditions; ()

c. Immediately terminate seclusion and restraint when the student is no longer an immediate danger to himself or others or if the student is observed to be in severe distress; ()

d. Establish time limits; ()

e. Following an incident involving seclusion, restraint or both; ()

i. Notification of appropriate school officials; ()

ii. Notification of parents within twenty-four hours of incident that includes contact information for education agency staff member to be contacted for further information; ()

iii. Required documentation in accordance with Subsection 161.05 of these rules; ()

04. Training. Seclusion and restraint techniques may only be employed by a person who has been trained in crisis intervention. Training in crisis intervention must include but is not limited to: ()

a. Evidence-based techniques shown to be effective in the prevention of physical restraint and seclusion; ()

b. Evidence-based techniques shown to be effective in keeping both school personnel and students

safe when imposing physical restraint or seclusion: ()

c. Evidence-based skills training related to positive behavioral interventions and supports, safe physical escort, conflict prevention, understanding antecedents, de-escalation, and conflict management: ()

d. First aid and cardiopulmonary resuscitation. ()

05. Documentation. In accordance with section 160 of these rules each education agency's annual review of the district wide policy and procedures addressing the use of restraint, seclusion and other aversive techniques must include a review of the documentation and reporting of incidents involving seclusion and restraint. ()

~~167~~2. -- 169. (RESERVED).

IDAPA 08 - STATE BOARD AND DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1004

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 33-1201 and 33-1258, Idaho Code.

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

**Tuesday, October 12, 2010
3:00 - 5:00 p.m. MDT**

**Len B. Jordan Building
Second Floor
Lewis & Clark Conference Room
650 W. State Street, Boise, Idaho**

Individuals unable to be present in person will have the opportunity to make comments by calling into the public hearing (dial-in number: 1-888-767-9895; access code: 7349974) or via the State Department of Education website at <http://www.sde.idaho.gov/>.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing, 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:

105.06 – Graduation Requirements. Changes to this subsection removes passing of the 10th grade Science Idaho Standards Achievement Test (ISAT) from the state's graduation requirements. The science ISAT functions in a much different fashion than the reading, language usage or mathematics sections of the ISAT. The ISAT series includes integrated content, which in reading and mathematics works well because the concepts build on each other and are less course specific. However, in science, particularly at the high school level, courses do not directly build on one another. Thus the current cumulative approach presents a disadvantage to 10th grade students who, for example, may have taken biology two years previously or may not have had biology yet due to a different scope and sequence within a district. Compounding this problem are gaps in assessment which necessarily occur because science is only assessed at grades 5, 7, and 10. These may be factors in the lower pass rates in science compared to other content areas as reflected in the chart below. The full implementation of the Science ISAT requirement continues to present significant remediation issues as the chart indicates. Adding another assessment requirement with the lowest pass rate could present a significant hurdle to a number of Idaho's high school students. A more effective approach to ensure students have a specific, discrete set of knowledge might be a series of end-of-course assessments. In this way students could access assessments that are synchronized with the particular scope and sequence employed at their respective districts, enhancing their opportunity to demonstrate what they know and can do.

109 - The change to this subsection more closely aligns Idaho rules to federal regulations, and would allow more time for initial evaluation and determination of need for special education and related services, as well as to develop and implement an individualized education program (IEP) for a student. This proposed and temporary rule change is effective August 1 in order to ensure one consistent timeline for all students starting this school year.

Currently Idaho allows less time than is allowed under federal law to conduct the evaluation and eligibility process. Idaho allows 60 calendar days for student evaluation, determination of eligibility for special education, development of an IEP and implementation of that IEP. Federal regulation allows 60 calendar days for student

evaluation and determination of eligibility for special education and subsequent to determination of eligibility, 30 days to develop an IEP which is to be implemented as soon as possible after development. The change would allow Idaho schools up to 60 calendar days for student evaluation and determination of eligibility for special education and 30 days for development of an IEP and implementation of that IEP. School districts have requested this change to ensure thorough and proper evaluation, eligibility determination and IEP development. The evaluation process includes a variety of assessment tools and strategies to gather relevant functional, developmental, and academic information about the student, including information provided by the parent. Both eligibility determination and IEP development must be conducted with a team. Flexibility provided in this rule change would help ensure that all relevant and necessary team members can be included in these essential processes, and that multiple meetings or additional assessment could be scheduled if necessary or beneficial to determine eligibility or develop an IEP.

111 – Changes to this subsection require district to send assessment results and related communication to parents within three (3) weeks of receiving the results from the state. The three-week timeline for districts to send assessment results and communication to parents will ensure that parents receive the information they need in a timely manner, as required by the US Department of Education.

117 – Master Advancement Pilot Program. This new section of Idaho Administrative Rule is a direct result of House Bill 493 passed by the 2010 Idaho Legislature. House Bill 493 details a six-year pilot program for the Mastery Advancement Program. The program as outlined in section 33-1620 – 1624, Idaho code establishes the pilot project permitting certain student in certain public schools to proceed through school curriculum at their own pace, defines program participants, assessments and directs the State Department of Education to promulgate rules to further explicate the process for implementation of the pilot program.

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 removal of the science ISAT is a new rule that will remove the Science ISAT as a graduation requirement. This will need to go into effect immediately, as the 10th graders this year (2010-2011) taking the ISAT would be the class of 2013 that would need the waiver.

The assessment timeline is a new rule that will ensure that assessment related correspondence is sent out from districts within 3 weeks. A recent federal review indicated that the Idaho State Department of Education must ensure that districts send notifications to parents in a timely manner.

MAAP is part of House Bill No. 493 detailing a six-year pilot program. Statute was passed as part of the 2010 legislative session and rules were required immediately as part of the program.

The Special Education IEP rule changes more closely aligns Idaho rules to federal regulations, and would allow more time for initial evaluation and determination of need for special education and related services as well as to develop and implement an individualized education program (IEP) for a student. This temporary and proposed rule change is effective August 1 in order to ensure one consistent timeline for all students starting this school year.

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

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

For the MAPP rule, there are a number of potential fiscal impacts. First, there is the potential for an increased number of students to graduate early from Idaho high schools. Second, there will be financial rules necessary for these early graduates and the respective schools and districts. The early graduates would be eligible for a scholarship which is 35% of the statewide Average Daily Attendance. The school would also then get 35% of that amount for the student and 30% would be kept in the general fund. The third impact will be the need for participating districts to develop and administer the assessments necessary to determine if students can pass out of a class. Districts and charter schools may require students to pay for the mastery exam. The CLEP exam, as noted as an acceptable exam, has a current cost of \$77 per exam. Districts and charter schools may also incur a cost if the development and administration of the mastery exams are created and administered within the district.

For the removal of passage of the science ISAT for graduation: Annual costs for fall and spring retesting of 11th and 12th graders just for science will cost at a minimum \$159,000 in fiscal year 2011, and to match the ISAT matrix and allow for a spring science test in grade 9, an additional \$60,000 is needed. These annual estimated costs of \$220,000 would be required additional costs to the ISAT contract for as long as the current Idaho Code governing state graduation requirements remains in place. There is also an undetermined cost for remediation at the district level.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule alteration brings us into line with federal program requirements.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rules, contact Niccole Bendixen at 208-332-6812.

Anyone may submit written comments regarding these proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

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

**THE FOLLOWING IS THE TEMPORARY RULE AND PROPOSED TEXT
FOR DOCKET NO. 08-0203-1004**

007. DEFINITIONS A - G.

01. Achievement Standards. Define “below basic,” “basic,” “proficient,” and “advanced” achievement levels on the Idaho Standards Achievement Tests (ISAT) and “beginning,” “advanced beginning,” “intermediate,” “early fluent” and “fluent” on the Idaho English Language Assessment (IELA) by setting scale score cut points. These cut scores are paired with descriptions of how well students are mastering the material in the content standards. These descriptions are called performance level descriptors or PLDs, and are provided by performance level, by content area, and by grade. (4-2-08)

02. Advanced Opportunities. Are defined as Advanced Placement courses, Dual Credit courses, Tech Prep, or International Baccalaureate programs. (4-11-06)

03. Advanced Placement® (AP) - <http://www.collegeboard.com>. The Advanced Placement Program is administered by the College Board. AP students may take one (1) or more college level courses in a variety of subjects. AP courses are not tied to a specific college curriculum, but rather follow national College Board curricula.

While taking the AP exam is optional, students can earn college credit by scoring well on the national exams. It is up to the discretion of the receiving college to accept the scores from the AP exams to award college credit or advanced standing. (4-11-06)

- 04. All Students.** All students means all public school students, grades K-12. (4-11-06)
- 05. Alternative Assessment (Other Ways of Testing).** Any type of assessment in which students create a response to a question rather than choose a response from a given list, as with multiple-choice or true/false. Alternative assessments can include short-answer questions, essays, oral presentations, exhibitions, and portfolios. (4-5-00)
- 06. Assessment.** The process of quantifying, describing, or gathering information about skills, knowledge or performance. (4-5-00)
- 07. Assessment Standards.** Statements setting forth guidelines for evaluating student work, as in the “Standards for the Assessment of Reading and Writing”; (4-5-00)
- 08. Authentic.** Something that is meaningful because it reflects or engages the real world. An “authentic task” asks students to do something they might really have to do in the course of their lives, or to apply certain knowledge or skills to situations they might really encounter. (4-5-00)
- 09. Basic Educational Skills Training.** Instruction in basic skills toward the completion/attainment of a certificate of mastery, high school diploma, or GED. (4-5-00)
- 10. Challenge Exam.** A test that is rigorous and covers the full depth and breadth of knowledge of a specific course. A challenge exam is more difficult than an End of Course exam which typically is counted only for a portion of a student’s final grade and covers only a sampling of the course content. (8-11-10)T
- 101. Classic Texts.** Literary or other works (e.g., films, speeches) that have been canonized, either continuously or intermittently, over a period of time beyond that of their initial publication and reception. (4-5-00)
- 102. Content Standards.** Describe the knowledge, concepts, and skills that students are expected to acquire at each grade level in each content area. (4-2-08)
- 123. Context (of a Performance Assessment).** The surrounding circumstances within which the performance is embedded. For example, problem solving can be assessed in the context of a specific subject (such as mathematics) or in the context of a real-life laboratory problem requiring the use of mathematics, scientific, and communication skills. (4-5-00)
- 134. Cooperative Work Experience.** Classroom learning is integrated with a productive, structured work experience directly related to the goals and objectives of the educational program. Schools and participating businesses cooperatively develop training and evaluation plans to guide and measure the progress of the student. School credit is earned for successful completion, and the work may be paid or unpaid. Cooperative work experiences are also known as co-operative education or co-op. (4-5-00)
- 145. Criteria.** Guidelines, rules or principles by which student responses, products, or performances, are judged. What is valued and expected in the student performance, when written down and used in assessment, become rubrics or scoring guides. (4-5-00)
- 156. Cues.** Various sources of information used by readers to construct meaning. The language cueing systems include the graphophonic (also referred to as graphophonemic) system, which is the relationship between oral and written language (phonics); the syntactic system, which is the relationship among linguistic units such as prefixes, suffixes, words, phrases, and clauses (grammar); and semantic system, which is the study of meaning in language. Reading strategies and language cueing systems are also influenced by pragmatics-the knowledge readers have about the ways in which language is understood by others in their culture. (4-5-00)
- 167. “C” Average.** A combined average of courses taken on a four (4) point scale with “C” equal to two

(2) points. (4-11-06)

17.8. Decode. (4-5-00)

a. To analyze spoken or graphic symbols of a familiar language to ascertain their intended meaning. (4-5-00)

b. To change communication signals into messages, as to decode body language. (4-5-00)

18.9. Dual Credit. Dual credit allows high school students to simultaneously earn credit toward a high school diploma and a postsecondary degree or certificate. Postsecondary institutions work closely with high schools to deliver college courses that are identical to those offered on the college campus. Credits earned in a dual credit class become part of the student's permanent college record. Students may enroll in dual credit programs taught at the high school or on the college campus. (4-11-06)

20. Elementary. School grades K-6. (8-11-10)T

19.21. Emergent Literacy. Development of the association of print with meaning that begins early in a child's life and continues until the child reaches the stage of conventional reading and writing. (4-5-00)

20.2. Employability Skills. Work habits and social skills desirable to employers, such as responsibility, communication, cooperation, timeliness, organization, and flexibility. (4-5-00)

21.3. Entry-Level Skills. The minimum education and skill qualifications necessary for obtaining and keeping a specific job; the starting point in a particular occupation or with a certain employer. (4-5-00)

22.4. Evaluation (Student). Judgment regarding the quality, value, or worth of a response, product, or performance based on established criteria, derived from multiple sources of information. Student evaluation and student assessment are often used interchangeably. (4-5-00)

23.5. Experiential Education (Application). Experiential education is a process through which a learner constructs knowledge, skill, and value from direct experiences. (4-5-00)

24.6. Exploratory Experience (Similar to a Job Shadow). An opportunity for a student to observe and participate in a variety of worksite activities to assist in defining career goals. An in-school exploratory experience is a school-based activity that simulates the workplace. (4-5-00)

25.7. Fluency. The clear, rapid, and easy expression of ideas in writing or speaking; movements that flow smoothly, easily, and readily. (4-5-00)

26.8. Genre (Types of Literature). A category used to classify literary and other works, usually by form, technique, or content. Categories of fiction such as mystery, science fiction, romance, or adventure are considered genres. (4-5-00)

27.9. Graphophonic/Graphophonemic. One (1) of three (3) cueing systems readers use to construct texts; the relationships between oral and written language (phonics). (4-5-00)

008. DEFINITIONS H - S.

01. Interdisciplinary or Integrated Assessment. Assessment based on tasks that measures a student's ability to apply concepts, principles, and processes from two (2) or more subject disciplines to a project, issue, or problem. (4-5-00)

02. International Baccalaureate (IB) - <http://www.ibo.org/ibo/index.cfm>. Administered by the International Baccalaureate Organization, the IB program provides a comprehensive liberal arts course of study for students in their junior and senior years of high school. IB students take end-of-course exams that may qualify for college credit. Successful completion of the full course of study leads to an IB diploma. (4-11-06)

03. Laboratory. A laboratory science course is defined as one in which at least one (1) class period each week is devoted to providing students with the opportunity to manipulate equipment, materials, specimens or develop skills in observation and analysis and discover, demonstrate, illustrate or test scientific principles or concepts. (4-11-06)

04. Learning Plan. The plan that outlines a student's program of study, which should include a rigorous academic core and a related sequence of electives in academic, professional-technical education (PTE), or humanities aligned with the student's post graduation goals. (4-11-06)

05. Local Education Agency (LEA). A school district or a charter school that operates independently of any district and reports to the Idaho Public Charter School Commission (8-11-10)T

056. Narrative. Text in any form (print, oral, or visual) that recounts events or tells a story. (4-5-00)

067. Norm-Referenced Assessment. Comparing a student's performance or test result to performance of other similar groups of students; (e.g., he typed better than eighty percent (80%) of his classmates.) (4-5-00)

078. On-Demand Assessment. Assessment that takes place at a predetermined time and place. Quizzes, state tests, SATs, and most final exams are examples of on-demand assessment. (4-5-00)

089. Performance Assessment. Direct observation of student performance or student work and professional judgment of the quality of that performance. Good quality performance assessment has pre-established performance criteria. (4-5-00)

0910. Performance-Based Assessment. The measurement of educational achievement by tasks that are similar or identical to those that are required in the instructional environment, as in performance assessment tasks, exhibitions, or projects, or in work that is assembled over time into portfolio collections. (4-5-00)

101. Performance Criteria. A description of the characteristics that will be judged for a task. Performance criteria may be holistic, analytic trait, general or specific. Performance criteria are expressed as a rubric or scoring guide. Anchor points or benchmark performances may be used to identify each level of competency in the rubric or scoring guide. (4-5-00)

112. Phonics. Generally used to refer to the system of sound-letter relationships used in reading and writing. Phonics begins with the understanding that each letter (or grapheme) of the English alphabet stands for one (1) or more sounds (or phonemes). (4-5-00)

123. Portfolio. A collection of materials that documents and demonstrates a student's academic and work-based learning. Although there is no standard format for a portfolio, it typically includes many forms of information that exhibit the student's knowledge, skills, and interests. By building a portfolio, students can recognize their own growth and learn to take increased responsibility for their education. Teachers, mentors, and employers can use portfolios for assessment purposes and to record educational outcomes. (4-5-00)

134. Print Awareness. In emergent literacy, a learner's growing awareness of print as a system of meaning, distinct from speech and visual modes of representation. (4-5-00)

145. Professional-Technical Education. Formal preparation for semi-skilled, skilled, technical, or paraprofessional occupations, usually below the baccalaureate level. (4-11-06)

156. Proficiency. Having or demonstrating a high degree of knowledge or skill in a particular area. (4-5-00)

167. School-to-Work Transition. A restructuring effort that provides multiple learning options and seamless integrated pathways to increase all students' opportunities to pursue their career and educational interests. (4-5-00)

18. Secondary. School grades 7-12.

(8-11-10)T

179. Service Learning. Combining service with learning activities to allow students to participate in experiences in the community that meet actual human needs. Service learning activities are integrated into the academic curriculum and provide structured time for a student to think, talk, or write about what was done or seen during the actual service activity. Service learning provides students with opportunities to use newly acquired skills and knowledge in real-life situations in their communities, and helps foster the development of a sense of caring for others. (4-5-00)

1820. Skill Certificate. Portable, industry-recognized credential that certifies the holder has demonstrated competency on a core set of performance standards related to an occupational cluster area. Serving as a signal of skill mastery at benchmark levels, skill certificates may assist students in finding work within their community, state, or elsewhere. A National Skills Standards Board is presently charged with issuing skill voluntary standards in selected occupations based on the result of research and development work completed by twenty-two (2) contractors. (4-5-00)

1921. Standards. Statements about what is valued in a given field, such as English language arts, and/or descriptions of what is considered quality work. See content standards, assessment standards, and achievement standards. (4-2-08)

202. Standardization. A set of consistent procedures for constructing, administering and scoring an assessment. The goal of standardization is to ensure that all students are assessed under uniform conditions so the interpretation of performance is comparable and not influenced by differing conditions. Standardization is an important consideration if comparisons are to be made between scores of different individuals or groups. (4-5-00)

243. Standards-Based Education. Schooling based on defined knowledge and skills that students must attain in different subjects, coupled with an assessment system that measures their progress. (4-5-00)

224. Structured Work Experience. A competency-based educational experience that occurs at the worksite but is tied to the classroom by curriculum through the integration of school-based instruction with worksite experiences. Structured work experience involves written training agreements between school and the worksite, and individual learning plans that link the student's worksite learning with classroom course work. Student progress is supervised and evaluated collaboratively by school and worksite personnel. Structured work experience may be paid or unpaid; may occur in a public, private, or non-profit organization; and may or may not result in academic credit and/or outcome verification. It involves no obligation on the part of the worksite employer to offer regular employment to the student subsequent to the experience. (4-5-00)

235. Student Learning Goals (Outcomes). Statements describing the general areas in which students will learn and achieve. Student learning goals typically reflect what students are expected to know by the time they leave high school, such as to read and communicate effectively; think critically and solve problems; develop positive self-concept, respect for others and healthy patterns of behavior; work effectively in groups as well as individually; show appreciation for the arts and creativity; demonstrate civic, global and environmental responsibility; recognize and celebrate multicultural diversity; exhibit technological literacy; have a well developed knowledge base which enhances understanding and decision making, and demonstrate positive problem solving and thinking skills. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

105. HIGH SCHOOL GRADUATION REQUIREMENTS.

A student must meet all of the requirements identified in this section before the student will be eligible to graduate from an Idaho high school. The local school district or LEA may establish graduation requirements beyond the state minimum. (5-8-09)

01. Credit Requirements. The State minimum graduation requirement for all Idaho public high schools is forty-two (42) credits. The forty-two (42) credits must include twenty-five (25) credits in core subjects as

identified in Paragraphs 105.01.c. through 105.01.h. All credit-bearing classes must be aligned with state high school standards in the content areas for which standards exist. For all public school students who enter high school at the 9th grade level in Fall 2009 or later, the minimum graduation requirement will be forty-six (46) credits and must include twenty-nine (29) credits in core subjects as identified in Paragraphs 105.01.b. through 105.01.g. (3-29-10)

a. Credits. (Effective for all students who enter the ninth grade in the fall of 2010 or later.) One (1) credit shall equal sixty (60) hours of total instruction. School districts or LEA's may request a waiver from this provision by submitting a letter to the State Department of Education for approval, signed by the superintendent and chair of the board of trustees of the district or LEA. The waiver request shall provide information and documentation that substantiates the school district or LEA's reason for not requiring sixty (60) hours of total instruction per credit. (3-29-10)

b. Mastery. Students may also achieve credits by demonstrating mastery of a subject's content standards as defined and approved by the local school district or LEA. (3-29-10)

c. Secondary Language Arts and Communication. Nine (9) credits are required. Eight (8) credits of instruction in Language Arts. Each year of Language Arts shall consist of language study, composition, and literature and be aligned to the Idaho Content Standards for the appropriate grade level. One (1) credit of instruction in communications consisting of oral communication and technological applications that includes a course in speech, a course in debate, or a sequence of instructional activities that meet the Idaho Speech Content Standards requirements. (3-29-10)

d. Mathematics. Four (4) credits are required. Secondary mathematics includes Applied Mathematics, Business Mathematics, Algebra, Geometry, Trigonometry, Fundamentals of Calculus, Probability and Statistics, Discrete Mathematics, and courses in mathematical problem solving and reasoning. For all public school students who enter high school at the 9th grade level in Fall 2009 or later, six (6) semester credits are required. For such students, secondary mathematics includes instruction in the following areas: (3-29-10)

i. Two (2) credits of Algebra I or courses that meet the Idaho Algebra I Content Standards as approved by the State Department of Education; (3-29-10)

ii. Two (2) credits of Geometry or courses that meet the Idaho Geometry Content Standards as approved by the State Department of Education; and (3-29-10)

iii. Two (2) credits of mathematics of the student's choice. (3-29-10)

iv. Two (2) credits of the required six (6) credits of mathematics must be taken in the last year of high school. (3-29-10)

e. Science. Four (4) credits are required, two (2) of which will be laboratory based. Secondary sciences include instruction in applied sciences, earth and space sciences, physical sciences, and life sciences. (3-29-10)

i. Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later, six (6) credits will be required. (3-29-10)

ii. Secondary sciences include instruction in the following areas: biology, physical science or chemistry, and earth, space, environment, or approved applied science. Four (4) credits of these courses must be laboratory based. (3-29-10)

f. Social Studies. Five (5) credits are required, including government (two (2) credits), United States history (two (2) credits), and economics (one (1) credit). Courses such as geography, sociology, psychology, and world history may be offered as electives, but are not to be counted as a social studies requirement. (3-29-10)

g. Humanities. Two (2) credits are required. Humanities courses include instruction in visual arts, music, theatre, dance, or world language aligned to the Idaho content standards for those subjects. Other courses such as literature, history, philosophy, architecture, or comparative world religions may satisfy the humanities standards if

the course is aligned to the Idaho Interdisciplinary Humanities Content Standards. (3-29-10)

h. Health/Wellness. One (1) credit is required. Course must be aligned to the Idaho Health Content Standards. (3-29-10)

02. Content Standards. Each student shall meet locally established subject area standards (using state content standards as minimum requirements) demonstrated through various measures of accountability including examinations or other measures. (3-29-10)

03. College Entrance Examination. (Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later.) A student must take one (1) of the following college entrance examinations before the end of the student's eleventh grade year: COMPASS, ACT or SAT. Scores must be included in the Learning Plan. (5-8-09)

04. Senior Project. (Effective for all public school students who enter high school at the 9th grade level in Fall 2009 or later.) A student must complete a senior project by the end of grade twelve (12). The project must include a written report and an oral presentation. Additional requirements for a senior project are at the discretion of the local school district or LEA. (3-29-10)

05. Middle School. If a student completes any required high school course with a grade of C or higher before entering grade nine (9), and if that course meets the same standards that are required in high school, then the student has met the high school content area requirement for such course. However, the student must complete the required number of credits in all high school core subjects as identified in Subsections 105.01.b. through 105.01.g. in addition to the courses completed in middle school. (3-29-10)

06. Proficiency. Each student must achieve a proficient or advanced score on the Grade 10 Idaho Standards Achievement Test (ISAT) in math, reading and language usage in order to graduate. ~~For all public school students who enter high school at the 9th grade level in the Fall 2009 or later, each student must also achieve a proficient or advanced score on the science portion of the ISAT in order to graduate.~~ A student who does not attain at least a proficient score prior to graduation may appeal to the school district or LEA, and will be given an opportunity to demonstrate proficiency of the content standards through some other locally established mechanism. All locally established mechanisms used to demonstrate proficiency will be forwarded to the State Board of Education for review and information. Districts with alternate measures on file with the Board on the effective date of this rule must re-submit their plans to the Board. Alternate mechanisms must be re-submitted to the Board when changes are made in their plans. ~~(5-8-09)~~ (8-11-10)T

a. Before entering an alternate measure, the student must be: (4-2-08)

i. Enrolled in a special education program and have an Individual Education Plan (IEP); or (3-20-04)

ii. Enrolled in an Limited English Proficient (LEP) program for three (3) academic years or less; or (3-20-04)

iii. Enrolled in the fall semester of the senior year. (3-20-04)

b. The measure must be: (5-8-09)

i. Aligned at a minimum to tenth grade state content standards; (3-20-04)

ii. Aligned to the state content standards for the subject matter in question; (5-8-09)

iii. Valid and reliable; and (5-8-09)

iv. Ninety percent (90%) of the criteria of the measure, or combination of measures, must be based on academic proficiency and performance. (3-20-04)

c. A student is not required to achieve a proficient or advanced score on the ISAT if: (5-8-09)

- i. The student received a proficient or advanced score on an exit exam from another state that requires a standards-based exam for graduation. The state's exit exam must be approved by the State Board of Education and must measure skills at the tenth grade level and be in comparable subject areas to the ISAT; (5-8-09)
- ii. The student completes another measure established by a school district or LEA and received by the Board as outlined in Subsection 105.06; or (3-29-10)
- iii. The student has an IEP that outlines alternate requirements for graduation or adaptations are recommended on the test; (5-8-09)
- iv. The student is considered an LEP student through a score determined on a language proficiency test and has been in an LEP program for three (3) academic years or less; (5-8-09)

07. Special Education Students. A student who is eligible for special education services under the Individuals With Disabilities Education Improvement Act must, with the assistance of the student's Individualized Education Program (IEP) team, refer to the current Idaho Special Education Manual for guidance in addressing graduation requirements. (4-11-06)

08. Foreign Exchange Students. Foreign exchange students may be eligible for graduation by completing a comparable program as approved by the school district or LEA. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

109. SPECIAL EDUCATION.

- 01. Definitions.** The following definitions apply only to Section 109 of these rules. (4-5-00)
 - a. Adult Student.** A student who is eligible for special education, is eighteen (18) years of age or older and to whom special education rights have transferred. (4-5-00)
 - b. Department.** State Department of Education. (4-5-00)
 - c. Due Process Hearing.** An administrative hearing that is conducted to resolve disputes. (3-29-10)
 - i. Regular due process hearing regarding issues on any matter related to identification, evaluation, placement, or the provision of a free appropriate public education. (3-29-10)
 - ii. For disputes concerning discipline for which shortened time lines are in effect, an expedited due process hearing may be requested in accordance with the Individuals with Disabilities Education Act. (3-29-10)
 - d. Education Agency.** Each school district and other public agency that is responsible for providing special education and related services to students with disabilities, including the Department of Juvenile Corrections and the Idaho School for the Deaf and Blind. (4-5-00)
 - e. Governing Special Education Requirements.** Sections 33-201, 33-2001 through 2002, 33-2004 through 2005, and 33-2010, Idaho Code; Section 109 of these rules; the Individuals with Disabilities Education Act (IDEA), Parts A and B, (20 U.S.C., Sections 1400-1419); IDEA Regulations (34 C.F.R. Part 300); Idaho Special Education Manual; and special education case law that sets precedence in Idaho. (3-29-10)
 - f. Idaho Special Education Manual.** Policies and procedures, as approved by the State Board of Education, that the State Department of Education is required to adopt to meet the eligibility requirements of 20 U.S.C, Section 1412 and are consistent with state and federal laws, rules, regulations, and legal requirements. (3-29-10)

g. Special education. Specially designed instruction as defined by the Individuals with Disabilities Education Act or speech-language pathology services to meet the unique needs of a special education student.

(4-5-00)

02. Legal Compliance. The State Department of Education and education agencies shall comply with all governing special education requirements.

(4-5-00)

a. The Board of Trustees or other comparable governing body of each education agency shall adopt policies and procedures for providing special education services and obtain approval from the State Department of Education for the same. Department approval shall be based on current governing special education requirements. Each education agency shall revise its policies and procedures as necessary to conform with changes in governing special education requirements.

(4-5-00)

b. The State Department of Education shall provide education agencies with a sample set of policies and procedures that is consistent with governing special education requirements. The Department shall monitor all education agencies and private agencies who provide special education services to students with disabilities for compliance with governing special education requirements and adopted policies and procedures.

(4-5-00)

c. Each education agency shall ensure that charter schools and alternative schools located in its jurisdiction have nondiscriminatory enrollment practices. Each education agency shall ensure the provision of special education and related services to eligible students enrolled in charter and alternative schools in accordance with governing special education requirements.

(4-5-00)

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

(4-5-00)

i. Is an accredited school or a licensed rehabilitation center; and

(4-5-00)

ii. Meets minimum health, fire and safety standards; and

(4-5-00)

iii. Is nonsectarian; and

(4-5-00)

iv. Provides special education services consistent with governing special education requirements.

(4-5-00)

v. Any private school or facility aggrieved by the Department's final decision may appeal that decision to the State Board of Education.

(4-5-00)

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

(4-5-00)

f. Education agencies may employ paraprofessional personnel to assist in the provision of special education and related services to students with disabilities if they meet standards established by the State Department of Education.

(4-5-00)

g. Education agencies shall collect and report data as necessary to meet state and federal requirements concerning special education services, staff or students. Education agencies shall develop, implement and revise district improvement plans as necessary to improve results as measured by data on goals and indicators for the performance of special education students that are established by the State Department of Education in accordance

with the Individuals with Disabilities Education Act. (4-5-00)

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

03. Eligibility for Special Education. The State Department of Education shall provide state eligibility criteria for special education services for categorical eligibility consistent with the Individuals with Disabilities Education Act. Education agencies shall consider eligibility under all disability categories set forth in the Idaho Special Education Manual with the exception of developmental delay, which is an optional category. If an education agency elects to use the developmental delay category, it shall consider developmental delay for students ages three (3) through nine (9) using the eligibility criteria adopted by the Department and set forth in the Idaho Special Education Manual. The total timeline from the date of receipt of written parental consent for an initial evaluation to the date of determination of eligibility for special education and related services must not exceed sixty (60) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days, unless all parties agree to an extension. ~~(3-29-10)~~(8-11-10)T

04. Individualized Education Programs. Each education agency shall develop an individualized education program (IEP) for each student who is eligible for special education. The IEP shall be implemented as soon as possible after it is developed. The total timeline from the ~~date of receipt of written parental consent for an initial assessment~~ determination that the student needs special education and related services to the date of ~~IEP~~ implementation of the initial IEP shall not exceed ~~sixty~~ thirty (630) calendar days, excluding periods when regular school is not in session for five (5) or more consecutive school days, unless all parties agree to an extension. A new IEP shall be developed at least annually, on or before the date the previous IEP was developed. ~~(4-5-00)~~(8-11-10)T

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

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

c. The IEP team shall determine the student's placement in the least restrictive environment. (5-3-03)

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

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

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

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

iv. The IFSP is developed in accordance with IDEA Part B policies and procedures. (3-29-10)

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

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

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

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

a. If a parent or adult student disagrees with an individualized education program change or placement change proposed by the district, the parent or adult student may file a written objection to all or parts of the proposed change. If the written objection is postmarked or hand delivered within ten (10) calendar days of the date the parent or adult student receives written notice of the proposed change, the proposed change cannot be implemented. Informal methods such as additional IEP team meetings or voluntary mediation may be used to resolve the disagreement. If these methods fail, the education agency may request a due process hearing to obtain a hearing officer's decision regarding the proposed change. The written objection cannot be used to prevent the education agency from placing a student in an interim alternative educational setting in accordance with IDEA discipline procedures. (4-5-00)

b. Mediation may be requested by an education agency, parent, or adult student, or offered by the State Department of Education at any time. The Department shall screen all such requests to determine appropriateness. Any time a hearing is requested, the Department shall offer mediation using policies and requirements set forth in the Individuals with Disabilities Education Act regulations. If the Department appoints a mediator, the Department shall be responsible for compensating the mediator. All mediation participants shall be required to sign a confidentiality pledge. Attorney fees may not be awarded for a mediation that is conducted prior to a request for a due process hearing. (3-29-10)

c. The State Department of Education shall administer a single-tiered due process hearing system to resolve disputes between education agencies and parents or adult students. When a due process hearing is requested, the superintendent, special education director, or other agency administrator shall inform the agency's board of trustees or other governing body of the request. The education agency shall immediately notify the Department's Director of Special Education of any request for a due process hearing. Within ten (10) calendar days of a written request for a regular hearing, or within five (5) business days of a written request for an expedited hearing, an impartial hearing officer shall be assigned by the Department. The Department shall maintain a list of trained hearing officers and their qualifications. (3-29-10)

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

e. Due process hearings shall be conducted pursuant to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Individuals with Disabilities Education Act (IDEA) requirements, and the Idaho Special Education Manual. In case of any conflict between the IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General" and the IDEA, the IDEA shall supersede the IDAPA 04.11.01, and IDAPA 04.11.01 shall supersede the Idaho Special Education Manual. (3-29-10)

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

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

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

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

j. A parent or adult student has the right to an independent educational evaluation (IEE) at public expense if the parent or adult student disagrees with an evaluation obtained by the education agency. Whenever an independent educational evaluation is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, shall be the same as the criteria the education agency uses when it initiates an evaluation, to the extent those criteria are consistent with the parent or adult student's right to an IEE. If an education agency has cost as one (1) of the criteria the education agency uses when it initiates an evaluation, the education agency may apply that criteria to independent educational evaluations. However, the parent or adult student has the right to demonstrate that unique circumstances justify an IEE that falls outside the education agency's cost criteria, and if so demonstrated, that IEE shall be publicly funded. A due process hearing may be initiated by the education agency to determine if the evaluation conducted by the education agency is appropriate. If the final decision of a hearing officer, or civil court, if the hearing officer's decision is appealed, is that the evaluation conducted by the education agency is appropriate, the parent or adult student still has the right to an independent educational evaluation, but not at the education agency's expense. (4-5-00)

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

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

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

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

(BREAK IN CONTINUITY OF SECTIONS)

111. ASSESSMENT IN THE PUBLIC SCHOOLS.

01. Philosophy. Acquiring the basic skills is essential to realization of full educational, vocational and personal/social development. Since Idaho schools are responsible for instruction in the basic scholastic skills, the State Board of Education has a vested interest in regularly surveying student skill acquisition as an index of the effectiveness of the educational program. This information can best be secured through objective assessment of student growth. The State Board of Education will provide oversight for all components of the comprehensive assessment program. (4-2-08)

- 02. Purposes.** The purpose of assessment in the public schools is to: (3-15-02)
- a.** Measure and improve student achievement; (3-15-02)
 - b.** Assist classroom teachers in designing lessons; (3-15-02)
 - c.** Identify areas needing intervention and remediation, and acceleration; (3-15-02)
 - d.** Assist school districts in evaluating local curriculum and instructional practices in order to make needed curriculum adjustments; (3-15-02)
 - e.** Inform parents and guardians of their child's progress; (3-15-02)
 - f.** Provide comparative local, state and national data regarding the achievement of students in essential skill areas; (3-15-02)
 - g.** Identify performance trends in student achievement across grade levels tested and student growth over time; and (3-15-02)
 - h.** Help determine technical assistance/consultation priorities for the State Department of Education. (3-15-02)

03. Content. The comprehensive assessment program will consist of multiple assessments, including, the Idaho Reading Indicator (IRI), the Direct Writing Assessment (DWA), the Direct Mathematics Assessment (DMA), the National Assessment of Educational Progress (NAEP), the Idaho English Language Assessment, the Idaho Standards Achievement Tests (ISAT), and the Idaho Alternate Assessment. (4-2-08)

04. Testing Population. All students in Idaho public schools, grades kindergarten through twelve (K-12), are required to participate in the comprehensive assessment program approved by the State Board of Education and funded. (4-2-08)

a. All students who are eligible for special education shall participate in the statewide assessment program. (4-6-05)

b. Each student's individualized education program team shall determine whether the student shall participate in the regular assessment without accommodations, the regular assessment with accommodations or adaptations, or whether the student qualifies for and shall participate in the alternate assessment. (4-6-05)

c. Limited English Proficient (LEP) students, as defined in Subsection 112.03.d.iv., who receive a score below the fluent level on the Idaho English Language Assessment and have an Education Learning Plan (ELP), shall be given the ISAT with accommodations or adaptations as outlined in the ELP. Students can be categorized as LEP students for two (2) years after testing proficient on the language proficiency test and exiting the LEP program. LEP students who do not have an ELP or a language acquisition score will be given the regular ISAT without accommodations or adaptations. LEP students who are enrolled in their first year of school in the United States may take the IELA in lieu of the reading/language usage ISAT, but will still be required to take the math and science ISAT with accommodations or adaptations as determined by the language proficiency score and ELP. Such LEP students will be counted as participants for the ninety-five percent (95%) participation target, as described in Subsection 112.03. However, such LEP students are not required to be counted for AYP purposes in determining proficiency, as described in Subsection 112.02. (5-8-09)

05. Scoring and Report Formats. Scores will be provided for each subject area assessed and reported in standard scores, benchmark scores, or holistic scores. Test results will be presented in a class list report of student scores, building/district summaries, content area criterion reports by skill, disaggregated group reports, and pressure sensitive labels as appropriate. Information about the number of students who are eligible for special education who participate in regular and alternate assessments, and their performance results, shall be included in reports to the public if it is statistically sound to do so and would not disclose performance results identifiable to individual students. (8-11-10)T

a. Effective April 1, 2009, all students taking the Idaho Standards Achievement Test (ISAT) must have a unique student identifier. (~~5-8-09~~)(8-11-10)T

b. Districts must send all assessment results and related communication to parents within three (3) weeks of receipt from the state. (8-11-10)T

06. Comprehensive Assessment Program. The State approved comprehensive assessment program is outlined in Subsections 111.06.a. through 111.06.l. Each assessment will be comprehensive of and aligned to the Idaho State Content Standards it is intended to assess. In addition, districts are responsible for writing and implementing assessments in those standards not assessed by the state assessment program. (4-2-08)

a. Kindergarten - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

b. Grade 1 - Idaho Reading Indicator, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

c. Grade 2 - Idaho Reading Indicator, Grade 2 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

d. Grade 3 - Idaho Reading Indicator, Grade 3 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

e. Grade 4 - Direct Math Assessment, National Assessment of Educational Progress, Grade 4 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

f. Grade 5 - Direct Writing Assessment, Grade 5 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

g. Grade 6 - Direct Math Assessment, Grade 6 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

h. Grade 7 - Direct Writing Assessment, Grade 7 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

i. Grade 8 - Direct Math Assessment, National Assessment of Educational Progress, Grade 8 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

j. Grade 9 - Direct Writing Assessment, Grade 9 Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

k. Grade 10 - High School Idaho Standards Achievement Tests, Idaho Alternate Assessment, Idaho English Language Assessment. (4-2-08)

l. Grade 11 - Idaho English Language Assessment. (4-2-08)

m. Grade 12 - National Assessment of Educational Progress, Idaho English Language Assessment. (4-2-08)

n. Students who achieve a proficient or advanced score on a portion or portions of the ISAT, or the Idaho Alternate Assessment, offered in their tenth grade year or later are not required to continue taking that portion or portions. (5-8-09)

07. Comprehensive Assessment Program Schedule. (5-3-03)

a. The Idaho Reading Indicator will be administered in accordance with Section 33-1614, Idaho Code. (3-15-02)

b. The Direct Math Assessment and the Direct Writing Assessment will be administered in December in a time period specified by the State Department of Education. (3-15-02)

c. The National Assessment of Educational Progress will be administered in timeframe specified by the U.S. Department of Education. (3-15-02)

d. The Idaho Standards Achievement Tests will be administered twice annually in the Fall and Spring in a time period specified by the State Board of Education. (5-3-03)

e. The Idaho Alternate Assessment will be administered in a time period specified by the State Board of Education. (4-2-08)

f. The Idaho English Language Assessment will be administered in a time period specified by the State Board of Education. (4-2-08)

08. Costs Paid by the State. Costs for the following testing activities will be paid by the state: (4-1-97)

a. All consumable and non-consumable materials needed to conduct the prescribed statewide comprehensive assessment program; (3-15-02)

b. Statewide distribution of all assessment materials; (3-15-02)

c. Processing and scoring student response forms, distribution of prescribed reports for the statewide comprehensive assessment program; and (3-15-02)

d. Implementation, processing, scoring and distribution of prescribed reports for the Direct Writing Assessment and the Direct Mathematics Assessment. (3-15-02)

09. Costs of Additional Services. Costs for any additional administrations or scoring services not included in the prescribed statewide comprehensive assessment program will be paid by the participating school districts. (3-15-02)

10. Services. The comprehensive assessment program should be scheduled so that a minimum of instructional time is invested. Student time spent in testing will not be charged against attendance requirements. (3-15-02)

11. Test Security, Validity and Reliability. Test security is of the utmost importance. To ensure integrity of secure test items and protect validity and reliability of test outcomes, test security must be maintained. School districts will employ security measures in protecting statewide assessment materials from compromise. Each individual who has any opportunity to see test items must sign a state-provided confidentiality agreement, which the district must keep on file in the district for at least two (2) years. Documentation of security safeguards must be available for review by authorized state and federal personnel. (4-2-08)

a. All ISAT paper and pencil test booklets will be boxed and shipped to the test vendor to be counted no later than two (2) weeks after the end of the testing window. (3-20-04)

b. The ISAT will be refreshed each year to provide additional security beginning with grades four (4)

eight (8) and ten (10) in 2007. Items will be refreshed for grades three (3) and seven (7) in 2008; grades five (5) and six (6) in 2009; and grades two (2) and nine (9) in 2010. (3-20-04)

c. Any assessment used for federal reporting shall be independently reviewed for reliability, validity, and alignment with the Idaho Content Standards. (4-2-08)

12. Demographic Information. Accurate demographic information must be submitted as required for each test to assist in interpreting test results. It may include but is not limited to race, sex, ethnicity, and special programs, (Title I, English proficiency, migrant status, special education status, gifted and talented status, and socio-economic status). (4-2-08)

13. Dual Enrollment. For the purpose of non-public school student participation in non-academic public school activities as outlined in Section 33-203, Idaho Code, the Idaho State Board of Education recognizes the following: (3-15-02)

a. The Idaho Standards Achievement Tests (grades 2-9 and High School). (5-3-03)

b. A portfolio demonstrating grade level proficiency in at least five (5) of the subject areas listed in Subsections 111.13.b.i. through 111.13.b.vi. Portfolios are to be judged and confirmed by a committee comprised of at least one (1) teacher from each subject area presented in the portfolio and the building principal at the school where dual enrollment is desired. (4-6-05)

i. Language Arts/Communications. (3-15-02)

ii. Math. (3-15-02)

iii. Science. (3-15-02)

iv. Social Studies. (3-15-02)

v. Health. (3-15-02)

vi. Humanities. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

117. MASTER ADVANCEMENT PILOT PROGRAM (MAPP).

01. LEA Participation. (8-11-10)T

a. LEAs must apply for the MAPP program no later than September 2010. LEAs will not be allowed to participate in the program after the initial sign up period. (8-11-10)T

b. LEAs may request from the State Department of Education in writing of the intent to opt out of the program during the six (6) year pilot. (8-11-10)T

c. The State Department of Education will create and review LEA application submissions. (8-11-10)T

d. LEAs may choose to include all or as few as one (1) school within the district. (8-11-10)T

e. LEAs may participate in the secondary pilot or the elementary pilot or both. (8-11-10)T

f. LEAs must include in the application a plan for public involvement and parental notification of the

program (8-11-10)T

02. Secondary Pilot Program. (8-11-10)T

a. To be eligible for the secondary pilot program LEAs must meet the following criteria: (8-11-10)T

i. LEAs will provide a detailed plan for implementing the program. This plan will include at a minimum: a process for students to request a Challenge Exam, review of the exam scores and providing advice on course or grade advancement. (8-11-10)T

ii. A district must have had a Challenge Exam or equivalent exam equivalent to an exam that would demonstrate full course mastery in place for a minimum of two school years prior to participating in MAPP. (8-11-10)T

iii. Participating districts must be able to demonstrate the reliability and validity of the chosen measure in ensuring strong enough course knowledge to be successful in the next course in the series. For example, a district must have evidence that a student who passes an Algebra I measure has a reasonable chance of success in Algebra II. (8-11-10)T

iv. LEAs may chose to incorporate scores from national standardized tests such as the ACT, SAT, CLEP exams as the measure. These measures will be accepted by the State Department of Education as already having the validity and reliability necessary. (8-11-10)T

v. The State Department of Education, in cooperation with the vendors of the national standardized tests, will provide a list recommending the course of mastery and the standard (score) at which students would be successful in the next course. (8-11-10)T

b. LEAs may require students to reimburse the LEA for any of the assessments administered. Costs could include the standardized test fee or the administration costs incurred by the district. Requests for reimbursement may not exceed the actual costs incurred by the district. (8-11-10)T

03. Elementary Pilot Program. (8-11-10)T

a. To be eligible for the elementary pilot program LEAs must meet the following criteria: (8-11-10)T

i. Elementary school participation in MAPP allows for schools to use measures other than assessments. LEAs must submit a plan including how students will be measured and advanced either to the next grade or class. (8-11-10)T

ii. The State Department of Education will review the plans and provide direction or suggestions. (8-11-10)T

iii. The State Department of Education will provide information on two research-based advancement programs for elementary schools as suggested models. LEAs may submit a plan that is different from the suggested models. (8-11-10)T

b. LEAs may require students to reimburse the LEA for any of the assessments administered. Costs could include the standardized test fee or the administration costs incurred by the district. Requests for reimbursement may not exceed the actual costs incurred by the district. (8-11-10)T

04. Reporting. LEAs are required to submit to the State Department of Education, no later than June 10, the following data for all schools within the district regardless of whether the school is a site for MAPP: (8-11-10)T

a. Comprehensive list of all students who participated in MAPP, including the students who graduated early and the number of years that each student graduated early. (8-11-10)T

- b.** Detailed information on the performance of participating students on Challenge Exams or other measures used. (8-11-10)T
- c.** The number of requests for Challenge Exams or advancement and the requests granted. (8-11-10)T
- d.** School and District disciplinary and/or behavioral incidents. (8-11-10)T
- e.** School and District graduation and dropout rates. (8-11-10)T
- f.** Number of students in each school and for the LEA participating in advanced placement concurrent enrollment, or college courses while still students in the LEA. (8-11-10)T
- 05. Early Graduation Eligibility.** (8-11-10)T
- a.** Students must have attended an Idaho public school for four full school years, as defined in IDAPA 08.02.01, "Rules Governing Administration, State Board of Education Rules, Subsection 250.01, immediately prior to graduation to be eligible for a Mastery Scholarship. (8-11-10)T
- b.** Students must have completed all LEA and State graduation requirements within eleven (11) full school years or nine thousand nine hundred (9,900) hours to be eligible for a one (1) year mastery scholarship, within ten (10) full school years or eight thousand nine hundred ten (8,910) hours to be eligible for a two (2) year mastery scholarship or within nine (9) full school years or seven thousand nine hundred twenty (7,920) hours to be eligible for a three (3) year mastery scholarship. (8-11-10)T
- c.** Students must attend an Idaho public college or university for the entirety of the scholarship period in order to receive the scholarship payment. (8-11-10)T
- d.** Students are eligible for a maximum of three (3) years of mastery scholarship. (8-11-10)T
- e.** Students must enroll at an Idaho public college or university immediately within two (2) years following early graduation in order to receive scholarship funds. (8-11-10)T
- 06. ADA and Scholarship Funding.** (8-11-10)T
- a. Guidelines:** (8-11-10)T
- i.** The statewide average daily attendance-driven funding per enrolled pupil shall be calculated by adding the previous fiscal year's statewide distributions for salary-based apportionment, benefit apportionment and discretionary funds, and dividing the total by the previous year's statewide public school enrollment for all grades. (8-11-10)T
- ii.** The statewide average daily attendance-driven funding per enrolled pupil shall be re-calculated each fiscal year. (8-11-10)T
- iii.** All benefits paid for scholarships and to LEAs shall be based on the statewide average daily attendance-driven funding per enrolled pupil figure for the fiscal year in which the benefit is paid. (8-11-10)T
- b. Payments to Idaho Colleges and Universities.** (8-11-10)T
- i.** Annual scholarship payments will be made in two (2) equal installments, one (1) each at the beginning of each semester. (8-11-10)T
- ii.** Proof of enrollment in an Idaho public college or university must be obtained before any scholarship payments are made. This proof must be obtained for each semester in which scholarship payments are made. (8-11-10)T
- iii.** Students may apply to the State Department of Education to receive a multi-year scholarship over

fewer years if the student will graduate from an Idaho public college or university in less than the number of scholarship years. (8-11-10)T

iv. The State Department of Education will be responsible for making payments to the Idaho public colleges and universities attended by eligible students. The payments must be made no later than August 15 for the first semester and January 15 for the second semester. (8-11-10)T

c. Payments to LEAs (8-11-10)T

i. The State Department of Education will make a single annual payment to eligible LEAs by no later than October 1 of each year for all early graduates who are not attending the LEA that school year as a result of early graduation. (8-11-10)T

ii. Payments will not be made to LEAs who fail to meet the reporting requirements. (8-11-10)T

~~1178~~. -- 127. (RESERVED).

IDAPA 11 - IDAHO STATE POLICE

11.03.01 - RULES GOVERNING ALCOHOL TESTING

DOCKET NO. 11-0301-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 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 Section 67-2901, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The current language of the rule is confusing, appearing to imply that ISP must approve individual vendors of breath alcohol testing solutions, rather than approving the solutions provided by the manufacturer (which is the intent of the rule). The proposed amendment clarifies that ISP approves the solution provided by the manufacturer. Further, the amendment clarifies that breath alcohol testing is administered on the site of the traffic stop or at a police agency, and not in a laboratory.

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

The current wording of the rule has led to suppression hearings in Idaho's courts, to suppress breath alcohol results. If the breath alcohol results are suppressed by the courts because of the current wording, DUI cases with breath test results would not be able to be prosecuted in Idaho. Not prosecuting DUI cases presents a public safety threat.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because there is no change to the intent of the rule; the amending language removes the existing ambiguity of interpretation regarding ISP's approval authority.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Section 004 incorporates "Products List of Evidential Breath Measurement Devices" into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Matthew Gamette at (208) 884-7217.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 20th day of August, 2010.

Colonel G. Jerry Russell, Director
Idaho State Police
700 S. Stratford Dr., Meridian, ID 83642
(208) 884-7251/(208) 884-7295

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 11-0301-1001

000. LEGAL AUTHORITY.

The Director of the Idaho State Police has general rulemaking authority to prescribe rules and regulations for alcohol testing, pursuant to Section 67-2901, Idaho Code. (9-1-10)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 11.03.01, "Rules Governing Alcohol Testing." (9-1-10)T

02. Scope. The rules relate to the governance and operation of the Alcohol Testing Program. (9-1-10)T

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of this rule. (9-1-10)T

003. ADMINISTRATIVE APPEALS.

There is no provision for administrative appeals before the Idaho State Police under this chapter. (9-1-10)T

004. INCORPORATION BY REFERENCE

The following are incorporated by reference in this chapter of rules: (9-1-10)T

01. Conforming Products List of Evidential Breath Measurement Devices (revised 3/11/2010).

This document is available on the internet at: <http://edocket.access.gpo.gov/2010/pdf/2010-5242.pdf>. (9-1-10)T

005. MAILING ADDRESS AND OFFICE HOURS.

The mailing address is Idaho State Police, Forensic Services, 700 S. Stratford Drive Suite 125, Meridian, ID 83642-6206. Lobby hours are Monday through Friday, 8 a.m. to 5:00 p.m. except holidays designated by the state of Idaho. (9-1-10)T

006. PUBLIC RECORDS AVAILABILITY.

This rule is subject to and in compliance with the Public Records Act. (9-1-10)T

007. WEBSITE.

Alcohol Testing information is available at: <http://www.isp.state.id.us/forensic/index.html>. (9-1-10)T

~~008.~~ -- ~~009.~~ (RESERVED).

~~004~~**10. DEFINITIONS.**

01. Alcohol. "Alcohol" shall mean the chemical compound, ethyl alcohol. (7-1-93)

02. Blood Alcohol Analysis. "Blood alcohol analysis" shall mean an analysis of blood to determine the concentration of alcohol present. (7-1-93)

03. Breath Alcohol Analysis. "Breath alcohol analysis" shall mean an analysis of breath to determine the concentration of alcohol present. (7-1-93)

04. Department. “Department” shall mean the Idaho State Police. (7-1-93)

05. Laboratory. “Laboratory” shall mean the place at which specialized devices, instruments and methods are used by trained personnel to measure the concentration of alcohol in samples of blood, ~~breath~~ or urine for law enforcement purposes. (7-1-93)(9-1-10)T

06. Proficiency Testing. “Proficiency testing” shall mean a periodic analysis of specimens whose alcohol content is unknown to the testing laboratory, to evaluate the capability of that laboratory to perform accurate analysis for alcohol concentration. (3-19-99)

07. Quality Control. “Quality control” shall mean an analysis of referenced samples whose alcohol content is known, which is performed with each batch of urine or blood analysis to ensure that the laboratory’s determination of alcohol concentration is reproducible and accurate. (3-19-99)

08. Urine Alcohol Analysis. “Urine alcohol analysis” shall mean an analysis of urine to determine the concentration of alcohol present. (7-1-93)

~~005.—010. (RESERVED).~~

011. ABBREVIATIONS
There are no abbreviations or acronyms in this chapter. (9-1-10)T

01~~2~~. GENERAL PROVISIONS.

01. Repeal of Prior Rules. All rules governing the Idaho State Forensic Laboratory are repealed, specifically Idaho State Police Emergency Rules 11.03.1, 11.03.2, 11.03.3, 11.03.4, 11.03.5 and 11.03.6. (7-1-93)

02. Continuation of Policies. All policies, training manuals, approvals of instruments, and/or certifications of officers in effect when the alcohol program was managed by the Department of Health and Welfare shall continue to be in effect in the Idaho State Police until the policy, training manual, approval and/or certification is changed or deleted by the Idaho State Police. (7-1-93)

01~~2~~3. REQUIREMENTS FOR LABORATORY ALCOHOL ANALYSIS.

01. Laboratory. Any laboratory desiring to perform urine alcohol or blood alcohol analysis shall meet the following standards: (3-19-99)

a. The laboratory shall prepare and maintain a written procedure governing its method of analysis, including guidelines for quality control and proficiency testing; (7-1-93)

b. The laboratory shall provide adequate facilities and space for the procedure used; (7-1-93)

c. Specimens shall be maintained in a secure storage area prior to analysis; (7-1-93)

d. All equipment, reagents and glassware necessary for the performance of the chosen procedure shall be on hand or readily available on the laboratory premises; (7-1-93)

e. The laboratory shall participate in approved proficiency testing and pass this proficiency testing according to standards set by the department. Failure to pass a proficiency test shall result in disapproval until the problem is corrected and a proficiency test is successfully completed; (7-1-93)

f. For a laboratory performing blood or urine alcohol analysis, approval shall be awarded to the laboratory director or primary analyst responsible for that laboratory. The responsibility for the correct performance of tests in that laboratory rests with that person; however, the duty of performing such tests may be delegated to any person designated by such director or primary analyst; (3-19-99)

- g.** Urine samples shall be collected in clean, dry containers. (7-1-93)
- 02. Blood Collection.** Blood collection shall be accomplished according to the following requirements: (7-1-93)
- a.** Blood samples shall be collected using sterile, dry syringes and hypodermic needles, or other equipment of equivalent sterility; (7-1-93)
- b.** The skin at the area of puncture shall be cleansed thoroughly and disinfected with an aqueous solution of a nonvolatile antiseptic. Alcohol or phenolic solutions shall not be used as a skin antiseptic; (7-1-93)
- c.** Blood specimens shall contain ten (10) milligrams of sodium fluoride per cubic centimeter of blood plus an appropriate anticoagulant. (7-1-93)
- 03. Results.** The results of analysis on blood for alcohol concentration shall be reported in units of grams of alcohol per one hundred (100) cubic centimeters of whole blood. (3-19-99)
- 04. Reported.** The results of analysis on urine for alcohol concentration shall be reported in units of grams of alcohol per sixty-seven (67) milliliters of urine. Results of alcohol analysis of urine specimens shall be accompanied by a warning statement about the questionable value of urine alcohol results. (3-19-99)
- 05. Records.** All records regarding proficiency tests, quality control and results shall be retained for three (3) years. (7-1-93)

0134. REQUIREMENTS FOR PERFORMING BREATH ALCOHOL TESTING.

- 01. Instruments.** ~~Each B~~breath testing instrument* ~~model~~ shall ~~either have been be~~ approved by the department ~~or and~~ shall be listed in the "Conforming Products List of Evidential Breath Measurement Devices" published in the Federal Register by the United States Department of Transportation, ~~or appear in that list's successor whatever its current name may be~~ as incorporated by reference in section 004 of this rule. (7-1-93)(9-1-10)T
- 02. Report.** Each direct breath testing instrument shall report alcohol concentration as grams of alcohol per two hundred ten (210) liters of breath. (7-1-93)
- 03. Administration.** Breath tests shall be administered in conformity with standards established by the department. Standards shall be developed for each type of breath testing instrument used in Idaho, and such standards shall be issued in the form of analytical methods and standard operating procedures ~~and training manuals.~~ (3-19-99)(9-1-10)T
- 04. Training.** Each individual operator shall demonstrate that he has sufficient training to operate the instrument correctly. This shall be accomplished by successfully completing a training course approved by the department. Officers must retrain periodically as required by the department. (7-1-93)
- 05. Checks.** Each breath testing instrument shall be checked on a schedule established by the Department for accuracy with a simulator solution provided by or approved by the department ~~or by a source approved by the department.~~ These checks shall be performed according to a procedure established by the department. (3-19-99)(9-1-10)T
- 06. Records.** All records regarding maintenance and results shall be retained for three (3) years. (3-19-99)
- 07. Deficiencies.** Failure to meet any of the conditions listed in Sections 0123 and 0134. Any laboratory or breath testing instrument may be disapproved for failure to meet one (1) or more of the requirements listed in Sections 0123 and 0134, and approval may be withheld until the deficiency is corrected. (7-1-93)(9-1-10)T
- 0145. -- 999. (RESERVED).**

IDAPA 11 - IDAHO STATE POLICE

11.10.01 - RULES GOVERNING IDAHO PUBLIC SAFETY AND SECURITY INFORMATION SYSTEM

DOCKET NO. 11-1001-1001

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 19-5203, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 rulemaking provides for proxy appointments for the purpose of establishing a quorum at ILETS Board meetings, and defines the allowable proxies.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: No fee or charge is imposed or increased.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this is not a contested or controversial change.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dawn Peck, BCI Manager, (208) 884-7136 or dawn.peck@isp.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 16th day of August, 2010.

Colonel G. Jerry Russell, Director
Idaho State Police
700 S. Stratford Drive
Meridian, ID 83643
(208) 884-7003
(208) 884-7090

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 11-1001-1001

013. ILETS BOARD -- MEETINGS AND QUORUM.

01. Schedule of Meetings. The Board holds regular meetings twice annually and may hold special meetings at other times as the executive officer deems necessary or upon the written request of a majority of the Board. The regular semi-annual meetings of the Board will be scheduled on such dates and at such times as the executive officer may determine after consultation with the members. Meeting announcements and agendas will be mailed to each member not less than ten (10) working days before a regular meeting. (3-20-04)

02. Quorum. When meeting, four (4) members of the Board constitutes a quorum necessary for transacting business. (3-20-04)

03. Representation at Meetings. A board member may ~~not~~ appoint ~~an alternate~~ a proxy to attend a meeting and exercise the voting privilege of that member. ~~(3-30-01)~~ ()

a. An Idaho State Police proxy must be at least a major in rank; ()

b. A police chief proxy must be an Idaho police chief; ()

c. A sheriff proxy must be an Idaho sheriff; and ()

d. Proxy designations must be made in writing to the Executive Officer prior to the meeting. ()

04. Posting and Minutes of Meetings. Notice of board meetings will be posted and meetings will be conducted in compliance with the "Idaho Open Meeting Law," Sections 67-2340 through 67-2347, Idaho Code. Minutes of all regular and special meetings of the Board will be prepared and maintained by staff assigned by the executive director to support the Board. (3-20-04)

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1001

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 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 changes the title of the POST Executive Director position to POST Division Administrator; changes the POST Executive Director position from a classified to a non-classified position; and changes the hiring process for the POST Division Administrator to one of selection by the Idaho State Police Director with the advice and consent of the POST Council. The rule will ensure more appropriate agency alignment of the position now known as POST Executive Director. This change provides clarity in the areas of hiring, supervision, accountability and administration.

Other occurrences of this language in other chapters are also included as technical corrections.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 25th day of August, 2010.

Col. G. Jerry Russell, Director
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7003
Facsimile: (208) 884-7090

Pursuant to Section 67-5221(1) this docket is being published as a Proposed Rule.

This docket has been previously published as a Temporary Rule.
The temporary effective date is January 12, 2010.

The original text of the Temporary Rule was published in the [Idaho Administrative Bulletin, Volume 10-3, March 3, 2010](#), pages 12 through 13.

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 11-1101-1001

031. ~~EXECUTIVE DIRECTOR~~ DIVISION ADMINISTRATOR.

There shall be established in the Idaho State Police a nonclassified position of ~~Executive Director~~ Division Administrator of the Idaho Peace Officer Standards and Training Council. (4-2-08)()

01. Selection of ~~Executive Director~~ Division Administrator. (4-2-08)()

a. The Chairman of the POST Council shall recommend one Chief or Sheriff who is a member of the POST Council to serve on the examining board set up by the Idaho Division of Human Resources. (4-2-08)

b. The ~~Executive Director~~ Division Administrator shall be selected by the ~~POST Council~~ Director of the Idaho State Police subject to approval of the ~~Director of the Idaho State Police~~ POST Council from the approved register established by the Idaho Division of Human Resources after competitive testing. (4-2-08)()

02. Under POST Council's Direction. The ~~Executive Director will~~ Division Administrator shall be employed by the Idaho State Police to serve under the direction of the POST Council in carrying out the duties and responsibilities of the Council. (4-2-08)()

03. Supervision Over Employees. The ~~Executive Director~~ Division Administrator shall have supervision over the employees and other persons necessary in carrying out the functions of POST. (4-2-08)()

04. Administration. For administrative purposes, the ~~Executive Director~~ Division Administrator and his staff ~~will~~ shall be governed by the Policies and Rules of the state of Idaho and the Idaho State Police, concerning but not limited to fiscal, purchasing, and personnel matters. (4-2-08)()

032. POST COUNCIL.

01. Compensation. Except for the ~~Executive Director~~ Division Administrator of the POST Council, the members of the Council receive no compensation from POST for their services, but shall be allowed their actual and necessary expenses incurred in the performance of their functions, as prescribed by law. (4-2-08)()

02. Council Resignations. Any Council member who ceases to qualify as such shall at once notify the Governor and Chairman in writing. Any Council member who desires to terminate their services shall notify the Governor and Chairman in writing of their intentions. (4-2-08)

03. Contested Cases. Rules of Procedure in contested cases shall be governed by the Idaho Administrative Procedures Act. (4-2-08)

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1002

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Eliminates restriction on Hearing Board appointments; clarifies minimum standards and documentation requirements; changes hardship requirement for closed campus exemption; removes specific curricula; provides POST graduates same challenge opportunities as vo-tech graduates; removes grace period for canine team certification; clarifies and updates instructor certification requirements and streamlines the process; establishes suspension of certification for non-compliance with continuing training requirement.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 25th day of August, 2010.

William L. Flink
POST Division Administrator
Idaho State Police
Peace Officer Standards & Training Council
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 11-1101-1002

033. HEARING BOARD.

The POST Council may appoint a Hearing Board to hear all matters appropriately brought before the POST Council for decision, pursuant to Chapter 51, Title 19, Idaho Code. (3-30-07)

01. Appointment of Members. The chairman of the POST Council shall appoint three members of the POST Council to serve on the Hearing Board. ~~The Hearing Board shall consist of a city chief of police, a county sheriff, and an attorney.~~ (3-30-07)()

02. Recommended and Final Orders. Orders issued by the Hearing Board at the conclusion of proceedings shall be considered recommended orders and ~~will~~ shall become final orders only after POST Council's review pursuant to Section 67-5244, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Subsection 720.01. (3-30-07)()

03. Discovery. Pursuant to Section 19-5107, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General," Sections 520 through 532, discovery may be conducted in contested cases before the Hearing Board and POST Council. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

052. EDUCATION.

The applicant shall be a high school graduate or have earned a GED certificate. (4-2-08)

01. Documentation. Proof of education shall not have been mutilated, altered, or damaged, and shall be in the form of a photocopy of one (1) of the following: (4-2-08)()

a. High school diploma; (4-2-08)

b. GED certificate; (4-2-08)

c. High school transcript that indicates the date of graduation; (4-2-08)()

d. GED test report form; ~~or~~ (4-2-08)()

e. High school equivalency certificate; or ()

f. Official college transcript indicating the successful completion of a minimum of fifteen (15) academic credits. (4-2-08)()

053. EXPERIENCE AGE.

The applicant shall have be a minimum of ~~two (2) years of any combination of responsible work experience, military service, education, or any other productive activity~~ twenty-one (21) years of age. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

056. MILITARY RECORD.

01. Military Discharge. A "dismissal," "bad conduct discharge" (BCD), "dishonorable discharge" (DD), or administrative discharge of other than honorable (OTH) from the military service ~~will~~ shall disqualify the applicant. The administrative discharge of "general under honorable conditions" (GEN), a "general" discharge, or an "uncharacterized" discharge may be grounds for rejection. In the case of a "general under honorable conditions" or "uncharacterized" discharge, the applicant may be accepted upon approval of the POST ~~Executive Director~~ Division Administrator. The ~~Executive Director will~~ Division Administrator shall have the discretion to refer the application to

the POST Council. In the case of a “general” discharge, the POST Council ~~will~~ shall review the application and determine whether the individual ~~will~~ shall be certifiable as a peace, detention, juvenile detention, ~~or~~ juvenile probation, adult probation and parole, or adult misdemeanor probation officer or as a direct care staff member of the Idaho Department of Juvenile Corrections in the state of Idaho. ~~(3-30-07)~~()

02. Documentation. Proof of military record shall not have been mutilated, altered, or damaged; shall indicate character of service; and shall be in the form of a photocopy of the following: ()

- a. DD-214 for any active military service. ()
- b. NGB Form 22 for any National Guard service, and ()
- c. AF-216 for any Air Force service. ()

(BREAK IN CONTINUITY OF SECTIONS)

059. PHYSICAL - MEDICAL.

01. Requirements. (7-1-93)

a. Hearing. The applicant ~~must~~ shall have unaided or aided hearing between zero (0) and twenty-five (25) decibels for each ear at the frequencies of five-hundred (500) Hz, one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, ~~or~~ juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. ~~If the applicant's unaided or aided hearing is between twenty six (26) and forty (40) decibels, the applicant may be accepted upon approval of the POST Executive Director. The Executive Director will POST Division Administrator shall~~ have the discretion to refer the application to the POST Council. ~~If the applicant's unaided or aided hearing is over forty (40) decibels, the POST Council will review the application and determine whether the individual will be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho.~~ ~~(4-2-08)~~()

b. Vision. (7-1-93)

i. The applicant ~~must~~ shall possess binocular coordination that does not manifest diplopia; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision ~~must~~ shall be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There ~~must~~ shall be no pathology of the eye; applicant ~~must~~ shall possess a minimum seventy percent (70%) proficiency on a color discrimination test. Waiver of the above may be considered by the ~~Council~~ POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, ~~or~~ juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division Administrator shall have the discretion to refer the application to the POST Council. ~~(4-2-08)~~()

ii. The applicant ~~must~~ shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but ~~must~~ shall have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination ~~must~~ shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the ~~Council~~ POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a peace, detention, juvenile detention, ~~or~~ juvenile probation, or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The POST Division

Administrator shall have the discretion to refer the application to the POST Council. (4-2-08)()

c. Disease/Condition. The applicant ~~must~~ shall be free from any impediments of the senses of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver of the above may be considered by the Council upon the applicant's demonstration that the deficiency does not jeopardize or impair his ability to perform the duties of a peace, detention, juvenile detention, ~~or juvenile probation,~~ or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. (4-2-08)()

d. Agency Physical ~~Agility/Fitness~~ Readiness Test. To determine the applicant's physical capability, a physical ~~agility or fitness~~ readiness test based upon the job requirements of the appointing agency ~~must~~ shall be administered by the appointing agency to each applicant. (3-20-04)()

02. Procedures. (7-1-93)

a. A POST Council-approved medical history form ~~must~~ shall be supplied by each applicant to the examining physician. The medical history ~~must~~ shall include information on past and present diseases, injuries and operations. (3-20-04)()

b. A medical examination ~~must~~ shall be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's ability to perform the duties of a peace, detention, juvenile detention, ~~or juvenile probation,~~ or adult misdemeanor probation officer, or a direct care staff member of the Idaho Department of Juvenile Corrections. The physician ~~must~~ shall record his findings on the appropriate form and ~~must~~ shall note thereon any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. A medical examination shall remain valid for one (1) year. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

071. BASIC TRAINING ACADEMY.

Every peace and detention officer ~~must~~ shall begin the respective POST Basic Training Academy within six (6) months from the date of their appointment as a full-time officer. Every peace, detention, juvenile detention, and juvenile probation officer ~~must~~ shall successfully complete the respective POST Basic Training Academy, including the field training portion, within twelve (12) months from the date of their appointment as a full-time officer. This time period includes probationary time. (4-6-05)()

01. Closed Campus. The POST Basic Patrol, Juvenile Detention, and Juvenile Probation Training Academies ~~will~~ shall operate as a closed campus Monday through Thursday. The POST ~~Council~~ Division Administrator may consider an exemption to this requirement in the case of a documented ~~severe financial personal~~ hardship for the applicant where no other ~~reasonable~~ alternative exists and provided the applicant's agency head files a written request for review with the POST ~~Council~~ Division Administrator. A trainee granted a hardship exemption ~~will~~ shall be required to attend all mandatory classes, and ~~must~~ shall not be late to any class. Unauthorized lateness to or absence from any class ~~will~~ shall be grounds for revocation of the hardship exemption by the POST ~~Executive Director~~ Division Administrator. The POST Council may consider an exemption to this requirement on a case-by-case basis for a scheduled POST Basic Patrol, Juvenile Detention, or Juvenile Probation Training Academy. (4-2-08)()

02. Open Campus. All other POST Basic Training Academies shall operate as an open campus. (4-2-08)

03. Attendance. Attendance ~~will~~ shall be required of each trainee at all classes in the Basic Training Academy. A trainee who is absent for more than one (1) day of the academy session ~~must~~ shall make up such course content. (3-20-04)()

04. **Completion.** A trainee ~~must~~ shall successfully complete the Basic Training Academy within six (6) months of the date they enroll in such course. In a case of delay of more than six (6) months, the entire course ~~must~~ shall be repeated. (3-20-04)()

05. **Field Training.** The field training portion ~~must~~ shall be completed to be eligible for certification. (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

075. THE BASIC PATROL ACADEMY TRAINING CURRICULUM.

01. Minimum Basic Training. The POST Council shall establish the requirements of minimum basic training which peace officers shall complete in order to be eligible for permanent employment as peace officers. ()

~~01- Training Hours. The amount of training for which certification may be granted in the Basic Patrol Academy will be a total of six hundred five and one half (605.5) hours, with forty (40) hours received in pre-academy computer-based training, five hundred twenty five and one half (525.5) hours received at the training academy, and forty (40) hours received in field training in the officer's appointing agency or another agency if necessary prior to or subsequent to attendance at the Basic Patrol Academy. (4-6-05)~~

~~02- Requirements. (7-1-93)~~

~~a- Successful completion of forty (40) hours of pre-academy computer-based instruction in the following minimum prescribed subject areas will be required:~~

Summary	Hours
Child Abuse	4
Domestic Violence	8
Emotionally Disturbed Persons	4
Report Writing	8
Sexual Assault Investigation	16
Total	40

~~(4-6-05)~~

~~b- Successful completion of five hundred twenty five and one half (525.5) hours of instruction in the following minimum prescribed subject areas at the Basic Patrol Academy will be required:-~~

Summary	Hours
Professional Orientation	7
Criminal Justice System	12.5
Police and the Law	44
Practical Police Skills/Health & Fitness	256
Human Relations	30
Investigations	60

Summary	Hours
Patrol Procedures	37
Traffic Enforcement	56
Administration/Examinations	23
Total	526.5

(4-6-05)

e02. Additional Instruction Necessary. It is emphasized that the established basic patrol academy training is only a minimum and that additional instruction beyond the basic academy is necessary if the proper training of a peace officer, as required by the profession, is to be accomplished. (3-15-02)()

#03. Field Training. Successful completion of forty (40) hours of supervised field training in the appointing agency, or another agency if necessary, ~~will~~ **shall** be required. (4-6-05)()

034. Procedure Certificate of Graduation. (7-1-93)

~~a. Trainees must be enrolled in the Basic Patrol Academy within six (6) months from the date of their appointment as a full-time officer to permit completion of the course and the supervised field training during the twelve (12) month period following their appointment as a peace officer.~~ (4-6-05)

~~b.~~ The Council ~~will~~ **shall** issue a certificate of graduation from the Basic Patrol Academy to each trainee who successfully completes the Basic Patrol Academy. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

077. THE BASIC DETENTION ACADEMY TRAINING CURRICULUM.

01. Minimum Basic Training. The POST Council shall establish minimum basic training standards for county detention officers. ()

~~01. Training Hours.~~ The amount of training for which certification may be granted in the Basic Detention Academy will be a total of two hundred sixty (260) hours, with two hundred twenty (220) hours received at the training academy and forty (40) hours received in jail training in the officer's appointing agency or another agency if necessary prior to or subsequent to attendance at the Basic Detention Academy. (4-6-05)

~~02. Requirements.~~ (3-15-02)

~~a.~~ Successful completion of two hundred twenty (220) hours of instruction in the following minimum prescribed subject areas at the Basic Detention Academy will be required:-

Summary	Hours
Jail Standards Procedures	11
Detention Legal Issues	34
Practical Skills	68
Jail Medical Issues	14
Human Relations	17
Detention Techniques	24

Summary	Hours
<i>Incident Procedures</i>	18
<i>Emergency Procedures</i>	13
<i>Physical Wellness</i>	13
<i>Administration/Examinations</i>	11
Sub-Total	220
<i>Jail Training Manual</i>	40
Total	260

(4-6-05)

b02. Additional Instruction Necessary. It is emphasized that the established basic detention academy training is only a minimum and that additional instruction beyond the basic academy is necessary if the proper training of a detention officer, as required by the profession, is to be accomplished. (3-15-02)()

e03. Jail Training. Successful completion of forty (40) hours of supervised jail training in the appointing agency, or another agency if necessary, ~~will~~ shall be required. (4-6-05)()

~~0304.~~ **Procedure Certificate of Graduation.** (3-15-02)

~~a.~~ *Trainees must be enrolled in the Basic Detention Academy within six (6) months from the date of their appointment as a full-time officer to permit completion of the course and the supervised jail training during the twelve (12) month period following their appointment as a detention officer.* (4-6-05)

~~b.~~ The Council ~~will~~ shall issue a certificate of graduation from the Basic Detention Academy to each trainee who successfully completes the Basic Detention Academy. (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

096. COLLEGE CREDITS.

01. College Hour. One (1) college or university semester hour or unit shall equal one (1) college credit. (7-1-93)

02. College Quarter Hour. One (1) college or university quarter hour or unit shall equal two-thirds (2/3) of one (1) college credit. (7-1-93)

03. Conversion to POST Training Hours. College credits may be converted to POST training hours at the rate of one (1) college credit equals twenty (20) POST training hours. (4-2-03)

04. Credits for POST-Approved Training. When college credit is awarded or purchased for POST-approved training, it may be counted for either POST training hours or college credit, whichever is to the advantage of the applicant. (4-2-08)

05. Documentation. Proof of college education shall not have been mutilated, altered, or damaged, and shall be in the form of a photocopy of an official transcript. ()

097. THE BASIC AND PART-TIME BASIC CERTIFICATE.

In addition to the requirements set forth in Section 094 of these rules, the requirements in Section 097 are necessary for award of the basic certificate and the part-time basic certificate. (4-2-03)

01. Probation. The applicant shall have satisfactorily completed at least a six (6) month probationary period, which may include basic patrol academy time. The probationary period may be extended by the appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time shall be continuous with the agency the officer is appointed to when applying for certification. The probationary period shall not extend over one (1) year for certification purposes. (4-2-03)

02. Basic Training. The applicant shall have satisfactorily completed: (4-2-03)

a. The POST Basic Patrol Academy as required by the Council in Section 071; or (4-2-03)

b. Be a graduate of a law enforcement vo-tech program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Patrol Academy, and shall have passed the POST patrol certification examination approved by the Council. The applicant shall be allowed two (2) attempts to pass the examination. The attempts shall be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he shall successfully complete the POST Basic Patrol Academy to be certified. (4-2-03)

03. Field Training. The applicant shall have satisfactorily completed forty (40) hours of POST-approved field training. (4-2-03)

04. Vo-Tech Program Graduates. Graduates from Idaho POST-certified law enforcement vo-tech programs shall also comply with the requirements of Subsection 073.02. (4-2-03)

05. Patrol and Detention Vo-Tech Program or POST Academy Graduates. An applicant who is appointed to a peace officer position from three (3) to five (5) years after satisfactorily completing both the patrol and detention officer training through an Idaho POST-certified law enforcement vo-tech program or the Idaho POST Academy, shall be eligible for peace officer certification in Idaho without attending the POST Basic Patrol Academy, provided the officer: ~~(4-2-08)~~()

a. Was appointed to a county detention officer position in Idaho within three (3) years from graduating from the vo-tech program or POST Academy; ~~(4-2-08)~~()

b. Possesses detention officer certification from Idaho; (4-2-08)

c. Submits a POST Certification Patrol Challenge Packet; (4-2-08)

d. Attends an approved course of study in Idaho law and passes the POST Idaho law exam; (4-2-08)

e. Passes the following tests administered by a POST Training Specialist: (4-2-08)

i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection 097.02.b.; (4-2-08)

ii. The POST Firearms Qualification Course; (4-2-08)

iii. The POST Physical Fitness Test Battery; and (4-2-08)

f. Satisfies the probationary period requirement of Section 064. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

117. SUPERVISOR CERTIFICATE.

01. Requirements. For purposes herein, the term "first-line supervision position" means a position above the operational level which is occupied by an individual who holds the rank of sergeant or equivalent title and,

in the upward chain of command, principally is responsible for the direct supervision of non-supervisory personnel of an agency ~~and most commonly holds the rank of sergeant~~. A candidate for the Supervisor Certificate ~~must shall~~:
(3-30-07)()

a. Possess the Intermediate or Advanced Certificate, Level II or III Detention Officer Certificate, or Level II or III Communications Specialist Certificate. (3-30-07)

b. Have satisfactorily completed one hundred (100) hours of POST-certified supervisory-level training, of which fifty (50) hours ~~must shall~~ have been completed within three (3) years prior to submitting an application for the Supervisor Certificate. (3-30-07)()

c. Be presently appointed to a first-line supervision position with an Idaho law enforcement agency and ~~must shall~~ have served satisfactorily in that position for a minimum of one (1) year prior to application. Proof of position responsibilities ~~must shall~~ be submitted to the POST Council in the form of a job description or other documentation from the hiring authority. (3-30-07)()

(BREAK IN CONTINUITY OF SECTIONS)

119. MANAGEMENT CERTIFICATE.

01. Requirements. For purposes herein, the term “middle-management position” means a position between a first-line supervision position and an executive position which is occupied by an individual who ~~holds the rank of lieutenant or higher, or equivalent title and~~, in the upward chain of command, principally is responsible for the direct supervision of supervisory personnel of an agency and/or command duties ~~and most commonly holds the rank of lieutenant or captain~~. A candidate for the Management Certificate shall: (4-2-03)()

a. Possess peace officer certification, detention officer certification, or communications specialist certification from Idaho; certification from another state that has minimum peace officer standards; or a certificate of completion from a city, county, state, or federal law enforcement academy. The academy attended shall meet or exceed that state's minimum training standards. (4-2-03)

~~b. Submits a POST Certification Patrol Challenge Packet to POST Council, which shall include copies of POST training records from other states to substantiate the officer's training; and transcripts, certificates, diplomas, or other documents that substantiate the officer's education and experience. Subsection 119.01.b. applies only to an officer who is uncertified in Idaho. ()~~

~~b.c.~~ Attend an approved course of study in Idaho law and pass the POST Idaho law exam. Subsection 119.01.c. applies only to an officer who is uncertified in Idaho. (4-2-03)

~~d.~~ Have satisfactorily completed one hundred (100) hours of POST-certified management-level training, of which fifty (50) hours shall have been completed within three (3) years prior to submitting an application for the Management Certificate. (4-2-03)

~~d.e.~~ Be presently appointed to a middle-management, management, or executive position wherein the predominance of responsibilities are administrative or managerial in nature, and shall have served satisfactorily in that position for a period of six (6) months. Proof of position responsibilities shall be submitted to the POST Council in the form of a job description or other documentation from the hiring authority. (4-2-03)

02. City Police Chiefs. City police chiefs or administrators within state agencies having law enforcement powers, who, because of the number of full-time peace officers they supervise, have duties which are primarily administrative may satisfy the certification requirement of Section 19-5109(2), Idaho Code, by obtaining this certificate. All other city police chiefs or state agency administrators having law enforcement powers may be awarded this certificate upon meeting the requirements, but shall also complete the requirements necessary to obtain a Basic Certificate. (4-2-03)

120. EXECUTIVE CERTIFICATE.

01. **Requirements.** For purposes herein, the term “executive position” means the head of an agency and ~~most commonly is~~ shall be the Chief of Police, Sheriff, Director, or Chief Executive Officer. A candidate for the Executive Certificate shall: (4-2-03)()

a. Possess the Advanced Peace Officer Certificate or Management Certificate~~s~~ from Idaho or another state which has such certification meeting or exceeding Idaho standards. (4-2-03)()

b. Have satisfactorily completed one hundred (100) hours of POST-certified executive-level training, of which fifty (50) hours shall have been completed within three (3) years prior to submitting an application for the Executive Certificate. (4-2-03)

c. Be presently appointed to an executive position, and shall have served satisfactorily in that position for a period of three (3) years. (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

133. MINIMUM TRAINING REQUIREMENTS.

01. **Minimum Basic Training.** The POST Council shall establish the requirements of minimum basic training which reserve peace officers shall complete in order to be eligible for appointment as reserve peace officers. ()

02. **Level I Reserve Core Curriculum.** Any reserve officer desiring Level I Reserve certification ~~must~~ shall successfully complete the POST Council-approved Level I Reserve core curriculum ~~consisting of two hundred thirty three (233) hours of training.~~ Part of the ~~two hundred thirty three (233) hour~~ core curriculum may be taught by uncertified instructors provided the high liability classes as identified by POST are taught by POST-certified instructors. (4-11-06)()

~~02.~~ **Curriculum.**

~~* Must be taught by a Prosecutor.~~

~~** Must be taught by a Judge.~~

~~*** Must be taught by a POST-certified Instructor.~~

~~**** Must be taught by a Prosecutor and/or a Judge.~~

	Course	Hours
	Law	
*1.	Probable Cause and Laws of Arrest	4
*2.	Constitutional Laws	2
*3.	Search and Seizure Laws	8
*4.	Court Procedures & Rules of Evidence	4
*5.	Idaho Criminal Code	8
*6.	Motor Vehicle Law	4
*7.	Liquor Law	2
		32
	Professional Orientation	
1.	Career Survival: Police Ethics and Professionalism	8

	<i>Course</i>	<i>Hours</i>
		-8
	<i>Police Procedures</i>	
1.	Jail Procedures	2
2.	Report Writing and Note Taking	8
*** 3.	Testifying in Court	4
*** 4.	Arrest Control Tactics	8
5.	Building Search	8
*** 6.	Emergency Vehicle Operation	24
*** 7.	Firearms	34
		-88
	<i>Patrol Procedures</i>	
1.	Patrol Procedures	8
2.	Domestic Disputes	8
3.	Traffic Control	3
		19
	<i>Practical Problems</i>	
1.	Traffic Stops	8
		8
	<i>Investigations</i>	
*** 1.	DUI Investigation	16
2.	Auto and R.V. Theft	2
3.	Traffic Collision	8
4.	Narcotics	4
5.	Juvenile Procedures	2
6.	Interview & Interrogation	2
7.	Crime Scene Investigation, Preservation of Evidence, and Fingerprinting	16
		50
	<i>Enforcement Skills</i>	
*** 1.	Hazardous Materials	8
*** 2.	Weapon Retention	8
*** 3.	Arrest Control Tactics	8
		24
	<i>Administrative Matters</i>	
1.	Registration, Explanation of Schedule	2

	<i>Course</i>	<i>Hours</i>
2.	Written Exam, Course Evaluations	2
		4
	Total Number of Training Hours	233

(4-11-06)

03. Documentation of Completed Training. The Council shall accept written certification from the agency head as proof that a reserve officer has satisfactorily completed the required ~~two hundred thirty three (233) hour~~ core curriculum. However, no officer shall be awarded training hours on his POST training record for any training completed which has not been certified by the Council as set out in Sections 281 through 287.

(4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

135. LEVEL I RESERVE CERTIFICATION EXAMINATION.

Upon completion of the ~~one hundred sixty (160) hour~~ core curriculum, the reserve officer shall be allowed two (2) attempts to pass the POST Level I Reserve certification examination with a minimum score of seventy-five percent (75%). The attempts shall be no less than thirty (30) days apart and no more than six (6) months apart. If the officer fails both attempts or fails to retake the examination within six (6) months, he shall complete the entire POST Level I Reserve core curriculum again prior to retesting.

(4-2-03)()

(BREAK IN CONTINUITY OF SECTIONS)

147. MINIMUM TRAINING REQUIREMENTS.

01. Minimum Basic Training. The POST Council shall establish the requirements of minimum basic training which reserve peace officers shall complete in order to be eligible for appointment as reserve peace officers.

()

~~01.2.~~ **Level I Reserve Marine Deputy Core Curriculum.** Any reserve marine deputy desiring Level I Reserve Marine Deputy certification shall successfully complete the POST Council-approved Level I Reserve Marine Deputy core curriculum ~~consisting of one hundred sixty (160) hours of training~~. Part of the ~~one hundred sixty (160) hour~~ core curriculum may be taught by uncertified instructors provided the high liability classes as identified by POST are taught by POST-certified instructors.

(4-2-03)()

~~02. Curriculum.~~

~~* Shall be taught by a Prosecutor.~~

~~** Shall be taught by a Judge.~~

~~*** Shall be taught by a POST-certified Instructor.~~

	<i>Course</i>	<i>Hours</i>
	Basic Session	
*** 1.	Introduction to Marine Enforcement Patrol, Education, & Search and Rescue	2
*** 2.	Required Safety Equipment	6
*** 3.	Operational Laws	6

	Course	Hours
*** 4.	Boat & Trailer Operations	8
*** 5.	Accident Reporting, Inspections, Search & Rescue, Other	18
		40
	Advanced Session	
*** 1.	Marine DUI	16
*** 2.	Boat Theft, Trailer Theft, Marine Equipment	8
*** 3.	Marine Accident Investigation	8
*** 4.	Boat Operation, Inspection, & Scenarios	8
		40
	General Law	
* 1.	Search & Seizure Laws	10
* 2.	Laws of Arrest	6
* 3.	Rules of Evidence	4
		20
	Arrest Techniques & Officer Safety Skills	
*** 1.	Arrest Techniques & Handcuffing	12
*** 2.	Handgun Retention & Disarming	8
		20
	Firearms Proficiency	
*** 1.	Firearms Training, Classroom	4
*** 2.	Firearms Training, Range	12
*** 3.	Firearms Qualification	2
*** 4.	Use of Deadly Force, Legal Aspects	2
		20
	On-the-Job Training	
1.	On-the-Job Training	20
		20
	Total Number of Training Hours	160
	Optional Classes	
*** 1.	Reactive Impact Weapons Training & Certification	12
*** 2.	Intoxilyzer 5000 or Alco Sensor Training & Certification	8
*** 3.	Personal Watercraft Patrol & Rescue Techniques	24
4.	Radio Procedures	2
5.	Booking & Jail Procedures	4

	<i>Course</i>	<i>Hours</i>
***6.	Marine Officer Survival Tactics	24
7.	Verbal Judo	8
8.	Report Writing	4
***9.	Use of Aerosol Weapons (OC)	4
	Total Number of Optional Training Hours	90

(4-2-03)

03. Documentation of Completed Training. The Council shall accept written certification from the agency head as proof that a reserve marine deputy has satisfactorily completed the required ~~twenty (20) hours of Firearms Proficiency training and twenty (20) hours of On-the-Job training~~ **core curriculum**. However, no officer shall be awarded training hours on his POST training record for any training completed which has not been certified by the Council as set out in Sections 281 through 287. (4-2-03)()

(BREAK IN CONTINUITY OF SECTIONS)

149. LEVEL I RESERVE MARINE DEPUTY CERTIFICATION EXAMINATION.

Upon completion of the ~~one hundred sixty (160) hour~~ core curriculum, the reserve marine deputy shall be allowed two (2) attempts to pass the POST Level I Reserve Marine Deputy certification examination with a minimum score of seventy-five percent (75%). The attempts shall be no less than thirty (30) days apart and no more than six (6) months apart. If the officer fails both attempts or fails to retake the examination within six (6) months, he shall complete the entire POST Level I Reserve Marine Deputy core curriculum again prior to retesting. (4-2-03)()

(BREAK IN CONTINUITY OF SECTIONS)

175. COLLEGE CREDITS.

01. College Hour. One (1) college or university semester hour or unit shall equal one (1) college credit. (7-1-99)

02. College Quarter Hour. One (1) college or university quarter hour or unit shall equal two-thirds (2/3) of one (1) college credit. (7-1-99)

03. Conversion to POST Training Hours. College credits may be converted to POST training hours at the rate of one (1) college credit equals twenty (20) POST training hours. (4-2-03)

04. Credits for POST-Approved Training. When college credit is awarded or purchased for POST-approved training, it may be counted for either POST training hours or college credit, whichever is to the advantage of the applicant. (4-2-08)

05. Documentation. Proof of college education shall not have been mutilated, altered, or damaged, and shall be in the form of a photocopy of an official transcript. ()

176. THE LEVEL I CERTIFICATE.

In addition to the requirements set forth in Section 173 of these rules, the requirements in Section 176 are necessary for award of the Level I Certificate. (4-2-03)

01. Probation. The applicant shall have satisfactorily completed at least a six (6) month probationary period, which may include basic detention academy time. The probationary period may be extended by the

appointing agency which could delay certification until the probationary period is satisfactorily completed. This six (6) months' time shall be continuous with the agency the officer is appointed to when applying for certification. The probationary period shall not extend over one (1) year for certification purposes. (4-2-03)

02. Basic Training. The applicant shall have satisfactorily completed: (4-2-03)

a. The POST Basic Detention Academy as required by the Council in Section 071; (4-2-03)

b. The POST Patrol-to-Detention Transition Academy; or (4-2-03)

c. Be a graduate of a law enforcement vo-tech program, the curriculum of which has been certified by the Council as being equivalent to the POST Basic Detention Academy, and shall have passed the POST detention certification examination approved by the Council. The applicant shall be allowed two (2) attempts to pass the examination. The attempts shall be no less than thirty (30) days apart and no more than six (6) months apart. If an officer fails both attempts or fails to retake the examination within six (6) months, he shall successfully complete the POST Basic Detention Academy to be certified. (4-2-03)

03. Jail Training. The applicant shall have satisfactorily completed forty (40) hours of POST-approved jail training. (4-2-03)

04. Vo-Tech Program Graduates. Graduates from Idaho POST-certified law enforcement vo-tech programs shall also comply with the requirements of Subsection 073.02. (4-2-03)

05. Patrol and Detention Vo-Tech Program or POST Academy Graduates. An applicant who is appointed to a detention officer position from three (3) to five (5) years after satisfactorily completing both the patrol and detention officer training through an Idaho POST-certified law enforcement vo-tech program or the Idaho POST Academy, may be eligible for detention officer certification in Idaho without attending the POST Basic Detention Academy, provided the officer: ~~(3-29-10)~~()

a. Was appointed to a peace officer position in Idaho within three (3) years from graduating from the vo-tech program or POST Academy; ~~(4-2-08)~~()

b. Possesses peace officer certification from Idaho; (4-2-08)

c. Submits a POST Certification Detention Challenge Packet; (4-2-08)

d. Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

e. Attends an approved course of study in Idaho detention legal issues and passes the POST Idaho detention legal issues exam; (4-2-08)

f. Passes the following tests administered by a POST Training Specialist: (4-2-08)

i. The POST detention certification examination approved by the Council, conducted in the manner set forth in Subsection 176.02.c.; (4-2-08)

ii. The POST Firearms Qualification Course; (4-2-08)

iii. The POST Physical Fitness Test Battery; and (4-2-08)

g. Satisfies the probationary period requirement of Section 064. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

213. GENERAL PROVISIONS.

01. **Mandatory Certification.** A canine team ~~must~~ shall be Idaho-POST certified in order to perform their duties ~~unless the team is POST-certified in another state or approved by the federal government, in which case they will have six (6) months from the date the canine is put into service in Idaho to obtain Idaho POST certification. The Council, for good cause and in writing, may grant additional time to complete POST certification.~~

(4-11-06)()

02. **Eligibility.** The canine handler ~~must~~ shall be an Idaho POST-certified peace, detention, correction, ~~or~~ adult probation and parole, juvenile detention, juvenile probation, or adult misdemeanor probation officer employed by a law enforcement agency which is a part of or administered by the state or any political subdivision thereof, or an Idaho POST-certified direct care staff member of the Idaho Department of Juvenile Corrections to be eligible for certification under these rules. Contract employees shall not be eligible for canine team certification.

(4-11-06)()

03. **Notification of Canine Being Put Into Service.** Prior to a canine being put into service, the law enforcement agency head ~~must~~ shall submit written notification to the Council of such pending action unless the canine team is POST-certified in another state or approved by the federal government, in which case notification ~~must~~ shall be submitted within fifteen (15) days of the canine being put into service in Idaho.

(4-11-06)()

04. **Training.** (4-11-06)

a. A patrol canine handler ~~must~~ shall have completed two hundred forty (240) hours of POST-approved canine handler training. The training ~~must~~ shall include, but not be limited to:

(5-8-09)()

i. Suspect search; (4-11-06)

ii. Apprehension; (4-11-06)

iii. Handler protection; (4-11-06)

iv. Obedience; and (4-11-06)

v. Agility. (4-11-06)

b. A tracking, evidence search, controlled substance detection, or explosive substance detection canine handler ~~must~~ shall have completed one hundred sixty (160) hours of POST-approved canine handler training. The training ~~must~~ shall include, but not be limited to:

(5-8-09)()

i. Obedience; and (4-11-06)

ii. Odor recognition specific to the area the canine team is seeking certification in. (4-11-06)

c. A tracking, evidence search, controlled substance detection, or explosive substance detection canine handler cross-trained as a patrol canine handler ~~must~~ shall have completed two hundred forty (240) hours of POST-approved canine handler training.

(5-8-09)()

05. **Evaluation.** In evaluating the proficiency of the canine teams, the evaluators ~~must~~ shall use the standards approved by the POST Council for that particular skill category. Performance ~~will~~ shall be rated on a pass/fail basis. The evaluator ~~will~~ shall have the discretion to discontinue the testing if excessive time has been spent without results. The evaluator ~~must~~ shall not be the owner or handler of the canine being evaluated, and ~~must~~ shall not have a proprietary interest in the training of the canine team being evaluated. A POST Training Specialist ~~must~~ shall be notified of all canine certification testing.

(4-11-06)()

06. **Failed Evaluation.** If a canine team fails any portion of an evaluation, the entire evaluation is considered to be failed, and all skills ~~must~~ shall be repeated and successfully demonstrated during retesting. The canine team ~~must~~ shall wait at least twenty-four (24) hours before retesting, and they ~~must~~ shall be retested by the

same evaluator that evaluated the failed test or his designee.

(4-11-06)()

07. Areas of Certification. The Council ~~will~~ shall certify a canine team which successfully demonstrates the handler's ability to control the canine, under the scrutiny of a canine evaluator, in addition to proficiency in one (1) or more of the following areas:

(4-11-06)()

- a. Patrol; (3-30-01)
- b. Tracking; (3-30-01)
- c. Evidence search; (3-30-01)
- d. Controlled substance detection; or (3-30-01)
- e. Explosive substance detection. (3-30-01)

08. Expiration of Certification. Each certification issued pursuant to these rules ~~will~~ shall remain valid for fifteen (15) months. A canine team ~~must~~ shall be evaluated prior to their certification expiration date to maintain their certification. A canine team certification ~~will~~ shall lapse if the handler and canine cease to perform canine team functions together.

(4-11-06)()

09. Appeal. Any handler who believes there have been improper procedures applied in implementing the standards may file an appeal with the Idaho Peace Officer Standards and Training Academy in writing. This appeal ~~must~~ shall be filed within thirty (30) days of the testing date.

(4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

251. GENERAL PROVISIONS.

01. Purpose. Instructor Certificates are established for the purpose of recognizing competence as an instructor of law enforcement subjects and/or general subjects pertinent to law enforcement personnel. (4-2-03)

02. Certification. The Council shall certify instructors who meet the requirements set forth in Sections 250 through 256 and are deemed qualified to teach one (1) or more of the prescribed training courses. (4-2-03)

03. Applications. All applications for award of Instructor Certificates shall be completed by the applicant on the prescribed "Certified Instructor Packet" as provided by the POST Council. (4-2-03)

04. Submission. The Certified Instructor Packet shall be submitted by the applicant to his agency head who shall review it prior to signing it and forwarding it to the POST Regional Training Specialist. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

05. POST Training Credit. No POST training credit shall be given for attendance at a school taught by one (1) or more instructors who are not POST-certified instructors. However, POST training credit may be given for attendance at a school taught by an instructor seeking instructor certification in the respective subject pursuant to Sections 250 through 256. (4-2-03)

06. POST-Certified School. A school taught by one (1) or more POST-certified instructors in their respective subjects shall be considered a POST-certified school. (4-2-03)

07. Quality. Instructors certification cannot insure good instruction. Therefore, it shall be the continuing responsibility of school directors or coordinators to see that instructors are assigned only subjects which they are qualified to teach and are supervised on a regular basis to insure that instructional excellence is maintained.

(4-2-03)()

08. Revocation. Instructor certification may be revoked by the Council whenever an instructor is deemed to be unqualified to continue teaching. Review of instructor certification may be initiated upon the request of an agency head, school director or coordinator, or other reliable source. Such review may also be initiated by the Council in the absence of external requests or complaints. (4-2-03)

09. Exceptions. (4-2-03)

~~**a.** Judges, attorneys, educators, doctors, federal officials, state officials, and other non-police personnel are exempt from the instructor certification requirements, and should be utilized when their talents are needed deemed appropriate. The requirements set forth in Sections 250 through 256 may be waived by the Council and the Council may certify such instructors or the course they teach upon recommendation of the school director or coordinator. (4-2-03)()~~

~~**b.** Instructor applicants who do not meet the requirements of Sections 250 through 256, but who have taught at a training course pursuant to these rules may be eligible for instructor certification upon recommendation of the school director or coordinator. (4-2-03)~~

252. REQUIREMENTS FOR INSTRUCTORS OF LAW ENFORCEMENT SUBJECTS.

The requirements in Sections 250 through 252 are necessary for award of the instructor certificate for law enforcement subjects: (4-2-03)

01. Law Enforcement Experience. The applicant shall have a minimum of three (3) years of law enforcement experience. (4-2-03)

02. Education. The applicant shall be a high school graduate or the equivalent as recognized by the Council. (4-2-03)

03. Instructor Development Course. The applicant shall have satisfactorily completed an Instructor Development Course approved by the Council. The Council may waive this requirement in exceptional cases reflecting outstanding education, experience, or achievement; or under unusual circumstances upon written application by a school director or coordinator. (4-2-03)

04. Subsequent Applications. A current POST-certified instructor making application for instructor certification in an additional subject and who has already satisfactorily completed an Instructor Development Course approved by the Council shall not have to complete the course again. (4-2-03)

~~**05. Conducted Energy Device Instructor Certification.** An applicant for Conducted Energy Device Instructor Certification shall provide proof of successful completion of the manufacturer's "operator" and "instructor" courses for the Conducted Energy Device they will be instructing in. ()~~

(BREAK IN CONTINUITY OF SECTIONS)

254. PROCEDURES.

01. Application. After meeting the requirements set out in Sections 250 and 251, and either 252 or 253, the applicant shall submit to his POST Regional Training Specialist a completed Certified Instructor Packet, which shall include: (4-2-03)

a. Three (3) letters of recommendation; (4-2-03)

b. A resume of schools attended in preparation for instructing the selected subject; (4-2-03)

c. A lesson plan, including visual aids, equipment needed, handouts, performance objectives, and test questions with answers. (4-2-03)

02. Evaluation. (4-2-03)

a. Within two (2) weeks after submitting the packet, the applicant shall contact his POST Regional Training Specialist to set up a time for the Training Specialist to monitor a class the applicant is instructing. In addition to evaluating the quality of instruction provided by the applicant, the Training Specialist shall take into consideration background, education, achievement, teaching experience, and qualifications, as well as such variables as need, region, and recommendations. (4-2-03)

b. A current POST-certified instructor making application for instructor certification in an additional subject and who has previously had a class monitored by a POST Training Specialist shall not be required to have a class in the additional subject monitored. (4-2-03)

03. Recommendation. After ensuring all requirements are met and the Certified Instructor Packet is complete, the POST Regional Training Specialist shall attach his recommendation to the packet and forward it to the POST ~~Executive Director~~ Division Administrator. The POST ~~Executive Director~~ Division Administrator shall review the ~~packet~~ POST Regional Training Specialist's evaluation and recommendation, and upon approval, ~~put the applicant's request for instructor certification on the agenda for the next POST Council meeting~~ issue the certification. (4-2-03)()

~~04. POST Council. The POST Council shall rely heavily on the endorsement of the POST Regional Training Specialist as to the applicant's qualifications and ability to effectively communicate.~~ (4-2-03)

255. EXPIRATION.

01. Valid. Instructor certification shall remain valid for a period of two (2) years with the exception of firearms instructor certification which shall remain valid for a period of one (1) year. (4-2-03)()

02. Conducted Energy Device. A POST-certified Conducted Energy Device instructor shall maintain valid certification through the manufacturer for each Conducted Energy Device they are POST-certified to instruct. If their certification through the manufacturer becomes invalid for any reason, their POST Conducted Energy Device Instructor Certification for that device shall immediately be deemed inactive. ()

256. RENEWAL.

01. Notification. At the end of the certification period, the POST Council shall send notification to the instructor, provided the instructor still meets the qualifications for instructor certification. (4-2-03)

02. Requirements. To renew the certification, the instructor shall submit the following to POST Council: (4-2-03)

a. A teaching log indicating the instruction of at least one (1) class during the last certification period; (4-2-03)

b. An updated lesson plan, if any changes have been made since it was last submitted; and (4-2-03)

c. A ~~POST Short Course~~ firearms qualification score sheet witnessed by a POST-certified firearms instructor other than the renewing instructor. The qualification course shall be the POST Council-approved course pertinent to the topic the instructor is certified to teach. This requirement applies only to POST-certified firearms instructors who are renewing their firearms instructor certification. (4-2-03)()

d. Instructors ~~must~~ shall meet recertification requirements in compliance with Council and applicable industry standards. (3-29-10)()

e. Conducted Energy Device instructors shall submit proof of successful completion of the manufacturer's recertification requirements for each Conducted Energy Device they are POST-certified to instruct. ()

(BREAK IN CONTINUITY OF SECTIONS)

267. REQUIREMENTS.

In addition to the requirements set forth in Sections 250 and 251 of these rules, the requirements in Sections 266 through 269 are necessary for award of the master instructor certificate: (4-2-03)

01. Instructor Development Course. The applicant shall have satisfactorily completed an Instructor Development Course approved by the Council. (4-2-03)

02. POST-Certified Instructor. The applicant shall be a current POST-certified instructor in the subject he is applying for Master Instructor certification in, and shall have held that certification for a minimum of three (3) years prior to application. The Council may waive this requirement in exceptional cases reflecting outstanding education, experience, or achievement; or under unusual circumstances upon written application by the POST ~~Executive Director~~ Division Administrator. (4-2-03)()

03. Instruction. The applicant shall have instructed a minimum of forty (40) hours of classes in the subject he is applying for Master Instructor certification in during each of the previous two (2) years. (4-2-03)

04. Additional Training or Education. The applicant shall have received additional training or education beyond basic training in the area of their instructor certification. ~~In addition to this requirement, an applicant who is applying to become a Master Instructor in Conducted Energy Devices shall attend and successfully complete a "Master Instructor"-level Conducted Energy Device course offered by a reputable manufacturer as approved by the POST Council.~~ (3-29-10)()

05. Exceptional Ability. The applicant shall have demonstrated exceptional ability to develop and present training. (4-2-03)

06. Recommendation. The applicant shall be recommended for master instructor certification by a POST Regional Training Specialist or a current POST-certified master instructor. (4-2-03)

07. Maintain Certification. The applicant shall be willing to commit to teaching a minimum of one (1) instructor class during the certification period to maintain certification. (4-2-03)

08. Conducted Energy Device Master Instructor. An applicant who is applying to become a Master Instructor in Conducted Energy Devices shall also: ()

a. Attend and successfully complete a "Master Instructor"-level Conducted Energy Device course offered by a reputable manufacturer as approved by the POST Council; ()

b. Provide proof of successful completion of at least one (1) course on "excited delirium" or "positional asphyxia;" and ()

c. At the request of POST Council or the POST Division Administrator, serve as a subject matter expert on any conducted energy device product recommended for use by law enforcement. ()

09. Maintaining Conducted Energy Device Master Instructor Certification. A POST-certified Conducted Energy Device Master Instructor shall maintain and provide proof of valid "master instructor" certification through the manufacturer for each Conducted Energy Device they are POST-certified as a Master Instructor to instruct. If their "master instructor" certification through the manufacturer becomes invalid for any reason, their POST Conducted Energy Device Master Instructor Certification for that device shall immediately be deemed inactive. ()

(BREAK IN CONTINUITY OF SECTIONS)

333. CONDUCT AND BEHAVIOR.

01. **POST Minimum Standards for Employment.** ~~Any~~ Each vocational law enforcement student ~~that does not shall~~ meet the Minimum Standards for Employment as provided in Sections 050 through 064 of these rules ~~with~~ with the exception of age. Any vocational law enforcement student that does not meet the standards shall not be given the final test unless they have been granted a waiver in accordance with Subsection 327.03 of these rules. (4-2-08)()

02. **Code of Conduct/Code of Ethics.** Every vocational law enforcement student ~~must~~ shall attest that he has read, understands, and will abide by the Law Enforcement Code of Conduct as found in Subsection 091.04 of these rules and the Law Enforcement Code of Ethics as found in Subsection 091.05 of these rules. (4-2-08)()

03. **Integrity.** The vocational law enforcement program ~~must~~ shall have a policy on integrity. This policy ~~must~~ shall clearly state that dishonesty, including acts of academic dishonesty and plagiarism; untruthfulness; or discourtesy ~~will~~ shall not be tolerated. This policy ~~must~~ shall be reviewed with all vocational law enforcement students upon entry into the program. (4-11-06)()

04. **Social Contact.** The vocational law enforcement program ~~must~~ shall have a policy expressly prohibiting students from having social contact, either on or off campus, with any vocational law enforcement program staff member or instructor. Associations between students and vocational law enforcement program staff members or instructors ~~must~~ shall be professional in nature at all times. (4-11-06)()

05. **Other Standards of Conduct and Behavior.** The vocational law enforcement program ~~must~~ shall address other standards of conduct and behavior that reflect good taste, courtesy, consideration, and respect for the rights and privileges of others. Any conduct detrimental to the conduct, efficiency, or discipline of the vocational law enforcement program ~~must~~ shall be prohibited. (4-11-06)()

(BREAK IN CONTINUITY OF SECTIONS)

362. DOCUMENTATION.

01. **Submission of Written Certification.** In January of each year, the law enforcement agency head ~~must~~ shall submit written certification to the Council of the number of hours of continuing training each officer within his agency has completed during the previous calendar year. (4-6-05)()

02. **No Credit on POST Training Record.** The Council ~~will~~ shall accept written certification from the agency head as proof that an officer has satisfactorily completed the required forty (40) hours of continuing training every two (2) calendar years. However, no officer ~~will~~ shall be awarded training hours on his POST training record for any training completed which has not been certified by the Council as set out in Sections 281 through 311 of these rules. (4-6-05)()

03. **Non-Compliance With Continuing Training Requirement.** Any peace or county detention officer out of compliance with the continuing training requirement shall be notified in writing, along with his agency head. After notice and an opportunity to be heard, if compliance is still not achieved, the Council may suspend the officer's certification, which shall be immediately restored as soon as compliance is achieved. ()

04. **Exception for Active Duty Military Service.** The two (2) calendar year continuing training period shall be tolled during a peace or county detention officer's active duty military service, and shall recommence upon the officer's return to peace or county detention officer duties with his appointing agency. The appointing agency shall complete and submit to the Council a Notice of Separation/Change in Status form designated by the Council upon the officer's departure from and return to the agency. ()

IDAPA 11 - IDAHO STATE POLICE

11.11.02 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR JUVENILE DETENTION OFFICERS

DOCKET NO. 11-1102-1001

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 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Establishes timelines for the lapse of Juvenile Detention officer certification and the requirements for reactivating certification.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 25th day of August, 2010.

William L. Flink
POST Division Administrator
Idaho State Police
Peace Officer Standards & Training Council
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 11-1102-1001

035. LAPSE OF JUVENILE DETENTION OFFICER CERTIFICATION.

The certification of any juvenile detention officer shall be considered lapsed if the officer does not serve as a juvenile detention officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified juvenile detention officer who remains in a juvenile probation officer, Juvenile Corrections direct care staff, or misdemeanor probation officer duty assignment with a law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof shall retain their POST certification provided they work at least sixty (60) hours per year in that capacity. The three-year period provided herein shall be tolled during any time period that a juvenile detention officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ()

01. Three to Five Years. A juvenile detention officer who has been out of full-time juvenile detention officer employment status from three (3) to five (5) years and who wants to reactivate certification shall meet the following POST requirements: ()

a. Submit a POST Certification Juvenile Detention Challenge Packet; ()

b. Pass the POST juvenile detention certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 030.02.c.; and ()

c. Satisfactorily complete a probationary period as set forth in Subsection 031.01. ()

02. Over Five Years. A juvenile detention officer who has been out of full-time juvenile detention officer employment status for over five (5) years shall attend the POST Basic Juvenile Detention Academy and comply with the requirements of Sections 030 and 031 of these rules to reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of full-time juvenile detention officer employment, the officer was engaged in an occupation requiring juvenile justice training, skill, and experience. This evidence shall be submitted with a POST Certification Juvenile Detention Challenge Packet. Upon receiving a waiver, the officer shall meet the following POST requirements: ()

a. Pass the POST juvenile detention certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 030.02.c.; and ()

b. Satisfactorily complete a probationary period as set forth in Subsection 031.01. ()

03. Over Eight Years. A juvenile detention officer who has been out of full-time juvenile detention officer employment status for over eight (8) years shall attend the POST Basic Juvenile Detention Academy and comply with the requirements of Sections 030 and 031 of these rules to reactivate certification. No waiver of this requirement shall be granted by the Council. ()

04. Exceptions. ()

a. The provisions of Subsections 035.01 through 035.03 shall not apply to officers holding a part-time Juvenile Detention certificate who work at least sixty (60) hours per year as a Juvenile Detention officer. ()

b. The certification of a full-time Juvenile Detention officer transferring to part-time Juvenile Detention officer employment shall remain valid as long as the officer works at least sixty (60) hours per year as a Juvenile Detention officer. ()

0356. -- 999. (RESERVED).

IDAPA 11 - IDAHO STATE POLICE

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

DOCKET NO. 11-1103-1001

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 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Establishes minimum standards for training and certification of part-time Juvenile Probation Officers; establishes timelines for the lapse of Juvenile Probation officer certification and the requirements for reactivating certification.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 25th day of August, 2010.

William L. Flink
POST Division Administrator
Idaho State Police
Peace Officer Standards & Training Council
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 11-1103-1001

010. DEFINITIONS.

01. **Basic Juvenile Probation Academy.** A basic course of instruction for Juvenile Probation Officers as recognized by POST Council. (5-3-03)

02. **Challenge Exam.** A test to determine a person's competence for waiver of the basic Juvenile Probation Academy. (5-3-03)

03. **Juvenile Probation Department.** Any public or private agency administered by or contracted with the court, made up of one (1) or more staff to provide juvenile probation services to a county at the expense and concurrence of the county commissioners. Services may include intake, diversion, supervision, restitution, and community service work. (5-3-03)

04. **Juvenile Probation Officer.** Any full- or part-time employee of a county juvenile probation department who is responsible for preparing social history reports to the court, making recommendations regarding conditions of probation and the supervision of juvenile offenders' compliance with court orders. ~~(5-3-03)~~(____)

05. **Juvenile Training Council.** An advisory group to the POST Council that is represented by the Director of the Department of Juvenile Corrections, a Magistrate, a county Juvenile Detention Director, a county Chief Probation Officer, a county Commissioner, a county Clerk, and a county Sheriff. The purpose of the Juvenile Training Council is to advise POST Council in the planning, development, and operation of the Juvenile Probation Academy. (3-30-07)

06. **Mandatory Certification.** To issue a certificate to a juvenile probation officer based upon successful completion of the mandatory training requirements established by POST Council. (5-3-03)

07. **Voluntary Certification.** To issue a certificate to a juvenile probation officer based upon successful completion of the voluntary training requirements established by POST Council. (5-3-03)

011. -- 029. (RESERVED).

030. JUVENILE PROBATION OFFICER CERTIFICATION.

01. **Decertification.** The council may decertify any juvenile probation officer in the same manner as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Subsection 091.03. (5-3-03)

02. **Certification.** ~~The following dates govern voluntary and mandatory certification:~~ (5-3-03)(____)

~~a. From October 1, 2001 through September 30, 2003, any county Juvenile Probation Officer may receive voluntary certification from POST upon successful completion of the requirements outlined in Sections 031 or 032. (5-3-03)~~

~~b.a. If Any full-time juvenile probation officer employed on or after October 1, 2003, any juvenile probation officer shall be certified by obtaining mandatory certification from the Peace Officer Standards and Training Council within one (1) year of the initial hire date ~~the officer was first employed~~ as a full-time juvenile probation officer. (5-3-03)(____)~~

~~b.b. Any full-time juvenile probation officers employed prior to October 1, 2003, shall ~~comply with the training and certification provisions of Section 030~~ be certified by the Peace Officer Standards and Training Council by September 30, 2005; however, the requirement for successful completion of the POST Basic Juvenile Probation Academy ~~will~~ shall be waived if the officer scores a minimum of seventy-five percent (75%) on ~~a challenge the POST juvenile probation certification examination administered by POST and any other requirements for certification.~~ The officer ~~will~~ shall be allowed two (2) attempts to pass the examination. The attempts ~~must~~ shall be no less than thirty (30) days apart and no more than six (6) months apart. If the officer fails both attempts ~~or fails to retake the examination within six (6) months, the officer must~~ he shall successfully complete the POST Basic~~

Juvenile Probation Academy to be certified.

~~(5-3-03)~~()

c. Any part-time juvenile probation officer employed on or after October 1, 2010 shall be certified by the Peace Officer Standards and Training Council within one (1) year of their initial hire date as a part-time juvenile probation officer. ()

d. Any part-time juvenile probation officer employed prior to October 1, 2010 shall be certified by the Peace Officer Standards and Training Council by September 30, 2012; however, the requirement for successful completion of the POST Basic Juvenile Probation Academy shall be waived if the officer successfully completes the challenge procedure requirements prescribed in Section 032 of these rules. ()

03. Applications. All applications for award of the Juvenile Probation Officer Certificate shall be completed on the prescribed form "Application for Certification" as provided by the POST Council. (5-3-03)

04. Submission. The Application for Certification form must shall be submitted by the ~~officer/~~ applicant to ~~the applicant's department~~ his agency head, who shall review it for accuracy prior to signing it and forwarding ~~the application~~ it to the Council. Certificates will shall be issued to the ~~department~~ agency head for award to the applicant. ~~(5-3-03)~~()

05. Minimum Standards. Each applicant must shall meet the minimum standards for employment and basic training as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," with the exception of ~~height, weight,~~ fitness, and physical disability which will shall be left to the discretion of the employing agency. ~~(5-3-03)~~()

06. Retaining Certification. A certified juvenile probation officer shall work sixty (60) hours annually in a juvenile probation officer capacity to retain certification. Documentation of hours worked shall be kept on file at the employing agency. Any juvenile probation officer working less than sixty (60) hours annually shall complete all requirements set forth in Section 033 to be recertified. ()

(BREAK IN CONTINUITY OF SECTIONS)

033. LAPSE OF JUVENILE PROBATION OFFICER CERTIFICATION.

The certification of any juvenile probation officer shall be considered lapsed if the officer does not serve as a juvenile probation officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified juvenile probation officer who remains in a juvenile detention officer, Juvenile Corrections direct care staff, or misdemeanor probation officer duty assignment with a law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof shall retain their POST certification provided they work at least sixty (60) hours per year in that capacity. The three-year period provided herein shall be tolled during any time period that a juvenile probation officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ()

01. Three to Five Years. A juvenile probation officer who has been out of juvenile probation officer employment status from three (3) to five (5) years and who wants to reactivate certification shall meet the following POST requirements: ()

a. Submit a POST Certification Juvenile Probation Challenge Packet; ()

b. Pass the POST juvenile probation certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 030.02.b.; and ()

c. Satisfactorily complete a probationary period as set forth in Subsection 031.01. ()

02. Over Five Years. A juvenile probation officer who has been out of juvenile probation officer

employment status for over five (5) years shall attend the POST Basic Juvenile Probation Academy and comply with the requirements of Sections 030 and 031 of these rules to reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of juvenile probation officer employment, the officer was engaged in an occupation requiring juvenile justice training, skill, and experience. This evidence shall be submitted with a POST Certification Juvenile Probation Challenge Packet. Upon receiving a waiver, the officer shall meet the following POST requirements: ()

a. Pass the POST juvenile probation certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 030.02.b.; and ()

b. Satisfactorily complete a probationary period as set forth in Subsection 031.01. ()

03. **Over Eight Years.** A juvenile probation officer who has been out of juvenile probation officer employment status for over eight (8) years shall attend the POST Basic Juvenile Probation Academy and comply with the requirements of Sections 030 and 031 of these rules to reactivate certification. No waiver of this requirement shall be granted by the Council. ()

034. -- 999. (RESERVED).

IDAPA 11 - IDAHO STATE POLICE

11.11.04 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR CORRECTION OFFICERS AND ADULT PROBATION AND PAROLE OFFICERS

DOCKET NO. 11-1104-1001

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 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Clarifies minimum standards and documentation requirements; gives the POST Division Administrator additional authority to consider requests for hearing and vision waivers.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 25th day of August, 2010.

William L. Flink
POST Division Administrator
Idaho State Police
Peace Officer Standards & Training Council
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 11-1104-1001

033. EDUCATION.

The applicant shall be a high school graduate or have earned a GED (General Education Development) certificate. (4-2-08)

01. Documentation. Proof of education shall not have been mutilated, altered, or damaged, and shall be in the form of a photocopy of one (1) of the following: ~~(4-2-08)~~()

a. High school diploma; (4-2-08)

b. GED certificate; (4-2-08)

c. High school transcript that indicates the date of graduation; ~~(4-2-08)~~()

d. GED test report form; ~~or~~ ~~(4-2-08)~~()

e. High school equivalency certificate; or ()

ef. Official ~~College~~ transcript indicating the successful completion of a minimum of fifteen (15) academic credits. ~~(4-2-08)~~()

034. EXPERIENCE AGE.

The applicant shall have be a minimum of ~~two (2) years of any combination of responsible work experience, military service, education, or any other productive activity~~ twenty-one (21) years of age. ~~(4-2-08)~~()

(BREAK IN CONTINUITY OF SECTIONS)

037. MILITARY RECORD.

01. Discharge. A “dismissal,” “bad conduct discharge” (BCD), “dishonorable discharge” (DD), or administrative discharge of other than honorable (OTH) from the military service ~~will shall~~ disqualify the applicant. The administrative discharge of “general under honorable conditions” (GEN), a “general” discharge, or an “uncharacterized” discharge may be grounds for rejection. In the case of a “general under honorable conditions” or “uncharacterized” discharge, the applicant may be accepted upon approval of the POST ~~Executive Director~~ Division Administrator. The ~~Executive Director will~~ Division Administrator shall have the discretion to refer the application to the POST Council. In the case of a “general” discharge, the POST Council ~~will shall~~ review the application and determine whether the individual ~~will shall~~ be certifiable as a correction officer in the state of Idaho. ~~(3-29-10)~~()

02. Documentation. Proof of military record shall not have been mutilated, altered, or damaged; shall indicate character of service; and shall be in the form of a photocopy of the following: ()

a. DD-214 for any active military service; ()

b. NGB Form 22 for any National Guard service; and ()

c. AF-216 for any Air Force service. ()

(BREAK IN CONTINUITY OF SECTIONS)

039. PHYSICAL -- MEDICAL.

01. Requirements. (4-11-06)

a. Hearing. The applicant must shall have unaided or aided hearing between zero (0) and thirty (30) decibels for each ear at the frequencies of one thousand (1000) Hz and two thousand (2000) Hz; and unaided or aided hearing between zero (0) and fifty (50) decibels for each ear at the frequency of three thousand (3000) Hz. Waiver of the above may be considered by the POST Division Administrator if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a correction officer. ~~If the applicant's unaided or aided hearing at one thousand (1000) Hz and two thousand (2000) Hz is between thirty one (31) and forty (40) decibels, the applicant may be accepted upon approval of the POST Executive Director.~~ The ~~Executive Director~~ POST Division Administrator shall have the discretion to refer the application to the POST Council. ~~If the applicant's unaided or aided hearing at one thousand (1000) Hz and two thousand (2000) Hz is over forty (40) decibels or if the applicant's unaided or aided hearing at three thousand (3000) Hz is over fifty (50) decibels, the POST Council shall review the application and determine whether the individual shall be certifiable as a correction officer in the state of Idaho.~~ (4-2-08)()

b. Vision. The applicant must shall have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/thirty (20/30) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but must shall have the strong eye corrected to twenty/thirty (20/30) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination must shall be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the Council POST Division Administrator if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of a correction officer. The POST Division Administrator shall have the discretion to refer the application to the POST Council. (5-8-09)()

c. Disease/Condition. The applicant must shall be free from any impediments of the senses of sight, hearing, taste, smell, and touch; physically sound; well developed physically and in possession of his extremities; free from any physical defects, chronic or organic diseases, organic or functional conditions, or emotional or mental instabilities which may tend to impair efficient performance of duty or which might endanger the lives of others or the life of the officer. Waiver of Subsection 039.01.c. may be considered by the Council upon the applicant's demonstration that the deficiency does not jeopardize or impair his ability to perform the duties of a correction officer. (4-2-08)()

d. Physical Agility Readiness Test. The applicant must shall pass the POST Physical Agility Readiness Test for Correction Officers. (4-11-06)()

02. Procedures. (4-11-06)

a. A POST Council-approved medical history form must shall be supplied by each applicant to the examining physician. The medical history must shall include information on past and present diseases, injuries and operations. (4-11-06)()

b. A medical examination must shall be administered by a licensed physician or his designee to determine if the applicant is free from any physical, emotional, or mental condition which might adversely affect the applicant's ability to perform the duties of a correction officer. The physician must shall record his findings on the appropriate form or letter and must shall note thereon, for evaluation by the appointing authority, any past or present physical defects, diseases, injuries, operations or conditions of an abnormal or unusual nature, or indications of mental or emotional instability. A medical examination shall remain valid for one (1) year. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

061. MINIMUM STANDARDS FOR EMPLOYMENT FOR ADULT PROBATION AND PAROLE OFFICERS.

Every adult probation and parole officer must shall meet the minimum standards for employment as provided in

IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," Sections 050 through 065, with the exception of hearing, vision, and physical agility. ~~(4-2-08)~~()

01. Hearing. An applicant for adult probation and parole officer certification ~~must shall~~ have unaided or aided hearing between zero (0) and twenty-five (25) decibels for each ear at the frequencies of one thousand (1000) Hz, two thousand (2000) Hz, and three thousand (3000) Hz. Waiver of the above may be considered ~~by the POST Division Administrator~~ if accompanied by the certificate of an audiologist or ear, nose, and throat physician that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. ~~If the applicant's unaided or aided hearing is between twenty-six (26) and forty (40) decibels, the applicant may be accepted upon approval of the POST Executive Director.~~ The ~~Executive Director~~ ~~POST Division Administrator~~ shall have the discretion to refer the application to the POST Council. ~~If the applicant's unaided or aided hearing is over forty (40) decibels, the POST Council shall review the application and determine whether the individual shall be certifiable as an adult probation and parole officer in the state of Idaho.~~ ~~(4-2-08)~~()

02. Vision. (4-11-06)

a. An applicant for adult probation and parole officer certification ~~must shall~~ possess binocular coordination that does not manifest diplopia; depth of proficiency of a minimum of one (1) minute of arc at twenty (20) feet; peripheral vision ~~must shall~~ be binocularly two hundred (200) degrees laterally with sixty (60) degrees upward and seventy (70) degrees downward. There ~~must shall~~ be no pathology of the eye; applicant ~~must shall~~ possess a minimum of seventy percent (70%) proficiency on a color discrimination test. Waiver of the above may be considered by the ~~Council~~ ~~POST Division Administrator~~ if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. ~~The POST Division Administrator shall have the discretion to refer the application to the POST Council.~~ ~~(4-2-08)~~()

b. The applicant ~~must shall~~ have uncorrected vision in each eye of no weaker than twenty/two hundred (20/200) with the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). An applicant who wears contact lenses is exempt from the uncorrected vision of twenty/two hundred (20/200), but ~~must shall~~ have the strong eye corrected to twenty/twenty (20/20) and the weaker eye corrected to twenty/sixty (20/60). A full eye examination ~~must shall~~ be administered by an optometrist or ophthalmologist to any applicant who wears glasses whose uncorrected vision in either eye is twenty/one hundred fifty (20/150) or weaker. Waiver of the above may be considered by the ~~Council~~ ~~POST Division Administrator~~ if accompanied by the certificate of a vision specialist that the applicant's condition will not jeopardize or impair the applicant's ability to perform the duties of an adult probation and parole officer. ~~The POST Division Administrator shall have the discretion to refer the application to the POST Council.~~ ~~(4-2-08)~~()

03. Physical Agility Readiness Test. An applicant for adult probation and parole officer certification ~~must shall~~ pass the POST Physical ~~Agility Readiness~~ Test for Adult Probation and Parole officers. ~~(4-11-06)~~()

IDAPA 11 - IDAHO STATE POLICE

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

DOCKET NO. 11-1105-1001

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 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Revises timelines for the lapse of Juvenile Corrections Direct Care Staff certification so they are in line with all of the other disciplines POST certifies.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 25th day of August, 2010.

William L. Flink
POST Division Administrator
Idaho State Police
Peace Officer Standards & Training Council
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 11-1105-1001

103. LAPSE OF JUVENILE CORRECTIONS CERTIFICATION.

The certification of any juvenile corrections direct care staff ~~will shall~~ be considered lapsed if the individual does not serve as a juvenile corrections direct care staff ~~for the department or as a POST-certified juvenile probation or juvenile detention officer~~ in Idaho for ~~two~~ three (23) consecutive years. Provided, however, that an Idaho POST-certified juvenile corrections direct care staff who remains in a juvenile detention officer, juvenile probation officer, or misdemeanor probation officer duty assignment with a law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof shall retain their POST certification provided they work at least sixty (60) hours per year in that capacity. The three-year period provided herein shall be tolled during any time period that a juvenile corrections direct care staff is the subject of a POST decertification investigation and is no longer employed in law enforcement. (5-8-09)()

01. ~~Over Two~~ Three to Five Years. A juvenile corrections direct care staff who has been out of ~~full-time status with the department in a~~ juvenile corrections direct care staff ~~role, or as a certified juvenile detention or juvenile probation officer in Idaho for over two (2)~~ employment status from three (3) to five (5) years and ~~whose job requires that he be recertified, or who wishes wants to be recertified, must~~ reactivate certification shall meet the following POST requirements: (5-8-09)()

a. Submit a POST Certification Juvenile Corrections ~~Certification~~ Challenge Packet; (5-8-09)()

b. Pass the POST juvenile corrections certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 100.06.c. of these rules, ~~administered by a POST Training Specialist;~~ and (5-8-09)()

c. Satisfactorily complete a probationary period ~~of not less than one thousand forty (1,040) hours of continuous employment in a direct care staff role with the department~~ as set forth in Subsection 101.01 of these rules. (5-8-09)()

02. ~~Over Three~~ Five Years. A juvenile corrections direct care staff who has been out of ~~full-time status with the department in a~~ juvenile corrections direct care staff ~~role, or as a certified juvenile detention or juvenile probation officer in Idaho for over three (3)~~ employment status for over five (5) years, ~~must shall~~ attend the POST Basic Juvenile Corrections Academy ~~in order to earn recertification~~ and comply with the requirements of Sections 100 and 101 of these rules to reactivate certification. The Council may waive this requirement on a showing of good cause by the direct care staff supported by clear and convincing evidence that during a substantial part of the time out of ~~full-time~~ juvenile corrections direct care staff ~~status~~ employment, the individual was engaged in an occupation requiring juvenile corrections direct care staff training, skill, and experience. This evidence ~~must shall~~ be submitted with a POST Certification Juvenile Corrections ~~Certification~~ Challenge Packet. Upon receiving a waiver, the direct care staff ~~must shall~~ meet the following POST requirements: (5-8-09)()

a. Pass the POST juvenile corrections certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 100.06.c. of these rules, ~~administered by a POST Training Specialist;~~ and (5-8-09)()

b. Satisfactorily complete a probationary period ~~of not less than one thousand forty (1,040) hours of continuous employment in a direct care staff role with the department~~ as set forth in Subsection 101.01 of these rules. (5-8-09)()

03. ~~Over Five~~ Eight Years. A juvenile corrections direct care staff who has been out of ~~full-time status with the department in a~~ juvenile corrections direct care staff ~~role, or as a certified juvenile detention or juvenile probation officer in Idaho for over five (5)~~ employment status for over eight (8) years ~~must shall~~ attend ~~and pass~~ the POST Basic Juvenile Corrections Academy ~~in order to earn recertification~~ and comply with the requirements of Sections 100 and 101 of these rules to reactivate certification. No waiver of this requirement ~~will shall~~ be granted by the Council. (5-8-09)()

IDAPA 11 - IDAHO STATE POLICE

11.11.06 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR MISDEMEANOR PROBATION OFFICERS

DOCKET NO. 11-1106-1001 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 19-5107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 new rule chapter establishes the minimum standards for employment, training, and certification for Misdemeanor Probation Officers.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because representatives of the affected parties were involved in the drafting and approval of the rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 25th day of August, 2010.

William L. Flink
POST Division Administrator
Idaho State Police
Peace Officer Standards & Training Council
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 11-1106-1001

IDAPA 11
TITLE 11
CHAPTER 06

**11.11.06 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL
FOR MISDEMEANOR PROBATION OFFICERS**

000. LEGAL AUTHORITY.

Pursuant to Section 19-5109(8), Idaho Code, the Peace Officer Standards and Training Council may, upon recommendation of the Misdemeanor Probation Training Council, establish minimum basic training and certification standards for misdemeanor probation officers. ()

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 11.11.06, "Rules of the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers," IDAPA 11, Title 11, Chapter 06. ()

02. Scope. These rules constitute the minimum standards of training, education, employment, and certification of misdemeanor probation officers in Idaho. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, any written statements which might pertain to the interpretation of the rules of this chapter or to the documentation of compliance with the rules of this chapter are available for public inspection and copying at cost at the Idaho State Police, Peace Officer Standards and Training, 700 South Stratford Drive, Meridian, Idaho, 83642-6202. ()

003. ADMINISTRATIVE APPEALS.

Any appeals allowed under these rules shall be governed by the Idaho Administrative Procedures Act (Title 67, Chapter 52, Idaho Code) and by IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into this rule. ()

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

The principal place of business of the Idaho State Police, Peace Officer Standards and Training is in Meridian, Idaho. The office is located at 700 South Stratford Drive, Meridian, Idaho and is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. The mailing address is: Peace Officer Standards and Training, 700 S. Stratford Dr., Meridian, Idaho 83642-6202. The telephone number of administration is (208) 884-7250 and the telephone number of basic academy training is (208) 884-7337. The facsimile number of administration is (208) 884-7295 and the facsimile number of basic academy training is (208) 884-7398. The Peace Officer Standards and Training website is <http://www.idaho-post.org>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

007. -- 009. (RESERVED).

010. DEFINITIONS.

01. Basic Misdemeanor Probation Academy. A basic course of instruction for Misdemeanor Probation Officers as recognized by POST Council. ()

02. Misdemeanor Probation Department. Any public agency administered by the county, made up of one (1) or more staff to provide misdemeanor probation services to a county at the expense and concurrence of the county commissioners. Services may include intake, diversion, supervision, restitution, and community service work. ()

03. Misdemeanor Probation Officer. Any employee of a misdemeanor probation department who is responsible for preparing reports to the court, making recommendations regarding conditions of probation, and the supervision of misdemeanor offenders' compliance with court orders. ()

04. Misdemeanor Probation Training Council. An advisory group to the POST Council that is comprised of a Magistrate, two (2) county commissioners, three (3) misdemeanor probation department administrators, a representative of the Idaho Association of Counties, a representative of the Idaho Department of Correction, and a representative of the Administrative Office of the Courts. The purpose of the Misdemeanor Probation Training Council is to advise POST Council in the planning, development, and operation of the Basic Misdemeanor Probation Academy. ()

05. Part-Time Misdemeanor Probation Officer. Any employee of a misdemeanor probation department who is responsible for preparing reports to the court, making recommendations regarding conditions of probation, or the supervision of misdemeanor offenders' compliance with court orders, and is employed less than full time or does not meet the definition of "employee" as defined in Section 59-1302, Idaho Code. ()

011. -- 029. (RESERVED).

030. MISDEMEANOR PROBATION OFFICER CERTIFICATION.

01. Decertification. The POST Council may decertify any misdemeanor probation officer in the same manner as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council." ()

02. Eligibility. To be eligible for the award of the Basic Misdemeanor Probation Certificate, an applicant shall be a full-time misdemeanor probation officer employed by an Idaho misdemeanor probation department. To be eligible for the award of the Part-Time Basic Misdemeanor Probation Certificate, an applicant shall be a part-time misdemeanor probation officer employed by an Idaho misdemeanor probation department. ()

03. Certification. ()

a. Any full-time or part-time misdemeanor probation officer employed on or after January 10, 2011 shall be certified by the Peace Officer Standards and Training Council within one (1) year of their initial hire date as a full-time or part-time misdemeanor probation officer. ()

b. Any full-time or part-time misdemeanor probation officer employed prior to January 10, 2011 shall be certified by the Peace Officer Standards and Training Council by January 9, 2014; however, the requirement for successful completion of the POST Basic Misdemeanor Probation Academy shall be waived if the officer has been continuously employed as a misdemeanor probation officer in Idaho since January 10, 2006 and successfully completes the following: ()

i. Submits a POST Certification Misdemeanor Probation Challenge Packet to POST Council, which shall include copies of training records, transcripts, certificates, diplomas, or other documents that substantiate the officer's training, education, and experience; ()

ii. Passes the POST misdemeanor probation certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 031.03 of these rules; ()

iii. Attends and passes the Idaho POST Misdemeanor Probation Academy's "Legal and Liability

Issues” and “Appropriate Use of Physical Force” training or POST-approved equivalent; and ()

- iv. Satisfactorily completes a probationary period as set forth in Subsection 031.01 of these rules. ()

04. Applications. All applications for award of a Misdemeanor Probation Certificate shall be completed by the applicant on the prescribed form “Application for Certification” as provided by the POST Council. ()

05. Submission. The Application for Certification form shall be submitted by the applicant to his department head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the department head for award to the applicant. ()

06. Minimum Standards. Each applicant shall meet the minimum standards for employment and basic training as provided in IDAPA 11.11.01, “Rules of the Idaho Peace Officer Standards and Training Council,” with the exception of fitness and physical disability which shall be left to the discretion of the employing department. ()

07. Limitation of Part-Time Officers. A part-time misdemeanor probation officer’s certification shall be effective only during those periods when he is formally assigned by the employing department to perform the duties of a part-time misdemeanor probation officer. ()

08. From Full-Time to Part-Time Status. The certification of a full-time Misdemeanor Probation officer transferring to part-time Misdemeanor Probation officer employment shall remain valid as long as the officer works at least sixty (60) hours per year as a Misdemeanor Probation officer. ()

09. From Part-Time to Full-Time Status. To be certified as a full-time misdemeanor probation officer, a currently certified part-time misdemeanor probation officer, upon appointment to full-time misdemeanor probation officer status, shall submit an Application for Certification as prescribed in Subsections 030.04 and 030.05 of this rule. ()

031. THE BASIC AND PART-TIME BASIC MISDEMEANOR PROBATION CERTIFICATE.

The following requirements are necessary for award of the basic and the part-time basic misdemeanor probation certificate: ()

01. Probation. The applicant shall have satisfactorily completed at least a six (6) month probationary period, which may include Basic Misdemeanor Probation Academy time. The probationary period may be extended by the employing department which could delay certification until the probationary period is satisfactorily completed. This six (6) months’ time shall be continuous with the department the officer is employed by when applying for certification. The probationary period shall not extend over one (1) year for certification purposes. ()

02. Basic Training. The applicant shall have satisfactorily completed the POST Basic Misdemeanor Probation Academy. ()

03. Certification Exam. The applicant shall have passed the POST misdemeanor probation certification examination approved by the POST Council. The applicant shall be allowed two (2) attempts to pass the examination with a minimum score of seventy-five percent (75%). The attempts shall be no less than thirty (30) days apart and no more than six (6) months apart. If an applicant fails both attempts or fails to retake the examination within six (6) months, he shall reapply and successfully complete the POST Basic Misdemeanor Probation Academy prior to taking the certification examination again. ()

04. Misdemeanor Probation Training Manual. The applicant shall have satisfactorily completed forty (40) hours of POST-approved, supervised misdemeanor probation training in the employing department, or another department if necessary. Evidence of the successful completion of such training shall be submitted to POST Council. ()

032. LAPSE OF MISDEMEANOR PROBATION OFFICER CERTIFICATION.

The certification of any misdemeanor probation officer shall be considered lapsed if the officer does not work as a misdemeanor probation officer in Idaho a minimum of sixty (60) hours per year for three (3) consecutive years. Provided, however, that an Idaho POST-certified misdemeanor probation officer who remains in a juvenile probation officer duty assignment with a law enforcement agency that is a part of or administered by the state of Idaho or any political subdivision thereof shall retain their POST certification provided they work at least sixty (60) hours per year in that capacity. The three-year period provided herein shall be tolled during any time period that a misdemeanor probation officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ()

01. Three to Five Years. A misdemeanor probation officer who has been out of misdemeanor probation officer employment status from three (3) to five (5) years and who wants to reactivate certification shall meet the following POST requirements: ()

a. Submit a POST Certification Misdemeanor Probation Challenge Packet; ()

b. Pass the POST misdemeanor probation certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 031.03 of this rule; and ()

c. Satisfactorily complete a probationary period as set forth in Subsection 031.01 of this rule. ()

02. Over Five Years. A misdemeanor probation officer who has been out of misdemeanor probation officer employment status for over five (5) years shall attend the POST Basic Misdemeanor Probation Academy and comply with the requirements of Section 031 of these rules to reactivate certification. The Council may waive this requirement on a showing of good cause by the officer supported by clear and convincing evidence that during a substantial part of the time out of misdemeanor probation officer employment, the officer was engaged in an occupation requiring criminal justice training, skill, and experience. This evidence shall be submitted with a POST Certification Misdemeanor Probation Challenge Packet. Upon receiving a waiver, the officer shall meet the following POST requirements: ()

a. Pass the POST misdemeanor probation certification examination approved by the POST Council, administered by a POST Training Specialist, and conducted in the manner set forth in Subsection 031.03 of this rule; and ()

b. Satisfactorily complete a probationary period as set forth in Subsection 031.01 of this rule. ()

03. Over Eight Years. A misdemeanor probation officer who has been out of misdemeanor probation officer employment status for over eight (8) years shall attend the POST Basic Misdemeanor Probation Academy and comply with the requirements of Section 031 of these rules to reactivate certification. No waiver of this requirement shall be granted by the Council. ()

033. -- 999. (RESERVED).

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.16 - THE TRAPPING OF PREDATORY AND UNPROTECTED WILDLIFE AND THE TAKING OF FURBEARING ANIMALS

DOCKET NO. 13-0116-1002

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 16, 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 36-104(b), 36-201 and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Public concern over the placement of traps and snares near public travel ways and injury to pets. Establish rules for placement of traps and snares near public travel ways.

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 rule confers a benefit to certain hunters and trappers.

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: 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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the lack of an identified group to represent interested parties makes it infeasible. The rules were reviewed with the Idaho Trapper's Association.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2780.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

W. Dallas Burkhalter, Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25, Boise, Idaho 83707
(208) 334-3715, Fax (208) 334-2148

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT
FOR DOCKET NO. 13-0116-1002

010. DEFINITIONS.

01. **Furbearing Animals.** Furbearing animals are defined as the following species: (7-1-93)
- a. Marten -- *Martes americana*. (7-1-93)
 - b. Fisher -- *Martes pennanti*. (7-1-93)
 - c. Mink -- *Mustela vison*. (7-1-93)
 - d. Otter -- *Lontra canadensis*. (3-30-01)
 - e. Beaver -- *Castor canadensis*. (7-1-93)
 - f. Muskrat -- *Ondatra zibethicus*. (7-1-93)
 - g. Bobcat -- *Felis rufus*. (7-1-93)
 - h. Lynx -- *Felis lynx*. (7-1-93)
 - i. Red Fox -- *Vulpes vulpes*, and includes all color phases found in Idaho. (7-1-93)
 - j. Badger -- *Taxidea taxus*. (7-1-93)
02. **Predatory Wildlife.** Predatory wildlife is defined as the following species: (7-1-93)
- a. Coyote. (7-1-93)
 - b. Jackrabbit. (7-1-93)
 - c. Raccoon (7-12-10)T
 - d. Skunk. (7-1-93)
 - e. Weasel. (7-1-93)
03. **Unprotected Wildlife.** Unprotected wildlife is defined as all animals OTHER than those classified by the Fish and Game Commission as big game animals, upland game animals, game birds, game fish, crustacea, migratory birds, furbearing animals, threatened or endangered wildlife, protected nongame wildlife or predatory wildlife. (7-12-10)T
04. **Bait.** Bait is defined as any animal parts; except bleached bones or liquid scent. (4-6-05)
05. Sets. (8-16-10)T
- a. Ground Set. Ground set is defined as any foothold trap, body-gripping trap, or snare originally set in or on the land (soil, rock, etc.). This includes any traps elevated up to a maximum of thirty-six (36) inches above the natural ground level. (8-16-10)T
 - b. Water Set. Water set is defined as any trap or snare originally set in or on any body of water. This shall include traps on floats in the water and those that are set with a minimum of one-third (1/3) of the trap submerged. The term water set applies to traps set on beaver dams, in bank holes and in the water at bank slides.

(8-16-10)T

c. Other Sets. Other set is defined as any set not defined as a ground or water set, including without limitation, elevated sets originally set thirty-six (36) inches or more above natural ground level. (8-16-10)T

06. Public Trail. Public trail is defined as any trail designated by any city, county, state, or federal transportation or land management agency on the most current official map of the agency. (8-16-10)T

(BREAK IN CONTINUITY OF SECTIONS)

400. METHODS OF TAKE.

01. Furbearing Animals. No person shall take beaver, muskrat, mink, marten, or otter by any method other than trapping. In Valley County and portions of Adams County in the Little Salmon River drainage, red fox may be taken only by trapping. (5-3-03)

02. Hunting. No person hunting permissible furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

a. Hunt with any weapon the possession of which is prohibited by state or federal law. (7-1-93)

b. Hunt with dogs unless they comply with IDAPA 13.01.15, "Rules Governing the Use of Dogs." (7-1-93)

c. Hunt any furbearing animal with or by the aid of artificial light. (7-12-10)T

d. Persons may hunt raccoon with the aid of an artificial light without a permit from the Director but no person hunting raccoon at night shall: (7-12-10)T

i. Hunt from a motorized vehicle. (7-1-93)

ii. Use any light attached to any motor vehicle. (7-1-93)

iii. Hunt on private land without obtaining written permission from the landowner or lessee. (7-1-93)

03. Trapping. No person trapping furbearing animals or predatory or unprotected wildlife shall: (7-1-93)

a. Use for bait or scent, any part of a domestic or wild origin game bird, big game animal, upland game animal, game fish, or protected nongame wildlife. (7-12-10)T

b. Use any set within thirty (30) feet of any visible bait. (4-6-05)

c. Use a dirt hole ground set with bait unless the person ensures that the bait remains covered at all times to protect raptors and other meat-eating birds from being caught accidentally. ~~(7-1-93)~~ (8-16-10)T

d. Use live animals as a bait or attractant. (4-6-05)

e. Place any ground, water, or other sets on, across, or within five (5) feet of center line of any maintained public trail. (8-16-10)T

f. Place any ground set on, across, or within any public highway as defined in Section 36-202, Idaho Code; except ground sets may be placed underneath bridges and within and at culverts that are part of a public highway right-of-way. (8-16-10)T

g. Place any ground set incorporating snare, trap, or attached materials within three hundred (300) feet of any designated public campground, trailhead, or picnic area. (8-16-10)T

h. Place or set any snare without a break-away device. (8-16-10)T

IDAPA 15 - DIVISION OF HUMAN RESOURCES

15.04.01 - RULES OF THE DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION

DOCKET NO. 15-0401-1002

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) Section 67-5309, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 27, 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 rulemaking is mostly housekeeping in nature and removes redundant phrases and definitions, removes references to deleted rules/areas, and clarifies or removes language that conflicts with other current rules and practices.

More specifically, this proposed rulemaking removes the definition in 013.10 and the references to "Traded Time"; removes phrases that conflict with rule 144; removes the word "entrance" in 150.05 because acting appointments require permanent status; in 169.04 removes "more responsibility" because that translates into having greater points; in 220.04 removes the words "current agencies" because entitlement is not limited to current information; in 241.02 changes the order of words to clarify the application of absences of less than 2 weeks as it applies to the 12-week period.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a copy of the proposed rule changes was sent out to all state agencies for their review and comments. We gave them a two week period in which they could respond to our proposed changes.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Donna Weast, 208-854-3079.

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 Friday, October 27, 2010.

DATED this 26th day of August, 2010.

Vicki Tokita
Deputy Administrator
Division of Human Resources
304 N. 8th Street
PO Box 83720, Boise, ID 83720-0066
Main: 208-334-3900 / Fax: 208-334-2438

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0401-1002

013. DEFINITIONS -- P THROUGH Z.

Each of the terms defined in these rules will have the meaning given herein unless a different meaning is clearly required by the context. Additional definitions are contained in Section 67-5302, Idaho Code. (5-8-09)

01. Pay Line Exception. A temporary assignment of pay grade, pursuant to Section 67-5309D, Idaho Code, in excess of the pay grade allocated pursuant to Section 67-5309B, Idaho Code, as approved by the administrator. (5-8-09)

02. Permanent Employee. An employee in the classified service who has successfully completed entrance probation. Permanent employees remain subject to separation as set forth in these rules and Section 67-5309(n), Idaho Code. (5-8-09)

03. Promotion. The advancement through the competitive process of an employee with permanent status from a position which he occupies in one (1) classification to a position in another classification having a higher paygrade. (5-8-09)

04. Reduction in Pay. A reduction of an employee's salary from one (1) pay rate to a lower rate within the pay grade to which the employee's classification is allocated. (3-16-04)

05. Register. A list of names of persons or the name of one (1) person who has been determined to be eligible for employment in a classification on the basis of examination and merit factors as established by the administrator. An adequate register lists at least five (5) names of eligible candidates currently available for consideration for each vacancy in the classification for which the register was established. (3-16-04)

06. Resignation. The voluntary quitting or abandonment of state employment, excluding retirement. (5-8-09)

07. Respondent. The party whose interests are adverse to those of the appellant. (7-1-93)

08. Suspension. An enforced period of absence, with or without pay, for disciplinary purposes, for felony charges, or pending investigation of charges made against an employee pursuant to Section 190 of these rules. (5-8-09)

09. Termination. The separation of an entrance or voluntary probationary employee from classified service for unsatisfactory service during the probationary period without cause assigned by the appointing authority pursuant to Section 152 of these rules. (5-8-09)

~~**10. Traded Time.** Those hours an employee agrees to substitute for another employee during scheduled hours of work, where both work in the same capacity, the agreement to substitute is solely at the employees' option, and the agreement is approved by the agency by whatever manner is customary. (7-1-87)~~

~~**10.**~~ **Transfer.** A change of work location of an employee in which the employee changes from one (1) position to another in the same classification or to another classification in the same pay grade. (3-16-04)

~~**121.**~~ **Underfill.** The filling of a classification of position with an employee in a classification of lower pay grade to accommodate a training period as approved by the administrator. (3-16-04)

~~**132.**~~ **USERRA.** Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. Sections 4301 through 4333. Prohibits employment discrimination against persons because of their service in the Armed Forces Reserve, the National Guard, or other uniformed services. (5-8-09)

~~**143.**~~ **Workweek.** A period of seven (7) consecutive days beginning 12:01 a.m. Sunday. (Ref. Section 073) (12-10-90)

(BREAK IN CONTINUITY OF SECTIONS)

073. CALCULATION OF PAY.

01. Standard Calculation of Pay. For other than police, correctional officers, or fire employees, pay is calculated in the following order: (5-8-09)

- a. Holiday pay; (12-10-90)
- b. All hours worked on a holiday as overtime; (12-10-90)
- c. All hours worked over forty (40) in the workweek as overtime, excluding occasional or sporadic work ~~and traded time;~~ (12-10-90)()
- d. Vacation, sick and other paid or unpaid leaves; and (12-10-90)
- e. All remaining hours worked at the employee's regular rate of pay. (5-8-09)

02. Shift Differential. Additional compensation paid to employees (including temporary or part-time employees) who work specific, designated hours. Shift differential is paid in addition to any other compensation. (Ref. Sections 67-5302(20) and 67-5328, Idaho Code; Shift differential may be awarded in amounts up to and including twenty-five percent (25%) of hourly rates, based on local market practice for similar jobs. (Ref. Section 67-5309(u), Idaho Code. (5-8-09)

03. Calculation of Pay for Police, Correctional Officers, and Fire Employees. Police, correctional officers, and fire employees on a twenty-eight (28) day work schedule will be compensated as described in Subsections 073.01 and 073.02 of these rules, except that overtime will be calculated based on one hundred sixty (160) hours in a twenty eight (28) day period instead of forty (40) hours in a workweek. (5-8-09)

04. Holiday Pay Calculation. (7-1-87)

a. Paid time off for holidays is a benefit and must be allocated in a substantially similar manner to all employees in the same classification. (5-8-09)

b. A full-time employee will receive holiday pay in accordance with the number of hours the employee works on a regular workday. If the employee's schedule is so irregular that a regular workday cannot be determined, the employee will receive eight (8) hours of holiday pay. An employee must receive some paid leave, wages or salary for the pay period in which the holiday occurs to receive the holiday benefit. (3-16-04)

c. A part-time employee who has a regular work schedule shall be paid for a holiday in the same ratio as eight (8) hours is to a forty (40) hour work week, which for calculation purposes converts to two tenths (.20) x hours normally worked. (3-16-04)

d. To avoid inequities with regard to the Family Medical Leave Act (FMLA) during holiday weeks, if an employee is recording all hours for the week as Family Medical "Leave Without Pay," no hours will be coded on the holiday. Therefore, the holiday will not be counted toward the twelve (12) weeks of family medical leave. (5-8-09)

e. If a part-time employee's hourly schedule is so irregular that a normal workweek cannot be determined, the holiday benefit is in the same proportion that the hours the employee works during a week in which a holiday occurs relate to forty (40). (3-16-04)

f. Schedules resulting in holiday time off in excess of eight (8) hours may be approved by the appointing authority if included in the agency compensation plan. Appointing authorities may also suspend flex

schedules during holiday weeks or otherwise adjust work schedules to ensure internal consistency. (5-8-09)

05. Reduction of Salary. The salary of an employee receiving more than the lowest rate of the pay grade for his classification may be reduced to a lower rate within the pay grade by the appointing authority for disciplinary reasons enumerated in Section 190 of these rules. (5-8-09)

06. Salary Administration. Each agency must develop a compensation plan. Each agency compensation plan must be designed to consider recruitment and retention and ensure pay equity within the organization. (Ref. Section 67-5309B, Idaho Code) (5-8-09)

07. Salaries for Temporary Appointments. Except as provided for in these rules, salaries for employees hired under temporary and project-exempt appointments will be governed by Section 59-1603, Idaho Code. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

101. TYPES OF ELIGIBILITY REGISTERS.

There are four (4) kinds of eligibility registers: (4-5-85)

01. Reemployment Preference Registers. Registers with reemployment preference for a given classification will contain the names of classified employees of permanent status who have been laid off ~~or notified of a pending layoff~~ except limited service appointments. (See Sections 140 ~~and 146~~ of these rules). ~~(5-8-09)~~ ()

02. Agency Promotional Registers. Agency promotional registers for a given classification will contain the names of classified employees in a given agency who successfully passed an agency promotional examination for the class. (Ref. Rule Subsection 086.05) (5-8-09)

03. Statewide Promotional Registers. Statewide promotional registers for a given classification will contain the names of all classified employees in all state agencies who successfully passed a statewide promotional examination for the class. (Ref. Rule Subsection 086.05) (5-8-09)

04. Open Competitive Registers. Open competitive registers for a given classification will contain the names of applicants who successfully passed an open competitive examination for the classification. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

119. APPOINTMENTS, REINSTATEMENTS, TRANSFERS, AND RESIGNATIONS.

01. Reemployment Preference Register. New appointments to a classification within an agency are not permissible if there is an agency reemployment preference register (Ref. Rule Subsection 101.01) for that classification with names of eligibles who are willing to accept employment. (5-8-09)

~~**02. Credited State Service.** Except as provided by Section 040 and Subsection 250.02 of these rules, no classified credited state service accrues to employees for any service under temporary, project exempt, or nonclassified appointments. (5-8-09)~~

03. Probationary Period Required. All appointments to positions in the state classified service whenever adequate eligibility registers exist for the classification are probationary appointments except as otherwise provided in Sections 040 and 150 of these rules. (5-8-09)

04. Provisional Appointment. (7-1-93)

a. A provisional appointment may be authorized in the absence of an adequate register. (Ref. Section 67-5309(k), Idaho Code) (5-8-09)

b. In nominating a person for provisional appointment, the appointing authority will transmit to the administrator an application for employment of the nominee. If the applicant meets the minimum qualifications established for the classification, the nominee may be provisionally appointed to fill an existing vacancy in a position for no longer than thirty (30) calendar days after establishment of an adequate register. Successive provisional appointments of the same individual or successive provisional appointments to the same position will not be permitted unless specifically authorized by the administrator. (3-16-04)

c. Provisional incumbents will be given opportunity to take the examination for the classification of position. Any provisional employee who fails to pass such an examination within certifiable range or who has an opportunity to take such an examination and has not done so will be separated no later than thirty (30) calendar days after the establishment of an adequate register of eligibles. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

145. USE OF REGISTERS WITH REEMPLOYMENT PREFERENCE.

01. Priority for Reemployment by Agency that Conducted the Layoff. (3-16-04)

a. The employee who has been laid off, ~~or given official, written notice of a pending layoff date (Ref. Rule Subsection 143.05)~~ will be offered reemployment to a position in the classification from which laid off ~~or layoff is pending~~, before any person outside that agency may be promoted to, transferred to, reinstated or appointed to that classification by an appointing authority of that agency. Appointing authorities may reassign or transfer individuals who are in the same classification within their agency but may not demote, promote, reclassify, or make acting appointments to that classification. If that agency determines a need to fill that classification, the employee ~~scheduled for lay off or~~ who was laid off has first priority for that position. (Ref. Rule Subsections 125.04 and 125.08) Extenuating circumstances due to short term budget, workload, location, or other complexities may be used by the appointing authority to request a temporary waiver of this rule by the administrator. (5-8-09) ()

b. When attempting to fill vacancies for a classification where a lay off occurred, the agency will provide an opportunity to interview and will make their hiring selection from the individuals their agency laid off from the classification, including those separated from state service under Subsection 241.02 of these rules and those that took a voluntary demotion in lieu of layoff. (5-8-09)

c. Individuals being returned to the classification from which they were laid off will be reinstated with the same salary, permanent status and their sick leave balance restored. If the pay minimum has increased, see Subsection 072.03 of these rules. (5-8-09)

02. Consideration for Hire by Other Agencies. For promotional opportunities, internal agency candidates are normally considered before outside recruitment occurs, including other agencies' laid off candidates. However, individuals who have been laid off must be offered the opportunity to interview before other agencies consider candidates from statewide promotional or open-competitive recruitments. (3-16-04)

03. Employment by Other Agency. Individuals may be reappointed or reinstated if eligible. The salary of an employee re-hired after a layoff is negotiable between the employee and new appointing authority in the current pay grade for the classification in which the employee is appointed. (3-16-04)

04. Return to Register. If an individual finds another agency's position unsatisfactory or does not satisfactorily complete a voluntary probation period, he may be placed back on a register for the remainder of their twelve (12) month time frame. Individuals appointed to a position, other than the classification from which laid off, will remain on preference register status for the remainder of the twelve (12) month period if otherwise eligible. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

146. ~~INTERVIEWS FOR PROSPECTIVE LAYOFFS~~ (RESERVED).

~~Any employee who has been notified or identified as likely to be affected by a layoff may request to be placed on a register for the classification from which the layoff will occur. (Ref. Rule 145.01.a.) All agencies shall offer an interview to these individuals when attempting to fill such vacancies through statewide promotion or open competitive recruitments. (Ref. Rule 145.02)~~ (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

169. PROMOTIONS.

01. Use of Promotional Registers. (7-1-93)

a. Preference for Promotion. Whenever practical, a vacancy in a classified position must be filled by the promotion of an employee in the agency in which the vacancy occurs. (Ref. Section 67-5309(g), Idaho Code) (5-8-09)

b. Exception. An appointing authority may request that a position be filled from a statewide promotional register (Ref. Rule Subsection 101.03) or an open competitive register (Ref. Rule Subsection 101.04) whenever he determines that such an appointment will best serve the interests of the agency. (5-8-09)

c. Agency Registers with Reemployment Preference Status. Promotions to a classification are not permissible as long as there is an agency register with reemployment preference status (Ref. Rule Subsection 101.01) for the classification with names of eligible candidates who are willing to accept reemployment. (5-8-09)

02. Interagency Promotions. All interagency promotions must be made using statewide promotional registers (Ref. Rule Subsection 101.03) (5-8-09)

03. Eligibility for Promotion. Promotional appointees must have permanent status (Ref. Rule Section 159) and must meet the minimum qualifications of the promotional classification. (5-8-09)

04. Promotion, In-Grade. To reflect unique agency organization design, an agency may choose to request an internal competitive process to recognize the advancement of an employee with permanent status from a position occupied in one classification to a position in another classification having greater points, ~~more responsibility~~, or a unique specialty area, but within the same pay grade. With the approval of the administrator, an in-grade promotion will be treated in all regards as a promotion. (5-8-09) ()
169.04 Promotions-Promotion, in grade

(BREAK IN CONTINUITY OF SECTIONS)

220. RECORDS.

01. Employee Service Records. (7-1-93)

a. For each employee in classified service, the Division of Human Resources maintains a service record which must include all personnel transactions pertinent to the employee's employment history. (Ref. Section 67-5309(o), Idaho Code) (5-8-09)

b. Service records or a facsimile thereof for classified employees must be maintained permanently by the administrator. (5-8-09)

c. Any employee may at all reasonable times during business hours review his service record maintained in the Division of Human Resources or maintained in any agency. Except for material used to screen and test for employment, all information maintained in an employee's service record must be made available to the employee or designated representative upon request. File contents may be corrected if found in error according to the procedure contained in Section 9-342, Idaho Code. (5-8-09)

02. Administrative Records. The administrator must permanently maintain a record of the proceedings of the Commission and a record of all hearings of appeals. (5-8-09)

03. Employee Personnel Action Documents. The appointing authority must furnish each employee with notice of every personnel action affecting the employee's status, pay, tenure, or other terms and conditions of employment, including a copy of their performance evaluations. (5-8-09)

04. Transfers, Reemployment and Promotions Between Agencies. When an employee seeks a transfer, reemployment, or promotion between agencies, the appointing authority of the hiring agency, or designee, is entitled to examine the employee's service record and ~~current agencies~~ performance information before the hiring decision is made. (Ref. Section 67-5309(o), Idaho Code) (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

241. WORKERS COMPENSATION AND DISABILITY.

01. Use of Leave in a Workers Compensation Claim. In the event of a disability incurred on the job covered by workers compensation, the employee will be given the choice of either: (5-8-09)

a. Leave of absence without pay while receiving workers compensation; or (5-8-09)

b. Utilizing a portion of accrued sick leave to supplement workers compensation to maintain his regular salary; however, no appointing authority may require an employee to accept sick leave, vacation leave, or compensatory time off for overtime in lieu of workers compensation provided by law. Additionally, an employee may not waive his rights to workers compensation and cannot accept earned leave or other benefits in lieu thereof. (5-8-09)

02. Layoff After Twelve Weeks' Disability. If the employee becomes disabled, whether or not due to a workers compensation injury, and is unable to return to work after twelve (12) weeks' absence or when accrued sick leave has been exhausted, whichever is longer, the employee's position may be declared vacant unless otherwise prohibited by state or federal law. The period of absence for such an employee is not interrupted by the employee's full return to work for less than two (2) consecutive work weeks. Return to work as part of a rehabilitation program does not interrupt the calculation of the period of absence. The employee's name is certified to a reemployment preference register when the administrator has been notified by the physician that the employee is able to return to work. (Ref. Rule Subsection 101.01) (5-8-09)

~~**a.** If an employee is not eligible for the protections of the Family and Medical Leave Act (FMLA), the employee may only take a maximum of twelve (12) weeks absence due to their disability every twelve (12) month period. The period of absence for such an employee is not interrupted by the employee's full return to work for less than two (2) consecutive work weeks and return to work as part of a rehabilitation program does not interrupt the calculation of the period of absence.~~ (5-8-09)

~~**b.** Conditional releases will be considered in accordance with the Americans with Disabilities Act.~~ (3-16-04)()

(BREAK IN CONTINUITY OF SECTIONS)

262. OVERTIME.

01. Employing Agencies. The state is considered as one (1) employer for determining the number of hours an employee works. If an employee works for more than one (1) agency, the agency employing the employee when the overtime occurs is liable for compensatory time off or cash compensation as provided by law. (5-8-09)

02. Compensation for Overtime. Overtime accrual and compensation for classified employees is covered by Sections 67-5328 and 59-1607, Idaho Code, for nonclassified employees. Overtime is defined in Section 67-5302(20), Idaho Code. Overtime does not include any time, such as ~~traded time, or~~ occasional or sporadic work, which ~~are~~ is excluded from the overtime calculation by federal law. ~~(5-8-09)~~ ()

03. Modification of Workweek or Schedule. No agency will alter a previously established work week for the purpose of avoiding overtime compensation. An agency may modify the employee's regular schedule of work to avoid or minimize overtime. (5-8-09)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1002

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULEMAKING

EFFECTIVE DATES: The effective dates of these temporary rules are: April 1, 2009, December 19, 2009, January 1, 2010, and September 1, 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 Sections 56-202, 56-203, 56-209, 56-236, 56-237, 56-238, 56-239, 56-240, 56-242, 56-250, 56-253, 56-255, and 56-257, Idaho Code, Section 211 of the "Children's Health Insurance Program (CHIP) Reauthorization Act of 2009," and federal Public Law no. 111-118, Sec. 8120.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

1. This rulemaking contains two changes that provide more choices for Idaho citizens seeking health coverage for their children, and will streamline the application process for children and families whose U.S. citizenship must be verified.

a. This rule change will allow for any child eligible for SCHIP to be enrolled in Children's Access Card, which means that children between the ages of 6 and 19 with family income exceeding 100% of FPL and less than or equal to 185% of FPL can also qualify for Children's Access Card.

b. This rule change will allow for the U.S. citizenship and identity of first-time applicants for Medicaid and SCHIP to be verified through a data match with the Social Security Administration (SSA), when the SSA has previously verified citizenship and identity.

2. This rule change also updates the eligibility time period for special immigrants based on federal regulations that extended the eligibility time period.

3. Also added are requirements for children eligible for coverage under Title XXI SCHIP to meet the verification of U.S. citizenship and identity requirements.

4. Lastly, language was added stating that an individual found eligible for Medicaid will receive services for 90 days while verification of U.S. citizenship and identity are pending.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate. The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

Number 1, as described in the descriptive summary, provides a benefit by giving additional families a choice between having the Department provide direct health coverage for their children in the form of the SCHIP program, and purchasing private health insurance for their children, with the Department subsidizing the child's premium. This rulemaking also helps participants applying for Medicaid as they will not have to make multiple trips to Department offices in order to allow Department staff to view original birth certificates or other paper documents.

Rule changes being made in Numbers 2, 3, and 4, stated in the descriptive summary, are required by federal legislation, i.e., Number 2 - federal Public Law no. 111-118, Sec. 8120; Number 3 and 4 - Section 211 of the "Children's Health Insurance Program (CHIP) Reauthorization Act of 2009."

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: None.

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 total anticipated fiscal impact to the state general fund is \$120,714, which is the state's portion at the current federal match rates for this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted since these changes are due to federal regulations.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule. N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact Kathy McGill at (208) 334-4934.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
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THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0301-1002

220. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.

To be eligible, an individual must be a member of one (1) of the following groups: (3-30-07)

01. U.S. Citizen. A U.S. Citizen; (3-30-07)

02. U.S. National, National of American Samoa or Swain's Island. A U. S. national, or a national of American Samoa or Swain's Island. (3-30-07)

03. Child Born Outside the U.S. A child born outside the U.S., as defined in Public Law 106-395, is considered a citizen if all of the following conditions are met: (3-30-07)

a. At least one (1) parent is a U.S. Citizen. The parent can be a citizen by birth or naturalization. This includes an adoptive parent; (3-30-07)

b. The child is residing permanently in the U.S. in the legal and physical custody of a parent who is a

- U.S. Citizen; (3-30-07)
- c.** The child is under eighteen (18) years of age; (3-30-07)
 - d.** The child is a lawful permanent resident; and (3-30-07)
 - e.** If the child is an adoptive child, the child was residing in the U.S. at the time the parent was naturalized and was in the legal and physical custody of the adoptive parent. (3-30-07)
- 04. Full-Time Active Duty U.S. Armed Forces Member.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who is 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; (3-30-07)
- 05. Veteran of the U.S. Armed Forces.** A qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c) who were 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; (3-30-07)
- 06. Non-Citizen Entering the U.S. Before August 22, 1996.** A non-citizen who entered the U.S. before August 22, 1996, who is currently a qualified non-citizen as defined in 8 U.S.C. 1641(b) or (c), who remained continuously present in the U.S. until he became a qualified non-citizen; (3-30-07)
- 07. Non-Citizen Entering On or After August 22, 1996.** A non-citizen who entered the U.S. on or after August 22, 1996, and who is: (3-30-07)
- a.** 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; (3-30-07)
 - b.** 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; (3-30-07)
 - c.** 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; (3-30-07)
 - d.** 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 (3-30-07)
 - e.** A Cuban or Haitian entrant to the U.S. under Section 501(e) of the Refugee Assistance Act under Section 501(e) of P.L. 96-422 (1980), and can be eligible for seven (7) years from their date of entry; (3-30-07)
- 08. Qualified Non-Citizen Entering On or After August 22, 1996.** A qualified non-citizen under 8 U.S.C. 1641(b) or (c), who entered the U.S. on or after August 22, 1996, and who has held a qualified non-citizen status for at least five (5) years; (3-30-07)
- 09. American Indian Born in Canada.** An American Indian born in Canada, under 8 U.S.C. 1359; (3-30-07)
- 10. American Indian Born Outside the U.S.** An American Indian born outside of the U.S., who is a member of a U.S. federally recognized tribe under 25 U.S.C. 450 b(e); (3-30-07)
- 11. Qualified Non-Citizen Child Receiving Federal Foster Care.** A qualified non-citizen child as defined in 8 U.S.C. 1641(b) or (c), and receiving federal foster care assistance; and (3-30-07)
- 12. 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: (3-30-07)

- a. Is under the age of eighteen (18) years; or (3-30-07)
- 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 (3-30-07)
 - 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 (3-30-07)
 - ii. Is remaining in the U.S. to assist the U.S. Attorney General in the prosecution of traffickers in persons. (3-30-07)

13. Afghan Special Immigrants. An Afghan special immigrant, as defined in Public Law 110-161, 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.~~ ~~(3-29-10)~~ (12-19-09)T

14. Iraqi Special Immigrants. An Iraqi special immigrant, as defined in Public Law 110-181, 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)~~ (12-19-09)T

221. U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.

Any individual who participates in a Title XIX Medicaid or Title XXI SCHIP funded program must provide documentation of U.S. citizenship and identity unless he has otherwise met the requirements under Section 225 of this rule. The individual must provide the Department with the most reliable document that is available. Documents must be originals or copies certified by the issuing agency. Copies of originals or notarized copies cannot be accepted. The Department will accept original documents in person, by mail, or through a guardian or authorized representative. ~~(3-30-07)~~ (1-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

224. ELIGIBILITY FOR APPLICANTS AND MEDICAID PARTICIPANTS WHO DO NOT PROVIDE CITIZENSHIP AND IDENTITY DOCUMENTATION.

01. Applicants. ~~Eligibility will be denied to any applicant who does not provide proof of citizenship and identity documentation.~~ Medicaid applicants have ninety (90) days to provide proof of U.S. citizenship and identity. Medicaid benefits will be approved pending verification of U.S. citizenship and identity if the participant meets all other eligibility requirements. Medicaid will be denied if the applicant refuses to obtain documentation. ~~(3-30-07)~~ (4-1-09)T

02. Participants. Any Medicaid participant, who does not provide proof of citizenship and identity documentation at a scheduled renewal and who is making a good faith effort to obtain documentation, will not be terminated from Medicaid for lack of documentation unless the participant: (3-30-07)

- a. Does not meet other eligibility criteria required in this chapter of rules; ~~or~~ ~~(3-30-07)~~ (4-1-09)T
- b. Refuses to obtain the documentation; ~~or~~ ~~(3-30-07)~~ (4-1-09)T
- c. Fails to provide the documentation within ninety (90) days of a request for the documentation. ~~(4-1-09)T~~

225. INDIVIDUALS CONSIDERED AS MEETING THE U.S. CITIZENSHIP AND IDENTITY DOCUMENTATION REQUIREMENTS.

The individuals listed in Subsections 225.01 through 225.05 of this rule meet the U.S. citizenship and identity

- requirements and are not required to provide documentation of citizenship and identity. (4-2-08)
- 01. Supplemental Security Income (SSI) Recipients. (4-2-08)
 - 02. Social Security Disability Income (SSDI) Recipients. (4-2-08)
 - 03. Individuals Determined by SSA to be Entitled to Receive Medicare. (4-2-08)
 - 04. Adoptive or Foster Care Children Receiving Assistance Under Title IV-B or Title IV-E of the Social Security Act. (4-2-08)
 - 05. Individuals Deemed Eligible for Medicaid as a Waived Newborn Under Section 530 of these Rules. (3-29-10)
 - 06. **Individuals Whose Name, Social Security Number, and Declaration of U.S. Citizenship Have Been Confirmed to Match the Records of the SSA.** (9-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

251. SPONSOR DEEMING.

Income and resources of a legal non-citizen's sponsor and the sponsor's spouse are counted in determining eligibility. *Sponsor deeming is not required for the following non-citizens:* (5-8-09)(12-19-09)T

- ~~a.~~ *Afghan special immigrants as described in Section 220 of these rules; or* (5-8-09)
- ~~b.~~ *Iraqi special immigrants as described in Section 220 of these rules.* (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

525. CONTINUOUS HEALTH CARE ASSISTANCE ELIGIBILITY FOR CHILDREN UNDER AGE NINETEEN.

Children under age nineteen (19), who are found eligible in an initial determination or a renewal, remain eligible for a period of twelve (12) months. The twelve (12) month continuous eligibility period does not apply if, for any reason, eligibility was determined incorrectly. (3-30-07)

- 01. **Reasons Continuous Eligibility Ends.** Continuous eligibility for children stops for one (1) of the following reasons: (3-30-07)
 - a. The child is no longer an Idaho resident; or (3-30-07)
 - b. The child dies; or (3-30-07)
 - c. The participant requests closure; or (3-30-07)
 - d. The child turns nineteen (19) years of age as defined in Subsection 010.05 of these rules. (3-30-07)
- 02. **Children Not Eligible for Continuous Eligibility.** Children are not eligible for continuous eligibility for one (1) of the following reasons: (3-30-07)
 - a. A child is approved for emergency medical services; ~~or~~ (5-8-09)(12-19-09)T
 - b. A child is approved for pregnancy-related services; ~~or~~ (5-8-09)(12-19-09)T

- ~~e.~~ *A child is an Afghan special immigrant and is approved for eight (8) months; or* (3-29-10)
- ~~d.~~ *A child is an Iraqi special immigrant and is approved for eight (8) months.* (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

560. CHOOSING CHILDREN'S ACCESS CARD.

Participants may choose Children's Access Card for a child when their countable family income ~~exceeds one-hundred thirty-three percent (133%) and is less than or equal to one-hundred eighty-five percent (185%) of the Federal Poverty Guideline for his family size~~ meets the standards of Subsection 560.01 or 560.02 of this rule.
(3-30-07)(9-1-10)T

01. Children Under the Age of Six. Family income exceeds one-hundred thirty-three percent (133%) and is less than or equal to one-hundred eighty-five percent (185%) of the Federal Poverty Guideline for his family size. (9-1-10)T

02. Children Six Years of Age or Older. Family income exceeds one-hundred percent (100%) and is less than or equal to one-hundred eighty-five percent (185%) of the Federal Poverty guideline for his family size. (9-1-10)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO

DOCKET NO. 16-0304-1002

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 56-203, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Department temporarily suspended the asset test for the Food Stamp Program (see the July 7, 2010, Idaho Administrative Bulletin, Docket 16-0305-1001) due to the lack of employment and the economy not recovering in Idaho. The temporary rule currently in place will expire and the text will revert back to the previously codified text unless the Department reinstates an asset test to replace these rules. The proposed rules in this Docket 16-0305-1002 will become effective on adjournment of the 2011 Legislative Session. This docket also reflects changes that are being made to the previously codified rules that were in effect prior to the adoption of the temporary rules.

The asset test will be reinstated with an increase in the amount allowed for all Food Stamp households. In order to qualify for the program, a household's assets, as defined by Food Stamp rules and federal regulations, cannot exceed \$5,000.

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 Department anticipates a fiscal impact to state general funds due to this rulemaking. The impact will be for operating costs to cover the required automation changes to the Idaho Benefits Information System (IBES), the Department's automated system which is funded with existing IBES funding. The actual Food Stamp benefits are 100% federally-funded and any change in the amount distributed does not impact state general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rule change is being made to meet legislative guidance.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule. N/A

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

DATED this 26th day of August, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720, Boise, ID 83720-0036

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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0304-1002

178. CATEGORICALLY ELIGIBLE HOUSEHOLDS.

Households with all members meeting one (1) of the criteria below are categorically eligible for Food Stamps. ~~Categorically eligible households are resource and income eligible.~~ The Department will not compute resource eligibility. The Department will not compute gross or net income eligibility. Categorically eligible households must meet all other Food Stamp eligibility criteria. Categorically eligible households have the same rights as other households. (6-1-94)()

01. Cash Benefits. All household members are approved for, or already ~~get~~ receive, TAFI or AABD or SSI cash benefits. The household is categorically eligible. (7-1-98)()

02. Benefits Recouped. All household members have AABD or SSI benefits being recouped. The household is categorically eligible. (7-1-98)

03. Grant Less Than Ten Dollars. All household members not ~~getting~~ receiving TAFI or AABD or SSI because their grant is less than ten dollars (\$10). The household is categorically eligible. (7-1-98)()

179. HOUSEHOLDS NOT CATEGORICALLY ELIGIBLE.

The households listed below ~~are~~ not categorically eligible for Food Stamps. (6-1-94)()

01. Medicaid Only. Households are not categorically eligible if any household member ~~gets~~ receives Medicaid benefits only. (6-1-94)()

02. IPV. Households are not categorically eligible, if any household member is disqualified for a Food Stamp Intentional Program Violation (IPV). (6-1-94)

03. Work Requirements. Households are not categorically eligible, if any household member fails to comply with the Food Stamp work requirements. (6-1-94)

04. Ineligible Legal Non-Citizen or Student. Households are not categorically eligible if any member is an ineligible legal non-citizen or ineligible student. (7-1-98)

05. Nonexempt Institution. Households are not categorically eligible if any member is a person living in a nonexempt institution. (6-1-94)

180. CATEGORICAL ELIGIBILITY ENDS.

Categorical eligibility ends when ~~one~~ the household member is no longer eligible for TAFI, AABD or SSI. If the household is still eligible under Food Stamp rules, the household will continue to ~~get~~ receive Food Stamps. If categorical eligibility ends and household income or resources exceed the Food Stamp limits, the household is no longer eligible for Food Stamps. Food Stamps will stop after timely advance notice. (7-1-98)()

181. MIXED HOUSEHOLDS (RESERVED).

~~Households with at least one (1) member meeting the conditions below are mixed households. Resources of members meeting the conditions below are excluded. Resources of the other household members are counted.~~ (6-1-94)

~~**01. Cash Benefits.** Household member is approved for, or already gets, TAFI or AABD or SSI cash benefits. (7-1-98)~~

~~**02. Benefits Recouped.** Household member has AABD or SSI benefits being recouped. (7-1-98)~~

~~**03. Grant Less Than Ten Dollars.** Household member not getting TAFI or AABD or SSI because the grant is less than ten dollars (\$10). (7-1-98)~~

(BREAK IN CONTINUITY OF SECTIONS)

301. DETERMINING RESOURCES.

~~Determine the countable resources available to the household by projecting resources on a month-by-month basis.~~
The resources of all household members are counted unless the resource is excluded. (6-1-94)()

(BREAK IN CONTINUITY OF SECTIONS)

303. COUNTING RESOURCES ~~FOR APPLICANTS.~~

At the time of application or recertification, a household must report all countable resources it has ~~or expects to receive~~. Resources are identified and evaluated, as of the Food Stamp interview date, to determine if they are counted or excluded. (4-11-06)()

304. ~~COUNTING RESOURCES FOR RECIPIENTS (RESERVED).~~

~~Determine resources for recipients throughout the certification period as described in Section 601 of these rules.~~
(4-11-06)

~~01. **Anticipated Resources.** If resources are anticipated at any time during an upcoming month or months, a resource determination must be made. Anticipated resources affect the entire month's eligibility for the month of receipt.~~
(6-1-94)

~~02. **Unanticipated Newly Acquired Resources.** Consider unanticipated newly acquired resources available as of the first day of the month following the receipt of the new resource. If the client spends or uses up the resource before the first day of the next month, the resource will not be counted the next month.~~
(6-1-94)

305. RESOURCE LIMIT.

The Food Stamp resource limit ~~for households with one (1) member who is age sixty (60) or over, or disabled, is three five thousand dollars (\$35,000). The resource limit is three thousand dollars (\$3,000), even if the person age sixty (60) or over is the only person in the household. The resource limit for other households is two thousand dollars (\$2,000). To be considered as disabled, a person must meet one (1) of the criteria listed in Subsections 216.02 through 216.10 of these rules. Beginning October 1, 2008, the resource limit will be adjusted for inflation using the Consumer Price Index, rounded down to the nearest two hundred and fifty dollars (\$250). Each adjustment is based on the unrounded amount for the prior twelve (12) month period.~~
(5-8-09)()

~~**306. CHANGE IN RESOURCE LIMIT.**~~

~~The Food Stamp resource limit changes from two thousand dollars (\$2,000) to three thousand dollars (\$3,000) the month a household member turns age sixty (60) or when the household member is disabled and meets one (1) of the criteria listed in Subsections 216.02 through 216.10 of these rules. The resource limits will be adjusted for inflation using the Consumer Price Index beginning October 1, 2008.~~
(5-8-09)

~~**307. RESOURCES AND CHANGE IN HOUSEHOLD MEMBERS.**~~

~~A change in household members can change the resource limit. If a household gains one member age sixty (60) or older, or who is disabled, the resource limit changes the month the Department adds the member to the Food Stamp household. If a household loses all members age sixty (60) or older, or who is disabled, the resource limit changes the month the Department removes the member from the Food Stamp household.~~
(3-20-04)

~~**306. -- 307. (RESERVED).**~~

(BREAK IN CONTINUITY OF SECTIONS)

380. RESOURCES PREVIOUSLY PRORATED AS INCOME EXCLUDED (RESERVED).

~~Resources previously prorated as income are excluded as resources. Prorated income may be loans to persons attending school or self-employed persons, paid in amounts to cover several months. After the proration period, the total amount of combined funds is a countable resource. If this money is combined with countable funds, such as a bank account, the prorated amount is excluded for the proration period.~~
(7-1-97)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-1003
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of the temporary rules are: December 19, 2009; January 1, 2010; July 1, 2010; and October 1, 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 regular rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-203, Idaho Code, Public Law 111-118 Section 8120, and 7 CFR 273.11(c)(1).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

These rule changes are being made to align the food stamp program rules with federal regulations and other benefit programs. These changes will improve the Department's accuracy and processes when determining participant eligibility for food stamp benefits. The changes include clarification of income that is excluded, special immigrants with refugee status, process for returned mail and adjustment of benefits when a participant's death becomes known to the Department.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule changes is appropriate because they confer benefits.

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

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

There is no anticipated fiscal impact to the state general fund due to this rulemaking. The food stamp program is 100% federally-funded.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because changes are being done to confer benefits and align with federal regulations.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
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THE FOLLOWING IS THE TEMPORARY RULE AND THE PROPOSED TEXT
FOR DOCKET NO. 16-0304-1003

204. CITIZENSHIP AND QUALIFIED NON-CITIZEN REQUIREMENTS.

To be eligible for Food Stamps, an individual must meet the requirements specified in 7 CFR 273.4, "Citizenship and alien status." In addition, special immigrants from Iraq and Afghanistan have ~~limited eligibility per~~ refugee status under Public Laws ~~110-161, 110-181, and~~ 111-118, Subsection ~~602(b)(8)~~ 8120. ~~(3-29-10)(12-19-09)T~~

(BREAK IN CONTINUITY OF SECTIONS)

219. CIRCUMSTANCES UNDER WHICH FOOD STAMP PARTICIPATION IS PROHIBITED.

01. Prohibition from Receiving Food Stamp Benefits. An individual is prohibited from receiving Food Stamp benefits ~~in the same month as~~ at the time of application if he: ~~(4-6-05)(7-1-10)T~~

- a. Receives tribal commodities; (4-6-05)
- b. Is incarcerated; (4-6-05)
- c. Is in an institution; (4-6-05)
- d. Is in foster care and the foster parents are receiving a cash benefit for providing care and maintenance for the child; ~~or~~ ~~(4-11-06)(7-1-10)T~~
- e. Receives Food Stamp benefits in another household; ~~or~~ ~~(4-6-05)(7-1-10)T~~
- f. Is deceased. (7-1-10)T

02. Prohibited Participation During the Certification Period. If the Department learns of prohibited participation during the certification period, it will act to end benefits for that individual. (7-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

402. UNEARNED INCOME.

Unearned income includes, but is not limited to income listed below: (6-1-94)

01. Public Assistance (PA). Payments from SSI, TAFI, AABD, GA, or other Public Assistance programs are unearned income. (7-1-98)

- 02. Retirement Income.** Payments from annuities, pensions, and retirement are unearned income. Old age, survivors, or Social Security benefits are unearned income. (6-1-94)
- 03. Strike Benefits.** Strike benefits are unearned income. (6-1-94)
- 04. Veteran's Benefits.** Veteran's benefits are unearned income. (6-1-94)
- 05. Disability Income.** Disability benefits are unearned income. (6-1-94)
- 06. Workers' Compensation.** Workers' Compensation is unearned income. (6-1-94)
- 07. Unemployment Insurance.** Unemployment Insurance is unearned income. (6-1-94)
- 08. Contributions.** Contributions are unearned income. (6-1-94)
- 09. Rental Property Income.** Rental property income, minus the cost of doing business, is unearned income if a household member is not managing the property at least twenty (20) hours per week. (6-1-94)
- 10. Support Payments.** Support payments, including child support payments, are unearned income. (6-1-94)
- 11. Alimony.** Alimony payments are unearned income. (6-1-94)
- 12. Education Benefits.** Educational scholarships, grants, fellowships, deferred payment loans, and veteran's educational benefits ~~exceeding excluded amounts~~ are **excluded** unearned income. ~~(6-1-94)~~**(10-1-10)T**
- 13. Government Sponsored Program Payments.** Payments from government sponsored programs are unearned income. (6-1-94)
- 14. Dividends, Interest, and Royalties.** Dividends, interest, and royalties are unearned income. Interest income is excluded unearned income. ~~(6-1-94)~~**(10-1-10)T**
- 15. Contract Income.** Contract income from the sale of property is counted as unearned income. (6-1-94)
- 16. Funds From Trusts.** Monies withdrawn from trusts exempt as a resource are unearned income. Dividends paid or dividends that could be paid from trusts exempt as a resource are unearned income. (7-1-97)
- 17. Recurring Lump Sum Payments.** Recurring lump sum payments are unearned income. (7-1-98)
- 18. Prizes.** Cash prizes, gifts and lottery winnings are unearned income. (6-1-94)
- 19. Diverted Support or Alimony.** Child support or alimony payments, diverted by the provider to a third party, to pay a household expense are unearned income. (6-1-94)
- 20. Agent Orange Payments.** Payments made under the Agent Orange Act of 1991 and disbursed by the U.S. Treasury are unearned income. (6-1-94)
- 21. Garnishments.** Garnishments from unearned income are unearned income. (6-1-94)
- 22. Tribal Gaming Income.** Tribal gaming income is unearned income. The participant can choose to count the income in the month received, or prorate the income over a twelve (12) month period. (4-5-00)
- 23. Other Monetary Benefits.** Any monetary benefit, not otherwise counted or excluded, is unearned income. (6-1-94)

403. -- 404. (RESERVED).

405. EXCLUDED INCOME.

Income excluded when computing Food Stamp eligibility is listed below: (6-1-94)

01. Money Withheld. Money withheld voluntarily or involuntarily, from an assistance payment, earned income, or other income source, to repay an overpayment from that income source, is excluded. If an intentional noncompliance penalty results in a decrease of benefits under a means tested program such as SSI or GA, count that portion of the benefit decrease attributed to the repayment as income. (7-1-98)

02. Child Support Payments. Child support payments received by TAFI recipients which must be given to CSS are excluded as income. (7-1-98)

03. Earnings of Child Under Age Eighteen Attending School. Earned income of a household member under age eighteen (18) is excluded. The member must be under parental control of another household member and attending elementary or secondary school. For the purposes of this provision, an elementary or secondary student is someone who attends elementary or secondary school or who attends GED or home-school classes that are recognized, operated, or supervised by the school district. This exclusion applies during semester and summer vacations if enrollment will resume after the break. If the earnings of the child and other household members cannot be differentiated, prorate equally among the working members and exclude the child's share. (7-1-98)

04. Retirement Benefits Paid to Former Spouse or Third Party. Social Security retirement benefits based on the household member's former employment, but paid directly to an ex-spouse, are excluded as the household member's income. Military retirement pay diverted by court order to a household member's former spouse is excluded as the household member's income. Any retirement paid directly to a third party from a household member's income by a court order is excluded as the household member's income. (6-1-94)

05. Infrequent or Irregular Income. Income received occasionally is excluded as income if it does not exceed thirty dollars (\$30) total in a three (3) month period. (6-1-94)

06. Cash Donations. Cash donations based on need and received from one (1) or more private nonprofit charitable organizations are excluded as income. The donations must not exceed three hundred dollars (\$300) in a calendar quarter of a federal fiscal year (FFY). (6-1-94)

07. Income in Kind. Any gain or benefit, such as meals, garden produce, clothing, or shelter, not paid in money, is excluded as income. (6-1-94)

08. Vendor Payments. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. (3-20-04)

09. Third Party Payments. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. (3-20-04)

10. Loans. Loans are money received which is to be repaid. Loans are excluded as income. (6-1-94)

11. Money for Third Party Care. Money received and used for the care and maintenance of a third party who is not in the household. If a single payment is for both household members and nonhousehold members the identifiable portion of the payment for nonhousehold members is excluded. If a single payment is for both household members and nonhousehold members, exclude the lesser of: (6-1-94)

a. The prorated share of the nonhousehold members if the portion cannot be identified. (6-1-94)

b. The amount actually used for the care and maintenance of the nonhousehold members. (6-1-94)

12. Reimbursements. Reimbursements for past or future expenses not exceeding actual costs. Payments must not represent a gain or benefit. Payments must be used for the purpose intended and for other than

- normal living expenses. Excluded reimbursements are not limited to: (6-1-94)
- a. Travel, per diem, and uniforms for job or training. (6-1-94)
 - b. Out-of-pocket expenses of volunteer workers. (6-1-94)
 - c. Medical and dependent care expenses. (6-1-94)
 - d. Pay for services provided by Title XX of the Social Security Act. (6-1-94)
 - e. Repayment of loans made by the household from their personal property limit. The repayment must not exceed the amount of the loan. (6-1-94)
 - f. Work-related and dependent care expenses paid by the JSAP program. (6-1-94)
 - g. Transitional child care payments. (6-1-94)
 - h. Child care payments under the Child Care and Dependent Block Grant Act of 1990. (6-1-94)
13. **Federal Earned Income Tax Credit (EITC).** Federal EITC payments are excluded as income. (9-1-94)
14. **Work Study.** Work Study income received while attending post-secondary school is excluded as income. (3-20-04)
15. **HUD Family Self-Sufficiency (FSS) Escrow Account.** The federal exclusion for these funds are only excluded while the funds are in the escrow account or being used for a HUD approved purpose. See Section 363 of these rules for further clarification. (4-11-06)
- 16. Temporary Census Earnings. Wages earned for temporary employment related to U. S. Census activities are excluded as income during the regularly scheduled ten (10) year U. S. Census.** (1-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

415. EDUCATIONAL INCOME.

Educational income includes deferred repayment educational loans, grants, scholarships, fellowships, and veterans' educational benefits. The school attended must be a recognized institution of post secondary education, a school for the handicapped, a vocational education program, or a program providing completion of a secondary school diploma, or equivalent. ~~Title IV and BIA~~ Educational income is excluded. ~~Expenses may be deducted from educational income not excluded. Proof of expenses must be provided. Educational income is computed using steps in Subsections 415.01 through 415.06.~~ (6-1-94)(10-1-10)T

- ~~01- Step 1. Determine available income received for education. Exclude Title IV and BIA educational income.~~ (6-1-94)
- ~~02- Step 2. Deduct the amount for origination fees and insurance premiums from any educational loans.~~ (6-1-94)
- ~~03- Step 3. Deduct the largest amounts used for or earmarked as an allowance. The allowance is determined by the school, institution, or program. Do not deduct an allowance for living expenses. Deductible allowances are:~~ (6-1-94)
 - ~~a- Tuition allowance.~~ (6-1-94)

- ~~b. Mandatory fees allowance. This includes rental or purchase of equipment, materials, and supplies related to the course of study. (6-1-94)~~
- ~~c. Books, supplies, and transportation allowance. (6-1-94)~~
- ~~04. Step 4. Deduct personal expenses incidental to attending the school, institution, or program. The expenses are determined by the school. Do not deduct living expenses. (6-1-94)~~
- ~~05. Step 5. Deduct a child care allowance as determined by the school, institution, or program. (6-1-94)~~
- ~~06. Step 6. The remaining income is counted in the Food Stamp budget by prorating it over the period of intended use. (6-1-94)~~

(BREAK IN CONTINUITY OF SECTIONS)

509. TYPES OF INCOME TO BE AVERAGED.

Types of income to be averaged are listed below. Income for a destitute migrant or seasonal farm worker household is not averaged. (3-30-07)

- 01. Self-Employment Income.** Average self-employment income. (6-1-94)
- 02. Contract Income.** Average contract income over the period of the contract, if not received on an hourly or piecework basis. Households with averaged contract income include school employees, share croppers and farmers. These households do not include migrants or seasonal farm workers. (6-1-94)
- ~~03. Scholarships or Education Loans. Average scholarship, deferred educational loan, or other educational grant income, after exclusions, over the period of intended use. Scholarships or education loans may cover part of a month. A partial month is counted as a whole month to determine the period of intended use. (6-1-94)~~
- ~~a. If education benefits are received in the middle of the coverage period average them over the entire period, after deducting allowable expenses. Count the average monthly amount for only the remaining months in the period covered. No overissuance exists for the previous months. (6-1-94)~~
- ~~b. If education costs are incurred and verified after the first month of the school term, average the expenses over the entire period of intended use. Deduct only the average monthly amount for the remaining months in the period of intended use. (6-1-94)~~
- 043. Income Received Less Often Than Monthly.** When receipt of income is less often than monthly, the anticipated income can be averaged over the period intended to cover to determine the average monthly income. (6-1-94)
- 054. Child Support.** Child support income can be averaged to make a valid projection for ongoing income. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

531. COMPUTING GROSS INCOME.

Compute gross Food Stamp income by performing the steps in Subsections 531.01 through 531.06 of this rule. (6-1-94)

- 01. Step 1.** Project wages and salaries for the month for each household member. Do not count

- excluded income. (6-1-94)
- a. Add wages and salaries for the household. (6-1-94)
 - b. Add net self-employment income. (6-1-94)
- 02. Step 2.** Subtract any loss from a farmer's self-employment income. (6-1-94)
- 03. Step 3.** Project unearned income, ~~including educational income~~, for the month for each household member. Do not count excluded income. Add unearned income for the household. ~~(6-1-94)~~(10-1-10)T
- 04. Step 4.** Add unearned income to earned income. (6-1-94)
- 05. Step 5.** Subtract any remaining loss from a farmer's self-employment income. (6-1-94)
- 06. Step 6.** The income remaining is gross income for Food Stamp eligibility. (6-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

537. DEPENDENT CARE RESTRICTIONS.

- Dependent care restrictions are listed below: (6-1-94)
- 01. Care by Household Member.** Dependent care cannot be deducted if the care is provided by another household member. (6-1-94)
 - 02. In-Kind Payment.** Dependent care cannot be deducted if the payment is in-kind, such as food or exchanges for shelter. (6-1-94)
 - 03. Vendor Payment.** Dependent care cannot be deducted if paid by vendor payment. (6-1-94)
 - ~~**04. Education Exclusion.** Dependent care cannot be deducted if income for dependent care is excluded from educational income. (6-1-94)~~
 - 05. Spouse Can Give Care.** Dependent care cannot be deducted if the spouse in the home is physically capable of the dependent care and is not working, seeking work, or registered for work. (6-1-94)
 - 06. Paid or Reimbursed Dependent Care.** Dependent care cannot be deducted if paid or reimbursed under a federal child care program. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

613. CHANGES ON WHICH THE DEPARTMENT MUST ACT.

- 01. General Changes on Which Department Must Act.** Regardless of whether the Food Stamp Benefit will increase or decrease, the Department must act as described in Sections 617 and 618 of these rules when: (4-11-06)
- a. The household requests closure; (4-6-05)
 - b. The TAFI or AABD grant amount changes; (4-6-05)
 - c. An individual is sanctioned or disqualified; (4-6-05)

- d. The change would cause prohibited participation, see Section 219 of these rules; (4-11-06)
- e. Information is received from a source the Department has defined as verified upon receipt in Section 012 of these rules; (4-11-06)
- f. The change is required to be reported and the change is expected to continue into the next month; (4-6-05)
- g. The Food Stamp benefit will increase and the change is not a change in expenses; (4-11-06)
- h. The household reports that all members of the household moved out of the state of Idaho; ~~or~~ ~~(3-29-10)~~ (10-1-10)T
- i. The U.S. Post Office returns mail to the Department because the household moved and left no forwarding address as provided in Section 735 of these rules. (10-1-10)T

02. Changes Resulting in an Increase in the Food Stamp Benefit. The Department must also act on changes that have been reported that would increase the household's Food Stamp amount as described in Section 617 of these rules. (4-11-06)

03. Documentation. Changes must be documented in the case record, even if there is no change in the Food Stamp amount. (6-1-94)

04. Change Report Form. A new Change Report Form (HW 0594 or HW 0586) must be given or sent to the household when a change is reported. (6-1-94)

05. Receipt of Report Notice. The Department must notify the household when the report is received. A Notice of Decision meets this requirement, when notifying the household of a benefit determination. (6-1-94)

06. Proof. Give the household a written request for proof. The household must be told failure to provide the proof will result in decreased or stopped benefits. The Department must document how the request for proof was made. (3-15-02)

07. Unclear Information. If the Department is unable to readily determine the effect of a change on the household's benefit amount, the Department will issue a written request advising the household of proof it must provide or actions it must take, to clarify its circumstances. The household has ten (10) days in which to respond to the Department's request, either by telephone or correspondence. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

633. NOTICE OF CHANGES NOT REQUIRED.

Notice to individual Food Stamp households is not required when the conditions listed in Subsection 633.01 below are met. Mass notice must be given in some situations, as listed in Subsection 633.02 below: (4-5-00)

01. Waiver by the Household. A household member or authorized representative provides a written statement requesting closure. The person gives information causing reduction or an end to benefits and states, in writing, they know adverse action will be taken. The person acknowledges in writing continuation of benefits is waived, if a fair hearing is requested. (4-5-00)

02. Mass Change. Mass changes include: (6-1-94)

a. Changes in the income limit tables. (6-1-94)

- b. Changes in the issuance tables. (6-1-94)
- c. Changes in Social Security benefits. (6-1-94)
- d. Changes in SSI payments. (6-1-94)
- e. Changes in TAFI or AABD grants. (7-1-98)
- f. Changes caused by a reduction, suspension, or cancellation of Food Stamps ordered by the Secretary of USDA. (6-1-94)
- g. When it performs mass changes, the Department notifies Food Stamp households of the mass change by one of the following methods: (6-1-94)
 - i. Media notices. (6-1-94)
 - ii. Posters in the Food Stamp offices and issuance locations. (6-1-94)
 - iii. A general notice mailed to households. (6-1-94)
- 03. Mass Changes in TAFI or AABD.** When a mass change to TAFI or AABD causes a Food Stamp change, use the following criteria: (7-1-98)
 - a. If the Department has thirty (30) days advance notice of the TAFI or AABD mass change, Food Stamps must be adjusted the same month as the change. (7-1-98)
 - b. If the Department does not have advance notice, Food Stamp benefits must be changed no later than the month after the TAFI or AABD mass change. (7-1-98)
 - c. Ten (10) day advance notice to Food Stamp households is not required. Adequate notice must be sent to Food Stamp households. (6-1-94)
 - d. If a household requests a fair hearing because of an issue other than mass change, continue Food Stamps. (6-1-94)
- 04. Notice of Death.** Notice is not required when the Department learns of the death of all household members. (6-1-94)
- 05. Move From Idaho or Cannot be Located.** Notice of closure is not required when the household moves from Idaho, or when the U.S. Post Office returns mail to the Department because the household moved and left no forwarding address. (~~4-11-06~~)(10-1-10)T
- 06. Completion of Restored Benefits.** Notice is not required when an increased allotment, due to restored benefits, ends. The household must have been notified in writing when the increase would end. (6-1-94)
- 07. Joint Public Assistance and Food Stamp Applications.** Notice is not required if the household jointly applies for TAFI or AABD and Food Stamps and gets Food Stamps pending TAFI or AABD approval. The household must be notified at certification that Food Stamps will be reduced upon TAFI or AABD approval. (7-1-98)
- 08. Converting From Repayment to Benefit Reduction.** Notice is not required if a household with an IHE or IPV claim fails to repay under the repayment schedule. An allotment reduction is enforced. (6-1-94)
- 09. Households Receiving Expedited Service.** Notice is not required if all the following conditions are met: (4-11-06)
 - a. The applicant received expedited services. (4-11-06)

- b. Proof was postponed. (6-1-94)
- c. A regular certification period was assigned. (6-1-94)
- d. Written notice, stating future Food Stamps depend on postponed proof, was given at approval. (6-1-94)

10. Residents of a Drug or Alcoholic Treatment Center or a Group Living Arrangement Center.
Notice is not required when the Department ends Food Stamps to residents of a drug or alcoholic treatment center or group living arrangement center if: (6-1-94)

- a. The Department revokes the center's certification. (6-1-94)
- b. FCS disqualifies the center as a retailer. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

735. FOOD STAMP HOUSEHOLDS THAT MOVE.

01. Household Moves and New Address is Known. When a Food Stamp household moves: (10-1-10)T

a. ~~Within Idaho, the sending and receiving field offices must transfer the case record and the Department will~~ change the household's address. (10-1-10)T

b. ~~When all members of a Food Stamp household move~~ Outside of Idaho, the Department will close the case effective at the end of the month in which the household moves. Notice is not required. ~~(4-11-06)~~ (10-1-10)T

02. Household Moves and New Address is Unknown. When the U.S. Post Office returns mail to the Department because the household moved and left no forwarding address, the case is closed at the end of the month. Notice is not required. (10-1-10)T

a. ~~If the household contacts the Department and provides a new Idaho address in the first calendar month following closure, the case is reopened without a new application as long as the certification period has not expired. The Food Stamps case is effective as of the first day of the month the Department is contacted.~~ (10-1-10)T

b. ~~New proof of residency is not required, unless questionable.~~ (10-1-10)T

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

**16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,
BLIND, AND DISABLED (AABD)**

DOCKET NO. 16-0305-1002

NOTICE OF PUBLIC HEARING AND EXTENSION OF WRITTEN COMMENT PERIOD

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has scheduled a public hearing and extended the period of public comment. The action is authorized pursuant to Sections 56-202 and 56-203, Idaho Code.

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

Thursday, October 14, 2010 1:30 p.m. PDT	Thursday, October 14, 2010 11:00 a.m. MDT	Thursday, October 14, 2010 1:30 p.m. MDT
Dept. of Health & Welfare - Region 1 1120 Ironwood Drive, Suite 102 Lower Level, Large Conf. Room Coeur d'Alene, ID	Dept. of Health & Welfare - Region 4 1720 Westgate Drive Suite D, Conference Room A Boise, ID	Dept. Health & Welfare - Region 7 150 Shoup Avenue 2nd Floor, Large Conference Room Idaho Falls, ID

SPECIAL NOTE: Department staff will be available at the hearing sites in Coeur d'Alene and Idaho Falls for a question and answer session about the AABD rule changes in this docket beginning at 1:30 p.m. The Public Hearing will begin promptly at 2:00 p.m. In Boise, the question and answer session will begin at 11:00 a.m., followed by the Public Hearing at 11:30 a.m.

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 summary of this action is found in the [Idaho Administrative Bulletin, Vol. 10-9, dated September 1, 2010, pages 168 through 175.](#)

These AABD rule changes were made for federal regulations for special immigrants, for use of Social Security Administration data exchange for U.S. citizenship verification, and the expiration of the ISSH Waiver from the Medicaid State Plan. The proposed rule text was published in legislative format with additions underlined and deletions struck out. It is these additions and deletions to which public comments on the rule changes in Docket 16-0305-1002 are to be addressed at these public hearings.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Callie King at (208) 334-0663.

SUBMISSION OF WRITTEN COMMENTS: The comment period for this rulemaking has been extended. Anyone may submit written comments regarding this rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 15, 2010.

Anyone may submit written comments at the public hearing regarding this rulemaking. Any written comments submitted at a public hearing carry the same weight as oral testimony. All written comments must be directed to the undersigned and must be delivered on or before October 15, 2010.

DATED this 20th day of September, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720, Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.22 - RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES IN IDAHO

DOCKET NO. 16-0322-1001

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 39-3305, Idaho Code.

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

Thursday, October 14, 2010 at 3:00 p.m.

Department of Health and Welfare - Medicaid Office
3232 Elder Street
Conference Room D East
Boise, ID 83705

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

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

The reporting requirements for incidents and accidents in residential care or assisted living facilities are being amended. Currently, these reports do not contain allegations of abuse and neglect, but only provide for incidents and accidents that result in an injury requiring medical treatment. Changes are needed to better protect the residents living in these facilities. These proposed changes will place a higher priority on allegations of abuse and neglect and will help alleviate time spent by both Department and facility staff reporting and reviewing incidents and accidents that are of a minor nature.

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

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

This rulemaking has no anticipated fiscal impact to state general funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted with the residential care or assisted living facilities staff, residents of these facilities and their families, advocacy groups and professional associations, Disability Rights Idaho, Idaho Commission on Aging, and the Idaho Center for Assisted Living Association (ICAL).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jamie Simpson at (208) 334-6626.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0322-1001

011. DEFINITIONS AND ABBREVIATIONS F THROUGH M.

01. Follow-Up Survey. A survey conducted to confirm that the facility is in compliance and has the ability to remain in compliance. (3-30-06)

02. Functional Abilities Assessment. An assessment of the resident's degree of independence with which the resident performs activities of daily living and instrumental activities of daily living. (3-30-06)

03. Governmental Unit. The state, any county, municipality, or other political subdivision or any Department, division, board, or other agency thereof. (3-30-06)

04. Grade Plane. A reference plane representing the average of finished ground level adjoining the building at exterior walls. Where the finished ground level slopes away from the exterior walls, the reference plane will be established by the lowest points within the area between the building and the lot line or, where the lot line is more than six (6) feet (1829 mm) from the building, between the building and a point six (6) feet (1829 mm) from the building. International Building Code - 2003. (3-30-06)

05. Hands On. Physical assistance to the resident beyond verbal prompting. (3-30-06)

06. Hourly Adult Care. Nonresident daily services and supervision provided by a facility to individuals who are in need of supervision outside of their personal residence for a portion of the day. (3-30-06)

07. Immediate Danger. Any resident is subject to an imminent or substantial danger. (3-30-06)

08. Inadequate Care. When a facility fails to provide the services required to meet the terms of the Negotiated Service Agreement, or provide for room, board, activities of daily living, supervision, first aid, assistance and monitoring of medications, emergency intervention, coordination of outside services, a safe living environment, or engages in violations of resident rights or takes residents who have been admitted in violation of the provisions of Section 39-3307, Idaho Code. (3-30-06)

09. Incident. An event that can cause a resident injury. (3-30-06)

10. Incident, Reportable. A situation when a facility is required to report information to the Licensing and Certification Unit. (3-29-10)

a. Allegations of, or suspected physical, mental or sexual abuse to include: ()

i. Verbal or written allegations that a resident has been subject to physical, mental or sexual abuse. ()

ii. Resident injuries of unknown origin. ~~This includes any injury.~~ The source of ~~which the injury~~ was not observed by any person or the source of the injury could not be explained by the resident; or the injury includes severe bruising on the head, neck, or trunk, fingerprint bruises anywhere on the body, laceration, sprains, or fractured bones. ~~Minor bruising and skin tears on the extremities need not be reported.~~ (3-30-06)()

b. Resident injury resulting from accidents involving facility-sponsored transportation. Examples: falling from the facility's van lift, wheel chair belt coming loose during transport, or an accident with another vehicle. (3-30-06)

c. Resident elopement of any duration. Elopement is when a resident who is unable to make sound decisions physically leaves the facility premises without the facility's knowledge. (3-30-06)

d. An injury due to resident-to-resident incident. (3-30-06)

e. An incident that results in ~~the resident's need for hospitalization, treatment in a hospital emergency room, fractured bones, IV treatment, dialysis, or death~~ a life-threatening situation or death. Such incidents include: ingestion of toxic substances, attempted suicide, hypothermia, hyperthermia, life-threatening medication errors, and incidents that result in a resident's admission to a hospital. (3-30-06)()

11. Independent Mobility. A resident's ability to move about freely of their own choice with or without the assistance of a mobility device such as a wheelchair, cane, crutches, or walker. (3-30-06)

12. Instrumental Activities of Daily Living. The performance of secondary level of activities that enables a person to live independently in the community, including preparing meals, access to transportation, shopping, laundry, money management, housework, and medication management. (3-30-06)

13. Legal Guardian or Conservator. A court-appointed individual who manages the affairs or finances or both of another who has been found to be incapable of handling his own affairs. (3-30-06)

14. License. A permit to operate a facility. (3-30-06)

15. Licensing and Certification Unit. The section of the Department responsible for licensing and surveying residential care or assisted living facilities. (3-29-10)

16. Medication. Any substance or drug used to treat a disease, condition, or symptom, which may be taken orally, injected, or used externally and is available through prescription or over-the-counter. (3-30-06)

17. Medication Administration. It is a process where a prescribed medication is given to a resident by one (1) of several routes by licensed nurses. (3-30-06)

18. Medication Assistance. The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a person who cannot independently self-administer medications. IDAPA 23.01.01. "Rules of the Idaho State Board of Nursing," Section 010. (3-30-06)

19. Medication Dispensing. The act of filling, labeling and providing a prescribed medication to a resident. (3-30-06)

20. Medication, Self-Administration. The act of a resident taking a single dose of his own medication from a properly labeled container and placing it internally in, or externally on, his own body as a result of an order by a authorized provider. (3-30-06)

21. Mental Disorders. Health conditions that are characterized by alterations in thinking, mood or behavior (or some combination thereof), that are all mediated by the brain and associated with distress and or impaired functioning. (3-30-06)

22. Mental Illness. Refers collectively to all diagnosable mental disorders. (3-30-06)

23. Monitoring Visit. A visit by a representative of the Licensing and Certification Unit for the purpose of assuring residents are not in immediate danger. (3-29-10)

24. Neglect. Failure to provide food, clothing, shelter, or medical care necessary to sustain the life and health of a resident. (3-30-06)

25. Negotiated Service Agreement. The plan reached by the resident and/or their representative and the facility based on the assessment, physician or authorized provider's orders, admission records, and desires of the resident, and which outlines services to be provided and the obligations of the facility and the resident. (3-30-06)

26. Non-Core Issue. Any finding of deficiency that is not a core issue. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

215. REQUIREMENTS FOR A FACILITY ADMINISTRATOR.

Each facility must be organized and administered under one (1) licensed administrator assigned as the person responsible for the operation of the facility. Multiple facilities under one (1) administrator may be allowed by the Department based on an approved plan of operation. (3-30-06)

01. Administrator Responsibility. The administrator is responsible for assuring that policies and procedures required in Title 39, Chapter 33, Idaho Code and IDAPA 16.03.22, "Residential Care or Assisted Living Facilities in Idaho" are implemented. (3-30-06)

02. Availability of Administrator. The facility's administrator must be on site sufficiently to provide for safe and adequate care of the residents to meet the terms in the Negotiated Service Agreement. The facility's administrator or his designee must be available to be on-site at the facility within two (2) hours. (3-30-06)

03. Thirty Day Operation Limit. The facility may not operate for more than thirty (30) days without a licensed administrator. (3-30-06)

04. Representation of Residents. The administrator, his relatives, or employees cannot act as or seek to become the legal guardian of, or have power of attorney for any resident. Specific limited powers of attorney to address emergency procedures where competent consent cannot otherwise be obtained are permitted. (3-30-06)

05. Responsibility for Acceptable Admissions. The administrator must assure that no resident is knowingly admitted or retained who requires care as defined in Section 39-3307, Idaho Code, and Subsection 152.05 of these rules. (3-30-06)

06. Sexual Offender. The administrator must assure that a non-resident on the sexual offender registry is not allowed to live or work in the facility. The registry may be accessed at http://www.isp.idaho.gov/sor_id/. (3-30-06)

07. Notification of Adult Protection and Law Enforcement. The administrator must assure that adult protection and law enforcement are notified in accordance with Section 39-5310, Idaho Code. (3-30-06)

08. Procedures for Investigations. The administrator must assure the facility procedures for investigation of incidents, accidents, and allegations of abuse, neglect, or exploitation are implemented to assure resident safety. (3-30-06)

09. Notification of Reportable Incidents. The administrator must assure notification to the Licensing and Certification Unit of reportable incidents. (3-29-10)

10. Administrator's Designee. A person authorized in writing to act in the absence of the administrator and who is knowledgeable of facility operations, the residents and their needs, emergency procedures,

the location and operation of emergency equipment, and how the administrator can be reached in the event of an emergency. (3-30-06)

11. Ability to Reach Administrator or Designee. The administrator or his designee must be reachable and available at all times. (3-30-06)

12. Minimum Age of Personnel. The administrator will assure that no personnel providing hands-on care or supervision services will be under eighteen (18) years of age unless they have completed a certified nursing assistant (CNA) certification course. (3-30-06)

13. Notification to Licensing and Certification Unit. The facility must notify the Licensing and Certification Unit, in writing, within three (3) business days of a change of administrator. (3-29-10)

14. Incident and Accident Log. The administrator must maintain a written log of all incidents and accidents as defined in Subsections 010.02, 011.09 and 011.10 of these rules. The log must include, at a minimum: ()

- a.** The name(s) of each resident and staff involved; ()
- b.** The date and time the incident took place; ()
- c.** The nature of the incident and any injuries; and ()
- d.** The actions taken to prevent recurrence of the incident. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.05.04 - RULES OF THE IDAHO COUNCIL ON DOMESTIC VIOLENCE
AND VICTIM ASSISTANCE GRANT FUNDING

DOCKET NO. 16-0504-1001

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 39-5209, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Idaho Council on Domestic Violence is proposing to update the minimum standards document for the Domestic Violence Batterer Treatment Program that is incorporated by reference in this chapter of rules. The minimum standards are being updated to reflect current research on domestic violence treatment, in particular, evidence-based batterer intervention.

The proposed changes will benefit individuals and organizations involved in the effective response to domestic violence as well as those receiving treatment, their families, and their communities. The rule changes will support, with best practices, an effective response to domestic violence that promotes safety, accountability of offenders, and a positive family environment.

In addition, the standard "required sections" of this chapter of rules are being included and updated to conform to the current requirements of the Office of the Administrative Rules Coordinator.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any 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, informal negotiated rulemaking was conducted. However, no Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the Idaho Administrative Bulletin. Extensive informal negotiated rulemaking in the form of open forums was held during June and July of 2009, in Boise Idaho Falls, and Coeur d'Alene. For more information, go to: <http://codvbtps.blogspot.com/>.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the *Minimum Standards for Domestic Violence Offender Intervention Programs* document is being incorporated by reference into these rules to give it the force and effect of law. The document is not being published in this chapter of rules due to its length and format, and because of the cost for republication. The document will be available at <http://www.icdv.idaho.gov> upon approval by the 2011 Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Luann Dettman at (208) 332-1540.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 11th day of August, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720, Boise, ID 83720-0036
phone: (208) 334-5564; fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0504-1001

000. LEGAL AUTHORITY.

~~Pursuant to~~ Under Sections ~~39-5207(2) and~~ 39-5209, Idaho Code, the Council on Domestic Violence and Victim Assistance is authorized to promulgate, adopt, and amend rules to implement the provisions of the Domestic Violence Project Grants Act, as contained in Chapter 52, Title 39, Idaho Code. ~~Furthermore, pursuant to Executive Order No. 85-18 and Section 39-5208(2), Idaho Code, the Council is authorized to administer such other funds as may be made available to accomplish in whole or in part any of the purposes of the laws or orders administered by the Council and to disseminate information on the availability of funds and the application process.~~ (5-3-03)()

001. TITLE AND PURPOSE SCOPE.

01. Title. These title of these rules ~~are to be cited as Idaho Department of Health and Welfare Rules, is~~ IDAPA 16.05.04, "Rules of the Idaho Council on Domestic Violence and Victim Assistance Grant Funding." (5-3-03)()

02. Purpose Scope. These rules ~~hereby establish the~~ define the application process, eligibility determination, and other requirements for the grants administered by the Idaho Council on Domestic Violence and Victim Assistance ~~and subsequent authority to award state and federal grants to programs in the state of Idaho that provide aid to victims of crime.~~ (5-3-03)()

03. Relationship to the Department of Health and Welfare. The Council on Domestic Violence and Victim Assistance is attached to the Department of Health and Welfare for fiscal and administrative purposes, and any grant awards, disbursement of funds, and other procedural matters must be in compliance with Department requirements. Programmatically the Council is independent of the Department. (5-3-03)

~~002.—003. (RESERVED).~~

002. WRITTEN INTERPRETATIONS.

There are no written interpretations for these rules. ()

003. ADMINISTRATIVE APPEALS.

The requirements for appealing a grant award decision are found under Section 033 of these rules. ()

004. INCORPORATION BY REFERENCE.

01. General. Unless provided otherwise, any reference in these rules to any document identified in Section 004 shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "document" includes codes, standards, or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

02. Availability of Reference Material. Copies of the documents incorporated by reference into these rules are available: (5-3-03)

a. At the Idaho Council on Domestic Violence and Victim Assistance, 450 West State Street 304 North 8th Street, Suite 140, P.O. Box 83720, Boise, Idaho 83720-0036. (5-3-03)()

b. On the internet at: <http://www.icdv.idaho.gov>. (5-3-03)

03. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-3-03)

a. “Domestic Violence Program and Personnel Standards,” published by the Idaho Council on Domestic Violence and Victim Assistance, effective November 20, 1998. (5-3-03)

b. “Minimum Standards for ~~Batterer Treatment~~ Domestic Violence Offender Intervention Programs,” published by the Idaho Council on Domestic Violence and Victim Assistance, effective ~~April 29, 1999~~ July 1, 2011. (5-3-03)()

c. “Sexual Assault Program and Personnel Standards,” published by the Idaho Council on Domestic Violence and Victim Assistance, effective April 27, 2001. (5-3-03)

005. OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

02. Mailing Address. ()

a. The mailing address for the business office of the Idaho Department of Health and Welfare is P.O. Box 83720, Boise, Idaho 83720-0036. ()

b. The mailing address for the business office of the Idaho Council on Domestic Violence and Victim Assistance is P.O. Box 83720, Boise, Idaho 83720-0036. ()

03. Street Address. ()

a. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ()

b. The business office of the Idaho Council on Domestic Violence and Victim Assistance is located at 304 North 8th Street, Suite 140, Boise, Idaho 83702. ()

04. Telephone. ()

a. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. ()

b. The telephone number for the Idaho Council on Domestic Violence and Victim Assistance is (208) 332-1540, or, Toll Free: 1-800-291-0463. ()

05. Internet Website. ()

a. The Department’s internet website is found at <http://www.healthandwelfare.idaho.gov>. ()

b. The website for the Idaho Council on Domestic Violence and Victim Assistance is found at <http://www.icdv.idaho.gov>. ()

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ()

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ()

0057. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

033. APPEAL OF GRANT AWARD DECISION.

No later than fifteen (15) days from the date of written notification from the Council to a program announcing denial of its grant application or suspension or termination of its grant, a program may file a written request for reconsideration of the Council's decision. All requests for reconsideration must be addressed and submitted to the executive director of the Council. (3-12-90)

01. Contents of Request for Reconsideration. Any request for reconsideration must contain all pertinent facts supporting the program's request for the Council to reconsider its grant award decision. (3-12-90)

02. Disposition of Request for Reconsideration. Upon notification of a timely request for reconsideration, the chairperson of the Council will appoint a panel composed of three (3) Council members to review the contents of the request and all pertinent data upon which the Council based its original decision. (3-12-90)

03. Disposition of Funds for Service Area Pending Reconsideration. While a timely and valid request for reconsideration received from a program is pending, fifty percent (50%) of the funds allocated to the service area in which the program is located will be held. (3-12-90)

04. Issuance of Decision. Following consideration of all data pertinent to the issue, the appointed panel will prepare a written report of its deliberations and issue a dated decision concerning the recommended resolution of the dispute. Copies of the report and the decision will be transmitted to the full Council and to the program submitting the request. (3-12-90)

05. Appeal of the Council's Decision. If the program is unsatisfied by the decision of the Council, a written appeal setting out the basis for the appeal may be filed. It must be received by the executive director of the Council no later than fifteen (15) days from the date of the Council's written decision. (3-12-90)

06. Hearing on Appeal. Upon notification of receipt of a timely appeal, the chairperson of the Council will appoint a hearing officer to convene a hearing pursuant to in accordance with the Idaho Administrative Procedure Act, Sections 67-52091, et seq. through 67-5212, Idaho Code. (3-12-90)()

(BREAK IN CONTINUITY OF SECTIONS)

037. -- 9979. (RESERVED).

998. INCLUSIVE GENDER

For the purposes of these rules, words used in the feminine gender include the masculine and vice versa, where appropriate. (3-12-90)

999. SEVERABILITY.

~~Idaho Department of Health and Welfare Rules, IDAPA 16.05.04, "Rules Governing the Domestic Violence and Victim Assistance Grant Projects" are severable. If any rule or part thereof, or the application of such rule to any person or circumstances is declared invalid, that invalidity does not affect the validity of any remaining portion of these rules.~~

~~(3-12-90)~~

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

DOCKET NO. 16-0612-1002

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

Thursday, October 21, 2010 at 6:30 p.m.

**Region IV Health and Welfare Office
1720 Westgate Drive
Suite D Conference Room
Boise, ID**

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

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

The Idaho Child Care rules are being amended to be more effective and user friendly for Idahoans to access the program. These rules have been reorganized, repetitive requirements have been removed, and clarification has been added for how income and qualifying activity is calculated. Application time frames are being clearly defined in order to streamline eligibility determinations.

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

FISCAL IMPACT: The following is a specific description, if applicable, of any 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 state general funds for this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is clarifying existing language, reorganization of the current rule, and removing repetitive requirements.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 24th day of August, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720, Boise, ID 83720-0036

phone: (208) 334-5564
fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 16-0612-1002

012. -- ~~099~~49. (RESERVED).

APPLICATION REQUIREMENTS
(Sections 050 through 069)

050. ICCP APPLICATION FOR BENEFITS.

A family applying for child care benefits must submit a completed and signed application to the Department. ()

01. Application Received. The Department will date stamp the application on the day the application is received. The applicant has thirty (30) days from the date the application is received by the Department to complete the application process by providing all required verifications. ()

02. New Application Required. A new application is required if all requested verification is not provided within thirty (30) days from the date the application was received by the Department. The time limit can be extended by the Department for events beyond the Department's control. ()

03. Notification. The Department will act on applications for child care benefits within thirty (30) days of receipt. The applicant will be notified in writing of the approval or denial of the application and of the applicant's right to appeal. ()

051. -- 069. (RESERVED).

FINANCIAL CRITERIA FOR ICCP ELIGIBILITY
(Sections 070 through 099)

[Codified Section 100 has been moved and renumbered to proposed Section 070]

~~**1070. APPLICATION AND INCOME LIMITS FOR CHILD CARE BENEFITS.**~~

~~*Child care benefits are payments from the Department to child care providers on behalf of eligible families. An application for assistance for child care benefits must be completed, signed by the applicant, and received by the Department. The date of the application is the date it is received by the Department. The applicant must be notified in writing of the approval or denial of the application and of the right to appeal, if applicable. In order to receive ICCP assistance the applicant must not exceed the gross income limits described in Subsections 100.01 and 100.02 of this rule. (4-2-08)*~~

~~**01. Maximum Income Limits for ICCP Benefits.** ~~*The maximum income limit for eligibility for payment of ICCP benefits is based on one hundred thirty-five percent (135%) of the 2007 federal poverty guidelines. Maximum income limits by family size are as follows:*~~ A family's income must be less than the published 2007 federal poverty guidelines for one hundred thirty-five percent (135%) of poverty for a family of the same size. The federal poverty guidelines are available on the U.S. Health and Human Services web site at <http://aspe.hhs.gov/poverty>. (4-2-08)()~~

- ~~a.~~ One thousand five hundred forty dollars (\$1,540) for a household of two (2); (4-2-08)
- ~~b.~~ One thousand nine hundred thirty-two dollars (\$1,932) for a household of three (3); (4-2-08)
- ~~c.~~ Two thousand three hundred twenty-three dollars (\$2,323) for a household of four (4); (4-2-08)
- ~~d.~~ Two thousand seven hundred fifteen dollars (\$2,715) for a household of five (5); (4-2-08)

- e. Three thousand one hundred six dollars (\$3,106) for a household of six (6); (4-2-08)
 - f. Three thousand four hundred ninety-eight dollars (\$3,498) for a household of seven (7); (4-2-08)
 - g. Three thousand eight hundred eighty-nine dollars (\$3,889) for a household of eight (8); (4-2-08)
 - h. Four thousand two hundred eighty-one dollars (\$4,281) for a household of nine: and (4-2-08)
 - i. Four thousand six hundred seventy-two dollars (\$4,672) for a household of 10. (4-2-08)
- 02. Additional Household Member.** Three hundred ninety-two dollars (\$392) is added to the maximum income limit for each additional family member. (4-2-08)

[Codified Section 301 has been moved and renumbered to proposed Section 071]

3071. COUNTABLE INCOME.

All gross earned and unearned income is counted in determining eligibility and the child care benefit amount, unless specifically excluded under Section ~~3072~~ of these rules. (~~5-8-09~~) ()

[Codified Section 302 has been moved and renumbered to proposed Section 072]

3072. 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. (1-1-10)T

[Codified Section 303 has been moved and renumbered to proposed Section 073]

~~307~~3. AVERAGING SELF-EMPLOYMENT INCOME.

01. **Annual Self-Employment Income.** When self-employment income is considered annual support by the household, the Department averages the self-employment income over a twelve (12) month period, even if: (5-8-09)
- a. The income is received over a shorter period of time than twelve (12) months; and (5-8-09)
- b. The household receives income from other sources in addition to self-employment. (5-8-09)
02. **Seasonal Self-Employment Income.** A seasonally self-employed individual receives income from self-employment during part of the year. When self-employment income is considered seasonal, the Department averages self-employment income for only the part of the year the income is intended to cover. (5-8-09)

[Codified Section 304 has been moved and renumbered to proposed Section 074]

~~307~~4. CALCULATION OF SELF-EMPLOYMENT INCOME.

The Department calculates self-employment income by adding monthly income to capital gains and subtracting a deduction for expenses as determined in Subsection ~~307~~4.03 of this rule. (~~5-8-09~~)()

01. **How Monthly Income is Determined.** If no income fluctuations are expected, the average monthly income amount is projected for the certification period. If past income does not reflect expected future income, a proportionate adjustment is made to the expected monthly income. (5-8-09)
02. **Capital Gains Income.** Capital gains include profit from the sale or transfer of capital assets used in self-employment. The Department calculates capital gains using the federal income tax method. If the household expects to receive any capital gains income from self-employment assets during the certification period, this amount is added to the monthly income as determined in Subsection ~~307~~4.01 of this rule to determine the gross monthly income. (~~5-8-09~~)()
03. **Self-Employment Expense Deduction.** The Department uses the standard self-employment deduction in Subsection ~~307~~4.03.a. of this rule, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the expenses described in Subsection ~~307~~4.03.b. of this rule. (~~5-8-09~~)()
- a. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the

gross monthly self-employment income as determined in Subsections ~~303074~~.01 and ~~303074~~.02 of this rule; or
(5-8-09)()

b. The self-employment actual expense deduction is determined by subtracting the actual allowable expenses from the gross monthly self-employment income. The following items are not allowable expenses and may not be subtracted from the gross monthly self-employment income: (5-8-09)

- i. Net losses from previous tax years; (5-8-09)
- ii. Federal, state, and local income taxes; (5-8-09)
- iii. Money set aside for retirement; (5-8-09)
- iv. Work-related personal expenses such as transportation to and from work; and (5-8-09)
- v. Depreciation. (5-8-09)

075. PROJECTING MONTHLY INCOME.

Income is projected for each month. Past income may be used to project future income. Changes expected during the certification period must be considered. Criteria for projecting monthly income is listed below: ()

01. Income Already Received. Count income already received by the household during the month. If the actual amount of income from any pay period is known, use the actual pay period amounts to determine the total month's income. Convert the actual income to a monthly amount if a full month's income has been received or is expected to be received. If no changes are expected, use the known actual pay period amounts for the past thirty (30) days to project future income. ()

02. Anticipated Income. Count income the household and the Department believe the household will get during the remainder of the certification period. If the income has not changed and no changes are anticipated, use the income received in the past thirty (30) days as one indicator of anticipated income. If changes in income have occurred or are anticipated, past income cannot be used as an indicator of anticipated income. If income changes and income received in the past thirty (30) days does not reflect anticipated income, the Department can use the household income received over a longer period to anticipate income. If income changes seasonally, the Department can use the household income from the last season, comparable to the certification period, to anticipate income. ()

a. Full Month's Income. If income will be received for all regular pay dates in the month, it is considered a full month of income. ()

b. If income will not be received for all regular pay dates in the month, it is not considered a full month of income and it is not converted. ()

c. Income Paid on Salary. Income received on salary, rather than an hourly wage, is counted at the expected monthly salary rate. ()

d. Income Paid at Hourly Rate. Compute anticipated income paid on an hourly basis by multiplying the hourly pay by the expected number of hours the client will work in the pay period. Convert the pay period amount to a monthly amount. ()

e. Fluctuating Income. When income fluctuates each pay period and the rate of pay remains the same, average the income from the past thirty (30) days to determine the average pay period amount. Convert the average pay period amount to a monthly amount. ()

076. CONVERTING INCOME TO A MONTHLY AMOUNT.

If a full month's income is expected, but is received on other than a monthly basis, convert the income to a monthly amount using one of the formulas below: ()

- 01. Weekly Amount.** Multiply weekly amounts by four point three (4.3). ()
- 02. Bi-Weekly Amount.** Multiply bi-weekly amounts by two point one five (2.15). ()
- 03. Semi-Monthly Amount.** Multiply semi-monthly amounts by two (2). ()
- 04. Salary Amount.** Use the exact monthly income if it is expected for each month of the certification period. ()
- 077. -- 099. (RESERVED).**

NON-FINANCIAL CRITERIA
(Sections 100 Through 199)

[Codified Section 100 has been moved and renumbered to proposed Section 070]

100. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

104. FAMILY COMPOSITION.

A family is a group of individuals living in a common residence, whose combined income is considered in determining eligibility and the child care benefit amount. No individual may be considered a member of more than one (1) family in the same month. The following individuals are included in determining the family composition: (4-2-08)

01. Married Parents. Married parents living together in a common residence, includes biological, adoptive, step-parent, and foster parent. (~~4-2-08~~)()

02. Unmarried Parents. Unmarried parents who live in the same home and who have a child in common living with them. (4-2-08)

03. Dependents. Individuals who are claimed as dependents for tax purposes. (4-2-08)

04. Minor Parent. A minor parent and child are considered a separate family when they apply for child care benefits, even if they live with other relatives. (4-2-08)

05. Individual Acting In Loco Parentis. An individual acting in loco parentis who is eligible to apply for child care benefits. (4-2-08)

105. ELIGIBLE CHILD.

A family can only receive child care benefits for eligible children. A child is eligible for child care benefits under the following conditions: (4-2-08)

01. Immunizations Requirements. A child must be immunized in accordance with IDAPA 16.02.11, "Immunization Requirements for Children Attending Licensed Daycare Facilities in Idaho." Child care benefits can continue during a reasonable period necessary for the child to be immunized. Parents must provide evidence that the child has been immunized unless the child is attending school. (4-2-08)

02. Citizenship or Alien Status Requirement. A child must be one (1) of the following: (4-2-08)

a. A citizen; (4-2-08)

- b. Living lawfully in the United States. (4-2-08)
- 03. Child's Age Requirement.** A child must be under thirteen (13) years of age, with the following exceptions: (4-2-08)
- a. A child thirteen (13) years of age or older may be eligible for child care benefits if he meets one (1) or more of the following criteria: (4-2-08)
- i. A child is eligible for child care benefits until the month of his eighteenth birthday if he is physically or mentally incapable of self-care, as verified by a licensed mental health professional or licensed practitioner of the healing arts. (4-2-08)
- ii. A child may be eligible for child care benefits until the month of his eighteenth birthday if a court order, probation order, child protection, or mental health case plan requires constant supervision. (4-2-08)
- b. A child who is eligible under Subsection 105.03.a. of this rule may receive child care benefits until the month of his nineteenth birthday if he is a full-time student and is expected to complete secondary school no later than the month of his nineteenth birthday. (4-2-08)()

04. Joint Custody. A child may move from one (1) parent's home to the other parent's home on a regular basis. The child may be a member of either household, but not both households. If the parents cannot agree on the child's household for the child care case, the child is included in the household of the first parent to apply who is both income and activity eligible. ()

(BREAK IN CONTINUITY OF SECTIONS)

QUALIFYING ACTIVITIES
(Sections 200 through 299)

200. QUALIFYING ACTIVITIES FOR CHILD CARE BENEFITS.

To be eligible for child care benefits, a family each parent included in the household must need child care because they are engaged in one (1) of the qualifying activities listed in Subsections 200.01 through 200.05 of this rule. (5-8-09)()

- 01. Employment.** The parent is currently employed. (4-2-08)
- 02. Self-Employment.** The parent is currently self-employed in a business that is a sole proprietorship. A sole proprietorship is a business owned by one (1) person. Restrictions apply for self-employment as follows: (5-8-09)
- a. For the first six (6) months of self-employment benefits assistance, actual activity hours are used ~~to determine benefit assistance for a parent who is self-employed.~~ (5-8-09)()
- b. After receiving six (6) months of self-employment child care benefits assistance, the number of self-employment activity hours ~~that will be used to calculate benefits can~~ will be limited ~~for a parent who is self-employed.~~ To calculate the activity hours allowed for ICCP benefit assistance, the gross monthly self-employment income is divided by the current federal minimum hourly wage ~~to determine the number of self-employment activity hours allowed.~~ The qualifying activity hours are the lesser of the calculated activity hours or actual activity hours ~~will be used to determine the benefit assistance.~~ (5-8-09)()
- 03. Training or Education.** The parent is attending an accredited education or training program. The following restrictions apply to training or education activities: (4-2-08)

- a. On-line classes cannot be counted as a qualifying activity for child care. (4-2-08)
- b. Persons with baccalaureate degrees or who are attending post-baccalaureate classes do not qualify for child care benefits. (4-2-08)
- c. More than forty (40) months of post-secondary education has been used as a qualifying activity. (4-2-08)

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

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

201. REPORTING REQUIREMENTS FOR FAMILIES.

~~**01. Changes That Must Be Reported Within Ten Days.** A family who applies for or receives child care benefits must report the following changes within ten (10) days of the change: (4-2-08)~~

- ~~a. Anyone entering or leaving the household. (4-2-08)~~
- ~~b. Change in the rates charged for child care services; (4-2-08)~~
- ~~c. Change in the hours or nature of any qualifying activity; (4-2-08)~~
- ~~d. Change in the number of hours worked; (4-2-08)~~
- ~~e. A permanent change in rate of pay; (4-2-08)~~
- ~~f. Any other permanent change in monthly income, either earned or unearned; and (4-2-08)~~
- ~~g. A change of address for either the participant or the child care provider. (4-2-08)~~

~~**02. Changing Providers.** (4-2-08)~~

~~a. Changing Providers During the Month. A parent must notify ICCP by the twenty fifth of the month of his intent to change providers for the next month of service. (4-2-08)~~

~~b. Changing Providers Without Providing Notice. A parent who chooses to change providers without providing notice to the Department and who does not have good cause for failing to report the change, is responsible to pay the new provider for the next month of service. (4-2-08)~~

201. PROJECTING QUALIFYING ACTIVITY HOURS.

01. Activity Hours. Activity is projected for each month. Past activity may be used to project future activity if the employer and number of hours worked are the same and are expected to remain the same throughout the certification period. For students, a new class schedule must be submitted at the beginning of each semester or change in schedule. Hours for each qualifying activity must be projected individually and converted to a monthly amount. ()

01. Weekly Hours. Multiply weekly amounts by four point three (4.3). ()

02. Bi-weekly Hours. Multiplying bi-weekly amounts by two point one five (2.15). ()

03. Semi-Monthly Hours. Multiplying semi-monthly amounts by two (2). ()

~~04.~~ **Monthly Hours.** Use the exact monthly hours if it is expected for each month of the certification period. ()

202. -- ~~2399.~~ (RESERVED).

~~300.~~ **INCOME LIMIT.**

~~A family's income must be less than the published 2007 federal poverty guidelines for one hundred thirty-five percent (135%) of poverty for a family of the same size. The federal poverty guidelines are available on the U.S. Health and Human Services web site at <http://aspe.hhs.gov/poverty/index.shtml>. (4-2-08)~~

[Codified Sections 301 through 304 have been moved and renumbered to proposed Sections 071 through 074, respectively]

~~305. -- 399.~~ (RESERVED).

400. REQUIREMENTS FOR IN-HOME CARE UNDER ICCP.

Parents must contact the Department to request approval of in-home child care. Only parents who have qualified activities outside their home will be considered for in-home care approval. The Department limits the approval of all in-home child care under ICCP to the following circumstances: (4-2-08)

01. Three or More Children in the Home. There are three (3) or more **ICCP eligible** children in the home who are ~~eligible for ICCP~~ **not in school at any time during the day** and require child care. (4-2-08)()

02. Fewer Than Three Children in the Home. If there are fewer than three (3) children in the home who are eligible for ICCP and require child care, in-home care will be approved by the Department only when one (1) of the following special circumstances are met: (4-2-08)

a. Parents' qualifying activity occurs during times when out-of-home care is not available. If child care is needed during any period when out-of-home care is not available, in-home care will be approved for the entire time care is needed. A family is not expected to change between out-of-home and in-home care. (4-2-08)

b. The family lives in an area where out-of-home care is not available. (4-2-08)

c. A child has a verified illness or disability that would place the child or other children in an out-of-home facility at risk. (4-2-08)

401. -- 499. (RESERVED).

PAYMENT INFORMATION
(Sections 500 through 599)

500. ALLOWABLE CHILD CARE COSTS.

Care provided to an eligible child by an eligible child care provider is payable subject to the following conditions: (4-2-08)

01. Payment for Employment, Training, Education, or Preventive Service Hours. Child care must be reasonably related to the hours of the parent's qualifying activities. ~~Travel time is included in determining qualifying activities.~~ (4-2-08)()

02. Family Member or Guardian Not Payable. A parent, step-parent, or unmarried parent will not be paid for providing child care to his child. A guardian will not be paid for providing child care to his ward. Absent parents, or anyone living in the absent parent's home are not eligible to receive ICCP payment.. (4-2-08)

03. One-Time Registration Fees. One-time fees for registering a child in a child care facility are

payable above the local market rate, if the fee is charged to all who enroll in the facility. Fees may not exceed usual and customary rates charged to all families. Registration fees are separate from local market rates. (4-2-08)

04. Local Market Rates (LMR) for Child Care. The local market rates are the maximum monthly amounts that ICCP will pay for any given category of child care in a geographic area designated by the Department. The local market rates for child care are established based on a comprehensive survey of child care providers. Using information gathered in the survey, including the age of child, the type of child care, and the designated area where the provider does business, a local market rate is specified for each category of child care. The rate survey is conducted biannually. However, due to budgetary considerations, the Department may opt not to update the rate structure following a survey. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

502. SLIDING FEE SCHEDULES.

Eligible families, except TAFI families participating in non-employment TAFI activities, must pay part of their child care costs. Providers are responsible for ensuring families pay the determined child care costs and may not waive or defer these costs. (7-1-09)

01. Poverty Rates. Poverty rates will be one hundred thirty-five percent (135%) of the 2007 federal poverty guidelines published in the Federal Register. The monthly rate will be calculated by dividing the yearly rate by twelve (12). (4-2-08)

02. Calculating Family Payment. ~~Families must pay the provider their share of costs for child care services which include the families' co-payments and any charges not paid by the Department.~~ Family income and activity for the month of the child care will determine the family share of child care costs. The payment made by the Department will be the allowable local market rate or billed costs, whichever is lower, less the co-payment listed in the following table: (4-2-08)()

03. ICCP Sliding Fee Schedule.

ICCP SLIDING FEE SCHEDULE									
Family Size	2	3	4	5	6	7	8	9	10
Percent Co-pay	MONTHLY INCOME LIMITS								
7%	\$499	\$599	\$699	\$799	\$899	\$1,099	\$1,199	\$1,399	\$1,499
11%	\$799	\$1,099	\$1,299	\$1,499	\$1,699	\$1,999	\$2,199	\$2,399	\$2,599
16%	\$949	\$1,249	\$1,449	\$1,699	\$1,999	\$2,299	\$2,549	\$2,799	\$3,049
21%	\$1,099	\$1,399	\$1,599	\$1,899	\$2,299	\$2,599	\$2,899	\$3,199	\$3,499
26%	\$1,165	\$1,465	\$1,731	\$2,031	\$2,399	\$2,731	\$3,031	\$3,365	\$3,665
31%	\$1,231	\$1,531	\$1,863	\$2,163	\$2,499	\$2,863	\$3,163	\$3,531	\$3,831
36%	\$1,299	\$1,599	\$1,999	\$2,299	\$2,599	\$2,999	\$3,299	\$3,699	\$3,999
41%	\$1,308	\$1,616	\$2,008	\$2,316	\$2,625	\$3,016	\$3,325	\$3,716	\$4,025
46%	\$1,317	\$1,633	\$2,017	\$2,333	\$2,651	\$3,033	\$3,351	\$3,733	\$4,051
51%	\$1,326	\$1,650	\$2,026	\$2,350	\$2,677	\$3,050	\$3,377	\$3,750	\$4,077

ICCP SLIDING FEE SCHEDULE									
Family Size	2	3	4	5	6	7	8	9	10
Percent Co-pay	MONTHLY INCOME LIMITS								
56%	\$1,335	\$1,667	\$2,035	\$2,367	\$2,703	\$3,067	\$3,403	\$3,767	\$4,103
61%	\$1,344	\$1,684	\$2,044	\$2,384	\$2,729	\$3,084	\$3,429	\$3,784	\$4,129
66%	\$1,356	\$1,706	\$2,056	\$2,406	\$2,756	\$3,106	\$3,456	\$3,806	\$4,156
71%	\$1,386	\$1,743	\$2,100	\$2,457	\$2,814	\$3,171	\$3,528	\$3,885	\$4,242
76%	\$1,416	\$1,780	\$2,144	\$2,508	\$2,872	\$3,236	\$3,600	\$3,964	\$4,328
81%	\$1,446	\$1,817	\$2,188	\$2,559	\$2,930	\$3,301	\$3,672	\$4,043	\$4,414
86%	\$1,476	\$1,854	\$2,232	\$2,610	\$2,988	\$3,366	\$3,744	\$4,122	\$4,500
91%	\$1,506	\$1,891	\$2,276	\$2,661	\$3,046	\$3,431	\$3,816	\$4,201	\$4,586
96%	\$1,540	\$1,932	\$2,323	\$2,715	\$3,106	\$3,498	\$3,889	\$4,281	\$4,672

(4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

600. CHANGE REPORTING REQUIREMENTS.

A family who applies for or receives child care benefits must report the following permanent changes within ten (10) days of the date the change occurs. ()

- 01. Change in Activity Hours. ()
- 02. Change in Rate of Pay. ()
- 03. Change in Your Permanent Address. ()
- 04. Change in Number of Household Members. ()
- 05. Change in Unearned Income. ()
- 06. Change in Child Care Provider. ()

601. RESPONSIBILITY TO REQUIRED ACTION ON REPORTED CHANGES.

~~Providers and those eligible for child care assistance are responsible for reporting changes which may affect child care benefits.~~ The Department will take the actions listed below on changes that are reported within the time frame listed in Section 600 of these rules. (7-1-09)()

- 01. **Change in Income or Hours of Activity.** ()

a. If a change in income or hours of qualifying activity results in a decrease in the amount of the child care benefit, the Department will make the change effective the month following the month the change is reported.

(4-2-08)

b. If a change results in an increase in the amount of the child care benefit, the Department will make the change effective in the month the change was reported. ()

02. Change in Billed Amount. If the billed amount of child care ~~results in a decrease in the amount of the child care benefit~~ changes, the Department will make the changes effective ~~in~~ for the month the changes ~~were~~ is reported. (4-2-08)()

~~**03. Change Resulting in an Increase.** If a change results in an increase in the amount of the child care benefit, the Department will make the change effective in the month the changes were reported.~~ (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

701. RECOUPMENT OF OVERPAYMENTS.

01. Recoupment of Overpayments. The Department may recoup or recover the amount paid for child care services from a provider. Interest will accrue on these overpayments at the statutory rate set under Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for services. Recoupment of an overpayment based on Department error may be collected from parents or providers when the overpayment is one hundred dollars (\$100), or more. Interest will not accrue on overpayments made due to Department error. An overpayment due to family or provider error, IPV or fraud must be recovered in full. (7-1-09)

02. Parental Repayment Requirement. A parent must repay any overpayment resulting from the parent's failure to report changes within ten (10) days as required in Section ~~207~~ 600 of these rules. The parent may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in loss of the family's eligibility to receive child care benefits. Ineligibility will continue until the parent repays the overpayment or a new repayment agreement is negotiated with the Department. (4-2-08)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.07.50 - RULES AND MINIMUM STANDARDS GOVERNING NONHOSPITAL, MEDICALLY-MONITORED DETOXIFICATION/MENTAL HEALTH DIVERSION UNITS

DOCKET NO. 16-0750-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date for these temporary rules is October 1, 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 39-305, 39-311, and 56-1003, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units rules are being updated to allow for a breath alcohol test to be performed on individuals being brought in for treatment in addition to the blood draw alcohol test. Also, the Tuberculin skin testing requirements for clients is being amended, as many clients may not stay in the unit long enough to have the skin test read.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of these rules are necessary for protection of public health and safety.

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: None.

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 state general funds due to this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, informal negotiated rulemaking was conducted with stakeholders of non-hospital, medically-monitored, detoxification and mental health diversion units.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kathleen Allyn at (208) 334-0997.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 19th day of August, 2010.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720, Boise, ID 83720-0036

phone: (208) 334-5564
fax: (208) 334-6558
e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 16-0750-1001

246. CONTROL OF TUBERCULOSIS.

In order to assure the control of tuberculosis in the facility, there must be a planned, organized program of prevention through written and implemented procedures that are consistent with current accepted practices and include the following in Subsections 246.01 through 246.0~~3~~⁵ of this rule. ~~(3-29-10)~~(10-1-10)T

01. Tuberculin Skin Tests. The results of a tuberculin skin test, taken immediately prior to admission or within six (6) months prior to admission, must be established for each client. If the status is not known upon admission, a tuberculin skin test must be done as soon as possible. (3-29-10)

a. If the tuberculin skin test is negative, the test does not have to be repeated prior to discharge. (3-29-10)

b. If the tuberculin skin test is positive, the client must have a chest x-ray to rule out the presence of infectious pulmonary tuberculosis. (3-29-10)

02. Protective Infection Control Techniques. If any x-ray is suggestive of infectious pulmonary tuberculosis, the facility is required to implement protective infection control techniques in accordance with these rules and as required by the facility's governing body through its CEO or administrator. (3-29-10)

03. Transfer of Client Suspected or Diagnosed. Arrangements for transfer to an appropriate facility must be made for any client suspected or diagnosed with infectious pulmonary tuberculosis. These arrangements must be made in accordance with these rules and as required by the facility's governing body through its CEO or administrator. (3-29-10)

04. Discharge Prior to Availability of Test Result. A client, discharged prior to sufficient time elapsing for the turberculin skin test to be read, will be instructed regarding the appropriate time frame and protocol for return to the facility to have the tuberculin skin test read. (10-1-10)T

05. Sobering Station Exclusion. The tuberculin skin tests required in Subsection 246.01 of this rule, is not required for clients receiving services from a sobering station. (10-1-10)T

(BREAK IN CONTINUITY OF SECTIONS)

320. REQUIRED MINIMUM ADMISSION CRITERIA TO DETOXIFICATION UNITS.

According to physician-approved written admission criteria, policies, and procedures, each detoxification unit must develop and implement written admission criteria that are uniformly applied to all clients. (3-29-10)

01. Admission to Detoxification Unit. A prospective client will be admitted or retained only if he meets the following admission criteria: (3-29-10)

a. Must be eighteen (18) years of age or older; (3-29-10)

b. Demonstrates a need for detoxification services; (3-29-10)

c. Has alcohol or other addictive controlled substance intake of sufficient amount and duration to create a reasonable expectation of withdrawal upon cessation of use; (3-29-10)

d. Is medically stable prior to admission and if seeking detoxification from alcohol has a blood alcohol level no greater than ~~200mg/100ee~~ point twenty-four (.24) as measured by an accurately calibrated

Breathalyzer or as determined by another equivalent laboratory test. A client who has a blood alcohol content in excess of point twenty-four (.24) may be admitted with approval granted by the medical director or his designee;
~~(3-29-10)~~(10-1-10)T

- e. Meets admission criteria specifications that do not exceed ASAM Level III.7-D; and (3-29-10)
 - f. Demonstrates the capacity to benefit from short-term stabilization and the services available at the facility may reduce the prospective client's acute symptoms and may prevent the client from detoxification hospitalization. (3-29-10)
- 02. Detoxification Unit Able to Provide Services.** The detoxification unit must have the capability, capacity, personnel, and services to provide appropriate care to the prospective client. The client cannot require a type of service for which the detoxification unit is not approved to provide. (3-29-10)
- 03. Monitoring Clients in Detoxification Unit.** The level of monitoring in the detoxification unit of the client or the physical restrictions of the environment must be adequate to prevent the client from causing serious harm to self or others. (3-29-10)
- 04. Notification of Admission of Opiate/Methadone Client.** The lead nurse must be notified that an opiate/methadone client was admitted to the detoxification unit. The name of the clinic where the client received the methadone must be documented in the client's record. (3-29-10)

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.03 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW - SECURITY FOR COMPENSATION

DOCKET NO. 17-0203-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 72-508, 72-520, 72-721, 72-722, and 72-723, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The current chapter, IDAPA 17.02.03 (Security for Compensation), is being repealed in its entirety and two new chapters are being adopted to clarify each entity's rules. The new chapter, IDAPA 17.02.10 (Insurance Carriers), adopts rules governing insurance carriers that clarify terms and implements more comprehensive reporting requirements. The new chapter, IDAPA 17.02.11 (Self-Insured Employers), adopts rules governing self insured employers that clarify terms, provide a more detailed application process and outline continuing reporting and security deposit requirements necessary to maintain self insured status.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, including insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission on the drafting of these rule revisions.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jane McClaran, 334-6042.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this September 1, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane, Boise, ID 83712
P.O. Box 83720, Boise, ID 83720-0041
Phone: 208-334-6000 / Fax: 208-334-5145

IDAPA 17.02.03 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803 Idaho Code.

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

OCTOBER 7, 2010 4:00 p.m. – 6:00 p.m.	OCTOBER 12, 2010 4:00 p.m. - 6:00 p.m	OCTOBER 19, 2010 2:00 p.m. - 5:00 p.m.
Shilo Inn 702 W. Appleway Coeur d'Alene, ID	Holiday Inn Express 2270 Channing Way Idaho Falls, ID	Industrial Commission 700 South Clearwater Lane Boise, ID

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: IDAPA 17.02.08 is being repealed and rewritten and separated into 2 chapters. A new chapter, IDAPA 17.02.09, Medical Fees, moves the conversion factors into a separate chapter for clarity. This new chapter adjusts conversion factors used to calculate physician fees in workers' compensation cases to reflect changes in current market conditions, pricing and other factors. IDAPA 17.02.08 contains the balance of the rule without substantive change and is being published in this Bulletin under Docket No. 17-0208-1002.

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

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

NEGOTIATED RULEMAKING: Although negotiated rulemaking was not done, the data was submitted to several affected parties (hospitals and ambulatory surgery centers) for analyzation and comment. Those comments were included in the final analysis that resulted in the proposed rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Medical Fee Schedule Analyst, 208-334-6000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
P.O. Box 83720, Boise, Idaho 83720-0041
Phone: (208) 334-6000 / Fax: (208) 334-2321

IDAPA 17.02.08 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.08 - MISCELLANEOUS PROVISIONS

DOCKET NO. 17-0208-1002 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803 Idaho Code.

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

OCTOBER 7, 2010 4:00 p.m. – 6:00 p.m.	OCTOBER 12, 2010 4:00 p.m. - 6:00 p.m	OCTOBER 19, 2010 2:00 p.m. - 5:00 p.m.
Shilo Inn 702 W. Appleway Coeur d'Alene, ID	Holiday Inn Express 2270 Channing Way Idaho Falls, ID	Industrial Commission 700 South Clearwater Lane Boise, ID

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

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

The new IDAPA 17.02.09, Medical Fees, which is being published in this Bulletin, adjusts conversion factors used to calculate physician fees in workers' compensation cases to reflect changes in current market conditions, pricing and other factors. IDAPA 17.02.09 also provides a new workers' compensation fee schedule for hospitals and ambulatory surgery centers. Since these adjustments may occur annually, they were split from IDAPA 17.02.08, Miscellaneous Provisions, which is being rewritten in this docket with the balance of the former IDAPA 17.02.08 without substantive changes.

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

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

NEGOTIATED RULEMAKING: Although negotiated rulemaking was not done, the data was submitted to several affected parties (hospitals and ambulatory surgery centers) for analyzation and comment. Those comments were included in the final analysis that resulted in the proposed rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Medical Fee Schedule Analyst, 208-334-6000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane
P.O. Box 83720
Boise, Idaho 83720-0041
Phone: (208) 334-6000 / Fax: (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0208-1002

IDAPA 17
TITLE 02
CHAPTER 08

17.02.08 - MISCELLANEOUS PROVISION

000. LEGAL AUTHORITY.

These rules are adopted and promulgated by the Industrial Commission pursuant to the provision of Section 72-508, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.08, "Miscellaneous Provisions." ()

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. ()

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Commission is exempted from contested-cases provisions of the Administrative Procedure Act. ()

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. ()

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

This office is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. The department's mailing address is: P.O. Box 83720, Boise, ID 83720-0041. The principal place of business is 700 S. Clearwater Lane, Boise, ID 83712. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act Title 9, Chapter 3, and Title 41, Idaho Code. ()

007. -- 032. (RESERVED).

033. RULE GOVERNING APPROVAL OF ATTORNEY FEES IN WORKERS' COMPENSATION CASES.

01. Authority and Definitions. Pursuant to Sections 72-404, 72-508, 72-707, 72-735 and 72-803, Idaho Code, the Commission promulgates this rule to govern the approval of attorney fees. ()

a. “Available funds” means a sum of money to which a charging lien may attach. It shall not include any compensation paid or not disputed to be owed prior to claimant’s agreement to retain the attorney. ()

b. “Approval by Commission” means the Commission has approved the attorney fees in conjunction with an award of compensation or a lump sum settlement or otherwise in accordance with this rule upon a proper showing by the attorney seeking to have the fees approved. ()

c. “Charging lien” means a lien, against a claimant’s right to any compensation under the Workers’ Compensation laws, which may be asserted by an attorney who is able to demonstrate that: ()

i. There are compensation benefits available for distribution on equitable principles; ()

ii. The services of the attorney operated primarily or substantially to secure the fund out of which the attorney seeks to be paid; ()

iii. It was agreed that counsel anticipated payment from compensation funds rather than from the client; ()

iv. The claim is limited to costs, fees, or other disbursements incurred in the case through which the fund was raised; and ()

v. There are equitable considerations that necessitate the recognition and application of the charging lien. ()

d. “Fee agreement” means a written document evidencing an agreement between a claimant and counsel, in conformity with Rule 1.5, Idaho Rules of Professional Conduct (IRPC). ()

e. “Reasonable” means that an attorney’s fees are consistent with the fee agreement and are to be satisfied from available funds, subject to the element of reasonableness contained in IRPC 1.5. ()

i. In a case in which no hearing on the merits has been held, twenty-five percent (25%) of available funds shall be presumed reasonable; or ()

ii. In a case in which a hearing has been held and briefs submitted (or waived) under Judicial Rules of Practice and Procedure (JRP), Rules X and XI, thirty percent (30%) of available funds shall be presumed reasonable; or ()

iii. In any case in which compensation is paid for total permanent disability, fifteen percent (15%) of such disability compensation after ten (10) years from date such total permanent disability payments commenced. ()

02. Statement of Charging Lien. ()

a. All requests for approval of fees shall be deemed requests for approval of a charging lien. ()

b. An attorney representing a claimant in a Workers’ Compensation matter shall in any proposed lump sum settlement, or upon request of the Commission, file with the Commission, and serve the claimant with a copy of the fee agreement, and an affidavit or memorandum containing: ()

i. The date upon which the attorney became involved in the matter; ()

ii. Any issues which were undisputed at the time the attorney became involved; ()

iii. The total dollar value of all compensation paid or admitted as owed by employer immediately prior to the attorney’s involvement; ()

iv. Disputed issues that arose subsequent to the date the attorney was hired; ()

- v. Counsel's itemization of compensation that constitutes available funds; ()
 - vi. Counsel's itemization of costs and calculation of fees; and ()
 - vii. Counsel's itemization of medical bills for which claim was made in the underlying action, but which remain unpaid by employer/surety at the time of lump sum settlement, along with counsel's explanation of the treatment to be given such bills/claims following approval of the lump sum settlement. ()
 - viii. The statement of the attorney identifying with reasonable detail his or her fulfillment of each element of the charging lien. ()
- c.** Upon receipt and a determination of compliance with this Rule by the Commission by reference to its staff, the Commission may issue an Order Approving Fees without a hearing. ()

03. Procedure if Fees Are Determined Not to Be Reasonable. ()

- a.** Upon receipt of the affidavit or memorandum, the Commission will designate staff members to determine reasonableness of the fee. The Commission staff will notify counsel in writing of the staff's informal determination, which shall state the reasons for the determination that the requested fee is not reasonable. Omission of any information required by Subsection 033.02 may constitute grounds for an informal determination that the fee requested is not reasonable. ()
- b.** If counsel disagrees with the Commission staff's informal determination, counsel may file, within fourteen (14) days of the date of the determination, a Request for Hearing for the purpose of presenting evidence and argument on the matter. Upon receipt of the Request for Hearing, the Commission shall schedule a hearing on the matter. A Request for Hearing shall be treated as a motion under Rule III(e), JRP. ()
- c.** The Commission shall order an employer to release any available funds in excess of those subject to the requested charging lien and may order payment of fees subject to the charging lien which have been determined to be reasonable. ()
- d.** The proponent of a fee which is greater than the percentage of recovery stated in Subsections 033.01.e.i., 033.01.e.ii., or 033.01.e.iii. shall have the burden of establishing by clear and convincing evidence entitlement to the greater fee. The attorney shall always bear the burden of proving by a preponderance of the evidence his or her assertion of a charging lien and reasonableness of his or her fee. ()

04. Disclosure. Upon retention, the attorney shall provide to claimant a copy of a disclosure statement. No fee may be taken from a claimant by an attorney on a contingency fee basis unless the claimant acknowledges receipt of the disclosure by signing it. Upon request by the Commission, an attorney shall provide a copy of the signed disclosure statement to the Commission. The terms of the disclosure may be contained in the fee agreement, so long as it contains the text of the numbered paragraphs one (1) and two (2) of the disclosure. A copy of the agreement must be given to the client. The disclosure statement shall be in a format substantially similar to the following:

**State of Idaho
Industrial Commission**

Client's name printed or typed _____

**Attorney's name and address
printed or typed** _____

DISCLOSURE STATEMENT

1. In workers' compensation matters, attorney's fees normally do not exceed twenty-five percent (25%) of the benefits your attorney obtains for you in a case in which no hearing on the merits has been completed. In a case in which a hearing on the merits has been completed, attorney's fees normally do not exceed thirty percent (30%) of the benefits your attorney obtains for you.
2. Depending upon the circumstances of your case, you and your attorney may agree to a higher or lower percentage which would be subject to Commission approval. Further, if you and your attorney have a dispute regarding attorney fees, either of you may petition the Commission to resolve the dispute.

I certify that I have read and understand this disclosure statement.

Client's Signature Date _____

Attorney's Signature Date _____

()

034. -- 060. (RESERVED).

061. RULE GOVERNING NOTICE TO CLAIMANTS OF STATUS CHANGE PURSUANT TO SECTION 72-806, IDAHO CODE.

01. Notice of Change of Status. As required and defined by Idaho Code, Section 72-806, a worker shall receive written notice within fifteen (15) days of any change of status or condition. ()

02. By Whom Given. Any notice to a worker required by Idaho Code, Section 72-806 shall be given by: the surety if the employer has secured Workers' Compensation Insurance; or the employer if the employer is self-insured; or the employer if the employer carries no Workers' Compensation Insurance. ()

03. Form of Notice. Any notice to a worker required by Idaho Code, Section 72-806 shall be mailed within ten (10) days by regular United States Mail to the last known address of the worker, as shown in the records of the party required to give notice as set forth above. The Notice shall be given on IC Form 8, as prescribed by the Commission for this purpose, as substantially set forth below:

IC Form 8:		
NOTICE OF CLAIM STATUS		
Injured Worker	SSN	
Date of Injury		
Employer		
Insurance Company		
Address	State	Zip
This is to notify you of the denial or change of status of your workers' compensation claim as indicated in the statement checked below.		
Your claim is denied.		
Reason		
Your benefit payments will be	Reduced	Increased
Effective date		

IC Form 8:	
NOTICE OF CLAIM STATUS	
Reason	
Your benefit payments will be stopped.	Effective date
Reason	
Your claim is being investigated.	
A decision should be made by	
Other	Effective date
Explanation	
See attached medical reports	
Signature of insurance company adjuster/examiner	Date
Name (typed or printed)	

A sample copy of IC Form 8 is available from the;
Industrial Commission
700 S. Clearwater Lane
P. O. Box 83720,
Boise, Idaho 83720-0041
Telephone (208) 334-6000.

()

04. Medical Reports. As required by Idaho Code, Section 72-806, if the change is based on a medical report, the party giving notice shall attach a copy of the report to the notice. ()

05. Copies of Notice. The party giving notice pursuant to Idaho Code, Section 72-806 shall send a copy of any such notice to the Industrial Commission, the employer, and the worker's attorney, if the worker is represented, at the same time notice is sent to the worker. ()

062. -- 999. (RESERVED).

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.09 - MEDICAL FEES

DOCKET NO. 17-0209-1001 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULEMAKING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-720, 72-721, 72-722, 72-723, and 72-803 Idaho Code.

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

OCTOBER 7, 2010 4:00 p.m. – 6:00 p.m.	OCTOBER 12, 2010 4:00 p.m. - 6:00 p.m	OCTOBER 19, 2010 2:00 p.m. - 5:00 p.m.
Shilo Inn 702 W. Appleway Coeur d'Alene, ID	Holiday Inn Express 2270 Channing Way Idaho Falls, ID	Industrial Commission 700 South Clearwater Lane Boise, ID

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

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: The new Chapter 9, Medical Fees, adjusts conversion factors used to calculate physician fees in workers' compensation cases to reflect changes in current market conditions, pricing and other factors. This new Chapter 9 also provides a new workers' compensation fee schedule for hospitals and ambulatory surgery centers. Since these adjustments may occur annually, they were split from the current Chapter 8, Miscellaneous Provisions.

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

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

NEGOTIATED RULEMAKING: Although negotiated rulemaking was not done, the data was submitted to several affected parties (hospitals and ambulatory surgery centers) for analyzation and comment. Those comments were included in the final analysis that resulted in the proposed rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

No documents have been incorporated by reference into this rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Patti Vaughn, Medical Fee Schedule Analyst, 208-334-6000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Mindy Montgomery, Director
Industrial Commission
700 S. Clearwater Lane, Boise, ID 83712
P.O. Box 83720, Boise, Idaho 83720-0041
Phone: (208) 334-6000 / Fax: (208) 334-2321

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0209-1001

IDAPA 17
TITLE 02
CHAPTER 09

17.02.09 - MEDICAL FEES

000. LEGAL AUTHORITY.

These rules are adopted and promulgated by the Industrial Commission pursuant to the provision of Sections 72-508, and 72-803, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.09, "Medical Fees." ()

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. ()

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Commission is exempted from contested-cases provisions of the Administrative Procedure Act. ()

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. ()

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

This office is open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday, and legal holidays. The department's mailing address is: P.O. Box 83720, Boise, ID 83720-0041. The principal place of business is 700 S. Clearwater Lane, Boise, ID 83712. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act Title 9, Chapter 3, and Title 41, Idaho Code. ()

007. -- 029. (RESERVED).

030. DEFINITIONS.

Words and terms used in this rule are defined in the subsections which follow. ()

01. Charge. Expense or cost. For hospitals and ASCs, "charge" shall mean the total charge. ()

a. "Acceptable charge." The charge for medical services calculated in accordance with this rule or as billed by the provider, whichever is lower, or the charge agreed to pursuant to a written contract. ()

b. "Customary charge." A charge which shall have an upper limit no higher than the 90th percentile, as determined by the Commission, of usual charges made by Idaho Providers for a given medical service. ()

c. "Reasonable charge." A charge that does not exceed the Provider's "usual" charge and does not exceed the "customary" charge, as defined in this rule. ()

d. "Usual charge." The most frequent charge made by an individual Provider for a given medical service to non-industrially injured patients. ()

02. Ambulatory Payment Classification (APC). A payment system adopted by the Center for Medicare and Medicaid Services (CMS) for outpatient services. ()

03. Ambulatory Surgery Center (ASC). A facility providing medical services on an outpatient basis only. ()

04. Critical Access Hospital. A hospital which meets all of the current designation criteria of the Centers for Medicare and Medicaid Services (CMS) for a critical access hospital, including, but not limited to, the maximum number of beds and minimum distance from other hospitals. ()

05. Hospital. An acute care facility providing medical services on an inpatient and outpatient basis. ()

06. Implantable Hardware. Objects or devices that are made to support, replace or act as a missing anatomical structure or to support or manage proper biological functions or disease processes and where surgical or medical procedures are needed to insert or apply such devices and surgical or medical procedures are required to remove such devices. The term also includes equipment necessary for the proper operation of the implantable hardware, even if not implanted in the body. ()

07. Medical Service. Medical, surgical, dental or other attendance or treatment, nurse and hospital service, medicine, apparatus, appliance, prostheses, and related service, facility, equipment and supply, as set forth in Section 72-102, Idaho Code. ()

08. Medicare Severity - Diagnosis Related Group (MS-DRG). A system adopted by the Centers for Medicare and Medicaid Services (CMS) that groups hospital admissions based on diagnosis codes, surgical procedures and patient demographics. ()

09. Payor. The legal entity responsible for paying medical benefits under Idaho's Workers' Compensation Law. ()

10. Physician. A member of any healing profession licensed or authorized to provide medical services by the statutes of this state, as set forth in Section 72-102, Idaho Code. ()

11. Provider. Any person, firm, corporation, partnership, association, agency, institution or other legal entity providing any kind of medical service related to the treatment of an industrially injured patient which is compensable under the Idaho's Workers' Compensation Law, as set forth in Section 72-102, Idaho Code. ()

12. Rehabilitation Hospital. A facility operated for the primary purpose of assisting with the rehabilitation of disabled persons through an integrated program of medical, psychological, social, and vocational evaluation and services under competent professional supervision. ()

031. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY PHYSICIANS UNDER THE IDAHO WORKERS' COMPENSATION LAW.

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission (hereinafter "the Commission") hereby adopts the following rule for determining acceptable charges for medical services provided by physicians under the Idaho Workers' Compensation Law. ()

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by physicians. ()

02. Adoption of Standard for Physicians. The Commission hereby adopts the Resource-Based Relative Value Scale (RBRVS), published by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services, as amended, as the standard to be used for determining the acceptable charge for medical services provided under the Idaho Workers' Compensation Law by physicians. ()

03. Conversion Factors. The following conversion factors shall be applied to the fully-implemented

facility or non-facility Relative Value Unit (RVU) as determined by place of service found in the latest RBRVS, as amended, that was published before December 31 of the previous calendar year for a medical service identified by a code assigned to that service in the latest edition of the Physicians' Current Procedural Terminology (CPT), published by the American Medical Association, as amended:

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	CODE RANGE(S)	DESCRIPTION	CONVERSION FACTOR
Anesthesia	00000 - 09999	Anesthesia	\$60.05
Surgery - Group One	22000 - 22999 23000 - 24999 25000 - 27299 27300 - 27999 29800 - 29999 61000 - 61999 62000 - 62259 63000 - 63999	Spine Shoulder, Upper Arm, & Elbow Forearm, Wrist, Hand, Pelvis & Hip Leg, Knee, & Ankle Endoscopy & Arthroscopy Skull, Meninges & Brain Repair, Neuroendoscopy & Shunts Spine & Spinal Cord	\$140.00
Surgery - Group Two	28000 - 28999 64550 - 64999	Foot & Toes Nerves & Nervous System	\$129.00
Surgery - Group Three	13000 - 19999 20650 - 21999	Integumentary System Musculoskeletal System	\$113.52
Surgery - Group Four	10000 - 12999 20000 - 20615 29000 - 29799 30000 - 39999 40000 - 49999 50000 - 59999 60000 - 60999 62260 - 62999 64000 - 64549 65000 - 69999	Integumentary System Musculoskeletal System Casts & Strapping Respiratory & Cardiovascular Digestive System Urinary System Endocrine System Spine & Spinal Cord Nerves & Nervous System Eye & Ear	\$87.72
Radiology	70000 - 79999	Radiology	\$87.72
Pathology & Laboratory	80000 - 89999	Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 90799 94000 - 94999 97000 - 97799 97800 - 98999	Immunization, Injections, & Infusions Pulmonary / Pulse Oximetry Physical Medicine & Rehabilitation Acupuncture, Osteopathy, & Chiropractic	\$47.00
Medicine - Group Two	90800 - 92999 93000 - 93999 95000 - 96020 96040 - 96999 99000 - 99607	Psychiatry & Medicine Cardiography, Catheterization, & Vascular Studies Allergy / Neuromuscular Procedures Assessments & Special Procedures E / M & Miscellaneous Services	\$68.50

()

04. Anesthesiology. The Conversion Factor for the Anesthesiology CPT Codes shall be multiplied by the Anesthesia Base Units assigned to that CPT Code by the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services as of December 31 of the previous calendar year, plus the allowable time units reported for the procedure. Time units are computed by dividing reported time by fifteen (15) minutes. Time units will not be used for CPT Code 01996. ()

05. Adjustment of Conversion Factors. The conversion factors set out in this rule shall be adjusted each fiscal year (FY) by the Commission to reflect changes in inflation or market conditions, using the methodology set forth in Section 56-136, Idaho Code; pursuant to Section 72-803, Idaho Code. ()

06. Services Without CPT Code, RVU or Conversion Factor. The acceptable charge for medical services that do not have a current CPT code, a currently assigned RVU, or a conversion factor will be the reasonable charge for that service, based upon the usual and customary charge and other relevant evidence, as determined by the Commission. Where a service with a CPT Code, RVU, and conversion factor is, nonetheless, claimed to be exceptional or unusual, the Commission may, notwithstanding the conversion factor for that service set out in Subsection 031.03, above, determine the acceptable charge for that service, based on all relevant evidence in accordance with the procedures set out in Section 034, below. ()

07. Coding. The Commission will generally follow the coding guidelines published by the Centers for Medicare and Medicaid Services and by the American Medical Association, including the use of modifiers. The procedure with the largest RVU will be the primary procedure and will be listed first on the claim form. Modifiers will be reimbursed as follows: ()

- a.** Modifier 50: Additional fifty percent (50%) for bilateral procedure. ()
- b.** Modifier 51: Fifty percent (50%) of secondary procedure. This modifier will be applied to each medical or surgical procedure rendered during the same session as the primary procedure. ()
- c.** Modifier 80: Twenty-five percent (25%) of coded procedure. ()
- d.** Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. ()

032. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY HOSPITALS AND AMBULATORY SURGERY CENTERS UNDER THE IDAHO WORKERS' COMPENSATION LAW. Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Commission hereby adopts the following rule for determining acceptable charges for medical services provided by hospitals and ambulatory surgery centers under the Idaho Workers' Compensation Law. ()

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by hospitals and ambulatory surgery centers. ()

02. Adoption of Standards for Hospitals and ASCs. The following standards shall be used to determine the acceptable charge for hospitals and ambulatory surgery centers. ()

a. Critical Access and Rehabilitation Hospitals. The standard for determining the acceptable charge for inpatient and outpatient services provided by a critical access or rehabilitation hospital is ninety percent (90%) of the reasonable charge. Implantable hardware charges shall be reimbursed at the rate of the actual cost plus fifty percent (50%). ()

b. Hospital Inpatient Services. The standard for determining the acceptable charge for inpatient services provided by hospitals, other than critical access and rehabilitation hospitals, is calculated by multiplying the base rate by the current MS-DRG weight for that service. The base rate for inpatient services is ten thousand dollars (\$10,000). Inpatient services that do not have a relative weight shall be paid at eighty-five percent (85%) of the reasonable charge; however, implantable hardware charges billed for services without an MS-DRG weight shall be reimbursed at the rate of actual cost plus fifty percent (50%). ()

c. Hospital Outpatient and Ambulatory Surgical Center (ASC) Services. The standard for determining the acceptable charge for outpatient services provided by hospitals (other than critical access and rehabilitation hospitals) and for services provided by ambulatory surgical centers is calculated by multiplying the base rate by the current APC weight. The base rate for hospital outpatient services is one hundred and thirty dollars (\$130). The base rate for ASC services is eighty-five dollars (\$85). ()

i. If there is no weight listed for APC status codes A, B, C, D, E, F, G, H, K, L, M, Q, S, T, V, X, or Y, then reimbursement shall be seventy-five percent (75%) of the reasonable charge. ()

ii. Status code N items (other than implantable hardware) or items with no CPT or Healthcare Common Procedure Coding System (HCPCS) code shall receive no payment. ()

iii. Two or more medical procedures with a status code T on the same claim shall be reimbursed with the highest weighted code paid at one hundred percent (100%) of the APC calculated amount and all other status code T items paid at fifty percent (50%). ()

iv. Status code Q items will not be discounted. ()

d. Hospitals Outside of Idaho. Reimbursement for services provided by hospitals outside the state of Idaho may be based upon the agreement of the parties. If there is no agreement, services shall be paid in accordance with the workers' compensation fee schedule in effect in the state in which services are rendered. If there is no fee schedule in effect in such state, or if the fee schedule in that state does not allow reimbursement for the services rendered, reimbursement shall be paid in accordance with these rules. ()

e. Additional Hospital Payments. When the charge for a medical service provided by a hospital (other than a critical access or rehabilitation hospital) meets the following standards, additional payment shall be made for that service, as indicated. ()

i. Inpatient Threshold Exceeded. When the charge for a hospital inpatient MS-DRG coded service exceeds the sum of thirty thousand dollars (\$30,000) plus the payment calculated under the provisions of Subparagraph 032.02.b. of this rule, then the total payment for that service shall be the sum of the MS-DRG payment and the amount charged above that threshold multiplied by seventy-five percent (75%). Implantable charges shall be excluded from the calculation for an additional inpatient payment under this Subparagraph. ()

ii. Inpatient Implantable Hardware. Hospitals may seek additional reimbursement beyond the MSDRG payment for invoiced implantable hardware where the total invoice cost is greater than ten thousand dollars (\$10,000). Additional reimbursement shall be the invoice cost plus ten percent (10%). Handling and freight charges shall be included in invoice cost. ()

iii. Outpatient Implantable Hardware. Hospitals and ASCs may seek additional reimbursement beyond the APC payment for invoiced implantable hardware where the total invoice cost is greater than five hundred dollars (\$500). Additional reimbursement shall be the invoice cost plus ten percent (10%). Handling and freight charges shall be included in invoice cost. ()

03. Disputes. The Commission shall determine the acceptable charge for hospital and ASC services that are disputed based on all relevant evidence in accordance with the procedures set out in Section 034 of this rule. ()

04. Adjustment of Hospital and ASC Base Rates. The Commission may periodically adjust the base rates set out in Subparagraphs 032.02.b. and 032.02.c. of this rule to reflect changes in inflation or market conditions. ()

033. ACCEPTABLE CHARGES FOR MEDICAL SERVICES PROVIDED BY OTHER PROVIDERS UNDER THE IDAHO WORKERS' COMPENSATION LAW.

Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Commission hereby adopts the following rule for determining acceptable charges for medical services provided by providers other than physicians, hospitals or ASCs under the Idaho Workers' Compensation Law. ()

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by providers other than physicians, hospitals or ASCs. ()

02. Adoption of Standard. The standard for determining the acceptable charge for providers other than physicians, hospitals or ambulatory surgery centers (ASCs) shall be the reasonable charge. ()

03. Disputes. The Commission shall determine the acceptable charge for medical services provided by providers other than physicians, hospitals and ASCs that are disputed based on all relevant evidence in accordance with the procedures set out in Section 034 of this rule. ()

034. BILLING AND PAYMENT REQUIREMENTS FOR MEDICAL SERVICES AND PROCEDURES PRELIMINARY TO DISPUTE RESOLUTION.

01. Authority. Pursuant to Section 72-508 and Section 72-803, Idaho Code, the Industrial Commission hereby promulgates this rule governing billing and payment requirements for medical services provided under the Workers' Compensation Law and the procedures for resolving disputes between payors and providers over those bills or payments. ()

02. Time Periods. None of the periods herein shall begin to run before the Notice of Injury/Claim for Benefits has been filed with the Employer as required by law. ()

03. Provider to Furnish Information. A Provider, when submitting a bill to a Payor, shall inform the Payor of the nature and extent of medical services furnished and for which the bill is submitted. This information shall include, but is not limited to, the patient's name, the employer's name, the date the medical service was provided, the diagnosis, if any, and the amount of the charge or charges. Failure to submit a bill complying with this Subsection 034.03 to the Payor within one hundred twenty (120) days of the date of service will result in the ineligibility of the Provider to utilize the dispute resolution procedures of the Commission set out in Subsection 034.10 for that service. ()

a. A Provider's bill shall, whenever possible, describe the Medical Service provided, using the American Medical Association's appropriate Current Procedural Terminology (CPT) coding, including modifiers, for the year in which the service was performed and using current International Classification of Diseases (ICD) diagnostic coding, as well. ()

b. The bill shall also contain the name, address and telephone number of the individual the Payor may contact in the event the Payor seeks additional information regarding the Provider's bill. ()

c. If requested by the Payor, the bill shall be accompanied by a written report as defined by IDAPA 17.02.04, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Benefits." Subsection 322.01.f. Where a bill is not accompanied by such Report, the periods expressed in Subsections 034.04 and 034.06, below, shall not begin to run until the Payor receives the Report. ()

04. Prompt Payment. Unless the Payor denies liability for the claim or, pursuant to Subsection 034.06, below, sends a Preliminary Objection, a Request for Clarification, or both, as to any charge, the Payor shall pay the charge within thirty (30) calendar days of receipt of the bill. ()

05. Partial Payment. If the Payor acknowledges liability for the claim and, pursuant to Subsection 034.06, below, sends a Preliminary Objection, a Request for Clarification, or both, as to only part of a Provider's bill, the Payor must pay the charge or charges, or portion thereof, as to which no Preliminary Objection or Request for Clarification has been made, within thirty (30) calendar days of receipt of the bill. ()

06. Preliminary Objections and Requests for Clarification. ()

a. Whenever a Payor objects to all or any part of a Provider's bill on the ground that such bill contains a charge or charges that do not comport with the applicable administrative rule, the Payor shall send a written Preliminary Objection to the Provider within thirty (30) calendar days of the Payor's receipt of the bill explaining the

basis for each of the Payor's objections. ()

b. Where the Payor requires additional information, the Payor shall send a written Request for Clarification to the Provider within thirty (30) calendar days of the Payor's receipt of the bill, and shall specifically describe the information sought. ()

c. Each Preliminary Objection and Request for Clarification shall contain the name, address and phone number of the individual located within the state of Idaho that the Provider may contact regarding the Preliminary Objection or Request for Clarification. ()

d. Where a Payor does not send a Preliminary Objection to a charge set forth in a bill or a Request for Clarification within thirty (30) calendar days of receipt of the bill, or provide an in-state contact in accord with Subsection 034.06.c., it shall be precluded from objecting to such charge as failing to comport with the applicable administrative rule. ()

07. Provider Reply to Preliminary Objection or Request for Clarification. ()

a. Where a Payor has timely sent a Preliminary Objection, Request for Clarification, or both, the Provider shall send to the Payor a written Reply, if any it has, within thirty (30) calendar days of the Provider's receipt of each Preliminary Objection or Request for Clarification. ()

b. If a Provider fails to timely reply to a Preliminary Objection, the Provider shall be deemed to have acquiesced in the Payor's objection. ()

c. If a Provider fails to timely reply to a Request for Clarification, the period in which the Payor shall pay or issue a Final Objection shall not begin to run until such clarification is received. ()

08. Payor Shall Pay or Issue Final Objection. The Payor shall pay the Provider's bill in whole or in part or shall send to the Provider a written Final Objection, if any it has, to all or part of the bill within thirty (30) calendar days of the Payor's receipt of the Reply. ()

09. Failure of Payor to Finally Object. Where the Payor does not timely send a Final Objection to any charge or portion thereof to which it continues to have an objection, it shall be precluded from further objecting to such charge as unacceptable. ()

10. Dispute Resolution Process. If, after completing the applicable steps set forth above, a Payor and Provider are unable to agree on the appropriate charge for any Medical Service, a Provider which has complied with the applicable requirements of this rule may move the Commission to resolve the dispute as provided in the Judicial Rule Re: Disputes Between Providers and Payors, as referenced in Sections 031, 032 and 033 of this rule. If Provider's motion disputing CPT or MS-DRG coded items prevails, Payor shall pay the amount found by the Commission to be owed, plus an additional thirty percent (30%) of that amount to compensate Provider for costs and expenses associated with using the dispute resolution process. For motions filed by a Provider disputing items without CPT or MS-DRG codes, the additional thirty percent (30%) shall be due only if the Payor does not pay the amount found due within thirty (30) days of the administrative order. ()

035. -- 999. (RESERVED).

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.10 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- INSURANCE CARRIERS

DOCKET NO. 17-0210-1001 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-520, 72-721, 72-722, and 72-723, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The current chapter, IDAPA 17.02.03 (Security for Compensation), is being repealed and two new chapters are being adopted to clarify each entity's rules. This new chapter, IDAPA 17.02.10 (Insurance Carriers), adopts rules governing insurance carriers which clarify terms and implement more comprehensive reporting requirements.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, including insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission on the drafting of these rule revisions.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jane McClaran, 334-6042.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 10th day of September, 2010.

Mindy Montgomery
Director
Industrial Commission
700 S. Clearwater Lane
P.O. Box 83720
Boise, ID 83720-0041
Phone: 208-334-6000
Fax: 208-334-5145

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0210-1001

IDAPA 17
TITLE 02
CHAPTER 10

17.02.10 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- INSURANCE CARRIERS

000. LEGAL AUTHORITY.

These rules are adopted and promulgated by the Industrial Commission pursuant to the provisions of Sections 72-508, 72-301 and 72-304, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.10, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Insurance Carriers." These rules shall apply to all insurance companies securing compensation under the Workers' Compensation Law. ()

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. ()

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Commission is exempted from contested-cases provisions of the Administrative Procedure Act. ()

004. -- 009. (RESERVED).

010. DEFINITIONS.

For the purposes of this chapter, the following definitions are applicable: ()

01. Indemnity Benefits. All payments made to or on behalf of workers' compensation claimants, including temporary or permanent disability benefits, permanent partial impairment benefits, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. ()

02. Indemnity Claim. Any claim made for the payment of indemnity benefits. ()

011. RULE GOVERNING QUALIFICATION OF INSURANCE CARRIER TO UNDERWRITE WORKERS' COMPENSATION LIABILITY.

01. Deposit With State Treasurer. To receive the approval of the Industrial Commission to write Worker's Compensation coverage under Section 72-301, Idaho Code, a carrier whose application has been approved by the Director of Insurance to underwrite casualty and surety insurance under Sections 41-506 and 41-507, Idaho Code, shall initially deposit security in the amount of two hundred fifty thousand dollars (\$250,000) with the State Treasurer, under the provisions of Section 72-302, Idaho Code. ()

02. Application. Before the Commission shall approve any insurance carrier to do business under the Workers' Compensation Law, said carrier shall apply to the Industrial Commission for permission to write compensation insurance and said application shall include the following: ()

a. A statement from the Director of the Idaho Department of insurance that the insurance carrier has been granted authority under the insurance laws of the state of Idaho to write casualty or surety insurance; ()

- b.** The latest audited financial statement of said carrier; ()
- c.** The name and address of the agent for service of process in Idaho; ()
- d.** The name and address of the Idaho resident licensed adjuster or adjusters with authority to make compensation payments and adjustments of claims arising under the Act. If more than one (1) adjuster is utilized in Idaho, a list of every such adjuster and all corresponding policyholders shall be provided; ()
- e.** A statement that the carrier will provide such blank forms as are, or may be, prescribed by the Commission and distributed to such employers as it may insure. ()
- f.** A statement that all surety bonds covering the payment of compensation will be filed with the Idaho State Treasurer in compliance with the law for all employers insured. All carriers will use the continuous bond form set out herein. ()

SURETY BOND

KNOW ALL MEN BY THESE PRESENTS:

That we, _____, as Principal, and _____, as Surety, are held and firmly bound unto the State of Idaho and the beneficiaries of awards rendered under the Workers' Compensation Law of the State of Idaho, for all sums said Principal is liable for by reason of workers' compensation policies issued to employers in the State of Idaho, insuring such employers' liability under Title 72, Idaho Code, the Workers' Compensation Law. Under the authority of Chapter 3, Title 72, Idaho Code, the liability of the Surety on this bond shall in no event exceed an amount equal to the total amount of all outstanding and unpaid compensation awards against the Principal.

In case of any default by the Principal or in the event said Principal shall fail to pay, by reason of insolvency, or because a receiver has been appointed therefor, or by reason of refusal, neglect or delay to pay any final award or awards, the State of Idaho and any beneficiaries under the Workers' Compensation Law shall have a right of action at law against said Surety immediately upon default by said Principal.

This bond is issued for an indefinite term to begin on the _____ day of _____, 20____, and will continue in full force and effect until terminated in either of the following two (2) manners: This bond may be cancelled by the Surety by filing sixty (60) days' written cancellation notice by registered mail with the Industrial Commission of the State of Idaho. This bond may be cancelled by the Industrial Commission of the State of Idaho by written notice to the Surety hereon, which notice shall specify the date of termination of the bond.

IN WITNESS WHEREOF, the parties hereto have caused their names to be signed and this instrument to be sealed by the respective parties thereto this _____ day of _____, 20____. ()

- g.** A statement that renewal certificates on said bonds will be issued and filed with the Industrial Commission immediately, if said bonds are to be renewed. ()
- h.** A statement that the cancellation of surety contracts will be made as set forth in the law, if said contracts are cancelled; ()
- i.** A statement that said carrier will deposit, in addition to the security required for authorization to write Workers' Compensation coverage by these rules, such further security equal to all unpaid outstanding awards of compensation; ()
- j.** A statement that said carrier will comply with the statutes of the state of Idaho and rules of the Industrial Commission to the end that payments of compensation shall be sure and certain and not unnecessarily delayed; and ()
- k.** A statement that said carrier will make such reports to the Commission as it may require in

reference to matters under the Workers' Compensation Law, including IC Form 36A, Report of Outstanding Awards – Insurance Carriers; which must be filed quarterly with the Commission. ()

012. RULES GOVERNING INSURANCE CARRIERS.

An insurance carrier must apply for and receive the approval of the Industrial Commission to write workers' compensation insurance pursuant to Section 72-301, Idaho Code. After receiving such approval, an insurance carrier shall comply with the following: ()

01. Maintain Statutory Security Deposits with the State Treasurer. ()

a. Each insurance carrier shall maintain with the Idaho State Treasurer a security deposit in the amount of twenty-five thousand dollars (\$25,000) if approved by the commission prior to July 15, 1988, or two hundred and fifty thousand dollars (\$250,000) if approved subsequent to that date. ()

b. In addition to the security required in Subsection 012.01.a., of this rule, each insurance carrier shall deposit an amount equal to the total unpaid outstanding awards of said insurance carrier. Such deposit shall be in the form permitted by Section 72-301, Idaho Code. Surety bonds shall be in the form set forth in Subsection 011.02.f. of these rules. If a surety bond is deposited, the surety company shall be completely independent of the principal and authorized to transact such business in the state of Idaho. A partial release of security deposited hereunder must be requested in writing and approved by the Commission. ()

c. Securities which are maintained to satisfy the requirements of this rule may be held in the federal reserve book-entry system, as defined in Section 41-2870(4), Idaho Code, and interests in such securities may be transferred by bookkeeping entry in the federal reserve book-entry system without physical delivery of certificates representing such securities. ()

02. Appoint Agent for Service of Process. Each insurance carrier shall appoint the Director of the Department of Insurance as its agent to receive service of legal process. ()

03. Maintain Resident Idaho Office. Each insurance carrier shall maintain an Idaho licensed resident adjuster or adjusters, or its own adjusting offices or officers resident in Idaho who have been appointed and have been given authority as to claims arising under the Act. ()

a. Each authorized insurance carrier shall notify the Commission Secretary in writing of any change of the designated resident adjuster(s) for every insured Idaho employer within fifteen (15) days of such change. ()

b. Each authorized insurance carrier will ensure that every in-state adjuster can classify and identify all claims adjusted on behalf of said insurance carrier, and that the in-state adjuster will provide such information to the Industrial Commission upon request. ()

04. Supply Forms. Each insurance carrier shall supply such forms as are or may be prescribed by the Commission pursuant to the Workers' Compensation Law and distribute them to all employers it insures. A list of required forms is available from the public information section of the Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041, telephone (208)334-6000. ()

05. Comply with Industrial Commission Reporting Requirements. Each insurance carrier shall file such reports as the Industrial Commission may require concerning matters under the Workers' Compensation Law. ()

06. Report Proof of Coverage.

a. Each insurance carrier shall report proof of coverage information to a third party designated by the Industrial Commission as its agent to receive, process, and forward the proof of coverage information required by these rules to the Commission. The name and address of the Commission's designated agent(s) is available upon request from the Employer Compliance Bureau of the Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041; telephone (208) 334-6000. ()

b. As an alternative to Subsection 012.06.a., an insurance carrier may be allowed to report proof of coverage information directly to the Industrial Commission in an electronic format prescribed by the Commission by first making a written request to the Commission and obtaining the Commission's permission. A formal written agreement with the Commission is required prior to the electronic transmission of proof of coverage data to the Commission. ()

c. The Industrial Commission hereby adopts the International Association of Industrial Accident Boards and Commissions' (IAIABC) electronic proof of coverage record layout and transaction standards as the required reporting mechanism for new policies, renewal policies, endorsements, cancellations, and non-renewals of policies. A copy of the record layout and transaction standards is available upon request from the Employer Compliance Bureau, Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041; telephone (208) 334-6000. ()

d. The most recent proof of coverage information contained in the Industrial Commission's database shall be presumed to be correct for the purpose of determining the insurance carrier providing coverage. ()

07. Report New Policy, Renewal Policy, and Endorsement Information Within Thirty Days. Each insurance carrier shall report the issuance of any new workers' compensation policy, renewal policy, or endorsement to the Industrial Commission or its designated agent within thirty (30) days of the effective date of the transaction. ()

08. Report Cancellation and Non-Renewal of Policy Within Time Prescribed by Statute. Each insurance carrier shall report the cancellation and/or nonrenewal of any workers' compensation insurance policy to the Industrial Commission or its designated agent within the time frames prescribed by Section 72-311, Idaho Code. Receipt of cancellation or nonrenewal notices by the Commission's designated agent shall be deemed to have been received by the Commission. ()

09. Report Election of Coverage on Form IC52 or Similar Format. Each insurance carrier shall report election of coverage or revocation of election of coverage on or in a format substantially the same as Form IC52, "Election of Coverage," which follows this chapter as Appendix A. This report shall be submitted to the Industrial Commission in writing on eight and one-half by eleven inch (8 1/2" x 11") paper. ()

10. Report Outstanding Awards. Each insurance carrier shall report to the Industrial Commission at the end of each calendar quarter, or more often as required by the Commission, any outstanding award. ()

a. The report of outstanding awards shall be filed with the Industrial Commission by the end of the month following the end of each calendar quarter. ()

b. The report shall be filed even if there are no outstanding awards. In that event, the carrier shall certify the fact that there are no outstanding awards to be reported. ()

c. The report shall be submitted on or in a format that is substantially the same as Form IC36A, "Report of Outstanding Awards – Insurance Carriers" which follows this chapter as Appendix B. The report may be produced as a computerized spreadsheet or database printout and shall be submitted to the Commission in writing on paper no larger than eight and one-half inches by eleven inches (8 1/2" x 11") in size. ()

d. The report shall be signed and certified to be correct by a corporate officer. If an insurance carrier has designated more than one adjuster for workers' compensation claims in Idaho, a corporate officer of the insurance carrier shall prepare, certify and file a consolidated report of outstanding awards. ()

e. The report shall list all outstanding awards, commencing with the calendar quarter during which the award is made or benefits are first paid, whichever occurs earlier. ()

11. Comply with Law and Rules. Each insurance carrier shall comply with the statutes of the state of Idaho and the rules of the Industrial Commission to ensure that payments of compensation shall be sure and certain and not unnecessarily delayed. ()

013. -- 050. (RESERVED).

051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.

All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: ()

01. Idaho Office. ()

a. All insurance carriers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. ()

b. The insurance carrier shall authorize a member of its staff or a resident licensed claims adjuster to service and make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. That authority shall include, but is not limited to, the following responsibilities: ()

i. Investigate and adjust all claims for compensation; ()

ii. Pay all compensation benefits due; ()

iii. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers' Compensation Law; ()

iv. Enter into compensation agreements and lump sum settlements with Claimants; and ()

v. Provide at the insurance carrier's expense necessary forms to any worker who wishes to file a claim under the Workers' Compensation Law. ()

c. As staffing changes occur and, at least annually, the insurance carrier or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. ()

02. Claim Files. All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: ()

a. First Report of Injury and Claim for Benefits; ()

b. Copies of bills for medical care; ()

c. Copy of lost-time computations, if applicable; ()

d. Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; ()

e. Employer's Supplemental Report; and ()

f. Medical reports. ()

03. Correspondence. All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be mailed from and maintained at in-state offices. ()

04. Date Stamp. Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped

with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the claims office. ()

05. Notice and Claim. All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or insurance carrier. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. ()

06. Compensation. All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. ()

07. Checks and Drafts. Checks must be signed and issued within the state of Idaho; drafts are prohibited. ()

a. The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit an insurance carrier to sign and issue checks outside the state of Idaho. ()

b. An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the insurance carrier attesting to the fact that the insurance carrier is prepared to comply with all statutes and rules pertaining to prompt payments of compensation. ()

c. All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any insurance carrier for which a waiver under this rule has been granted to assure that the insurance carrier is complying with all statutes and rules pertaining to prompt payments of compensation. ()

d. If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the insurance carrier has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the insurance carrier an opportunity to be heard, may revoke the waiver and order the insurance carrier to comply with the requirements of Subsections 051.06 and 051.07 of this rule. ()

08. Copies of Checks. Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. ()

09. Prompt Claim Servicing. Prompt claim servicing includes, but is not limited to: ()

a. Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033 and 034. ()

b. Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. ()

10. Audits. The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. ()

11. Non-Compliance. Non-compliance with the above requirements may result in the revocation of the authority of an insurance carrier to write workers' compensation insurance in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. ()

052. -- 270. (RESERVED).

271. RULE GOVERNING REPORTING INDEMNITY PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND ASSESSMENT.

Pursuant to Section 72-327, Idaho Code, the state insurance fund and every insurance carrier authorized to transact workers' compensation insurance in Idaho shall report annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. ()

01. Filing. The report of indemnity payments shall be filed with the Industrial Commission simultaneously with the first Semi-Annual Premium Tax Report which, pursuant to Section 72-523, Idaho Code, is due each year on March 3rd. ()

02. Form. The report of indemnity payments shall be submitted in writing on, or in a format substantially the same as Form IC327, "Report of Indemnity Payments," contained in Appendix C at the end of this chapter. ()

03. Report Required When No Indemnity Paid. If an entity required to report under this rule has no claims against which indemnity payments have been made during the reporting period, a report shall be filed so indicating. ()

04. Penalty for Late Filing. A penalty shall be assessed by the Commission for filing the report of indemnity payments later than March 3 each year. ()

a. A penalty of two hundred dollars (\$200) shall be assessed for late filing of seven (7) days or less. ()

b. A penalty of one hundred dollars (\$100) per day shall be assessed for late filing of more than seven (7) days. ()

c. A penalty assessed by the Commission shall be payable to the Industrial Commission and shall be submitted with the April 1 payment of the industrial special indemnity fund assessment, following notice by the Commission of the penalty assessment. ()

05. Estimating Indemnity Payments for Entities That Fail to Report Timely. If an entity required to report indemnity payments under these rules fails to report within the time allowed in these rules, the Commission will estimate the indemnity payments for that entity by using the indemnity amount reported for the preceding reporting period and adding twenty percent (20%). ()

06. Adjustment for Overpayments or Underpayments. Overpayments or underpayments, including those resulting from estimating the indemnity payments of entities that fail to report timely, will be adjusted on the billing for the subsequent period. ()

272. -- 999. (RESERVED).

APPENDIX A

IC52 ELECTION OF COVERAGE

Check the appropriate box	
<input type="checkbox"/> Election	<input type="checkbox"/> Revocation of Election

The undersigned hereby notifies the Industrial Commission of the following:

- Household domestic service
- Casual employment
- Employment of outworkers
- Employment of members of an employer's family dwelling in his household. (Applies only to sole-proprietorships)
- Employment as the owner of a sole proprietorship
- Employment of a working member of a partnership or a limited liability company (Circle either partnership or Limited Liability Company; if the election applies only to certain partners/members, name the covered partners/members.)
- Employment of an officer of a corporation who at all times during the period involved owns not less than ten percent (10%) of all of the issued and outstanding voting stock of the corporation and, if the corporation has directors, is also a director thereof (If the election applies only to certain corporate officers, name the covered officers)
- Employment for which a rule of liability for injury, occupational disease, or death is provided by the laws of the United States
- Pilots of agricultural spraying or dusting planes
- Associate real estate brokers and real estate salesmen paid solely by commission
- Volunteer ski patrollers
- Officials of athletic contests involving secondary schools

(Name of Insurance Company)

Policy Number _____

Insured Name _____

Effective Date of Election/Revocation _____

(Signature of authorized representative)

(Employer's signature)

APPENDIX B

IC36A -- REPORT OF OUTSTANDING AWARDS – INSURANCE CARRIERS

(Name of Carrier) _____							
Calendar Year: _____							
For Calendar Quarter Ending: qMarch qJune qSeptember qDecember							
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Date of Injury	Claimant Name (as shown on First Report of Injury)	Type of Claim	Total Awards	Compensation Paid This Report Period	Total Compensation Paid to Date	Adjustments	Unpaid Balance [(4) minus (5)]
TOTALS							

Send Original to: Fiscal Section, Industrial Commission, P. O. Box 83720, Boise, Idaho 83720-0041

I, the undersigned corporate officer of the above named insurance carrier, do hereby certify that this report is complete and accurate to the best of my knowledge.

Corporate Officer's Signature: _____

Title: _____

Printed Name: _____

Date: _____

Name and Title of Preparer: _____

Company: _____

Address: _____

Telephone: _____ **E-Mail Address:** _____

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IDAPA 17 - INDUSTRIAL COMMISSION

17.02.11 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW - SECURITY FOR COMPENSATION - SELF-INSURED EMPLOYERS

DOCKET NO. 17-0211-1001 (NEW CHAPTER - FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 72-508, 72-520, 72-721, 72-722, and 72-723, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The current chapter, IDAPA 17.02.03 (Security for Compensation), is being repealed and two new chapters are being adopted to clarify each entity's rules. This new chapter, IDAPA 17.02.11 (Self-Insured Employers), adopts rules governing self-insured employers that clarify terms, provide a more detailed application process and outline continuing reporting and security deposit requirements necessary to maintain self insured status.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: The fiscal impact to the industrial administration fund under this proposal is nominal due to the implementation of a \$250 application fee for self-insured employers. Self-insured applications average only 2-3 per year. The Commission's authority is contained in Section 72-508, Idaho Code.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because a subcommittee of the Commission's Advisory Committee, including insurance carrier representatives and self-insured employers, has been providing input to the Industrial Commission on the drafting of these rule revisions.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jane McClaran, 334-6042.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 1st day of September, 2010.

Mindy Montgomery
Director
Industrial Commission
700 S. Clearwater Lane
PO Box 83720, Boise, ID 83720-0041
Phone: 208-334-6000 / Fax: 208-334-5145

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0211-1001

IDAPA 17
TITLE 02
CHAPTER 11

17.02.11 - ADMINISTRATIVE RULES OF THE INDUSTRIAL COMMISSION UNDER THE WORKERS' COMPENSATION LAW -- SECURITY FOR COMPENSATION -- SELF-INSURED EMPLOYERS

000. LEGAL AUTHORITY.

These rules are adopted and promulgated by the Industrial Commission pursuant to the provisions of Sections 72-508, 72-301 and 72-304, Idaho Code. ()

001. TITLE AND SCOPE.

These rules shall be cited as IDAPA 17.02.11, "Administrative Rules of the Industrial Commission Under the Workers' Compensation Law -- Security for Compensation -- Self-Insured Employers." These rules shall apply to all employers securing compensation under the Workers' Compensation Law. ()

002. WRITTEN INTERPRETATIONS.

No written interpretations of these rules exist. ()

003. ADMINISTRATIVE APPEALS.

There is no administrative appeal from decisions of the Industrial Commission in workers' compensation matters, as the Commission is exempted from contested-cases provisions of the Administrative Procedure Act. ()

004. -- 011. (RESERVED).

012. DEFINITIONS.

For the purposes of this chapter, the following definitions are applicable: ()

01. Indemnity Benefits. All payments made to or on behalf of workers' compensation claimants, including temporary or permanent disability benefits, permanent partial impairment benefits, death benefits paid to dependents, retraining benefits, and any other type of income benefits, but excluding medical and related benefits. ()

02. Indemnity Claim. Any claim made for the payment of indemnity benefits. ()

03. Payroll. The gross amount paid by an employer for salaries, wages or commissions earned by its own direct employees, but not including any money paid to another entity or received from another entity for leased employees. ()

013. RULES GOVERNING QUALIFICATIONS OF SELF-INSURED EMPLOYERS.

In order to be considered for approval by the Industrial Commission to self-insure under Section 72-301, Idaho Code, an employer shall comply with the following requirements: ()

01. Payroll. Have an average annual Idaho payroll over the preceding three (3) years of at least four million dollars (\$4,000,000); ()

02. Application. Submit a completed application, available from the Industrial Commission's Fiscal Section, along with the application fee of two hundred fifty dollars (\$250), to the Idaho Industrial Commission, Attention: Fiscal Section, at 700 S. Clearwater Lane, PO Box 83720-0041, Boise, Idaho 83720-0041; telephone (208) 334-6000. ()

- 03. Documentation.** Submit documentation satisfactory to the Commission demonstrating the sound financial condition of the employer, such as the most recent CPA reviewed or, if available, audited, financial statement; ()
- 04. Adjuster.** Designate in writing a licensed Idaho resident adjuster; ()
- 05. Previous Claims.** Provide a history of workers' compensation claims filed with the employer or the employer's workers' compensation carrier during the previous three (3) calendar years. ()
- 06. Custodial Agreement.** Set up a custodial agreement with the State Treasurer for securities required to be deposited under Sections 72-301 and 72-302, Idaho Code; ()
- 07. Supplemental Information.** Provide supplemental information as requested; ()
- 08. Initial Security Deposit.** Prior to final approval, deposit an initial security deposit with the Idaho State Treasurer in the form permitted by Section 72-301, Idaho Code, or a self-insurer's bond in substantially the form set forth in Subsection 014.02, of this rule, in the amount of one hundred and fifty thousand dollars (\$150,000), plus five percent (5%) of the first ten million dollars (\$10,000,000.00) of the employer's average annual payroll in the state of Idaho for the three (3) preceding years; along with such additional security as may be required by the Commission based on prior claims history; ()
- 09. Written Approval.** Obtain written approval from the Industrial Commission. ()

014. CONTINUING REQUIREMENTS FOR SELF-INSURED EMPLOYERS.

Upon receiving the approval of the Industrial Commission to be a self-insured employer under Section 72-301, Idaho Code, to continue such approval a self-insured employer shall comply with the following requirements: ()

01. Payroll Requirements. Maintain an average annual Idaho payroll over the preceding three (3) years of at least four million dollars (\$4,000,000), if such employer was originally approved by the Commission subsequent to April 30, 1984, and two million dollars (\$2,000,000) if such employer was originally approved by the Commission prior to May 1, 1984; provided, however, that any employer who was an approved self-insured employer on July 1, 1974 need not comply with the provisions of this section. Any self-insured employer that does not meet the payroll requirements of this rule for two consecutive semi-annual premium tax reporting periods shall be allowed to maintain their self-insured status for six (6) months from the end of the last reporting period in order to permit them time to increase their payroll or obtain workers' compensation coverage with an insurance carrier authorized to write workers' compensation insurance in the state of Idaho. ()

02. Security Deposit with Treasurer. ()

a. Maintain a security deposit with the Idaho State Treasurer in the form permitted by Section 72-301, Idaho Code, or a self-insurer's bond in substantially the form set forth below, in the amount of one hundred fifty thousand dollars (\$150,000), plus five percent (5%) of the employers' average annual payroll in the state of Idaho for the three (3) preceding years, not in excess of ten million dollars (\$10,000,000) if such employer was originally approved by the Commission subsequent to April 30, 1984; and five million dollars (\$5,000,000) if such employer was originally approved by the Commission prior to May 1, 1984. In addition thereto, the self-insured employer shall deposit additional security in an amount equal to all outstanding and unpaid awards of compensation under the Workers' Compensation Law. ()

b. All security deposited by the self-insured employer shall be maintained as provided by Section 72-302, Idaho Code. ()

c. Any withdrawal or partial release of security deposited hereunder must be requested in writing and approved by the Commission. ()

SELF-INSURER'S COMPENSATION BOND

KNOW ALL MEN BY THESE PRESENTS, THAT _____, a corporation of the State of _____, hereinafter called the Principal, as Principal, and the _____, a surety corporation authorized to transact a surety business in the State of Idaho, as Surety, are held and firmly bound unto the State of Idaho, for the use and benefit of all those employees of the Principal to whom or to the dependents of whom the Principal may, during the life of this bond, become liable for benefits under the Idaho Workers' Compensation Law, as hereinafter more fully referred to, in the sum equal to and limited by the sum or sums that may become due and/or payable by said Principal to said employees under the terms, provisions and limitations of said Workers' Compensation Law, and in accordance with the terms, agreements, conditions and limitations of this obligation not exceeding, however, the sum of _____ dollars, for the payment of which, well and truly made, the Principal well and truly binds itself, its successors and assigns, and the Surety binds itself, its successors and assigns, jointly and severally, well and truly by these presents.

WHEREAS, in accordance with the provisions of Idaho Code, Title 72, Chapters 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto, and Principal has elected to secure compensation to its employees by depositing and maintaining with the Industrial Commission of Idaho a surety bond issued and executed by the surety herein named, which surety is duly qualified to transact such business in the state of Idaho subject to the approval of the Industrial Commission of the State of Idaho.

NOW, THEREFORE, the condition of this obligation is such that if the said Principal shall pay compensation according to the terms, provisions, and limitations of Idaho Code, Title 72, Chapter 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto, to its injured employees or the dependents of its killed employees contemplated by the terms of and covered under the said law, and shall furnish medical, surgical, nursing and the hospital services and attention and funeral expenses as provided for in said law (all of which shall be understood to be included in the term "compensation" as hereinafter used), then this obligation shall be null and void, otherwise to remain in full force and effect, subject, however to the following express conditions and agreements:

1. That any employee or the dependent of any employee of the Principal entitled to compensation under said Workers' Compensation Law, shall have the right to enforce in his own name the liability of the Surety hereunder, in whole or in part, for such compensation, either by at any time filing a separate claim against the Surety or by at any time making the Surety a part of the original claim against the employer; provided, however, that payment in whole or in part of such compensation by either the Principal or the Surety shall, to the extent thereof, be a bar to the recovery against the other of the amount so paid.

That as between the employee and the Surety, notice to or knowledge of the occurrence of injury on the part of the employer shall be deemed notice to or knowledge, as the case may be, on the part of the Surety; that the obligation of the Surety, and the Surety, shall in all things be bound by and subject to the orders, findings, decisions or awards rendered against the Principal for the payment of compensation under the provisions of the Workers' Compensation Law aforesaid, and that the insolvency or bankruptcy of the Principal and its discharge therein, shall not relieve the Surety from the payment of compensation for injuries, including death resulting therefrom, sustained during the life of this bond by an employee of the Principal covered under the Workers' Compensation Law.

That upon request of the Industrial Commission of Idaho, it will make such changes in this form of bond by endorsement to be attached hereto or by the execution of a surety bond replacing this one, as the said Commission may deem requisite, to bring this bond into conformity with its rulings as to the form of surety bond required of employers under Idaho Code, Title 72, Chapters 1 to 8, both inclusive, known as the Workers' Compensation Law and all amendments thereto.

This bond is issued for an indefinite term to begin on the ____ day of _____, 20__, and will continue in full force and effect until terminated in either of the following two manners: This bond may be cancelled by the Surety by filing sixty (60) days written cancellation notice by registered mail with the Industrial Commission of the State of Idaho. This bond may be cancelled by the Industrial Commission of the State of Idaho by written notice to the Surety hereon, which notice shall specify the date of termination of the bond.

IN TESTIMONY WHEREOF, the said Principal and said Surety have caused these presents to be executed in due form this ____ day of _____, 20__.

Countersigned

By

Resident Agent

Principal

SEAL

SEAL

By

By

Samples of this form are available from the Fiscal Section of the Industrial Commission, 700 S. Clearwater Lane, P. O. Box 83720, Boise, Idaho 83720-0041, Telephone (208) 334-6000. ()

03. Maintain a Licensed Resident Adjuster. Maintain a resident licensed claims adjuster located within the state of Idaho who shall have full authority to service said claims on behalf of the employer including, but not limited to, the following: ()

a. Investigate and adjust all claims for compensation; ()

b. Pay all compensation benefits due; ()

c. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers' Compensation Law; ()

d. Enter into compensation agreements and lump sum settlements with Claimants; ()

e. Provide at the employer's expense necessary forms to any employee who wishes to file a claim under the Workers' Compensation Law. ()

04. File Reports. Report to the Industrial Commission at the end of each calendar quarter, or more often as required by the Commission, all outstanding and unpaid awards of compensation. ()

a. The report of outstanding and unpaid awards shall be filed with the Industrial Commission by the end of the month following the end of each calendar quarter. ()

b. The report shall be filed even if there are no outstanding awards. In that event, the employer shall certify the fact that there are no outstanding awards to be reported. ()

c. The report shall be submitted on or in a format that is substantially the same as Form IC36B, "Report of Outstanding Awards - Self-Insured Employers," which follows this chapter as Appendix A. The report may be produced as a computerized spreadsheet or database printout and shall be submitted to the Commission in writing on paper no larger than eight and one-half inches by eleven inches (8 1/2" x 11") in size. ()

d. The report shall be signed and certified to be correct by a corporate officer. If an employer has designated more than one adjuster for workers' compensation claims in Idaho, a corporate officer of the employer shall prepare, certify and file a consolidated report of all outstanding and unpaid compensation awards. ()

e. The report shall list all outstanding awards at the beginning and end of the reporting period, commencing with the calendar quarter during which the award is made or benefits are first paid, whichever occurs first, along with the amount of any compensation paid on each claim during the reporting period. ()

f. A self-insured employer shall also make such other reports to the Commission as it may require in reference to matters under the Workers' Compensation Law. ()

05. Submit to Audits by Industrial Commission. Each year a self-insured employer shall provide the Industrial Commission with a copy of its annual financial statements, or other acceptable documentation. Each self-insured employer shall submit to audit by the Commission or its designee at any time and as often as it requires to verify the amount of premium such self-insured employer would be required to pay as premium to the State Insurance Fund, and to verify compliance with the provisions of these rules and the Idaho Workers' Compensation Law. ()

06. Comply with Law and Rules. Comply with the statutes of the state of Idaho and the rules of the Industrial Commission to the end that payment of compensation shall be sure and certain and not unnecessarily delayed. The Commission may withdraw its approval of any employer to operate as a self-insurer if it shall appear to the Commission that workers secured by said self-insured employer are not adequately protected and served, or the employer is failing to comply with the provisions of these rules or the Workers' Compensation Law. ()

015. -- 050. (RESERVED).

051. REQUIREMENTS FOR MAINTAINING IDAHO WORKERS' COMPENSATION CLAIMS FILES.

All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall comply with the following requirements: ()

01. Idaho Office. All self-insured employers and licensed adjusters servicing Idaho workers' compensation claims shall maintain an office within the state of Idaho. The offices shall be staffed by adequate personnel to conduct business. The self-insured employer shall designate a licensed adjuster to make decisions regarding claims pursuant to Section 72-305, Idaho Code. As staffing changes occur and, at least annually, the self-insured employer or licensed adjuster shall submit to the Industrial Commission Secretary the names of those authorized to make decisions regarding claims pursuant to Section 72-305, Idaho Code. Answering machines, answering services, or toll free numbers outside of the state will not suffice. ()

02. Claim Files. All Idaho workers' compensation claim files shall be maintained within the state of Idaho in either hard copy or immediately accessible electronic format. Claim files shall include, but are not limited to: ()

a. First Report of Injury and Claim for Benefits; ()

b. Copies of bills for medical care; ()

c. Copy of lost-time computations, if applicable; ()

d. Correspondence reflecting reasons for any delays in payments (i.e., awaiting medical reports, clarification, questionable items on bills, etc.), the resolution of such delays and acceptance or denial of compensability; ()

e. Employer's Supplemental Report; and ()

f. Medical reports. ()

03. Correspondence. All original correspondence involving adjusting decisions regarding Idaho workers' compensation claims shall be mailed from and maintained at in-state offices. ()

04. Date Stamp. Each of the documents listed in Subsections 051.02 and 051.03 shall be date-stamped with the name of the receiving office on the day received, and by each receiving agent or vendor acting on behalf of the self-insured employer. ()

05. Notice and Claim. All First Reports of Injury, Claims for Benefits, notices of occupational illnesses and fatalities shall be sent directly to the in-state adjuster or self-insured employer. The original copy of the First Report of Injury, Claim for Benefits and notices of occupational illness and fatality shall be sent directly to the Industrial Commission. ()

06. Compensation. All compensation, as defined by Section 72-102, Idaho Code, must be issued from the in-state office. ()

07. Checks and Drafts. Checks must be signed and issued within the state of Idaho; drafts are prohibited. ()

a. The Commission may, upon receipt of a written Application for Waiver, grant a waiver from the provisions of Subsections 051.06 and 051.07 of this rule to permit a self-insured employer to sign and issue checks outside the state of Idaho. ()

b. An Application for Waiver must be accompanied by an affidavit signed by an officer or principal of the self-insured employer, attesting to the fact that the self-insured employer is prepared to comply with all statutes and rules pertaining to prompt payment of compensation. ()

c. All waivers shall be effective from the date the Commission issues the order granting the waiver. A waiver shall remain in effect until revoked by the Industrial Commission. At least annually, staff of the Industrial Commission may review the performance of any self-insured employer for which a waiver under this rule has been granted to assure that the self-insured employer is complying with all statutes and rules pertaining to prompt payment of compensation. ()

d. If at any time after the Commission has granted a waiver, the Commission receives information permitting the inference that the self-insured employer has failed to provide timely benefits to any claimant, the Commission may issue an order to show cause why the Commission should not revoke the waiver; and, after affording the self-insured employer an opportunity to be heard, may revoke the waiver and order the self-insured employer to comply with the requirements of Subsections 051.06 and 051.07 of this rule. ()

08. Copies of Checks. Copies of checks and/or electronically reproducible copies of the information contained on the checks must be maintained in the in-state files for Industrial Commission audit purposes. A copy of the first check, showing signature and date, shall be sent to the Industrial Commission the same day of issuance. ()

09. Prompt Claim Servicing. Prompt claim servicing includes, but is not limited to: ()

a. Payment of medical bills in accordance with the provisions of IDAPA 17.02.09, Medical Fees, Sections 031, 032, 033, and 034. ()

b. Payment of income benefits on a weekly basis, unless otherwise approved by the Commission. ()

10. Audits. The Industrial Commission will perform periodic audits to ensure compliance with the above requirements. ()

11. Non-Compliance. Non-compliance with the above requirements may result in the revocation of the authority of a self-insured employer to self-insure its workers' compensation obligations in the state of Idaho, or such lesser sanctions as the Industrial Commission may impose. ()

052. -- 180. (RESERVED).

181. RULE PROHIBITING USE OF SICK LEAVE OR OTHER ALTERNATIVE COMPENSATION.

01. Employee Not Required to Take Sick Leave in Lieu of Compensation. No employer obligated to pay workers' compensation benefits to an employee as provided by the Workers' Compensation Law may require an employee to accept "sick leave" or other comparable benefit in lieu of the workers' compensation benefits provided by law. Section 72-318(2), Idaho Code, specifically provides that no agreement by an employee to waive his rights to compensation under the Workers' Compensation Law shall be valid. ()

02. Election of Sick Leave or Alternative Compensation Prohibited. Further, the Commission construes Section 181 as preventing an employee from electing to accept "sick leave" or other comparable benefit from an employer in lieu of workers' compensation benefits to which the employee is entitled under the Workers' Compensation Law, and therefore such elections or agreements are prohibited. ()

182. -- 270. (RESERVED).

271. RULE GOVERNING REPORTING INDEMNITY PAYMENTS AND MAKING PAYMENT OF INDUSTRIAL SPECIAL INDEMNITY FUND ASSESSMENT.

Pursuant to Section 72-327, Idaho Code, every authorized self-insurer authorized to self-insure its workers' compensation obligations in Idaho shall report annually to the Industrial Commission the total gross amount of indemnity benefits paid on Idaho workers' compensation claims during the applicable reporting period. ()

01. Filing. The report of indemnity payments shall be filed with the Industrial Commission simultaneously with the first Semi-Annual Premium Tax Report; which, pursuant to Section 72-523, Idaho Code, is due each year on March 3rd. ()

02. Form. The report of indemnity payments shall be submitted in writing on, or in a format substantially the same as Form IC327, "Report of Indemnity Payments," contained in Appendix B at the end of this chapter. ()

03. Report Required When No Indemnity Paid. If an entity required to report under this rule has no claims against which indemnity payments have been made during the reporting period, a report shall be filed so indicating. ()

04. Penalty for Late Filing. A penalty shall be assessed by the Commission for filing the report of indemnity payments later than March 3 each year. ()

a. A penalty of two hundred dollars (\$200) shall be assessed for late filing of seven (7) days or less. ()

b. A penalty of one hundred dollars (\$100) per day shall be assessed for late filing of more than seven (7) days. ()

c. A penalty assessed by the Commission shall be payable to the Industrial Commission and shall be submitted with the April 1 payment of the industrial special indemnity fund assessment, following notice by the Commission of the penalty assessment. ()

05. Estimating Indemnity Payments for Entities That Fail to Report Timely. If an entity required to report indemnity payments under these rules fails to report within the time allowed in these rules, the Commission will estimate the indemnity payments for that entity by using the indemnity amount reported for the preceding reporting period and adding twenty percent (20%). ()

06. Adjustment for Overpayments or Underpayments. Overpayments or underpayments, including those resulting from estimating the indemnity payments of entities that fail to report timely, will be adjusted on the billing for the subsequent period. ()

272. -- 999. (RESERVED).

APPENDIX A

IC36B -- REPORT OF OUTSTANDING AWARDS -- SELF-INSURED EMPLOYERS

(Name of Self-Insured Employer) _____							
Calendar Year: _____							
For Calendar Quarter Ending: qMarch qJune qSeptember qDecember							
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Date of Injury	Claimant Name (as shown on First Report of Injury)	Type of Claim	Total Awards	Compensation Paid This Report Period	Total Compensation Paid to Date	Adjustments	Unpaid Balance [(4) minus (5)]
TOTALS							

Send Original to: Fiscal Section, Industrial Commission, P. O. Box 83720, Boise, Idaho 83720-0041

I, the undersigned corporate officer of the above named self-insured employer, do hereby certify that this report is complete and accurate to the best of my knowledge.

Corporate Officer's Signature: _____

Title: _____

Printed Name: _____

Date: _____

Name and Title of Preparer: _____

Company: _____

Address: _____

Telephone: _____ **E-Mail Address:** _____

Page _____ Of _____

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.04 - RULES PERTAINING TO BAIL AGENTS

DOCKET NO. 18-0104-1001 (NEW CHAPTER)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Chapter 10 Title 41 Section 41-1039(5) Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Section 41-1039, Idaho Code was amended by the 2010 Legislature to include a requirement that the Department of Insurance set forth in rule reasons for immediate suspension of a bail agent license. This rulemaking identifies grounds for immediate suspension of a bail agent license and also clarifies the duties and responsibilities of bail agents doing business in Idaho.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, formal negotiated rulemaking was not conducted because the writing of this rule was accomplished in consultation with bail industry representatives and drafts were made available to interested parties.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dale Freeman (208) 334-4250.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Shad Priest
Deputy Director
Idaho Department of Insurance
700 West State Street, 3rd Floor
Boise, Idaho 83720-0043
Phone: (208) 334-4250
Fax: (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0104-1001

IDAPA 18
TITLE 01
CHAPTER 04

18.01.04 - RULES PERTAINING TO BAIL AGENTS

000. LEGAL AUTHORITY.

This rule is promulgated pursuant to the authority vested in the director under Sections 41-211 and 41-1037 through 41-1045, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. This rule shall be cited in full as Idaho Department of Insurance Rule IDAPA 18.01.04, "Rules Pertaining to Bail Agents." ()

02. Scope. The provisions of this rule shall apply to all bail agents, as defined by Section 41-1038, Idaho Code. This rule is supplementary to other rules and laws regulating insurance producers, and all other rules of the department and provisions of title 41, Idaho Code, applicable to insurance producers shall also apply to bail agents. ()

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents will be available for public inspection and copying at cost in the main office and each regional or district office of this agency. ()

003. ADMINISTRATIVE APPEALS.

All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General - General provisions." ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference. ()

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

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except Saturday, Sunday and legal holidays. ()

02. Mailing Address. The department's mailing address is: Idaho Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. ()

03. Street Address. The principal place of business is 700 West State Street, 3rd Floor, Boise, ID 83720-0043. ()

04. Web Site Address. The department's web address is <http://www.doi.idaho.gov>. ()

006. PUBLIC RECORDS COMPLIANCE.

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. -- 011. (RESERVED).

012. NOTIFICATION REQUIREMENTS.

01. Notice of Changes Required. A bail agent licensed pursuant to Section 41-1039, Idaho Code, shall immediately notify the Department of Insurance in writing of any the following: ()

- a.** Change of bail agent's name; ()
- b.** Change of bail agent's current business address; ()
- c.** Change of bail agent's current business phone number or business e-mail address if any; ()
- d.** Change of name or address of any surety insurance company for which the bail agent has an active appointment; ()
- e.** Cancellation by a surety insurance company of a bail agent's authority to write bonds for that company; ()
- f.** Any new affiliation with a bail bond agency; ()
- g.** Cancellation of a bail agent's affiliation with a bail agency; ()

02. Notice of Legal Proceedings Required. A bail agent shall provide immediate written notice to the Department of Insurance of the filing of any criminal charges against the bail agent. In addition to the foregoing, a bail agent shall provide immediate written notice to the Department of Insurance of any material change in circumstances that would require a different answer than previously provided by the bail agent on the background information section of the Uniform Application for Individual Insurance Producer License/Registration. Upon request by the department, the bail agent shall provide copies of all relevant legal documents relating to the matter and any additional relevant information requested. ()

013. CRIMINAL HISTORY CHECKS.

01. Criminal History Check Required. All licensed bail agents must obtain a criminal history records check in connection with the renewal of a bail agent's license and shall bear all costs associated with the records check. ()

02. Grounds for Immediate Suspension. A criminal conviction or guilty plea, including a withheld judgment or plea of nolo contendere, to any felony, or to a misdemeanor which evidences bad moral character, dishonesty, a lack of integrity and financial responsibility, or an unfitness and inability to provide acceptable service to the consuming public shall be considered conduct which poses a substantial threat of serious harm to the public and grounds for an immediate suspension of the bail agent's license pursuant to Section 41-1039(4), Idaho Code. The immediate suspension shall be in addition to any proceeding instituted by the director seeking penalties pursuant to Section 41-1016, Idaho Code. ()

014. STACKING OF BONDS PROHIBITED.

A bail agent may submit only one (1) power of attorney with each bail bond submitted to any Idaho court. The face value or face amount of the power shall be equal to or greater than the amount of the bail or bond set by the court in the case for which the bond and power are being submitted. A bail agent shall not attempt to "stack" bonds or powers by submitting more than one (1) power of attorney for any single bond. ()

015. NOTIFICATION TO SURETY OF FORFEITURE.

A bail agent shall notify the surety insurance company of any forfeiture, as defined in Section 19-2905, Idaho Code, within ten (10) days of receiving the notice from the court. ()

016. ALLOWABLE BAIL AGENT CHARGES AND FEES.

01. Charges for Bail Transaction. A bail agent shall not directly or indirectly impose or seek to impose any fees or charges except for those permitted under Section 41-1042, Idaho Code, as a part of any application, issuance, effectuation or continuation of a bail bond. ()

02. Charges for Additional Services. Charges and fees outside the scope of Section 41-1042, Idaho Code, such as charges for returning a defendant to custody after a breach of the bail bond contract, must be negotiated separately after the bail bond has been effectuated. Negotiations for additional charges shall not be entered into as a part of the application, issuance and effectuation of a bail bond and shall not be a condition of or requirement for entering into or continuing a bail bond contract. Any fees or charges that are negotiated separately shall be reasonable in relation to the expenses or services for which the fee or charge is imposed and must be accompanied by a statement that clearly explains that any agreement to pay fees or charges is not a requirement or condition to the validity of the existing bail bond. ()

03. Collateral. Collateral accepted in connection with the bail bond transaction shall be used solely for reimbursement of penal amounts paid to the courts in the case of forfeiture of the bail bond. ()

017. BAIL AGENT FINANCING OF BAIL BOND PREMIUMS.

01. Written Agreement Required. No credit may be extended by any bail agent or surety insurance company for the payment of any bail bond premium without entering into a written agreement. The written agreement for the extension of credit to finance premium must contain at a minimum the following: ()

- a. The names of the parties to the credit agreement; ()
- b. The amount of premium financed; ()
- c. The per annum rate of interest; ()
- d. The scheduled premium payment dates; and ()
- e. Signatures and dates of signatures of all parties to the credit agreement. ()

02. Early Surrender for Failure to Pay. If failure to pay premiums due under a credit arrangement may result in the early surrender of the defendant, that fact must be clearly set forth in the written credit agreement. Early surrender for failure to make premium or interest payments when due must be handled in accordance with Section 41-1044, Idaho Code, and neither the bail agent nor the surety shall be entitled to seek recovery of any amounts unpaid as of the date of surrender. ()

03. Collateral for Credit Agreement. If the credit agreement is to be collateralized, the collateral must not be excessive in relation to the amount of premium financed, must be separate and apart from any collateral used in the bail bond transaction, must be described in the credit agreement or in an attachment to the agreement, and must be handled in accordance with Section 41-1043, Idaho Code. ()

018. PAYMENT OF FORFEITURE.

It is a violation of Section 41-1329(6), Idaho Code, for a bail surety to intentionally, or with such frequency as to indicate a general business practice, fail to pay a claim for forfeiture after liability for payment has become reasonably clear. Liability for payment upon forfeiture is reasonably clear when a defendant has not appeared or has not been brought before the court within 180 days after the entry of the order of forfeiture, and a motion to set aside the forfeiture, in whole or in part, has not been filed with the court within that time period. ()

019. SEVERABILITY.

If any provision of this Rule is for any reason held to be invalid, the remainder of the Rule shall not be affected thereby. ()

020. -- 999. (RESERVED).

IDAPA 18 DEPARTMENT OF INSURANCE
18.01.50 - ADOPTION OF THE INTERNATIONAL FIRE CODE
DOCKET NO. 18-0150-1001
NOTICE OF RULEMAKING - PROPOSED RULEMAKING

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 41-253, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 proposed rule reflects the changes to the 2009 edition of the International Fire Code to bring it into conformity with Idaho statutes, the International Building Code 2009 edition as adopted, and changes made to previous editions of the fire code. This edition will also reflect changes agreed upon by a "fire code task force" organized by the Idaho Legislature after the 2010 session.

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

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

This proposed rule has no impact on the general fund for the state of Idaho. The adoption of new editions of the fire code is and has been since 1982, an ongoing process planned for by most governmental and affected private entities.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the writing of this rule was accomplished in consultation with representatives of the affected industries, fire agencies and elected officials.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2) (a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The International Fire Code makes reference to various documents and standards developed by recognized authorities, such as the National Fire Protection Association and the American Petroleum Institute. Chapter 47 of the 2009 edition of the code as proposed contains a listing of each specific standard referred to in the body of the code. This Code is necessary to provide the minimum standards for the protection of life and property from fire and explosion in the state of Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mark Larson, State Fire Marshal, at 208-334-4370.

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 November 1, 2010.

DATED this 23rd day of August, 2010.

Mark Larson
State Fire Marshal
Idaho Department of Insurance

700 West State Street, Third Floor
Boise, ID 83720-0043
Phone: (208) 334-4370 / Fax: (208) 334-4375

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0150-1001

001. TITLE AND SCOPE.

01. **Title.** These rules shall be cited as IDAPA 18.01.50, Rules of the Idaho Department of Insurance, Title 01, Chapter 50, "Adoption of the ~~2006~~ International Fire Code." (4-2-08)()

02. **Scope.** Pursuant to the authority provided by Section 41-253, Idaho Code, the ~~Idaho~~ State Fire Marshal hereby adopts the ~~2006~~ edition of the International Fire Code, with appendices thereto, and such later editions that may be so published and adopted by the State Fire Marshal, as the minimum standard for the protection of life and property from fire and explosion in the state of Idaho. All such later editions, and appendices thereto, shall be adopted in accordance with Section 67-5229, Idaho Code. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

01. **2006~~9~~ International Fire Code.** In accordance with Section 67-5229, Idaho Code, and pursuant to the authority provided by Section 41-253, Idaho Code, the ~~Idaho~~ State Fire Marshal hereby adopts the 2006~~9~~ edition of the International Fire Code as published by the International Code Council, with the following Any revisions, additions, deletions and/or appendices to the the 2009 International Fire Code are included herein. (4-2-08)()

02. **Availability of Referenced Material.** Copies of the 2006~~9~~ edition of the International Fire Code are available for public inspection at the office of the State Fire Marshal, ~~the State Law Library, and the State Legislative Council.~~ Copies of the 2006~~9~~ International Fire Code and supplements thereto may be procured purchased by writing the International Code Council, Northwest Resource Center, 2122 112th Ave NE, Suite C, Bellevue, WA 98004 or online through the electronic store on the Council's website at the following address: <http://www.iccsafe.org/Pages/default.aspx>. (4-2-08)()

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

The office of the State Fire Marshal is located at 700 West State Street, third floor, Boise Idaho. The business hours are 8 am through 5 pm , Monday through Friday. The mailing address is State Fire Marshal, Department of Insurance, P.O. Box 83720, Boise, ID 83720-0043. The department's web address is <http://www.doi.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Any records associated with this rule are subject to the provisions of the Idaho Public records Law, Title 9, Chapter 3, Idaho Code. ()

005~~7~~. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~021. -- 025. (RESERVED).~~

021. CHAPTER 5 FIRE SERVICE FEATURES.

01. **Section 501.** ()

a. To section 501.3 after the phrase, Construction documents for proposed, add the word "driveways."

- ()
- b.** To section 501.4 after the phrase, When fire apparatus access roads, add the word “driveways.” ()
- 02. Section 502.** To section 502, add the following definition in , DRIVEWAY. A vehicular ingress and egress route that serves no more than five (5) single family dwellings, not including accessory structures. ()
- 03. Section 503.** ()
- a.** To section 503, add the following definition, “FIRE STATION, A building, or portion of a building that provides, at a minimum, all weather protection for fire apparatus. Temperatures inside the building used for this purpose must be maintained at above thirty-two (32) degrees Fahrenheit.” ()
- b.** To section 503 add the words, “AND DRIVEWAYS” to the section heading. ()
- c.** To section 5031.1 add the following sentence, “Driveways shall be provided and maintained in accordance with Sections 503.7 through 503.11.” ()
- d.** To section 503.6 delete the sentence, The installation of security gates across a fire apparatus access road shall be approved by the fire chief. ()
- e.** Add the following section, “503.7 Driveways. Driveways shall be provided when any portion of an exterior wall of the first story of a building is located more than 150 feet (45720mm) from a fire apparatus access road. Driveways shall provide a minimum unobstructed width of 12 feet (3658mm) and a minimum unobstructed height of 13 feet 6 inches (4115mm). Driveways in excess of 150 feet (45720mm) in length shall be provided with turnarounds. Driveways in excess of 200 feet (60960mm) in length and 20 feet (6096mm) in width may require turnouts in addition to turnarounds.” ()
- f.** Add the following section, “503.7.1 Limits. A driveway shall not serve in excess of five single family dwellings.” ()
- g.** Add the following section, “503.7.2 Turnarounds. Driveway turnarounds shall have an inside turning radius of not less than 30 feet (9144mm) and an outside turning radius of not less than 45 feet (13716mm). Driveways that connect with an access road or roads at more than one point may be considered as having a turnaround if all changes of direction meet the radius requirements for driveway turnarounds.” ()
- h.** Add the following section, “503.7.3 Turnouts. Where line of sight along a driveway is obstructed by a man-made or natural feature, turnouts shall be located as may be required by the fire code official to provide for safe passage of vehicles. Driveway turnouts shall be of an all-weather road surface at least 10 feet (3048mm) wide and 30 feet (9144mm) long.” ()
- i.** Add the following section, “503.7.4 Bridge Load Limits. Vehicle load limits shall be posted at both entrances to bridges on driveways and private roads. Design loads for bridges shall be established by the fire code official.” ()
- i.** Add the following section, “503.7.5 Address markers. All buildings shall have a permanently posted address, which shall be placed at each driveway entrance and be visible from both directions of travel along the road. In all cases, the address shall be posted at the beginning of construction and maintained thereafter. The address shall be visible and legible from the road on which the road on which the address is located. Address signs along one-way roads shall be visible from both the intended direction of travel and the opposite direction. Where multiple address’s are required at a single driveway, they shall be mounted on a single post, and additional signs shall be posted at locations where driveways divide.” ()
- k.** Add the following section, “503.7.6 Grade. The gradient for driveways shall not exceed 10 percent unless approved by the fire code official.” ()

l. Add the following section, “503.7.7 Security Gates. Where security gates are installed, they shall have an approved means of emergency operation. The security gates and emergency operation shall be maintained operational at all times.” ()

m. Add the following section, “503.7.8 Surface. Driveways shall be designed and maintained to support the imposed loads of local responding fire apparatus and shall be surfaced as to provide all weather driving capabilities.” ()

04. Section 508. To section 508.2 Type of water supply, delete the existing language and add the following, “A water supply shall consist of water delivered by fire apparatus, reservoirs, pressure tanks, elevated tanks, water mains or other sources approved by the fire code official capable of providing the required fire flow. Exception. The water supply required by this code shall only apply to structures served by a municipal fire department or a fire protection district and within ten miles (16093m) of a responding fire station.” ()

~~026. SECTION 903.2.7 GROUP R AUTOMATIC SPRINKLER SYSTEM REQUIREMENTS.
Add to the paragraph, “Exception: automatic sprinkler systems are not required in 3- or 4-unit Group R buildings.”~~
(4-6-05)

022. -- 026. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

037. FIRE ALARM AND DETECTION SYSTEMS, SECTION 907.1, INTERNATIONAL FIRE CODE.

~~01.~~ Notification Devices. When fire alarm systems not required by the International Fire Code are installed, the notification devices shall meet the minimum design and installation requirements for systems which are required by this code. Intent: (Non-required fire alarm systems shall provide the same level of occupant notification that required systems provide). (5-3-03)

~~02. Partial or Limited Detection Systems Are Allowed. If notification devices are provided, they must meet Subsection 037.01 above.~~
(7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

041. EXPLOSIVES AND FIREWORKS, CHAPTER 33, INTERNATIONAL FIRE CODE.

Delete Sections 3301.1.3, 3301.2.2, 3301.2.3, 3301.2.4.1, 3301.2.4.2, and 3308.1 through 3308.3. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

047. -- ~~0510.~~ (RESERVED).

051. CHAPTER 46. CONSTRUCTION REQUIREMENTS FOR EXISTING BUILDINGS.

To section 4601.1 delete the period and add, “only if in the opinion of the fire code official, they constitute a distinct hazard to life or property.” ()

052. REFERENCED STANDARDS, CHAPTER 45, INTERNATIONAL FIRE CODE.

Beginning on Page ~~387~~ 418, of the NFPA Referenced Standards, make the following changes to the listed editions:

Delete	Add	Delete	Add	Delete	Add
10-200 27	10-200 7 <u>10</u>	51-2002	51-2007	407-2004	407-2007
11-200 25	11-200 5 <u>10</u>	52-200 26	52-200 6 <u>10</u>	430-2000	430-2004
12A- 97 <u>2004</u>	12A-200 49	57-99	57-2002	480-98	484-2002
13-200 27	13-200 7 <u>10</u>	58-2001	58-2004	481-2000	484-2002
13D-200 27	13D-200 7 <u>10</u>	61-99	61-2002	484-200 26	484-200 69
13R-200 27	13R-200 7 <u>10</u>	69-97	69-2002	490-98	490-2002
14-200 37	14-200 7 <u>10</u>	72-200 27	72-200 7 <u>10</u>	495-200 46	495-200 6 <u>10</u>
15-2001	15-2007	85-2004	85-2007	498-200 46	498-200 6 <u>10</u>
16-2003	16-2007	86-2003	86-2007	505-2002	505-2006
17- 98 <u>2002</u>	17-200 29	99-2002	99-2005	650-98	654-2000
17A- 98 <u>2002</u>	17A-200 29	101-200 36	101-200 69	654-2000	654-2006
20-200 37	20-200 7 <u>10</u>	110-200 25	110-200 6 <u>10</u>	655-2004	655-2007
22- 98 <u>2003</u>	22-200 38	211-200 06	211-200 03 <u>10</u>	664-2002	664-2007
24- 95 <u>2003</u>	24-200 03 <u>10</u>	231-98	230-2003	704-2004	704-2007
25- 9 <u>2008</u>	25-2002	231C-98	230-2003	750-200 36	750-200 6 <u>10</u>
30-2000	30-2003	231D-98	230-2003	1122-97	1125-2004
30A-2000	30A-2003	260- 98 <u>2003</u>	260-200 39	1123-200 06	112 63 -200 4 <u>10</u>
30B-2002	30B-2007	261- 98 <u>2003</u>	261-200 39	1124-2003	1124-2006
33-2003	33-2007	265-2002	265-2007	1125-2004	1125-2007
34-2003	34-2007	266-98	272-2003	1127-98	1127-2002
40-2004	40-2007	120- 1999 <u>2004</u>	120-200 4 <u>10</u>	1123-2000	1123-2006
12-200 05	12-200 58	160-2004	160-2006	1126-2004	1126-2006
24-2002	24-2007	241-200 04	241-200 49	31-2004	31-2006
35-1999	35-2005	286-2000	286-2006	32-2000	32-2007
51A-2004	51A-2006	303-2000	303-2006	701- 1999 <u>2004</u>	701-200 4 <u>10</u>
59A-200 46	59A-200 69	385-2000	385-2007	703-200 06	703-200 69
80- 1999 <u>2007</u>	80-200 7 <u>10</u>	409-2004	409-2004	267-98	272-2003
92 BA -2005	92A-2006	484-200 26	484-200 69	111-200 45	111-200 5 <u>10</u>
				2001-2000	2001-2004

(4-2-08)()

053. -- 055. (RESERVED).

056. REFERENCES TO APPENDIX, INTERNATIONAL FIRE CODE.

When this code references the appendix, the provisions of the appendix shall not apply unless specifically incorporated by reference. The following appendixes of the International Fire Code are incorporated by reference:

- (5-3-03)
- 01. Appendix B, Fire Flow Requirements for Buildings.** (5-3-03)
- 02. Appendix C, Fire Hydrant Location and Distribution.** (5-3-03)
- 03. Appendix D, Fire Apparatus Access Roads.** (4-2-08)
- a.** To section D101.1 Scope, add the following sentence, “Driveways as described in section 503.7 through 503.11 are not subject to the requirements of this appendix.” ()
- b.** To section D102.1, after the phrase, by way of an approved fire apparatus access road, add the following “designed and maintained to support the imposed loads of the responding fire apparatus and shall be surfaced so as to provide all-weather driving capabilities.” And delete the remainder of the section. ()
- c.** To section D103.2 Grade. Add the following. “The gradient of the fire apparatus access road shall be within the limits established by the fire code official based on the capabilities of the responding fire departments apparatus.” Delete the remainder of the section and the exception. ()
- 04. Appendix E, Hazard Categories.** (5-3-03)
- 05. Appendix F, Hazard Rankings.** (5-3-03)

IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY

19.01.01 - RULES OF THE STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-1001

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(s) 54-912.

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

Thursday, October 21, 2010 at 10:00 a.m.

**Office of the Idaho Board of Dentistry
350 North 9th Street, Suite M-100
Boise, ID**

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

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

Rule 004: The proposed rule change provides for Rule 004 updates and changes to conform to new editions of documents which are incorporated by reference into the rules of the Board. Certain reference documents have been updated by their writers to reflect new nomenclature and procedures in the fields of administration of anesthesia, as well as including new standards for practice of dentistry and dental hygiene.

Rule 012: The proposed rule change provides for change in nomenclature in anesthesia permits.

Rule 030: The proposed rule change provides for change in nomenclature for administration of nitrous oxide/oxygen.

Rule 031: The proposed rule change provides for a change in the nomenclature for the administration of anesthesia, etc.

Rule 035: The proposed rule change provides for a change in nomenclature for administration of nitrous oxide/oxygen.

Rule 054: The proposed rule change provides for changes to reflect new nomenclature and procedures involved in the methods of anxiety and pain control, sedation terms, and routes of administration.

Rule 055: The proposed rule change provides for changes to reflect new nomenclature and procedures for minimal sedation.

Rule 057: The proposed rule change provides for changes to reflect new nomenclature and procedures for the administration of Nitrous oxide/oxygen.

Rule 060: The proposed rule change provides for changes in the nomenclature and the procedures in the administration of moderate sedation

Rule 061: The proposed rules changes provide for changes in the nomenclature and the procedures of the administration of general anesthesia and deep sedation.

Rule 063: The proposed rule changes provide for changes in nomenclature regarding incident reporting.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the relatively simple nature of the rule change.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Certain reference documents have been updated by their writers to reflect new nomenclature and procedures in the fields of administration of anesthesia, as well as including new standards for practice of dentistry and dental hygiene.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Arthur R. Sacks, 208-334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Arthur R. Sacks
Executive Director
Idaho State Board of Dentistry
350 North 9th Street, Suite M-100, Boise, ID 83702
P. O. Box 83720, Boise, ID 83720-0021
Phone: 208-334-2369
Fax: 208-334-3247

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 19-0101-1001

004. INCORPORATION BY REFERENCE (RULE 4).

Pursuant to Section 67-5229, Idaho Code, this chapter incorporates by reference the following documents: (7-1-93)

01. Documents. (7-1-93)

a. American Association of Oral and Maxillofacial Surgeons, Office Anesthesia Evaluation Manual, 67th Edition, 2006. (3-15-02)()

b. American Dental Association, ~~Council on Dental Education~~, Guidelines for Teaching ~~the Comprehensive Control of Pain and Anxiety in Dentistry~~ Pain Control and Sedation to Dentists and Dental Students, October 2007. (4-11-06)()

c. American Dental Association, ~~Council on Dental Education~~, Guidelines for the Use of ~~Conscious Sedation, Deep Sedation and General Anesthesia~~ for ~~by~~ Dentists, October 2007. (4-11-06)()

d. American Dental Association Policy Statement: The Use of Sedation and General Anesthesia by Dentists, October 2007. ()

de. Centers for Disease Control and Prevention, DHHS, Guidelines for Infection Control in Dental Health-Care Settings, 2003. (4-6-05)

ef. American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), January 2003~~39~~*(as amended)*. (~~3-20-04~~)()

fg. American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), ~~1995~~ June 2009. (~~4-6-05~~)()

h. American Dental Hygienists' Association, Standards for Clinical Dental Hygiene Practice, March 10, 2008. ()

i. American Association of Dental Boards, the Dental Patient Record, June 12, 2009. ()

02. Availability. These documents are available for public review at the Idaho State Board of Dentistry, 350 North 9th Street, Suite M-100, Boise, Idaho 83720, or the Idaho State Law Library, Supreme Court Building, 451 W. State Street, Boise, Idaho 83720. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

012. LICENSE AND APPLICATION FEES (RULE 12).

The license fees and application fees shall be as follows: (3-30-07)

01. Application Fees for Dentists: (7-1-91)

a. General: (3-18-99)

i. By examination -- three hundred dollars (\$300). (3-26-08)

ii. By credentials -- six hundred dollars (\$600). (3-18-99)

b. Specialty: (7-1-91)

i. By examination -- three hundred dollars (\$300). (3-26-08)

ii. By credentials -- six hundred dollars (\$600). (3-18-99)

02. Application Fees for Dental Hygienists: (7-1-91)

a. By examination -- one hundred fifty dollars (\$150). (3-26-08)

b. By credentials -- one hundred fifty dollars (\$150). (3-26-08)

03. Biennial License Fees for Dentists: (3-30-07)

a. Active -- three hundred seventy-five dollars (\$375). (3-26-08)

b. Inactive -- one hundred sixty dollars (\$160). (3-26-08)

c. Specialty -- three hundred seventy-five dollars (\$375). (3-26-08)

04. Biennial License Fees for Hygienists: (3-30-07)

a. Active -- one hundred seventy-five dollars (\$175). (3-26-08)

- b. Inactive -- eighty-five dollars (\$85). (3-26-08)
- 05. **Application Fees for General Anesthesia and ~~Conscious~~ Moderate Sedation Permits:** ~~(4-2-03)~~()
- a. Initial Application -- three hundred dollars (\$300). (4-2-03)
- b. Renewal Application -- three hundred dollars (\$300). (4-2-03)
- c. Reinstatement Application -- three hundred dollars (\$300). (4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

030. DENTAL HYGIENISTS - PRACTICE (RULE 30).

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, dental hygienists are hereby authorized to perform the activities specified below: (4-6-05)

01. General Supervision. A dental hygienist may perform specified duties under general supervision as follows: (4-6-05)

a. Oral prophylaxis (including removal of supragingival and subgingival calculus, stains and plaque biofilm from teeth); (4-11-06)

b. Medical history assessments and intra-oral and extra-oral assessments (including charting of the oral cavity and surrounding structures, taking case histories and periodontal assessment); (4-11-06)

c. Developing patient care plans for prophylaxis, non-surgical periodontal therapy and supportive and evaluative care in accordance with the treatment parameters set by supervising dentist; (4-11-06)

d. Root planing; (4-11-06)

e. Non-surgical periodontal therapy; (4-11-06)

f. Closed subgingival curettage; (4-11-06)

g. Administration of local anesthesia; (4-6-05)

h. Removal of marginal overhangs (use of high speed handpieces or surgical instruments is prohibited); (4-6-05)

i. Application of topical antibiotics or antimicrobials (used in non-surgical periodontal therapy); (4-6-05)

j. Instructing patients in techniques of oral hygiene and preventive procedures; (4-6-05)

k. Placement of antibiotic treated materials pursuant to written order and site specific; (4-6-05)

l. All duties which may be performed by a dental assistant; and (4-11-06)

m. Such other duties as approved by the Board. (4-11-06)

02. Indirect Supervision. A dental hygienist may perform specified duties under indirect supervision as follows: (4-6-05)

- a. Administration and monitoring of nitrous oxide/oxygen; (4-6-05)()
 - b. All dental hygienist duties specified under general supervision; and (4-6-05)
 - c. Such other duties as approved by the Board. (4-11-06)
03. **Direct Supervision.** A dental hygienist may perform specified duties under direct supervision as follows: (4-6-05)
- a. Use of a laser restricted to gingival curettage and bleaching; (4-6-05)
 - b. All dental hygienist duties specified under general and indirect supervision; and (4-6-05)
 - c. Such other duties as approved by the Board. (4-11-06)

031. DENTAL HYGIENISTS - PROHIBITED PRACTICE (RULE 31).

Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, and these rules, a dental hygienist may not perform certain specified duties. (4-6-05)

01. **Prohibited Duties.** A dental hygienist is prohibited from performing the duties specified below: (4-6-05)
- a. Definitive diagnosis and dental treatment planning; (4-6-05)
 - b. The operative preparation of teeth for the placement of restorative materials; (4-6-05)
 - c. The placement or carving of restorative materials; (4-6-05)
 - d. Administration of any general anesthesia, or conscious minimal sedation, or moderate sedation; (4-6-05)()
 - e. Final placement of any fixed or removable appliances; (4-6-05)
 - f. Final removal of any fixed appliance; (4-6-05)
 - g. Cutting procedures utilized in the preparation of the coronal or root portion of the tooth; (4-6-05)
 - h. Cutting procedures involving the supportive structures of the tooth; (4-6-05)
 - i. Placement of the final root canal filling; (4-6-05)
 - j. Final impressions of any tissue-bearing area, whether hard or soft tissue; (4-6-05)
 - k. Occlusal equilibration procedures for any prosthetic restoration, whether fixed or removable; (4-6-05)
 - l. Final placement of prefabricated or cast restorations or crowns; and (4-6-05)
 - m. Such other duties as specifically prohibited by the Board. (4-6-05)

032. -- 034. (RESERVED).

035. DENTAL ASSISTANTS - PRACTICE (RULE 35).

01. **Direct Supervision.** A dental assistant may perform specified activities under direct supervision as follows: (4-6-05)

- a. Recording the oral cavity (existing restorations, missing and decayed teeth); (4-6-05)
 - b. Placement of topical anesthetic agents (prior to administration of a local anesthetic by a dentist or dental hygienist); (4-6-05)
 - c. Removal of excess bonding material from temporary and permanent restorations and orthodontic appliances (using hand instruments or contra-angle handpieces with disks or polishing wheels only); (4-6-05)
 - d. Expose and process radiographs; (4-6-05)
 - e. Take impressions for preparation of diagnostic models, bleach trays, fabrication of night guards, temporary appliances, temporary crowns or bridges; (4-6-05)
 - f. Record diagnostic bite registration; (4-6-05)
 - g. Record bite registration for fabrication of restorations; (4-6-05)
 - h. Provide patient education and instruction in oral hygiene and preventive services; (4-6-05)
 - i. Placement of cotton pellets and temporary restorative materials into endodontic access openings; (4-6-05)
 - j. Placement and removal of arch wire; (4-6-05)
 - k. Placement and removal of orthodontic separators; (4-6-05)
 - l. Placement and removal of ligature ties; (4-6-05)
 - m. Cutting arch wires; (4-6-05)
 - n. Removal of loose orthodontic brackets and bands to provide palliative treatment; (4-6-05)
 - o. Adjust arch wires; (4-6-05)
 - p. Etching of teeth prior to placement of restorative materials; (4-6-05)
 - q. Etching of enamel prior to placement of orthodontic brackets or appliances by a Dentist; (4-6-05)
 - r. Placement and removal of rubber dam; (4-6-05)
 - s. Placement and removal of matrices; (4-6-05)
 - t. Placement and removal of periodontal pack; (4-6-05)
 - u. Removal of sutures; (4-6-05)
 - v. Application of cavity liners and bases; (4-6-05)
 - w. Placement and removal of gingival retraction cord; (4-6-05)
 - x. Application of topical fluoride agents; and (4-6-05)
 - y. Performing such other duties as approved by the Board. (4-6-05)
- 02. Prohibited Duties.** Subject to other applicable provisions of these rules and of the Act, dental assistants are hereby prohibited from performing any of the activities specified below: (7-1-93)

- a. Definitive diagnosis and treatment planning. (4-6-05)
- b. The placement or carving of permanent restorative materials in any manner. (7-1-93)
- c. Any procedure using lasers. (4-6-05)
- d. The administration of any general anesthetic, infiltration anesthetic or any injectable nerve block procedure. (4-6-05)
- e. Any oral prophylaxis. Oral prophylaxis is defined as the removal of plaque, calculus, and stains from the exposed and unexposed surfaces of the teeth by scaling and polishing. (7-1-93)
- f. Any intra-oral procedure using a high-speed handpiece, except to the extent authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity. (4-6-05)
- g. The following expanded functions, unless authorized by a Certificate of Registration or certificate or diploma of course completion issued by an approved teaching entity and performed under direct supervision: (4-6-05)
 - i. Fabrication and placement of temporary crowns; (4-6-05)
 - ii. Perform the mechanical polishing of restorations; (7-1-93)
 - iii. Initiating, regulating and monitoring the administration of nitrous oxide/~~oxygen~~ *analgesia* to a patient; ~~(4-11-06)~~(____) (7-1-93)
 - iv. Application of pit and fissure sealants; (7-1-93)
 - v. Coronal polishing, unless authorized by a Certificate of Registration; this refers to the technique of removing soft substances from the teeth with pumice or other such abrasive substances with a rubber cup or brush. This in no way authorizes the mechanical removal of calculus nor is it to be considered a complete oral prophylaxis. This technique (coronal polishing) would be applicable only after examination by a dentist and removal of calculus by a dentist or dental hygienist. (7-1-93)
 - vi. Use of a high-speed handpiece restricted to the removal of orthodontic cement or resin. (4-6-05)

03. Expanded Functions Qualifications. A dental assistant may be considered Board qualified in expanded functions, authorizing the assistant to perform any or all of the expanded functions described in Subsection 035.02.g. upon satisfactory completion of the following requirements: (4-6-05)

- a. Completion of Board-approved training in each of the expanded functions with verification of completion of the training to be provided to the Board upon request by means of a Certificate of Registration or other certificate evidencing completion of approved training. The required training shall include adequate training in the fundamentals of dental assisting, which may be evidenced by: (4-6-05)
 - i. Current certification by the Dental Assisting National Board; or (7-1-93)
 - ii. Successful completion of a Board-approved course in the fundamentals of dental assisting; or (3-18-99)
 - iii. Successfully challenging the fundamentals course. (7-1-93)
- b. Successful completion of a Board-approved competency examination in each of the expanded functions. There are no challenges for expanded functions. (3-18-99)

04. Course Approval. Any school, college, institution, university or other teaching entity may apply to the Board to obtain approval of its courses of instruction in expanded functions. Before approving such course, the Board may require satisfactory evidence of the content of the instruction, hours of instruction, content of examinations or faculty credentials. (3-18-99)

05. Other Credentials. Assistants, who have completed courses or study programs in expanded functions that have not been previously approved by the Board, may submit evidence of the extent and nature of the training completed, and, if in the opinion of the Board the same is at least equivalent to other Board-approved courses, and demonstrates the applicant's fitness and ability to perform the expanded functions, the Board may consider the assistant qualified to perform any expanded function(s). (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

054. DEFINITIONS (RULE 54).

For the purposes of these anesthesia rules, the following terms will be used, as defined below: (4-11-06)

01. Methods of Anxiety and Pain Control. (4-11-06)

a. ~~Anxiolysis~~ Analgesia shall mean ~~the process of~~ the diminution or elimination of ~~the patient's anxiety, apprehension or fear by the administration of a pharmacological agent that renders the patient relaxed but does not impair the patient's ability to maintain normal mental abilities and vital functions. An oral sedative agent can be administered in the treatment setting or prescribed for patient dosage prior to the appointment~~ pain. (4-11-06)()

b. Local anesthesia shall mean the elimination of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug. ()

bc. Conscious Minimal sedation shall mean a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond ~~appropriately~~ normally to ~~physical~~ tactile stimulation ~~or and~~ verbal command, ~~and that is produced through the enteral or parenteral administration of a pharmacological or non-pharmacological method or a combination thereof. Although cognitive function and coordination may be modestly impaired, ventilator and cardiovascular functions are unaffected.~~ In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough ~~never~~ to render unintended loss of consciousness ~~unlikely~~. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of ~~conscious~~ minimal sedation. ~~Oral sedative agents can be administered in the treatment setting or prescribed for patient dosage prior to the appointment.~~ (4-11-06)()

d. Moderate sedation shall mean a drug-induced depression of consciousness during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway, and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. ()

de. Deep sedation shall mean a ~~drug-induced~~ state of depressed ~~depression of~~ consciousness ~~accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or to respond purposefully to physical stimulation or verbal command, and that is produced by a pharmacological or non-pharmacological method or a combination thereof~~ during which patients cannot be easily aroused but respond purposefully following repeated or painful stimulation. The ability to independently maintain ventilator function may be impaired. Patients may require assistance in maintaining a patent airway, and spontaneous ventilation may be inadequate. Cardiovascular function is usually maintained. (4-11-06)()

df. General anesthesia shall mean a ~~drug-induced~~ state loss of ~~unconsciousness~~ accompanied by a partial or complete loss of protective reflexes, including the inability to continually maintain an airway independently and respond purposefully to physical stimulation or verbal command, and that is produced by a pharmacological or

~~non-pharmacological method or a combination thereof~~ during which patients are not arousable, even by painful stimulation. The ability to independently maintain ventilator function is often impaired. Patients often require assistance in maintaining a patent airway, and positive pressure ventilation may be required because of depressed spontaneous ventilation or drug-induced depression of neuromuscular function. Cardiovascular function may be impaired. (4-11-06)()

~~e. Local anesthesia shall mean the elimination of sensation, especially pain, in one (1) part of the body by the topical application or regional injection of a drug.~~ (4-11-06)

~~f. Nitrous oxide inhalation analgesia shall mean an induced controlled state of minimally depressed consciousness, produced solely by the inhalation of a combination of nitrous oxide and oxygen, in which the patient retains the ability to independently and continuously maintain an airway and to respond purposefully to physical stimulation and to verbal command.~~ (4-11-06)

02. Sedation Terms. (4-11-06)

a. Advanced Cardiac Life Support (ACLS) shall mean an advanced cardiac life support course offered by a recognized accrediting organization. (4-11-06)

b. Monitor or monitoring shall mean the direct clinical observation of a patient during the administration of anesthesia by a person trained to observe the physical condition of the patient and capable of assisting with emergency or other procedures. (4-11-06)

c. Operator shall mean the supervising dentist or another person who is authorized by these rules or holds a permit to induce and administer the proper level of anesthesia/sedation. (4-11-06)

d. Titration shall mean the administration of ~~small~~ incremental doses of a drug until a desired ~~clinical~~ effect is ~~observed~~ reached. Knowledge of each drug's time of onset, peak response and duration of action is essential to avoid over sedation. Although the concept of titration of a drug to effect is critical for patient safety, when the intent is moderate sedation one must know whether the previous dose has taken full effect before administering an additional drug increment. (4-11-06)()

~~e. Maximum recommended (MRD) shall mean maximum FDA-recommended dose of a drug, as printed in FDA-approved labeling for unmonitored home use.~~ ()

~~f. Incremental dosing shall mean administration of multiple doses of a drug until a desired effect is reached, but not to exceed the maximum recommended dose (MRD).~~ ()

~~g. Supplemental dosing during minimal sedation shall mean a single additional dose of the initial drug that may be necessary for prolonged procedures. The supplemental dose should not exceed one-half of the initial dose and should not be administered until the dentist has determined the clinical half-life of the initial dosing has passed. The total aggregate dose must not exceed one and one-half times (1.5x) MRD on the day of treatment.~~ ()

03. Routes of Administration. (4-11-06)

a. Enteral. Any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sublingual). (4-11-06)

b. Inhalation. A technique of administration in which a gaseous or volatile agent is introduced into the ~~pulmonary tree~~ lungs and whose primary effect is due to absorption through the ~~pulmonary bed~~ gas/blood interface. (4-11-06)()

c. Parenteral. A technique of administration in which the drug bypasses the gastrointestinal (GI) tract (i.e., intramuscular (IM), intravenous (IV), intranasal (IN), submucosal (SM), subcutaneous (SC), ~~intraocular~~ intraosseous (IO)). (4-11-06)()

d. Transdermal/~~transmucosal~~. A technique of administration in which the drug is administered by

patch or iontophoresis through skin. (4-11-06)(____)

e. Transmucosal. A technique of administration in which the drug is administered across mucosa such as intranasal, sublingual, or rectal. (____)

055. ANXIOLYSIS MINIMAL SEDATION (RULE 55).

Persons licensed to practice dentistry in accordance with the Idaho Dental Practice Act and these rules ~~may are not required to obtain a permit to~~ administer ~~medication to patients for the purpose of relieving anxiety so long as the medication is given in a dosage that is within the current guidelines set forth for anxiolytic dosage on the manufacturer's package insert or other recognized drug reference and does not induce a state of depressed consciousness to the level of general anesthesia, deep sedation, or conscious sedation in the patient~~ minimal sedation to adult patients. When the intent is minimal sedation for adults, the appropriate initial dosing of a single enteral drug is no more than the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. (4-11-06)(____)

01. Patient Safety. The administration of ~~anxiolytics by means of titration or in combination with nitrous oxide inhalation analgesia~~ minimal sedation is permissible so long as it does not produce an alteration of the state of consciousness in a patient to the level of ~~conscious~~ moderate sedation, deep sedation or general anesthesia. A dentist must first qualify for and obtain the appropriate permit from the Board of Dentistry to be authorized to sedate patients to the level of ~~conscious~~ moderate sedation, deep sedation or general anesthesia. Nitrous oxide/~~oxygen inhalation analgesia shall not~~ may be used in combination with ~~anxiolytic medication except during the limited period of time required to administer a local anesthetic~~ a single enteral drug in minimal sedation. Notwithstanding any other provision in these rules, a dentist shall initiate and regulate the administration of nitrous oxide/~~oxygen inhalation analgesia~~ when used in combination with ~~anxiolysis~~ minimal sedation. (4-11-06)(____)

02. Personnel. ~~A patient sedated for anxiolytic purposes in the dental office shall be monitored by an assistant trained in basic life support to observe appropriate physiologic parameters and assist in any support or resuscitation measures required.~~ At least one (1) additional person currently certified in Basic Life Support for Healthcare Providers must be present in addition to the dentist. (4-11-06)(____)

(BREAK IN CONTINUITY OF SECTIONS)

057. NITROUS OXIDE/OXYGEN INHALATION ANALGESIA (RULE 57).

Persons licensed to practice dentistry and dental hygiene and dental assistants certified in accordance with the Idaho Dental Practice Act and these rules are not required to obtain a permit to administer nitrous oxide/~~oxygen inhalation analgesia~~ to patients. Nitrous oxide/~~oxygen inhalation analgesia~~ when used in combination with other sedative agents may produce an alteration of the state of consciousness in a patient to the level of ~~conscious~~ moderate sedation, deep sedation or general anesthesia. A dentist must first qualify for and obtain the appropriate permit from the Board of Dentistry to be authorized to sedate patients to the level of ~~conscious~~ moderate sedation, deep sedation or general anesthesia. (4-11-06)(____)

01. Patient Safety. In connection with the administration of nitrous oxide/~~oxygen inhalation analgesia~~, a dentist shall: (4-11-06)(____)

a. Evaluate the patient to insure that the patient is an appropriate candidate for nitrous/~~oxygen inhalation analgesia~~; and (4-11-06)(____)

b. Insure that any patient under nitrous/~~oxygen inhalation analgesia~~ shall be continually monitored ~~for such matters as response to verbal stimulation, oral mucosal color and vital signs~~; and (4-11-06)(____)

c. Insure that a second person shall be on the office premises who can immediately respond to any request from the person administering the nitrous/~~oxygen inhalation analgesia~~; and. (4-11-06)(____)

~~d. Insure that a qualified person is continuously monitoring the patient. (4-11-06)~~

02. Required Facilities and Equipment. Dental offices in which nitrous oxide/oxygen sedation is administered to patients shall, at a minimum and in addition to emergency medications, maintain appropriate facilities and have equipment on site for immediate use as follows: (4-11-06)()

a. A nitrous oxide delivery system with a fail-safe mechanism system that ~~will insure appropriate continuous oxygen delivery and a scavenger system~~ is appropriately checked and calibrated. The equipment must also have either: ()

i. A functioning device that prohibits the delivery of less than thirty percent (30%) oxygen; or ()

ii. An appropriately calibrated and functioning in-line oxygen analyzer with audible alarm; and (4-11-06)()

b. ~~An operating room sufficiently large to accommodate the patient and allow for delivery of appropriate care in an emergency situation~~ appropriate scavenging system must be available; and (4-11-06)()

~~e. Suction equipment capable of aspirating gastric contents from the mouth and pharynx; (4-11-06)~~

~~d.c. A portable positive-pressure oxygen delivery system including full face masks and a bag valve mask device capable of delivering positive pressure, oxygen enriched ventilation to the patient; and suitable for the patient being treated.~~ (4-11-06)()

~~e. An appropriately sized measuring device for taking a patient's blood pressure. (4-11-06)~~

03. Personnel. For nitrous oxide/oxygen administration, personnel shall include: (4-11-06)()

a. An operator; and (4-11-06)

b. An assistant ~~trained currently certified in basic life support to monitor appropriate physiologic parameters and assist in any support or resuscitation measures required (the operator and the assistant may be the same person)~~ Basic Life Support for Healthcare Providers. (4-11-06)()

c. Auxiliary personnel must have documented training in Basic Life Support for Healthcare Providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The ~~practitioner dentist~~ and all office personnel must participate in periodic reviews of office emergency protocol. (4-11-06)()

058. -- 059. (RESERVED).

060. ADMINISTRATION OF CONSCIOUS MODERATE SEDATION (RULE 60).

Dentists licensed in the state of Idaho cannot ~~use conscious~~ administer moderate sedation in the practice of dentistry unless they have obtained the proper ~~conscious moderate~~ sedation permit from the Idaho State Board of Dentistry. A ~~conscious moderate~~ sedation permit may be either limited enteral or comprehensive parenteral. A ~~limited-conscious moderate enteral~~ sedation permit authorizes dentists to administer ~~conscious moderate~~ sedation by either enteral or combination inhalation-enteral routes of administration. A ~~comprehensive-conscious moderate parenteral~~ sedation permit authorizes a dentist to administer ~~conscious moderate~~ sedation by ~~enteral, combination inhalation-enteral or parenteral any~~ routes of administration. A dentist shall not administer ~~conscious moderate~~ sedation to children under eighteen (18) years of age unless they have qualified for and been issued a ~~comprehensive-conscious moderate parenteral~~ sedation permit. (4-11-06)()

01. Requirements for a Limited-Conscious Moderate Enteral Sedation Permit. To qualify for a ~~limited-conscious moderate enteral~~ sedation permit, a dentist applying for a permit must shall provide proof that the dentist has completed training in the ~~use and~~ administration of ~~conscious moderate~~ sedation ~~drugs~~ to a level consistent with that prescribed in ~~Part I and Part III of~~ the American Dental Association's "ADA" Guidelines for

Teaching ~~the Comprehensive Control of Pain~~ Control and ~~Anxiety in Dentistry~~ Sedation to Dentists and Dental Students,” as incorporated in Section 004 in these rules. The five (5) year requirement regarding the required training for a ~~limited-conscious moderate enteral~~ sedation permit shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the application date. To obtain a ~~limited-conscious moderate enteral~~ sedation permit, a dentist must provide certification of the following: (4-11-06)(____)

a. Completion of an American Dental Association accredited or Board of Dentistry approved post-doctoral training program within five (5) years of the date of application for a ~~limited-conscious moderate enteral~~ sedation permit that included documented training of a minimum of ~~eighteen~~ twenty-four (1824) hours of ~~didactic education instruction~~ plus management of at least twenty ten (210) clinically-oriented adult case experiences ~~which provided competency in enteral and combination inhalation-enteral-conscious sedation. Clinically-oriented experiences may include either supervised administration or group observations on patients undergoing enteral or combination inhalation-enteral-conscious sedation~~ by the enteral and/or enteral-nitrous oxide/oxygen route. These ten (10) cases must include at least three live clinical dental experiences managed by participants in groups no larger than five (5). The remaining cases may include simulations and/or video presentations, but must include one experience in returning a patient from deep to moderate sedation; or and (4-11-06)(____)

~~b. Completion of a Board of Dentistry approved course of instruction within five (5) years of the date of application for a limited-conscious sedation permit that included documented training of a minimum of eighteen (18) hours of didactic education plus twenty (20) clinically-oriented experiences which provided competency in enteral and combination inhalation-enteral-conscious sedation. Clinically-oriented experiences may include either supervised administration or group observations on patients undergoing enteral or combination inhalation-enteral-conscious sedation; and~~ (4-11-06)

~~eb.~~ Proof of ~~completion and~~ current certification of Advanced Cardiac Life Support ~~training~~ or its equivalent. (4-11-06)(____)

02. Requirements for a Comprehensive-Conscious Moderate Parenteral Sedation Permit. A To qualify for a moderate parenteral sedation permit, a dentist applying for a permit ~~to administer comprehensive conscious sedation~~ shall provide proof that the dentist has ~~received formal completed~~ training ~~and certification~~ in the use administration of conscious moderate parenteral sedation ~~drugs as described prescribed~~ in the American Dental Association’s “Guidelines for Teaching the Comprehensive Pain Control of Pain and Anxiety in Dentistry and Sedation to Dentists and Dental Students,” published by the American Dental Association and as incorporated by ~~reference~~ into Section 004 of these rules within the five (5) year period immediately prior to the date of application for a ~~comprehensive-conscious moderate parenteral~~ sedation permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application. The ~~formal~~ training program shall: (4-11-06)(____)

a. Be sponsored by or affiliated with a dental school accredited by the Commission on Dental Accreditation of the American Dental Association or a teaching hospital or facility approved by the Board of Dentistry; and (4-5-00)

b. Consist of a minimum of sixty (60) hours ~~didactic education and of instruction, plus management of at least~~ twenty (20) ~~hours~~ patients contact by the intravenous route. Patient contact includes the administration of the intravenous (IV) sedation and management by the participant from induction through emergence.; and (3-18-99)(____)

c. Include the issuance of a certificate of successful completion that indicates the type, number of hours, and length of training received. (3-18-99)

d. In addition, the dentist must ~~show proof of~~ maintain current certification ~~of in~~ Advanced Cardiac Life Support ~~training~~ or its equivalent. (3-15-02)(____)

03. General Requirements for Limited Moderate Enteral and Comprehensive-Conscious Moderate Parenteral Sedation Permits. (4-11-06)(____)

a. **Facility Requirements.** The dentist must have a properly equipped facility for the administration of ~~conscious moderate sedation staffed with a dentist supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto.~~ The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of moderate sedation and providing the equipment, drugs and protocol for patient rescue. Adequacy of the facility and competence of the anesthesia team will be determined by Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. (3-18-99)()

b. **Personnel.** For ~~conscious moderate~~ sedation, the minimum number of personnel shall be two (2) including: (10-1-87)()

i. The operator; and (10-1-87)

ii. An assistant ~~trained to monitor appropriate physiologic parameters and assist in any support or resuscitation measures required~~ currently certified in Basic Life Support for Healthcare Providers. (10-1-87)()

iii. Auxiliary personnel must have documented training in basic life support for healthcare providers, shall have specific assignments, and shall have current knowledge of the emergency cart inventory. The practitioner and all office personnel must participate in documented periodic reviews of office emergency protocol, including simulated exercises, to assure proper equipment function and staff interaction. (3-18-99)()

c. **Permit Renewal.** Renewal of the permit will be required every five (5) years ~~in conjunction with the routine dental licensure renewal.~~ Proof of a minimum of twenty-five (25) credit hours continuing education in ~~conscious moderate~~ sedation which may include training in medical/office emergencies will be required to renew a permit. A fee shall be assessed to cover administrative costs. (4-2-03)()

d. **Reinstatement.** A dentist may make application for the reinstatement of an expired or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's expiration or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in ~~conscious moderate~~ sedation techniques for each year subsequent to the date upon which the permit expired or was surrendered. A fee for reinstatement shall be assessed to cover administrative costs. (4-2-03)()

061. GENERAL ANESTHESIA AND DEEP SEDATION (RULE 61).

Dentists licensed in the state of Idaho cannot use general anesthesia or deep sedation techniques in the practice of dentistry unless they have obtained the proper permit from the Idaho State Board of Dentistry by conforming with the following conditions: (10-1-87)()

01. General Requirements. A dentist applying for a permit to administer general anesthesia ~~and or~~ deep sedation shall provide proof that the dentist: (10-1-87)()

a. Has completed ~~an~~ minimum of one (1) year of advance training in anesthesiology and related academic subjects beyond the undergraduate dental school level advanced education program accredited by the ADA Commission on Dental Accreditation that affords comprehensive and appropriate training necessary to administer and manage deep sedation or general anesthesia, commensurate with Part IV.C of the American Dental Association's "Guidelines for the Use of Sedation and General Anesthesia by Dentists" within the five (5) year period immediately prior to the date of application for a permit. The five (5) year requirement shall not be applicable to applicants who hold an equivalent permit in another state which has been in effect for the twelve (12) month period immediately prior to the date of application. ~~This training is described in Part II of the "Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry," as incorporated by reference in Section 004 of these rules;~~ or ~~and~~ (4-11-06)()

~~b. Is a diplomate of the American Board of Oral and Maxillofacial Surgery; or~~ (10-1-87)

~~c. Is a member of the American Association of Oral and Maxillofacial Surgeons; or~~ (10-1-87)

- ~~d.~~ *Is a Fellow of the American Dental Society of Anesthesiology; and* (4-5-00)
- ~~eb.~~ *Has e*Current Certification *of in* Advanced Cardiac Life Support *Training* or its equivalent; and (3-15-02)()
- ~~fc.~~ Has an established protocol or admission to a recognized hospital. (3-18-99)

02. Facility Requirements. The dentist must have a properly equipped facility for the administration of general anesthesia, ~~staffed with a dentist supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto~~ or deep sedation. The qualified dentist is responsible for the sedative management, adequacy of the facility and staff, diagnosis and treatment of emergencies related to the administration of general anesthesia or deep sedation and providing the equipment, drugs and protocol for patient rescue. Adequacy of the facility and competence of the anesthesia team will be determined by e Evaluators appointed by the Idaho State Board of Dentistry will periodically assess the adequacy of the facility and competence of the anesthesia team. The Board adopts the standards incorporated by reference in Section 004 of these rules, ~~regarding approval of equipment within the facility~~ as set forth by the American Association of Oral and Maxillofacial Surgeons in their office anesthesia evaluation manual. (4-11-06)()

03. Personnel. For general anesthesia ~~and or~~ deep sedation ~~techniques~~, the minimum number of personnel shall be three (3) including: (10-1-87)()

- a. A qualified ~~person~~ operator to direct the sedation as specified in Section 061 of this rule; and (4-11-06)()
- b. ~~A qualified person whose primary responsibilities are observation and monitoring of the patient and who has documented current CPR certification; and~~ Two (2) additional individuals who have current certification in Basic Life Support for the Healthcare Provider. (3-18-99)()
- c. ~~An assistant for the operator who has documented current CPR certification.~~ When the same individual administering the deep sedation or general anesthesia is performing the dental procedure, one (1) of the additional appropriately trained team members must be designated for patient monitoring. (3-18-99)()

04. Conscious Moderate Sedation. A dentist holding a permit to administer general anesthesia or deep sedation under this rule may also administer ~~conscious~~ moderate sedation. (3-18-99)()

05. Permit Renewal. Renewal of the permit will be required every five (5) years ~~in conjunction with the routine dental licensure renewal.~~ Proof of a minimum of twenty-five (25) credit hours of continuing education in general anesthesia ~~and or~~ deep sedation ~~techniques~~ and proof of current certification in Advance Cardiac Life Support will be required to renew a permit. A fee shall be assessed to cover administrative costs. (4-2-03)()

06. Reinstatement. A dentist may make application for the reinstatement of an expired or surrendered permit issued by the Board under this rule within five (5) years of the date of the permit's expiration or surrender. Applicants for reinstatement of a permit shall satisfy the facility and personnel requirements of this rule and shall be required to verify that they have obtained an average of five (5) credit hours of continuing education in general anesthesia ~~and or~~ deep sedation ~~techniques~~ for each year subsequent to the date upon which the permit expired or was surrendered. A fee for reinstatement shall be assessed to cover administrative costs. (4-2-03)()

(BREAK IN CONTINUITY OF SECTIONS)

063. INCIDENT REPORTING (RULE 63).

~~Any anesthesia permit holder~~ Dentists shall report to the Board, in writing, within seven (7) days after the death or transport to a hospital or emergency center for medical treatment for a period exceeding twenty-four (24) hours of any patient to whom ~~conscious~~ sedation ~~or general anesthesia~~ was administered. (3-18-99)()

IDAPA 20 - DEPARTMENT OF LANDS

20.02.11 - TIMBER SUPPLY STABILIZATION ACT OF 1989 ON STATE FORESTS

DOCKET NO. 20-0211-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Department of Lands has proposed rulemaking. The action is authorized by Sections 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Informal public meetings were held in September pursuant to separate public notice. Additional Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The meeting site(s) 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.

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

The repeal of the "Timber Supply Stabilization Act of 1989," Title 58, Chapter 10, Idaho Code, during the 2010 legislative session has made IDAPA 20.02.11 obsolete. It is hereby repealed in its entirety.

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted because the authorizing statute was repealed by the 2010 Legislature.

GENERAL INFORMATION: For more information about IDL's programs and activities, visit IDL's web site at <http://www.idl.idaho.gov>.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact the undersigned.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The IDL will consider all written comments received by the undersigned on or before October 27, 2010.

DATED this 31st day of August, 2010.

Bob Helmer
Bureau Chief, Forest Management
Idaho Department of Lands
3284 West Industrial Loop
Coeur d'Alene, Idaho 83815
(208) 666-8610
Fax No. (208) 769-1524

IDAPA 20.02.11 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 20 - DEPARTMENT OF LANDS

20.02.14 - RULES FOR SELLING FOREST PRODUCTS ON STATE OWNED ENDOWMENT LANDS

DOCKET NO. 20-0214-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Department of Lands has proposed rulemaking. The action is authorized by Sections 58-104(6), 58-105, 58-403 and 58-412, Idaho Code.

PUBLIC HEARING SCHEDULE: Informal public meetings were held in September pursuant to separate public notice. Additional Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

The meeting site(s) 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.

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

The proposed changes to IDAPA 20.02.14 will:

- 1) Authorize the IDL to sell state timber as delivered products;
- 2) Expand state timber auction to allow additional bidding methods;
- 3) Authorize the Director to set permit rates and values; and
- 4) Clarify existing rules for state timber purchasers and the IDL.

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

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

NEGOTIATED RULEMAKING: Negotiated rulemaking was not conducted because the proposed rules impose no new fee or charge and because of the diverse interests of potentially affected parties.

GENERAL INFORMATION: For more information about IDL's programs and activities, visit IDL's web site at <http://www.idl.idaho.gov>.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact the undersigned.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The IDL will consider all written comments received by the undersigned on or before October 27, 2010.

DATED this 31st day of August, 2010.

Bob Helmer
Bureau Chief, Forest Management
Idaho Department of Lands
3284 West Industrial Loop
Coeur d'Alene, Idaho 83815
(208) 666-8610
Fax No. (208) 769-1524

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0214-1001

010. DEFINITIONS.

01. **Board.** The Idaho State Board of Land Commissioners. (5-8-09)
02. **Cable Yarding.** Transportation of forest products from stump to road by means of a suspended, powered cable system. (5-8-09)
03. **Cedar.** Western Red Cedar (*Thuja plicata*). (5-8-09)
04. **Cedar Pole.** A segment or portion of a western red cedar tree that can be manufactured into a utility pole meeting current ANSI Specifications. (5-8-09)
05. **Contract.** Timber sale contract in a form prescribed by the Department. (5-8-09)
06. **Department.** The Idaho Department of Lands. (5-8-09)
07. **Development Credits.** A stumpage credit received by the purchaser for the construction or reconstruction of roads, bridges, or other permanent improvements. (5-8-09)
08. **Director.** The director of the Idaho Department of Lands or his authorized representative. (5-8-09)
09. **Extreme Circumstances.** Catastrophic circumstances including, but not limited to, fire, downed timber due to a wind event, flood, earthquake, destruction of a purchaser's milling facilities or equipment by fire, or milling operation shut down due to a court order related to compliance with state or federal environmental laws. (5-8-09)
10. **Forest Products.** Marketable forest materials. (5-8-09)
11. **Ground-Based Yarding.** Transportation of forest products from stump to road using tractors, forwarders, or rubber-tired skidders. (5-8-09)
12. **Length.** The length of a pole in five (5) foot increments. (5-8-09)
13. **Measurement.** Weight, length, board foot volume, cubic volume, or any other means or procedure for determining quantity of forest products. (5-8-09)
14. **Net Appraised Value.** The minimum estimated sale value of the forest products after deducting the development credit. (5-8-09)
15. **Net Sale Value.** The final sale bid value of the forest products after deducting the development credit. (5-8-09)
16. **Public Auction.** Any advertised sale with notice to the general public at which bids are made and accepted. Public auctions include, but are not limited to, oral auctions and the announcement of sealed or electronically submitted bids. ()
167. **Pulp.** Any portion of a tree that does not meet the sawlog merchantability specifications of thirty-three and one-third percent (33 1/3%) net scale. (5-8-09)
178. **Purchaser.** A successful bidder for forest products from a state sale who has executed a timber sale contract. (5-8-09)

- ~~189.~~ **Roads.** Forest access roads used for the transportation of forest products. (5-8-09)
- ~~1920.~~ **Scaling.** Quantitative measurement of logs or other forest products by a log rule. (5-8-09)
- ~~201.~~ **Scribner Decimal "C" Board Foot Measure.** The measurement of forest products in accordance with the log rule described in Title 38, Chapter 12, Idaho Code, and the rules promulgated thereunder. (5-8-09)
- ~~212.~~ **State.** The State of Idaho. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

019. FIREWOOD AND OTHER PERSONAL USE PRODUCT PERMITS.

~~Permits for the sale of dead and down forest products~~ permits for personal use will be sold on a charge basis ~~at a rate determined by the Board. Permits will not exceed a maximum value established by the Director.~~ The Director shall determine permit rates and maximum permit values. (5-8-09)()

020. DIRECT SALES.

The ~~direct~~ sale of forest products without advertisement may be authorized by the Director if the net appraised value does not exceed the maximum value established by the Board. This type of sale is to be used to harvest isolated or bypassed parcels of timber of insufficient value and volume to justify a salvage sale (refer to Rule Section 021). The direct sale shall not be used when two (2) or more potential purchasers may be interested in bidding on the forest products offered for sale. The initial duration of a direct sale shall ~~not exceed an initial period of~~ be six (6) months with a provision for one six (6) month extension. The purchaser shall furnish an acceptable performance bond in the amount of thirty percent (30%) of the sale value with a minimum bond of one hundred dollars (\$100). Advance payment will be required and all sales will be on a lump sum basis. (5-8-09)()

(BREAK IN CONTINUITY OF SECTIONS)

023. DELIVERED PRODUCT SALES.

The Director may contract logging services and sell forest products at public auction. Purchasers of delivered forest products will be required to provide a ten percent (10%) initial deposit and a guarantee of payment bond. ()

~~0234.~~ **SALE OF CEDAR POLES** ~~SALE SELECTION.~~

01. Requirements for Cedar Poles ~~Sale.~~ Pole quality cedar shall be reserved for a cedar pole sale if the proposed sale area contains at least one hundred fifty (150) cedar poles in a density of at least five (5) poles per acre on ground based yarding areas, the and at least ten (10) poles per acre on cable yarding areas. Areas with a lower density of poles may be offered as a pole sale if the Department determines that such sale is economically feasible. If a proposed sale area contains at least one hundred fifty (150) cedar poles in a density of at least five (5) poles per acre on ground based yarding areas and at least ten (10) poles per acre on cable yarding areas, the pole quality cedar shall be reserved and sold separately as a pole sale or as a separate product sort in a delivered products sale. Pole quality cedar in areas with a lower density of poles may be offered as poles. (5-8-09)()

02. Maximum Amount of Sawlogs. Sawlogs and other forest products shall not exceed fifty percent (50%) of the total sale volume, excluding materials generated through the construction of roads and development sites. (5-8-09)

03. Poles within Sawlog Sale. If any area within a proposed timber sale contains two hundred fifty (250) cedar poles or more in a density of at least ten (10) poles per acre, the poles shall be reserved for a pole-quality cedar sale or sold as a separate product sort in a delivered products sale. (5-8-09)()

~~024. CEDAR POLE SALE PROCEDURES.~~

~~04.~~ **Length Appraisal.** Cedar poles shall be appraised by length and bid on a lineal foot basis. The conversion table set out below shall be used to establish the corresponding board foot volume. (5-8-09)

~~025.~~ **Length to Volume Conversion Table for Western Red Cedar Poles:**

Pole Length	Board Feet Each*		Pole Length	Board Feet Each*
30'	50		80'	595
35'	70		85'	736
40'	101		90'	792
45'	161		95'	892
50'	239		100'	929
55'	261		105'	1113
60'	304		110'	1132
65'	418		115'	1420
70'	462		120'	1475
75'	512			
* Based on Scribner Decimal "C" board foot measure				

(5-8-09)

~~036.~~ **Bidding Limited to Cedar.** When cedar represents eighty percent (80%) or more of the total appraised value, bidding shall be limited to cedar poles and cedar sawlogs only. (5-8-09)

~~047.~~ **Purchaser's Option.** The purchaser may opt to remove cedar as poles, sawlogs, and products or as sawlogs and products. Such choice shall be made at the completion of the auction. If the purchaser opts to manufacture the cedar as poles, the poles and sawlog material shall be removed at bid prices (lineal foot basis for poles and MBF basis for sawlogs). Pole-quality cedar trees containing thirty (30) foot cedar poles may be harvested as poles or sawlogs at the purchaser's discretion unless such trees are designated reserve. If the purchaser elects to manufacture cedar poles as sawlogs, the bid values of cedar poles and cedar sawlog material shall be weighted by volume to determine the selling value for all cedar sawlogs. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

031. TIMBER SALE AUCTIONS.

~~01.~~ **Requirements. Timber, Salvage, and Delivered Products sales shall be sold at public auction.** ()

~~042.~~ **Requirements for Bidding.** (5-8-09)

a. Bidders shall present a bid deposit in a form acceptable to the State in the amount of ten percent (10%) of the net appraised value. (5-8-09)

b. Bidders shall not be delinquent on any payments to the State at the time of sale. (5-8-09)

c. Bidders shall not be a minor as defined in Section 32-101, Idaho Code. (5-8-09)

d. Foreign corporations, as defined in Section 30-1-106, Idaho Code, shall procure a certificate of authority to do business in Idaho to be eligible to bid on and purchase State timber. (5-8-09)

~~02. **Opening the Auction.** The Director's representative will open the sale, read the advertisement, ask for questions, and then accept bid deposits. Each eligible bidder will select a numbered card to determine who will be allowed the first bid. The person entitled to the first bid may bid the minimum appraised or any higher price. Any bidder is then entitled to bid and bidding progresses with each previous bid being accepted by the last bidder. All bidding is done in the form of an oral auction. (5-8-09)~~

~~03. **Closing the Auction.** The Director's representative will close the auction and award the sale to the successful bidder. Bid deposits will be returned to the unsuccessful bidders. Sale values and charges will be calculated on the day of sale. Within ten (10) days the successful bidder will be required to pay ten percent (10%) of the final net sale value. Surety bid bonds must be replaced with cash within ten (10) days of the date of sale, either separately or as part of the total ten percent (10%) initial deposit. (5-8-09)~~

~~032. **TIMBER SALE CONTRACT SIGNATURES.**~~

~~The Department shall prepare and make available to the purchaser a contract and supplemental documents, including bond forms, with appropriate instructions. The purchaser shall return the signed contract and bonds for appropriate State signatures. The State will return a fully executed contract to the purchaser. (5-8-09)~~

~~033.~~ **INITIAL DEPOSIT AND BONDS.**

01. Initial Deposit. The initial deposit (ten percent (10%) of net sale value) shall be paid in cash and shall be retained by the state as a cash reserve for the duration of the contract; the purchaser shall not be entitled to any interest earned thereon. All or a portion of the initial deposit may be applied to charges as the contract nears completion. Any remaining initial deposit shall be forfeited in the event the contract is terminated without being completed. (5-8-09)(____)

02. Performance Bond. A bond of sufficient amount for carrying out in good faith all applicable laws and all the terms and conditions imposed by the Board and the sale contract or fifteen percent (15%) of the net sale value of the forest products (whichever is greater) shall be executed within thirty (30) days from the date of sale ~~but~~ and prior to execution of the contract. Failure to perform on the contract may result in forfeiture of all or a portion of the performance bond. (5-8-09)(____)

03. Guarantee of Payment. Prior to cutting of any forest products, the purchaser shall provide a bond acceptable to the Department as assurance of payment for products to be cut and/or removed during the next ninety (90) days. Guarantee of payment on delivered product sales shall be as determined by the Department. This bond is in addition to the required initial deposit. Failure to make full and timely payment as per contract terms may result in forfeiture of all or a portion of the guarantee of payment. (5-8-09)(____)

~~034.~~ -- **040. (RESERVED).**

041. STUMPAGE AND INTEREST PAYMENT.

A stumpage summary of forest products measured during the prior month and a statement of account will be prepared by the Department and forwarded to the purchaser monthly. The statement shall include interest computed from the date of sale to the date of the billing at a rate specified in the contract. The purchaser shall make payments within thirty (30) days of the end of the billing period or the payment shall be considered delinquent. Interest will not be charged on delivered product sales. (5-8-09)(____)

042. TIMBER SALE CANCELLATION.

It is the purchaser's responsibility to initiate cancellation by submitting such request in writing to the respective supervisory area office. ~~A signed and notarized early release form must be completed by the purchaser when cancellation is requested prior to the original contract expiration date.~~ When all contractual requirements have been completed, final payments have been received, all load tickets have been accounted for, and a written request for cancellation has been received by the Department, any credit balances and all cash bonds will be returned and/or

transferred to other timber sale accounts within forty-five (45) days, as requested by the purchaser ~~within forty-five (45) days~~. (5-8-09)()

043. PREMATURE TIMBER SALE TERMINATION.

01. Request. A timber sale purchaser may, for reasons of hardship, make written request to terminate a timber sale contract before harvesting is completed. In such cases, the Board will determine if a hardship exists and if the contract should be terminated. (5-8-09)

02. Premature Termination Policy. (5-8-09)

a. The Board may authorize premature termination of any sale under any terms considered reasonable and appropriate. Any remaining amount of the ten percent (10%) initial deposit will be retained ~~as a penalty, which amount may not be used as payment for forest products cut and/or removed. Additionally, the Board will seek payment of the value of the overbid for the uncut residual volume. For example, if white pine had been bid up by five dollars (\$5) per thousand board feet over the appraised price and there are one hundred thousand (100,000) board feet of white pine remaining on the sale area, the purchaser will have to pay five hundred dollars (\$500) upon termination in full and applied towards assessed damages and may not be used as payment for forest products cut and/or removed. Assessed damages in excess of the initial deposit will be applied against the performance bond.~~ (5-8-09)()

b. The following damages will be assessed by the Board for premature sale terminations. ()

i. The Board will seek payment of the value of the overbid for the uncut residual volume. For example, if white pine had been bid up by five dollars (\$5) per thousand board feet over the appraised price and there are one hundred thousand (100,000) board feet of white pine remaining on the sale area, the purchaser will be assessed five hundred dollars (\$500) upon termination. ()

ii. The Board will seek payment of the accrued stumpage interest due the endowed institutions based on the interest rate specified in the contract and calculated on all remaining volume from the date of sale to the date the Board approved termination of the contract. ()

iii. The Board will seek payment for any credits given for developments that remain incomplete at the time of termination. ()

iv. The Board will seek payment for estimated Department costs associated with reoffering the timber sale. ()

v. The Board may also seek payment for other expenses including, but not limited to, legal costs and Department staff time. ()

~~bc.~~ If logging has occurred on the sale, the purchaser must complete the units that have been partially logged according to contract standards and complete all development work as specified in the contract to the extent of allowances that have been credited to the purchaser. (5-8-09)

~~ed.~~ The purchaser who has terminated a timber sale contract will not be eligible to rebid that particular sale unless specifically authorized to do so by the Board. (5-8-09)

IDAPA 20 - DEPARTMENT OF LANDS

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

DOCKET NO. 20-0304-1001 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1) Idaho Code and IDAPA 20.01.01, Rules of Practice and Procedure Before the State Board of Land Commissioners (Board), Sections 830 through 835, notice is hereby given that this agency has initiated proposed rulemaking procedures. This proposed rulemaking is authorized pursuant to Section 58-104(6), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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 rulemaking will resolve an issue regarding covered slips that arose late in the prior rulemaking process. Also, a statutory change enacted during the 2010 legislative session requires a rule conflict to be removed. The latter allows the replacement of some single and two-family docks without a permitting process. Another statutory change enacted during the 2010 legislative session allows the Department to raise the application fees for some encroachment types. Lastly, the Department proposes to lower the application fee for small domestic waterlines.

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

Application fees will be increased from \$250 to \$300 for single and two-family docks, and from \$250 to \$550 for bank stabilization and erosion control. In addition, application fees for domestic water intake lines that serve four houses or less will be decreased from \$1,000 to \$300.

FISCAL IMPACT: This is a general fund program. The department does not anticipate a negative fiscal impact on the state general fund due to the proposed changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. A meeting with parties interested in the covered slip issue was held in April, 2010, and interested parties from prior rulemakings were notified of all the draft rule changes. Notification was provided via e-mail and the Department's web site, and comments were solicited.

INCORPORATION BY REFERENCE: Nothing was incorporated by reference during this rulemaking. N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson, (208) 334-0261 or ewilson@idl.idaho.gov. More information is also at <http://www.idl.idaho.gov/adminrule/rulemaking.html>.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2007.

DATED this 20th day of August, 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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0304-1001

010. DEFINITIONS.

01. **Adjacent.** Contiguous or touching, and with regard to land or land ownership having a common boundary. (7-1-98)
02. **Aids to Navigation.** Buoys, warning lights, and other encroachments in aid of navigation intended to improve waterways for navigation. (4-2-08)
03. **Artificial High Water Mark.** The high water elevation above the natural or ordinary high water mark resulting from construction of man-made dams or control works and impressing a new and higher vegetation line. (4-2-08)
04. **Beds of Navigable Lakes.** The lands lying under or below the “natural or ordinary high water mark” of a navigable lake and, for purposes of these rules only, the lands lying between the natural or ordinary high water mark and the artificial high water mark, if there be one. (9-13-90)
05. **Board.** The Idaho State Board of Land Commissioners or its designee. (4-2-08)
06. **Boat Garage.** A structure with one (1) or more slips that is completely enclosed with walls, roof, and doors, but no temporary or permanent residential area. (4-2-08)
07. **Boat Lift.** A mechanism for mooring boats partially or entirely out of the water. (4-2-08)
08. **Boat Ramp.** A structure or improved surface extending below the ordinary or artificial high water mark whereby watercraft or equipment are launched from land-based vehicles or trailers. (4-2-08)
09. **Commercial Marina.** A commercial navigational encroachment whose primary purpose is to provide moorage for rental or for free to the general public. (4-2-08)
10. **Commercial Navigational Encroachment.** A navigational encroachment used for commercial purposes. (4-2-08)
11. **Community Dock.** A structure that provides private moorage for more than two (2) adjacent littoral owners, or other littoral owners possessing a littoral common area with littoral rights including, but not limited to homeowner’s associations. No public access is required for a community dock. (4-2-08)
12. **Covered Slip.** A slip, or group of slips, with a ~~tubular~~ frame, fabric canopy, and eaves that do not extend beyond the underlying dock. (~~3-29-10~~)()
13. **Department.** The Idaho Department of Lands or its designee. (4-2-08)
14. **Director.** The head of the Idaho Department of Lands or his designee. (4-2-08)
15. **Encroachments in Aid of Navigation.** Includes docks, piers, jet ski and boat lifts, buoys, pilings, breakwaters, boat ramps, channels or basins, and other facilities used to support water craft and moorage on, in, or above the beds or waters of a navigable lake. The term “encroachments in aid of navigation” may be used interchangeably herein with the term “navigational encroachments.” (4-2-08)
16. **Encroachments Not in Aid of Navigation.** Includes all other encroachments on, in, or above the beds or waters of a navigable lake, including landfills, bridges, utility and power lines, or other structures not constructed primarily for use in aid of navigation. It shall also include float homes and boat garages. The term “encroachments not in aid of navigation” may be used interchangeably herein with the term “nonnavigational encroachments.” (3-29-10)

17. Floating Home or Float Home. A structure that is designed and built to be used, or is modified to be used, as a stationary waterborne residential dwelling and is not self-propelled. These structures are usually dependent for utilities upon a continuous utility linkage to a source originating on shore, and must have either a permanent continuous connection to a sewage system on shore, or an alternative method of sewage disposal that does not violate local, state, or federal water quality and sanitation regulations. (4-2-08)

18. Floating Toys. Trampolines, inflatable structures, water ski courses, and other recreational equipment that are not permanently anchored to the lake bed or an encroachment and are either located between the shoreline and the line of navigability or are waterward of the line of navigability for less than twenty-four (24) consecutive hours. (3-29-10)

19. Jet Ski Ramp, Port, or Lift. A mechanism for mooring jet skis or other personal watercraft similar to a boat lift. The lifts may be free standing or attached to a dock or pier. (4-2-08)

20. Line of Navigability. A line located at such distance waterward of the low water mark established by the length of existing legally permitted encroachments, water depths waterward of the low water mark, and by other relevant criteria determined by the board when a line has not already been established for the body of water in question. (4-2-08)

21. Low Water Mark. That line or elevation on the bed of a lake marked or located by the average low water elevations over a period of years, and marks the point to which the riparian rights of adjoining landowners extend as a matter of right, in aid of their right to use the waters of the lake for purposes of navigation. (4-2-08)

22. Moorage. A place to secure float homes and watercraft including, but not limited to, boats, personal watercraft, jet skis, etc. (4-2-08)

23. Natural or Ordinary High Water Mark. The high water elevation in a lake over a period of years, uninfluenced by man made dams or works, at which elevation the water impresses a line on the soil by covering it for sufficient periods to deprive the soil of its vegetation and destroy its value for agricultural purposes. (9-13-90)

24. Navigable Lake. Any permanent body of relatively still or slack water, including man-made reservoirs, not privately owned and not a mere marsh or stream eddy, and capable of accommodating boats or canoes. This definition does not include man-made reservoirs where the jurisdiction thereof is asserted and exclusively assumed by a federal agency. (4-2-08)

25. Party. Each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party. (3-29-10)

26. Person. A partnership, association, corporation, natural person, or entity qualified to do business in the state of Idaho and any federal, state, tribal, or municipal unit of government. (4-2-08)

27. Piling. A metal, concrete, plastic, or wood post that is placed into the lakebed and used to secure floating docks and other structures. (4-2-08)

28. Plans. Maps, sketches, engineering drawings, aerial and other photographs, word descriptions, and specifications sufficient to describe the extent, nature and approximate location of the proposed encroachment and the proposed method of accomplishing the same. (9-13-90)

29. Public Hearing. The type of hearing where members of the public are allowed to comment, in written or oral form, on the record at a public meeting held at a set time and place and presided over by a designated representative of the Department who shall act as the hearing coordinator. This type of hearing is an informal opportunity for public comment and does not involve the presentation of witnesses, cross examination, oaths, or the rules of evidence. A record of any oral presentations at such hearings will be taken by the Department by tape recorder. The hearing coordinator shall exercise such control at hearings as necessary to maintain order, decorum and common courtesy among the participants. (4-2-08)

- 30. Public Trust Doctrine.** The duty of the State to its people to ensure that the use of public trust resources is consistent with identified public trust values. This common law doctrine has been interpreted by decisions of the Idaho Appellate Courts and is codified at Title 58, Chapter 12, Idaho Code. (3-19-99)
- 31. Pylon.** A metal, concrete, or wood post that is placed into the lakebed and used to support fixed piers. (4-2-08)
- 32. Riparian or Littoral Rights.** The rights of owners or lessees of land adjacent to navigable waters of the lake to maintain their adjacency to the lake and to make use of their rights as riparian or littoral owners or lessees in building or using aids to navigation but does not include any right to make any consumptive use of the waters of the lake. (4-2-08)
- 33. Riparian or Littoral Owner.** The fee owner of land immediately adjacent to a navigable lake, or his lessee, or the owner of riparian or littoral rights that have been segregated from the fee specifically by deed, lease, or other grant. (3-29-10)
- 34. Riparian or Littoral Right Lines.** Lines that extend waterward of the intersection between the artificial or ordinary high water mark and an upland ownership boundary to the line of navigation. Riparian or littoral right lines will generally be at right angles to the shoreline. (4-2-08)
- 35. Side Tie.** Moorage for watercraft where the dock or pier is on only one (1) side of the watercraft. (4-2-08)
- 36. Single-Family Dock.** A structure providing noncommercial moorage that serves one (1) waterfront owner whose waterfront footage is no less than twenty-five (25) feet. (4-2-08)
- 37. Slip.** Moorage for boats with pier or dock structures on at least two (2) sides of the moorage. (4-2-08)
- 38. Submerged Lands.** The state-owned beds of navigable lakes, rivers and streams below the natural or ordinary high water marks. (9-13-90)
- 39. Two-Family Dock.** A structure providing noncommercial moorage that serves two (2) adjacent waterfront owners having a combined waterfront footage of no less than fifty (50) feet. Usually the structure is located on the common littoral property line. (4-2-08)
- 40. Upland.** The land bordering on navigable lakes, rivers, and streams. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

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. Replacement of single-family and two-family docks may not require a permit if they meet the criteria in Section 58-1305(e), Idaho Code. 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, or replacements under Section 58-1305(e), Idaho Code, 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, 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~~ a buried or submerged water intake line serving four or less households shall be accompanied by a nonrefundable filing fee of ~~two hundred fifty~~ three hundred dollars (\$~~250~~300). (4-2-08)()
- h.** A nonnavigational encroachment for bank stabilization and erosion control shall be accompanied by a nonrefundable filing fee of five hundred fifty dollars (\$550). ()
- ki.** 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)
- ji.** Applications and plans shall be stamped with the date of filing. (7-1-98)
- jk.** 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)

IDAPA 23 - BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-1001

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 54-1404(11), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

A current definition addressing who is allowed to administer medications is too restrictive and inadvertently fails to include certified medication assistants. A rule amendment is necessary to more accurately reflect license renewal procedures. Existing provisions regarding license reinstatement are not located together, have unnecessary redundancies, and contain a grammatical error. There is confusion and lack of clarity over the term "family member" for purposes of prescribing medications and a definition is required. A provision regarding nursing school administrators is misplaced and the Board will no longer be issuing wallet certificates and duplicate licenses so provisions addressing these matters need to be deleted. The proposed amendments will: (1) clarify that persons specifically authorized by Board statute or rule may administer medications; (2) reflect the fact that the Board no longer mails license renewal applications, but only sends notice of renewal to licensees; (3) add a provision to inform licensees where they can obtain license applications; (4) reorganize provisions regarding license reinstatement in a more convenient, understandable format and accessible location, and eliminate redundancies; (5) define the term "family member" in connection with the prescriptive authority of an advanced practice nurse; (6) move a provision on school administrators to a more appropriate location in rule; and (7) delete outdated references to wallet certificates and duplicate licenses.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because virtually all of the rulemaking consists of "housekeeping" matters such as reorganizing, renumbering and re-titling sections to create a more logical, coherent, procedural framework, and to correct an obvious misstatement in one provision and an obvious misplacement of another provision. The remaining rulemaking simply provides clarity to an existing definition of a term and established a necessary definition in connection with another term, neither of which should be controversial.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sandra Evans, M.A.Ed., R.N., Executive Director, at (208) 334-3110 Ext. 26.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 20th day of August, 2010.

Sandra Evans, M.A.Ed., R.N., Executive Director
Board of Nursing
280 N. 8th St. (8th & Bannock), Ste. 210
P. O. Box 83720
Boise, ID 83720-0061
Phone: (208) 334-3110, Ext. 26
Fax: (208) 334-3262

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 23-0101-1001

010. DEFINITIONS.

01. Abandonment. The termination of a nurse/patient relationship without first making appropriate arrangements for continuation of required nursing care. The nurse/patient relationship begins when responsibility for nursing care of a patient is accepted by the nurse. Refusal to accept an employment assignment or refusal to accept or begin a nurse/patient relationship is not abandonment. Reasonable notification, or a timely request for alternative care for a patient, directed to an attending physician or to a staff supervisor, prior to leaving the assignment, constitutes termination of the nurse/patient relationship. (3-30-07)

02. Accreditation. The official authorization or status granted by a recognized accrediting entity or agency other than a state board of nursing. (7-1-93)

03. Administration of Medications. The process whereby a prescribed medication is given to a patient by one (1) of several routes. Administration of medication is a complex nursing responsibility which requires a knowledge of anatomy, physiology, pathophysiology, and pharmacology. *Licensed nurses* Only persons authorized under Board statutes and these rules may administer medications and treatments as prescribed by health care providers authorized to prescribe medications. (~~5-3-03~~)()

04. Approval. The process by which the Board evaluates and grants official recognition to education programs that meet standards established by the Board. (5-3-03)

05. Assist. To aid or help in the accomplishment of a prescribed set of actions. (7-1-93)

06. Assistance With Medications. The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a patient who cannot independently self-administer medications. (5-3-03)

07. Board. The Idaho Board of Nursing. (7-1-93)

08. Board Staff. The executive director and other such personnel as are needed to implement the Nursing Practice Act and these rules. (7-1-93)

09. Charge Nurse. A licensed nurse who bears primary responsibility for assessing, planning, prioritizing and evaluating care for the patients on a unit, as well as the overall supervision of the licensed and unlicensed staff delivering the nursing care. (5-3-03)

10. Clinical Preceptor. A licensed professional nurse who acts to facilitate student training in a manner prescribed by a written agreement between the preceptor's employer and an educational institution. (5-3-03)

11. Competence. Safely performing those functions within the role of the licensee in a manner that demonstrates essential knowledge, judgment and skills. (5-3-03)

- 12. Curriculum.** The systematic arrangement of learning experiences including didactic courses, practical experiences, and other activities needed to meet the requirements of the nursing program and of the certificate or degree conferred by the parent institution. (5-3-03)
- 13. Delegation.** The process by which a licensed nurse assigns tasks to be performed by others. (5-3-03)
- 14. Disability.** Any physical, mental, or emotional condition that interferes with the nurse's ability to practice nursing safely and competently. (5-3-03)
- 15. Emeritus License.** A license issued to a nurse who desires to retire from active practice for any length of time. (5-3-03)
- 16. Licensing Examination.** A licensing examination that is acceptable to the Board. (5-3-03)
- 17. License in Good Standing.** A license not subject to current disciplinary action, restriction, probation or investigation in any jurisdiction. (5-3-03)
- 18. Limited License.** A nursing license subject to specific restrictions, terms, and conditions. (5-3-03)
- 19. Nursing Assessment.** The systematic collection of data related to the patient's health care needs. (5-3-03)
- 20. Nursing Diagnosis.** The clinical judgment or conclusion regarding patient/client/family/community response to actual or potential health problems made as a result of the nursing assessment. (7-1-93)
- 21. Nursing Intervention.** An action deliberately selected and performed to support the plan of care. (5-3-03)
- 22. Nursing Service Administrator.** A licensed professional nurse who has administrative responsibility for the nursing services provided in a health care setting. (7-1-93)
- 23. Organized Program of Study.** A written plan of instruction to include course objectives and content, teaching strategies, provisions for supervised clinical practice, evaluation methods, length and hours of course, and faculty qualifications. (7-1-93)
- 24. Patient.** An individual or a group of individuals who are the beneficiaries of nursing services in any setting and may include client, resident, family, community. (5-3-03)
- 25. Patient Education.** The act of teaching patients and their families, for the purpose of improving or maintaining an individual's health status. (5-3-03)
- 26. Plan of Care.** The goal-oriented strategy developed to assist individuals or groups to achieve optimal health potential. (5-3-03)
- 27. Practice Standards.** General guidelines that identify roles and responsibilities for a particular category of licensure and, used in conjunction with the decision-making model, define a nurse's relationship with other care providers. (5-3-03)
- 28. Probation.** A period of time set forth in an order in which certain restrictions, conditions or limitations are imposed on a licensee. (5-3-03)
- 29. Protocols.** Written standards that define or specify performance expectations, objectives, and criteria. (5-3-03)
- 30. Revocation.** Termination of the authorization to practice. (5-3-03)

31. Scope of Practice. The extent of treatment, activity, influence, or range of actions permitted or authorized for licensed nurses based on the nurse's education, preparation, and experience. (5-3-03)

32. Supervision. Designating or prescribing a course of action, or giving procedural guidance, direction, and periodic evaluation. Direct supervision requires the supervisor to be physically present and immediately accessible to designate or prescribe a course of action or to give procedural guidance, direction, and periodic evaluation. (4-6-05)

33. Suspension. An order temporarily withdrawing a nurse's right to practice nursing. (5-3-03)

34. Technician/Technologist. These individuals are not credentialed by regulatory bodies in Idaho and may include, but are not limited to: surgical, dialysis and radiology technicians/technologists, monitor technicians and medical assistants. (3-30-07)

35. Universal Standards. The recommendations published by the Center for Disease Control, Atlanta, Georgia, for preventing transmission of infectious disease, also referred to as "Standard Precautions." (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

060. LICENSE RENEWAL.

All licenses must be renewed as prescribed in the Section 54-1411, Idaho Code. (3-30-01)

01. Renewal ~~Application~~ Notice -- Licensed Professional Nurse. A notice of renewal application will be mailed to every currently licensed professional nurse, at the address on record with the Board, on or before July 1 of every odd-numbered year. (~~3-30-01~~)()

02. Renewal ~~Application~~ Notice -- Licensed Practical Nurse. A notice of renewal application will be mailed to every currently licensed practical nurse, at the address on record with the Board, on or before July 1 of every even-numbered year. (~~3-30-01~~)()

03. Renewal ~~Application~~ Notice -- Advanced Practice Professional Nurse. A notice of renewal application will be mailed to every currently licensed advanced practice professional nurse, at the address on record with the Board, on or before July 1 of every odd-numbered year. (~~3-30-01~~)()

04. Renewal ~~Application~~ Notice -- Emeritus Licensure. A notice of renewal application will be mailed to every holder of a current emeritus license, at the address on record with the Board, on or before July 1 of the renewal year that applied to the applicant's license at the time emeritus status was granted. If the applicant was an RN or APPN at the time emeritus status was granted, renewal will take place in odd numbered years. If the applicant was an LPN at the time emeritus status was granted, renewal will take place in even numbered years. (~~4-2-03~~)()

05. Renewal Applications. Renewal applications may be obtained by contacting the Board. ()

056. Final Date to Renew. The original signed completed renewal application and renewal fee as prescribed in Section 900 of these rules, must be submitted to the Board and post-marked or electronically dated not later than August 31 of the appropriate renewal year. (~~3-30-01~~)()

067. Date License Lapsed. Licenses not renewed prior to September 1 of the appropriate year will be lapsed and therefore invalid. (11-28-84)

078. Effective Period. Renewed licenses shall be effective for a two (2) year period, from September 1 of the renewal year. (3-30-01)

061. LICENSE REINSTATEMENT (NON-DISCIPLINE).

- 01. Within One Year.** A person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement within one (1) year by: (3-30-07)
- a.** Filing a completed renewal application; and (3-30-01)
 - b.** Payment of the verification of records fee and the renewal fee as prescribed in Subsection 900.05 of these rules. (4-2-03)
- 02. After One Year.** After one (1) year, but less than three (3) years, a person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement by: (3-30-07)
- a.** Filing a completed reinstatement application; and (3-30-01)
 - b.** Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)
 - c.** Providing evidence satisfactory to the Board of the applicant's ability to practice safely and competently. (3-30-01)
 - d.** ~~Causing the submission of A~~ Causing the submission of A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ~~(3-30-07)~~ ()
- 03. After Three Years.** After three (3) years, a person whose license has lapsed for failure to timely pay the renewal fee may apply for reinstatement by: (3-30-07)
- a.** Filing a completed reinstatement application; and (3-30-07)
 - b.** Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)
 - c.** Payment of the temporary license fee prescribed in Subsection 901.07 of these rules, if required; and (4-2-03)
 - d.** Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. (3-30-07)
 - e.** ~~Causing the submission of A~~ Causing the submission of A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ~~(3-30-07)~~ ()
- ~~**04. After Discipline.** A person whose license has been subject to disciplinary action by the Board may apply for reinstatement of the license to active and unrestricted status by: (3-30-07)~~
- ~~**a.** Submitting a completed application for reinstatement; and (4-2-03)~~
 - ~~**b.** Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)~~
 - ~~**c.** Documenting compliance with any term and restrictions set forth in any order as a condition of reinstatement; and (3-30-07)~~
 - ~~**d.** Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. (3-30-07)~~
 - ~~**e.** A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. (3-30-07)~~
 - ~~**f.** A person whose license has been revoked may not apply for reinstatement until two (2) years following the order of revocation. (3-30-07)~~

- 054. Reinstatement of Emeritus License to Current Status.** A person who holds a current emeritus license in good standing may apply for reinstatement of the license to active and unrestricted status by: (4-2-03)
- a. Submitting a completed application for reinstatement; and (4-2-03)
 - b. Payment of the fees prescribed in Subsection 900.05 of these rules; and (3-30-07)
 - c. Providing evidence, satisfactory to the Board, of the applicant's current competency to practice. (3-30-07)

Codified Section 120 has been moved and renumbered to proposed Section 062

12062. REINSTATEMENT AFTER DISCIPLINE.

~~**01. Application.** Applicants for reinstatement of revoked licenses must apply on forms provided by the Board and must pay any required fees. (3-15-02)~~

01. Submission of Application Materials. A person whose license has been subject to disciplinary action by the Board may apply for reinstatement of the license to active and unrestricted status by: ()

- a. Submitting a completed application for reinstatement; and ()
- b. Payment of the fees prescribed in Subsection 900.05 of these rules; and ()
- c. Documenting compliance with any term and restrictions set forth in any order as a condition of reinstatement; and ()
- d. Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. ()
- e. Causing the submission of a current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ()

02. Appearance Before Board. Applicants for reinstatement may be required to appear before the Board. (3-15-02)

03. Evaluation of Applications. In considering applications for reinstatement, the Board will evaluate: (3-15-02)

- a. The nature and severity of the act which resulted in ~~revocation of the license~~ discipline; (7-1-91)()
- b. The conduct of the applicant subsequent to the ~~revocation of license~~ discipline; (6-1-78)()
- c. The lapse of time since ~~revocation~~ discipline; (6-1-78)()
- d. The degree of compliance with all terms and conditions the Board may have set forth as a prerequisite for reinstatement; (3-15-02)
- e. Any intervening circumstances that may have altered the need for compliance; (3-15-02)
- f. The degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the Board from qualified people who have professional knowledge of the applicant; (11-28-84)
- g. The applicant's adherence to or violation of any applicable law or rule regulating the practice of nursing; and (4-6-05)

h. The applicant's criminal background information as evidenced by a current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)

04. Board Action Possible. After evaluation, the Board may deny a reinstatement, grant a reinstatement, or issue a license permitting the applicant to practice nursing under specified terms and conditions. (3-15-02)

05. Assessment of Costs. As a condition of withdrawing, reversing, modifying, or amending a ~~suspension or revocation~~ **prior disciplinary** order, the applicant may be required to pay all or any part of the costs incurred by the Board in the proceedings in which the order was entered. (3-15-02)()

06. Application for Reinstatement After Revocation. Unless otherwise provided in the order of revocation, applicants for reinstatement of revoked licenses may not apply for reinstatement for a period of two (2) years after entry of the order. (3-15-02)

~~0623.~~ -- **075. (RESERVED).**

(BREAK IN CONTINUITY OF SECTIONS)

102. -- ~~14931.~~ (RESERVED).

Codified Section 120 has been moved and renumbered to proposed Section 062

~~121. -- 131. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

316. GROUNDS FOR DISCIPLINE OF AN ADVANCED PRACTICE PROFESSIONAL NURSE LICENSE.

In addition to the grounds set forth in Section 54-1413, Idaho Code, and Section 100 of these rules, an advanced practice professional nursing license may be suspended, revoked, placed upon probation, or other disciplinary sanctions imposed by the Board on the following grounds: (3-30-07)

01. Prescribing or Dispensing Controlled Substances. Prescribing, dispensing, or selling any drug classified as a controlled substance to a family member or to himself. For purposes of Section 316 of these rules, "family member" is defined as the licensee's spouse, child (biological, adopted, or foster), parent, sibling, grandparent, grandchild, or the same relation by marriage. (7-1-99)()

02. Violating Governing Law. Violating any state or federal law relating to controlled substances. (7-1-99)

03. Outside Scope of Practice. Prescribing or dispensing outside the scope of the advanced practice professional nurse's practice. (7-1-99)

04. Other Than Therapeutic Purposes. Prescribing or dispensing for other than therapeutic purposes. (7-1-99)

05. Violation of Nursing Practice Act or Board Rules. Violating the provisions of the Nursing Practice Act or the rules of the Board. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

641. FACULTY ~~RESPONSIBILITIES.~~

01. Numbers Needed. There shall be sufficient faculty with educational preparation and nursing expertise to meet the objectives and purposes of the nursing education program. (4-5-00)

a. Number of faculty shall be sufficient to design and implement the curriculum necessary to prepare students to function in a rapidly changing healthcare environment. (4-5-00)

b. Number of faculty in the clinical setting shall be sufficient in number to assure patient safety and meet student learning needs. (4-5-00)

02. Faculty-Student Ratio. There shall be no more than ten (10) students for every faculty person in the clinical agencies. Deviations may be presented for approval with the program's annual report to the Board with written justification assuring client safety and supporting accomplishment of learner objectives. (4-5-00)

~~**03. Numbers of Administrators Needed.** There shall be at least one (1) qualified nursing administrator for each nursing education department or division. In institutions that offer nursing education programs for more than one (1) level of preparation and where the scope of administrative responsibility so requires, there shall be an individual administrator for each nursing education program. (11-28-84)~~

642. (RESERVED).

643. ADMINISTRATOR RESPONSIBILITIES AND QUALIFICATIONS.

01. Administrator Responsibilities. The administrator provides the leadership and is accountable for the administration, planning, implementation, and evaluation of the program. The administrator's responsibilities include, but are not limited to: (4-5-00)

a. Development and maintenance of an environment conducive to the teaching and learning processes; (4-5-00)

b. Liaison with and maintenance of the relationship with administrative and other units within the institution; (4-5-00)

c. Leadership within the faculty for the development and implementation of the curriculum; (4-5-00)

d. Preparation and administration of the program budget; (4-5-00)

e. Facilitation of faculty recruitment, development, performance review, promotion, and retention; (4-5-00)

f. Liaison with and maintenance of the relationship with the Board; and (4-5-00)

g. Facilitation of cooperative agreements with practice sites. (4-5-00)

02. Administrator Qualifications. The administrator of the program shall be a licensed professional nurse, with an unencumbered license in this state, and with the additional education and experience necessary to direct the program. (4-5-00)

a. Programs for Unlicensed Assistive Personnel. Meet institutional requirements. (4-5-00)

b. Practical Nurse Administrator. The administrator in a program preparing for practical nurse

- licensure shall: (4-5-00)
- i. Hold a minimum of a master's degree with a major in nursing; and (4-5-00)
 - ii. Have evidence of experience in education, administration, and practice sufficient to administer the program. (4-5-00)
- c.** Professional Nurse Administrator. The administrator in a program preparing for professional nurse licensure shall: (4-5-00)
- i. Hold a minimum of a master's degree with a major in nursing and meet institutional requirements; and (4-5-00)
 - ii. Have evidence of experience in education, administration, and practice sufficient to administer the program. (4-5-00)
- d.** Advanced Practice Professional Nurse Administrator. The administrator in a program preparing for advanced practice professional nursing shall: (4-5-00)
- i. Hold a master's degree and an earned doctoral degree, one of which is in nursing; and (4-5-00)
 - ii. Have evidence of experience in education, administration, and practice sufficient to administer the program. (4-5-00)

03. Numbers of Administrators Needed. There shall be at least one (1) qualified nursing administrator for each nursing education department or division. In institutions that offer nursing education programs for more than one (1) level of preparation and where the scope of administrative responsibility so requires, there shall be an individual administrator for each nursing education program. ()

(BREAK IN CONTINUITY OF SECTIONS)

900. RENEWAL AND REINSTATEMENT FEES.

Fees will be assessed for renewal of licensure or for reinstatement of a lapsed, disciplined, limited, or emeritus license. Any person submitting the renewal application and fee post-marked or electronically dated later than August 31 shall be considered delinquent and the license lapsed and therefore invalid: ~~(3-30-07)~~()

01. Licensed Professional Nurse Renewal Fee. Licensed professional nurses will be assessed a renewal fee of ninety dollars (\$90) due by August 31 of each odd-numbered year. (3-30-06)

02. Licensed Practical Nurse Renewal Fee. Licensed practical nurses will be assessed a renewal fee of ninety dollars (\$90) due by August 31 of each even-numbered year. (3-30-06)

03. Advanced Practice Professional Nurse. Licensed advanced practice professional nurses will be assessed a renewal fee of ninety dollars (\$90) due by August 31 of each odd-numbered year. (3-30-06)

04. Emeritus License. Emeritus status nurses will be assessed a renewal fee of twenty dollars (\$20) due by August 31 of the renewal year. (4-2-03)

05. Reinstatement Fee. Nurses requesting reinstatement of a lapsed, disciplined, limited, or emeritus license, or reinstatement of an emeritus license to active status, will be assessed the records verification and renewal fees. (3-30-07)

06. Delay in Processing. Processing of renewal applications not accompanied by cash, cashier's check, a money order, or other guaranteed funds may be delayed in order to allow clearance of personal checks

through the licensee's bank.

(3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

907. ~~LICENSES AND WALLET CERTIFICATES~~ **(RESERVED).**

~~**01. Duplicate Wallet Certificates.** Duplicate wallet certificates will be issued where the original wallet certificate has been lost or destroyed. Applicants requesting a duplicate wallet certificate must pay a ten dollar (\$10) application fee. (3-30-01)~~

~~**02. Revised Wallet Certificates.** Revised wallet certificates will be issued to reflect a change in name. Applicants requesting a revised wallet certificate must pay a ten dollar (\$10) application fee. (3-30-01)~~

~~**03. Duplicate Licenses.** (3-30-01)~~

~~**a.** Duplicate licenses are reproductions of original licenses. (3-30-01)~~

~~**b.** Applicants requesting a duplicate license must pay a ten dollar (\$10) application fee. (3-30-01)~~

~~**c.** Original licenses may not be revised. (3-30-01)~~

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.02.01 - RULES OF THE BOARD OF BARBER EXAMINERS

DOCKET NO. 24-0201-1001

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 54-512, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

In an effort to more timely process endorsement applications and to ensure knowledge of laws and rules is current, the Board of Barber Examiners is eliminating the jurisprudence examination. Applicants will swear under oath that they have fully reviewed, understand, and will abide by the laws and rules. The barber school in Idaho is currently teaching laws and rules to the students.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussions were held in a noticed, open meeting of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 24-0201-1001

350. ENDORSEMENT (RULE 350).

01. Requirements for Licensure by Endorsement. (3-13-02)

a. Applicants for license by endorsement under the provisions of Section 54-512, Idaho Code, must make application on the form provided by the Board and furnish proof of current license in another state or country, having requirements substantially equal to the requirements of Idaho, or who has a current license as a barber or barber-stylist in another state or country and has maintained that license for at least three (3) years immediately prior to making application in this state. (3-13-02)

b. Certification of licensure must be completed and signed by the licensing agency of such other state, or country, and received in the office of the Bureau of Occupational Licenses directly from the licensing agency of such other state or country. (3-13-02)

c. Each applicant must provide official documentation of having met the education requirements as set forth in Section 54-506, Idaho Code. Documentation must be received in the office of the Bureau of Occupational Licenses directly from the school registrar or other certifying entity. (3-13-02)

d. Applications for license by endorsement must be accompanied by the endorsement fee and the license fee. If the Idaho Barber Board finds that the applicant is ineligible for license by endorsement, but is eligible for license by examination, a refund may be made of the endorsement fee in excess of the required examination fee, and the applicant permitted to take the examination. (7-1-93)

e. The board shall require all applicants for endorsement to ~~pass the Idaho jurisprudence examination as noted under Section 400 prior to licensure by endorsement~~ sign an affidavit swearing under oath that they have fully reviewed and understand and will abide by the Idaho Barber Law, Title 54, Chapter 5, Idaho Code, and the Board's Rules, IDAPA 24.02.01, "Rules of the Board of Barber Examiners". (3-13-02)()

02. Requirements for Licensure by Examination. Credit of fifty (50) hours of instruction in an approved school of barbering, will be given for each three (3) months of practical experience as a licensed barber or a barber-stylist in another state, territory, possession or country. (Example: If a barber-stylist, is licensed in a state which does not have requirements equal to the requirements of Idaho, or for any other reason does not have endorsement with Idaho, such applicant is required to meet the educational requirements of Idaho.) If he has completed a course of one thousand six hundred (1,600) hours of instruction in a licensed school in such other state and has one (1) year of practical experience as a licensed barber-stylist, he is considered to have completed two hundred (200) hours of instruction in school, and is eligible to take the examination for Idaho barber-stylist license. (3-13-02)

351. -- 399. (RESERVED).

400. EXAMINATION (RULE 400).

01. Content and Passing Grade on Exam. The examination will consist of ~~three~~ two (2) portions: theory, ~~Idaho Jurisprudence~~ and practical. An applicant must obtain at least a seventy-five percent (75%) grade on each portion to pass the examination. (3-13-02)()

02. Subjects on Exam. The examination for licensure as a barber or barber-stylist shall consist of a: (3-13-02)

a. Practical demonstration of all or any combination of those services outlined in Section 54-502(2), Idaho Code, for barbers or Section 54-502(1), Idaho Code, for barber-stylists; and (3-13-02)

b. Written theory examination covering those topics outlined in Section 54-507(2), Idaho Code, for barbers or Section 54-507(1), Idaho Code, for barber-stylists; ~~and~~ (3-13-02)()

c. ~~Written jurisprudence examination covering Title 54, Chapter 5, Idaho Code and IDAPA 24.02.01 "Rules of the Board of Barber Examiners."~~ (3-13-02)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.02.01 - RULES OF THE BOARD OF BARBER EXAMINERS

DOCKET NO. 24-0201-1002

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 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 54-512 and 54-521, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The 2010 Legislature passed House Bill 459 which changed the student/instructor ratio. This rule is being updated to reflect this change.

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

The 2010 legislature passed House Bill 459 which amended Section 54-507, Idaho Code, to require that one instructor be present for each twenty students.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are due to amendment in statute and were discussed in an open, noticed meeting.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at 208 334-3233

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State, Boise, ID 83702
(208) 334-3233 Ph.
(208) 334-3945, fax

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 24-0201-1002

501. TEACHING STAFF (RULE 501).

01. Qualifications of Instructor. No person shall teach or be employed to teach in any barber school within the state who at the time of rendering such service is not a holder of an instructor's license. (3-13-02)

02. Scope of Instruction. An instructor shall teach only those areas of practice for which the instructor is licensed. (3-13-02)

03. Number of Instructors Requirement. One (1) instructor must be employed and physically present in the school for each ~~fifteen~~ twenty (~~15~~20) students or fractional part thereof. (~~3-13-02~~)(8-11-10)T

04. Licensed Instructors. Only those persons holding a valid instructors license shall count toward the instructor/student ratio. Persons holding cosmetology instructor licenses shall count toward the instructor student ratio only when teaching under the direct personal supervision of a licensed barber instructor. (3-13-02)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS
DOCKET NO. 24-0301-1001
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 54-707, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Board of Chiropractic Physicians would like to establish a code of ethics that will further protect the public.

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

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

There is no fiscal impact.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussions were held in a noticed, open meeting of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 13th day of August, 2010.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 24-0301-1001

602. -- ~~999~~604. (RESERVED).

605. CODE OF ETHICS (RULE 605).

Chiropractic physicians are responsible for maintaining and promoting ethical practice in accordance with the ethical principles set forth in Appendix A in these rules. ()

606. -- 999. (RESERVED).

Appendix A – Chiropractic Physicians Code of Ethics

Preamble

This code of ethics set forth principles for the ethical practice of chiropractic. All chiropractic physicians are responsible for maintaining and promoting ethical practice and otherwise complying with the terms of this code of ethics. To this end, the chiropractic physician shall act in the best interest of the patient. This code of ethics shall be binding on all chiropractic physicians.

1. Duty to Report

- A. Duty to Report. It shall be the duty of every licensee to notify the Board through the Bureau of Occupational Licenses of any violation of the Chiropractic Act or Board Rules.
- B. Reporting of Certain Judgments to Board. If a judgment is entered against a licensee in any court, or a settlement is reached on a claim involving malpractice exceeding fifty thousand dollars (\$50,000), a licensee shall report that fact to the Board within thirty (30) days. The licensee may satisfy the provision of this subsection if he/she provides the Board with a copy of the judgment or settlement.

If a licensee is convicted of a felony or a crime involving dishonesty, theft, violence, habitual use of drugs or alcohol, or sexual misconduct, he/she shall report that fact to the board within thirty (30) days following the conviction.

2. Advertising of Research Projects

Advertisement of Affiliation with Research Projects. If a licensee advertises any affiliation with a research project, he must make a written statement of the objectives, cost and budget of the project, and the person conducting the research. Such statements are to be made available at the request of the Board, to scientific organizations, and to the general public. The advertisement must indicate that it is supported by clinical research. Any willful failure to comply with these requirements will be deemed false and deceptive advertising under rule 450. Licensee must comply with all state and federal laws and regulations governing research projects on humans, and shall obtain "Institutional Review Board" (IRB) approval as established and set forth in the U.S. Code of Federal Regulations, Title 45, Part 46, Subpart A (45 CFR 46.101-46-505).

3. Sexual Misconduct

The doctor-patient relationship requires the chiropractic physician to exercise utmost care that he or she will do nothing to exploit the trust and dependency of the patient. Sexual misconduct is a form of behavior that adversely affects the public welfare and harms patients individually and collectively. Sexual misconduct exploits the doctor-patient relationship and is a violation of the public trust. This section of the Code of Ethics shall not apply between a chiropractor and their spouse.

For the purposes of this subsection, sexual misconduct is divided into sub-categories based upon the severity of the conduct:

- A. Sexual Impropriety. Any behavior such as gestures, expressions, and statements which are sexually

suggestive or demeaning to a patient, or which demonstrate a lack of respect for a patient's privacy.

- B. Sexual Violation. Physician-patient contact of a sexual nature, whether initiated by the physician or the patient.
- C. A chiropractic physician shall wait at least one (1) year (“waiting period”) following the termination of a professional doctor-patient relationship, before beginning any type of sexual relationship with a former patient.

4. Pre-Paid Funds

- A. Safekeeping Pre-paid Funds. A chiropractic physician may possess pre-paid funds in connection with patient care but must maintain such unearned funds in a separate and independent bank account in the state of Idaho distinct from the chiropractor’s personal or business bank account. Complete accounting records of such account funds shall be preserved for a period of three (3) years after termination of the contractual agreement or completion of services rendered.
- B. A chiropractic physician shall promptly refund any unearned fees within thirty (30) days upon request and cancellation of the pre-paid contract. A full accounting of the patient account shall be provided to the patient at the time of the refund or upon request.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.06.01 - RULES FOR THE LICENSURE OF OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS

DOCKET NO. 24-0601-1001

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 28, 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 Section 54-3717, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Board of Occupational Therapists and Occupational Therapy Assistants in this set of rules is updating previous rules under the Board of Medicine to clarify the inactive status and the requirements to reinstate. Further, the Board adopted a rule that has caused concern to licensees and providers and limited service to the public. In an effort to address this concern while still protecting the public and ensuring their health, safety, and welfare, the Board is clarifying the level of supervision for students, graduates, and assistants. It also clarifies the supervision needed for certain treatment modalities.

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

The Board adopted a rule that has caused concern to licensees and providers and limited service to the public. In an effort to address this concern while still protecting the public and ensuring their health, safety, and welfare, the Board is clarifying the level of supervision for students, graduates, and assistants. It also clarifies the supervision needed for certain treatment modalities.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussions were held in a noticed open meeting.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 24-0601-1001

011. SUPERVISION.

An occupational therapist shall supervise and be responsible for the patient care given by occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants, and aides. (3-29-10)

01. Skill Levels. The following skill levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants and aides: ~~(3-29-10)~~(7-28-10)T

a. Entry Level - Working on initial skill development (zero to one (0-1) year experience) or working in a new area of practice; (3-29-10)

b. Intermediate Level - Increased independence and mastery of basic roles and functions. Demonstrates ability to respond to new situations based on previous experience (generally one to five (1-5) years' experience); (3-29-10)

c. Advanced Level - Refinement of skills with the ability to understand complex issues and respond accordingly. (3-29-10)

02. Supervision Levels. The following supervision levels apply to occupational therapy assistants, graduate occupational therapists, graduate occupational therapy assistants, student occupational therapists, student occupational therapy assistants and aides: ~~(3-29-10)~~(7-28-10)T

a. Direct Line of Site Supervision - An occupational therapist or occupational therapy assistant must provide direct line of site supervision to an aide; (3-29-10)

b. Direct Supervision - Daily, direct contact at the site of work with the supervisor physically present at all times within the facility when the supervisee renders care and requires the supervisor to co-sign all documentation that is completed by the supervisee. This supervision is the minimal level of supervision required for students, ~~and~~ for entry or intermediate level occupational therapy assistants applying deep thermal and electrotherapeutic modalities, and for advanced level occupational therapy assistants who apply such modalities while lacking the education and training required in Subsection 012.01 of these rules; ~~(3-29-10)~~(7-28-10)T

c. Close Supervision - Daily, direct contact at the site of work. The occupational therapist provides direction in developing the plan of treatment and periodically inspects the actual implementation of the plan. This supervision is the minimal level of supervision required for entry level occupational therapy assistants and graduate occupational therapy assistants ~~who are working under a temporary license;~~ ~~(3-29-10)~~(7-28-10)T

d. Routine Supervision - Requires direct contact at least every two (2) weeks at the site of work, with interim supervision occurring by other methods, such as by telephone or written communication. This supervision is the minimal level of supervision required for ~~a temporary occupational therapist or for an~~ graduate occupational

therapists and intermediate level occupational therapy assistant. It also is the minimum level of supervision required for advanced level occupational therapy assistants applying deep thermal and electrotherapeutic modalities while possessing the education and training specified in Subsection 012.01 of these rules; ~~(3-29-10)~~(7-28-10)T

e. General Supervision - Initial direction and periodic review of the following: service delivery, update of treatment plans, and treatment outcomes. The supervisor need not at all times be present at the premises where the occupational therapy assistant is performing the professional services. However, not less than monthly direct contact must be provided, with supervision available as needed by other methods. This supervision is the minimal level of supervision required for an intermediate to advanced occupational therapy assistant. (3-29-10)

03. Supervision Ratios. An occupational therapist may supervise up to three (3) full-time occupational therapy assistants, but never more than two (2) entry level occupational therapy assistants. The total number of supervised occupational therapy assistants, ~~and~~ non-licensed occupational therapy personnel (including any graduate occupational therapists, graduate occupational therapy assistants, student occupational therapy, student occupational therapy assistants, and aides), and occupational therapists in training to provide deep thermal, electrotherapeutic modalities and wound care may not exceed five (5) without prior Board approval. The Board may permit the supervision of a greater number by an occupational therapist if, in the Board's opinion, there would be adequate supervision and the public's health and safety would be served. It is the supervising occupational therapist's responsibility to notify the Board of any circumstances requiring approval of a greater number and to submit a written plan for resolution of the situation. ~~(3-29-10)~~(7-28-10)T

04. Record Keeping. The occupational therapy assistant, graduate occupational therapist, and graduate occupational therapy assistant must maintain on file at the job site signed documentation reflecting supervision activities. This supervision documentation must contain the following: date of supervision, means of communication, and information discussed. Both the supervising occupational therapist and the ~~occupational therapy assistant / limited permit licensee~~ person being supervised must sign each entry. ~~(3-29-10)~~(7-28-10)T

05. Occupational Therapy Assistants. Occupational Therapy Assistants may deliver occupational therapy services under the supervision of occupational therapists as follows. The occupational therapy assistant: (3-29-10)

a. May only select, implement, and modify therapeutic activities and interventions that are consistent with client goals, the requirements of the practice setting, and the occupational therapy assistant's demonstrated competency levels; (3-29-10)

b. Must not initiate a treatment program until the occupational therapist has evaluated the client and planned treatment for the client, or discharge the client from a treatment program without supervision from the occupational therapist; (3-29-10)

c. Must not perform an evaluation, but may contribute to the evaluation process with the supervision of the occupational therapist; (3-29-10)

d. May participate in the screening process by collecting data, such as records, by general observation and by conducting a general interview, and may communicate the information gathered to the occupational therapist; (3-29-10)

e. May track the need for reassessment, report changes in status that might warrant reassessment or referral, and administer the reassessment under the supervision of the occupational therapist; (3-29-10)

f. Must immediately discontinue any specific treatment procedure which appears harmful to the client, and so notify the occupational therapist; (3-29-10)

g. Is responsible for knowing about the client's targeted occupational therapy outcomes and for providing information and documentation related to outcome achievement; (3-29-10)

h. May implement outcome measurements and provide needed client discharge resources. (3-29-10)

06. Aides. Aides do not provide skilled occupational therapy services. An aide is trained by an occupational therapist or an occupational therapy assistant to perform specifically delegated tasks. The occupational therapist is responsible for the overall use and actions of the aide. An aide first must demonstrate competency to be able to perform the assigned, delegated client and non-client tasks. The occupational therapist must oversee the development, documentation, and implementation of a plan to supervise and routinely assess the ability of the occupational therapy aide to carry out non-client and client-related tasks. The occupational therapy assistant may contribute to the development and documentation of this plan. An aide shall function only under the direct line of sight supervision of an occupational therapist or occupational therapy assistant. An aide may provide: (3-29-10)

a. Non-client-related tasks, including clerical and maintenance activities and preparation of the work area or equipment. (3-29-10)

b. Client-related, routine tasks during which the aide may interact with the client. The following conditions must exist when an occupational therapist or occupational therapy assistant delegates a selected client-related task to the aide: (3-29-10)

i. The outcome anticipated for the delegated task is predictable. (3-29-10)

ii. The client and environment are stable and will not require that judgment, interpretations, or adaptations be made by the aide. (3-29-10)

iii. The client has demonstrated some previous performance ability in executing the task. (3-29-10)

iv. The task routine and process have been clearly established. (3-29-10)

v. The aide has been trained and is able to demonstrate competency in carrying out the task and in using any necessary equipment. (3-29-10)

vi. The aide has been instructed on how to specifically carry out the delegated task with the specific client. (3-29-10)

vii. The aide knows the precautions, signs, and symptoms for the particular client that would indicate the need to seek assistance from the occupational therapist or occupational therapy assistant. (3-29-10)

c. The supervision of the aide needs to be documented for every client-related activity performed by an aide. Documentation must include information about frequency and methods of supervision used, the content of supervision, and the names and credentials of all persons participating in the supervisory process. (3-29-10)

012. DEEP THERMAL AND ELECTROTHERAPEUTIC MODALITIES, AND WOUND CARE.

01. Qualifications. Except as provided in Paragraph Subsection 012.01**~~2~~.b.i.** of these rules, a person may not utilize occupational therapy techniques involving deep thermal, electrotherapeutic modalities or perform wound care management unless the person is licensed by the Board as an occupational therapist and certified by the Hand Therapy Commission. In lieu of being certified by the Hand Therapy Commission, the person must have obtained education and training as described in Paragraphs 012.01.a. through 012.01.c. of this rule. (~~3-29-10~~)

~~**a.** Is licensed by the Board as an occupational therapist; and~~ (~~3-29-10~~)

~~**i.** Is certified by the Hand Therapy Commission; or~~ (~~3-29-10~~)

~~**ii.a.** Has~~ If the person utilizes techniques involving deep thermal, electrotherapeutic modalities, the person must have successfully completed three (3) continuing education units in the application of deep thermal and electrotherapeutic modalities ~~and one and one half (1.5) continuing education units in wound care management,~~ along with one hundred sixty (160) hours of supervised, on-the-job or clinical internship or affiliation training, pertaining to ~~each area of deep thermal, electrotherapeutic such~~ modalities ~~and wound care management.~~ (~~3-29-10~~)(7-28-10)T

b. If the person manages wound care, the person must have successfully completed one and one-half (1.5) continuing education units in wound care management, along with one hundred sixty (160) hours of supervised, on-the-job or clinical internship or affiliation training pertaining to wound care management. (7-28-10)T

c. If the person utilizes both deep thermal, electrotherapeutic modalities and manages wound care, the person's supervised training for each may have overlapped, so that the one hundred sixty (160) hours for each were obtained concurrently through the same supervised, on-the-job or clinical internship or affiliation. (7-28-10)T

b02. Obtaining Education and Supervised Training. A student occupational therapist, graduate occupational therapist, and an occupational therapist may utilize deep thermal, electrotherapeutic modalities or manage wound care while working towards obtaining the education and supervised training described in Section 012 of these rules. The supervisor must provide at least direct supervision to the student occupational therapist, and at least routine supervision to the graduate occupational therapist or occupational therapist. An ~~certified~~ occupational therapy assistant may apply deep thermal and electrotherapeutic modalities ~~only while the occupational therapy assistant is working under the direct supervision of a qualified occupational therapist.~~ under routine supervision if the occupational therapy assistant has obtained an advanced level of skill as described in Subsection 011.01 of these rules and the education and training described in Subsection 012.01 of these rules. Otherwise, the occupational therapy assistant must work under direct supervision while applying such modalities. (3-29-10)(7-28-10)T

03. Supervised Training by Qualified Individual. The supervised training described in Section 012 of these rules must be provided by an occupational therapist who is qualified as specified in this Subsection 012.01, or by another type of licensed health care practitioner whose education, training, and scope of practice enable the practitioner to competently supervise the person as to the modalities utilized and wound care management provided. (7-28-10)T

(BREAK IN CONTINUITY OF SECTIONS)

022. LICENSE EXPIRATION AND RENEWAL.

01. Expiration Date. An individual's license expires on the individual's birth date. The individual must annually renew the license before the individual's birth date in accordance with Section 67-2614, Idaho Code. Licenses not so renewed will be cancelled in accordance with Section 67-2614, Idaho Code. (3-29-10)

02. Reinstatement. A license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code. Reinstatement of a license from inactive to active status is governed by Section 030. (3-29-10)(7-28-10)T

03. Application for Renewal. In order to renew a license, a licensee must submit a timely, completed, Board-approved renewal application form and pay the required renewal fees. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

030. INACTIVE STATUS.

~~The Board shall grant inactive status to a licensee who makes application for inactive status; or who does not practice as an Occupational Therapist or Occupational Therapy Assistant in Idaho.~~ (1-5-88)

01. Request for Inactive Status. Occupational Therapists and Occupational Therapy Assistants requesting an inactive status during the renewal of their active license must submit a written request and pay the established fee. (7-28-10)T

02. Inactive License Status. (7-28-10)T

a. Licensees may not practice in Idaho while on inactive status. (7-28-10)T

b. All continuing education requirements will be waived for any year or portion thereof that a licensee maintains an inactive license and is not actively practicing or supervising in Idaho, subject to Subsection 030.03 of these rules. (7-28-10)T

c. Inactive license renewal notices and licenses will be marked "Inactive." (7-28-10)T

03. Reinstatement to Full Licensure from Inactive Status. An inactive licensee may reinstate to active status by submitting a completed, Board-approved application and paying the appropriate fee. The licensee's application must demonstrate, to the Board's satisfaction, that during the two (2) years immediately preceding the application, the licensee completed at least two (2) CEUs recommended by the Idaho Occupational Therapy Association and approved by the Board, along with at least ten (10) Board-approved professional development units (PDUs), as specified in Section 025 of these rules. (7-28-10)T

031. ~~**REINSTATEMENT TO FULL LICENSURE FROM INACTIVE STATUS (RESERVED).**~~

~~An individual desiring reinstatement to full active licensure to practice as an Occupational Therapist or Occupational Therapy Assistant shall submit a completed written application to the Board, on the forms prescribed by the Board together with the license and reinstatement fees. The application shall be verified and under oath (Subsection 021.01, above). The Board may request such other information deemed necessary to identify and evaluate the applicant's proficiency.~~ (1-5-88)

(BREAK IN CONTINUITY OF SECTIONS)

041. FEES.

01. **Fees.** Necessary fees shall accompany applications. Fees shall not be refundable. (3-29-10)

02. **Initial Licensure.** The fee for initial licensure of occupational therapists shall be one hundred fifteen dollars (\$115) and the fee for occupational therapy assistants shall be eighty-five dollars (\$85). (3-29-10)

03. **Limited Permit or Temporary License.** The fee for a limited permit or temporary license shall be thirty dollars (\$30). (3-29-10)

04. **Active License Renewal Fee.** The annual renewal fee for an active license shall be seventy dollars (\$70) for occupational therapists and fifty dollars (\$50) for occupational therapy assistants. ~~(3-29-10)~~(7-28-10)T

05. **Reinstatement Fee.** The fee to reinstate a lapsed license shall be thirty-five dollars (\$35). (3-29-10)

06. **Inactive License Renewal Fee.** The annual renewal fee for an inactive license ~~shall~~ be fifty dollars (\$50) for occupational therapists and occupational therapy assistants. ~~(3-29-10)~~(7-28-10)T

07. **Inactive to Active License Fee.** The fee for reinstating Aan inactive license ~~may be converted~~ to an active license ~~by application to the Board and payment of required~~ is the difference between the current inactive and active license renewal fees. (7-28-10)T

~~**a.** The fee for converting an inactive to an active license shall be forty dollars (\$40) and the annual renewal fee for each year not actively licensed minus inactive fees previously paid.~~ (3-29-10)

~~**b.** Before the license will be converted the applicant must account for the time during which an inactive license was held. The Board may, in its discretion, require a personal interview.~~ (4-2-03)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.08.01 - RULES OF THE STATE BOARD OF MORTICIANS

DOCKET NO. 24-0801-1001

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 54-1107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

In order to protect the public, the Board of Morticians is clarifying the rules that pertain to resident trainees. The rules define resident trainee and clarify the training requirements; outline the sponsoring mortician's responsibility; clarify eligibility to be licensed and clarify the qualifications. Documentation of the completion of a resident trainee program is being clarified in the application section.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussions were held in a noticed, open meeting of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 24-0801-1001

250. RESIDENT TRAINEE (RULE 250).

~~01. Definition. The term “A Resident Trainee” as herein used is a person who is engaged in learning the practice of embalming and/or the profession of mortuary arts and sciences licensed to train, under the direct and immediate supervision of a sponsoring mortician, to become a licensed mortician or funeral director.~~ ()

01. Training Requirements. ()

a. Training ~~shall be understood to mean~~ requires the Resident Trainee’s diligent attention to the subject matter in the course of regular and full-time paid employment. Full-time employment ~~shall mean a minimum of~~ requires that the Resident Trainee be employed for at least thirty-six (36) hours per week for fifty (50) weeks per year within the mortuary where the Resident Trainee’s sponsoring resident mortician is the practicing, resident mortician. ~~It shall be further required that~~ ()

i. ~~A~~At least three-fourths (3/4) of the Resident Trainee’s training period must consist of ~~a~~ the sponsoring licensed mortician instructing and demonstrating practices and procedures to increase the Resident Trainee’s knowledge of the service performed by a mortician or a funeral director as defined in Chapter 11, Title 54, Idaho Code. ~~A Resident Trainee shall not sign a death certificate as provided under Idaho law.~~ ()

ii. For the balance of the required hours, ~~it would be the responsibility of~~ the sponsoring mortician, or his licensed appointee, ~~to~~ must be immediately available for to consultation with the Resident Trainee. ()

b. All training must ~~be served in the state of~~ occur within Idaho. (4-11-06)()

c. A Resident Trainee shall not sign a death certificate. ()

02. Sponsoring Mortician. A practicing sponsoring mortician must: ()

a. Be an Idaho-licensed mortician ~~within the state of who practices as a full-time resident mortician in Idaho, who is duly registered as such with the Bureau and assumes responsibility for the proper supervision and instruction of a~~ ()

b. ~~Not serve as the sponsoring mortician for more than two (2) “Resident Trainees at any given time.”~~ (4-11-06)()

c. Supervise and instruct the Resident Trainee, and provide demonstrations for and consultations to the Resident Trainee, as described in Subsection 250.01, of this rule. ()

d. Complete and co-sign, with the Resident Trainee, quarterly and final reports. These reports must be completed on forms approved by the Board and document the information described in Subparagraphs 250.04.c. and 250.04.d., of this rule. The sponsoring mortician must promptly submit a report after the period of time covered by the report ends. For example, the sponsoring mortician must promptly submit the first quarter report after the first quarter ends, the second quarter report after the second quarter ends, etc. ()

e. Promptly notify the Board in writing if a Resident Trainee’s training is terminated, including termination due to interruption as specified in Subsection 250.05, of this rule and submit a final report documenting training up to the termination date. ()

03. Eligibility to Be Licensed. ~~No~~ A person ~~shall be eligible to~~ may not be licensed as a “Resident Trainee” ~~who if the person~~ has practiced as a Resident Trainee or apprentice for a total cumulative period of more than two (2) years in ~~the state of~~ Idaho, unless approved by the Board for good cause. For purposes of accounting for total cumulative training as a Resident Trainee, the sponsoring mortician ~~is required to~~ must notify the Bureau at the beginning and termination of the training period. When a Resident Trainee ~~has~~ completeds training, the Resident Trainee must complete the remaining qualifications for licensure as a licensed mortician or funeral director ~~must be completed~~ within the following three (3) years ~~period or said trainee must~~ show good reason for further delay. (4-11-06)()

04. Resident Trainee Applicants to Qualify. (7-1-93)

a. An applicant for a Resident Trainee license must apply on Board-approved forms and pay the appropriate fee. The applicant must: ()

a.i. ~~Must b~~**Be** at least eighteen (18) years of age: (7-1-93)()

b.ii. ~~Must b~~**Be** of good moral character: (7-1-93)()

e.iii. ~~Must h~~**H**ave graduated from an accredited high school or have received an equivalent education as determined by the standards set and established by the state board of education: (7-1-93)()

d.iv. ~~A~~ **Provide a** photo as specified in Section 200 ~~above.~~ **of this rule; and** (3-13-02)()

v. Identify the sponsoring mortician and the funeral establishment in which the applicant will train. The applicant must promptly notify the Board in writing if this information changes during the training period. ()

e.b. The effective date of the resident training shall be determined by the board at its next meeting. In no case shall it be prior to the date the application, together with the required fees, are received in the office of the Bureau. (4-11-06)

~~**f.** Resident training must be served under the direction of a qualified full-time resident mortician licensed and practicing in Idaho. (4-11-06)~~

g.c. ~~Applicants~~ **Resident Trainees** pursuing a mortician license must complete ~~resident training affidavits showing time served, the number of bodies embalmed~~ and co-sign, with the sponsoring mortician, quarterly and final reports documenting that the applicant has assisted in embalming at least twenty-five (25) dead human bodies and assisted in making at least twenty-five (25) funeral arrangements and in conducting at least twenty-five (25) funerals under supervision. (4-11-06)()

h.d. ~~Applicants~~ **Resident Trainees** pursuing a funeral director license must complete ~~resident training affidavits of conducting and/or providing assistance~~ and co-sign, with the sponsoring mortician, quarterly and final reports documenting that the applicant has assisted in making at least twenty-five (25) funerals arrangements and in conducting at least twenty-five (25) funerals under supervision. (4-11-06)()

05. Interruption in Training. An interruption in training of sixty (60) days or more constitutes termination of training. (7-1-93)

251. -- 299. (RESERVED).

300. APPLICATIONS AND EXAMINATION (RULE 300).

In order to be admitted to the examination, the applicant must submit a completed application on forms provided by the bureau and provide all requested documentation including proof of having completed the training period as prescribed by law and these rules, and meet the specific requirements for license as set forth in Section 54-1109 of the Idaho Code as follows: (4-11-06)

01. Age. Applicant must have attained the age of twenty-one (21) years by the time of examination. (7-1-93)

02. Moral Character. Must be of good moral character. (7-1-93)

03. Mortician Educational Requirements. Applicants for a mortician license must have completed and received credit for at least sixty (60) semester hours or ninety (90) quarter hours instruction in a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all such credits must be for courses in fields of liberal arts, business or science directly

relating to the knowledge required to successfully compete in the field of mortuary science. In questionable cases the decision of the board shall be final. These requirements shall be in addition to and not considered a part of the completion of and graduation from a mortuary college accredited by the American Board of Funeral Service Education that includes an embalming course of study. (4-11-06)

04. Funeral Director Educational Requirements. Applicants for a funeral director license must have completed and received at least sixty (60) semester hours' or ninety (90) quarter-hours' instruction from a duly accredited college or university and has obtained at least a C grade average for all courses of instruction; provided, however, at least three-fourths (3/4) of all such credits must be for courses in the fields of liberal arts, business or science as defined and specified by the board. These requirements shall be in addition to completion of at least fifteen (15) semester credit hours or the equivalent from a mortuary college accredited by the American board of funeral service education, inc., or such credits as are otherwise approved by the board, with course of study to include business law, psychology, sociology, funeral service counseling, funeral service management and other classes that relate to conducting funeral business. (4-11-06)

05. Photo. A photo as specified in Section 200 of these rules. (4-11-06)

06. Completion of One Year as a Resident Trainee. Must have served one (1) year as required by statute as a Resident Trainee and receive certification from a sponsoring mortician in Idaho. (4-11-06)

a. ~~Trainees~~ An applicant pursuing licensure as a mortician must document having on Board-approved forms that the applicant has assisted in embalming at least twenty-five (25) dead human bodies and assisted in making at least twenty-five (25) funeral arrangements and in conducting at least twenty-five (25) funerals under the supervision of a sponsoring mortician. (~~5-8-09~~)()

b. ~~An Applicant~~ An Applicant pursuing licensure as a funeral director must document having on Board-approved forms that the applicant has assisted in making at least twenty-five (25) funeral arrangements and in conducting twenty-five (25) funerals under the supervision of a sponsoring mortician. (~~4-11-06~~)()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.09.01 - RULES OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

DOCKET NO. 24-0901-1001

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 54-1604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Board of Examiners of Nursing Home Administrators would like verification that an applicant obtained supervised experience in all six domains and that the preceptor training be in addition to full time work. The rule clarifies that full time shall be at least thirty-two hours per week which would allow at least eight hours per week for direct training between the preceptor and trainee. It also requires that the preceptor be re-certified every ten years.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussion on the changes were noticed on an agenda and discussed in a public meeting.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 13th day of August, 2010.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 24-0901-1001

400. NURSING HOME ADMINISTRATORS-IN-TRAINING (RULE 400).

01. Related Health Care Field. “Related health care field” shall mean a field in health care related to administration. (7-1-93)

02. Trainees. Trainees must work on a full time basis in any capacity in an Idaho licensed nursing home setting. Full time shall be at least a ~~forty~~ thirty-two (40~~32~~) hour per week work schedule with consideration for normal leave taken. Failure to comply with this rule or Section 54-1610, Idaho Code, shall not receive credit as a Nursing Home Administrator-In-Training. (~~4-2-08~~)()

a. Each trainee shall register with the Board as a Nursing Home Administrator-In-Training (AIT) by submitting an application provided by the Board together with the required fee. The effective date of each AIT program shall be the date the Board approves the application. (3-13-02)

b. Quarterly reports for those trainees employed in a nursing home must reflect that the preceptor of the trainee has instructed, assisted and given assignments as deemed necessary to fulfill the requirements of Subsection 400.03. (7-1-98)

03. Nursing Home Administrator-in-Training Requirements. A Nursing Home Administrator-in-Training shall be required to train in all ~~phases~~ domains of nursing home administration including the following: (~~7-1-93~~)()

a. Resident Care Management. (7-1-98)

b. Personnel Management. (7-1-93)

c. Financial Management. (7-1-93)

d. Environmental Management. (7-1-98)

e. Meeting Regulations and Governing Entities Directives. (7-1-98)

f. Organizational Management. (7-1-98)

g. Completion of a specialized course of study in nursing home long-term health care administration approved by NAB or otherwise approved by the Board. (4-6-05)

04. Facility Administrator. The trainee must spend no less than thirty-two (32) hours a month with the preceptor in a training and/or observational situation in the six (6) ~~areas~~ domains of nursing home administration as outlined in Subsection 400.03. Time spent with the preceptor must be in addition to the full time work that the trainee must perform under Subsection 400.02, unless the Administrator-in-Training role is designated as a full time training position. Collectively, over the twelve (12) month period. Quarterly reports must reflect particular emphasis on the all six (6) ~~phases~~ domains of nursing home administration during the time spent in the nursing home. (~~5-3-03~~)()

05. Preceptor Certification. (7-1-93)

a. A nursing home administrator who serves as a preceptor for a nursing home administrator-in-training must be certified by the Board of Examiners of Nursing Home Administrators. The Board will certify the Idaho licensed nursing home administrator to be a preceptor who: (7-1-98)

i. Is currently practicing as a nursing home administrator and who has practiced a minimum of two (2) consecutive years as a nursing home administrator; and (7-1-98)

ii. Who successfully completes a six (6) clock hour preceptor orientation course approved by the Board. (7-1-93)

b. The orientation course will cover the philosophy, requirements and practical application of the nursing home administrator-in-training program and a review of the six (6) phases of nursing home administration as outlined in Subsection 400.03. (7-1-93)

c. The preceptor must be re-certified by the Board every ten (10) years. ()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.13.01 - RULES OF THE PHYSICAL THERAPY LICENSURE BOARD
DOCKET NO. 24-1301-1001
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 16, 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 Section 54-2206, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The 2010 legislature passed House Bill 470 which amended Section 54-2212, Idaho Code, to require that foreign educated physical therapists pass an English proficiency examination to qualify for a license if English is not the applicant's native language. This rule identifies the standardized examinations.

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

To comply with a new law which passed last session.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are due to amendment in statute and were discussed in an open, noticed meeting..

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 20th day of August, 2010.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT FOR DOCKET NO. 24-1301-1001

175. REQUIREMENTS FOR LICENSURE (RULE 175).

An individual shall be entitled to a license upon meeting the following requirements: (4-2-08)

01. Application. Submission of a complete application establishing that the individual has met the qualifications as set forth in these rules. (4-2-08)

02. Examination. Submission of proof that the individual has successfully passed the NPTE with a scaled score of at least six hundred (600) and the jurisprudence examination with a score of at least seventy-five percent (75%). Foreign educated individuals whose native language is not English shall submit proof of successfully passing one (1) of the following English proficiency exams: ~~(4-2-08)~~(7-16-10)T

a. Test of English as a Foreign Language (TOEFL) with minimum passing scores of two hundred twenty (220) for computer test and five hundred sixty (560) for paper test; (7-16-10)T

b. Test of English as a Foreign Language - internet based test (TOEFL IBT) with minimum passing scores of twenty-four (24) in writing; twenty-six (26) in speaking, twenty-one (21) in reading, and eighteen (18) in listening; or (7-16-10)T

c. As otherwise approved by the Board. (7-16-10)T

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.13.01 - RULES OF THE PHYSICAL THERAPY LICENSURE BOARD
DOCKET NO. 24-1301-1002
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-2206, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Physical Therapy Board is updating its rules to correct the name of the U.S. Department of Education and to allow a successor entity. The Board is also adding a section to allow for termination of applications that have lacked activity for one year upon notification to the applicant. This will help reduce the number of files that need to be maintained. Finally, the Board would like to allow four (4) hours continuing education credit for the supervision of physical therapist students or physical therapist assistant students as this supervision is an important part of the training of future licensees.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussion on the changes were noticed on an agenda and discussed in a public meeting.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 20th day of August, 2010.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 24-1301-1002

010. DEFINITIONS (RULE 10).

- 01. Board.** The Physical Therapy Licensure Board. (3-19-07)
- 02. Bureau.** Bureau means the Idaho Bureau of Occupational Licenses as created in section 67-2602, Idaho Code. (3-19-07)
- 03. Physical Therapist.** An individual who meets all the requirements of Title 54, Chapter 22, Idaho Code, holds an active license and who engages in the practice of physical therapy. (3-19-07)
- 04. Physical Therapist Assistant.** An individual who meets the requirements of Title 54, Chapter 22, Idaho Code, holds an active license, and who performs physical therapy procedures and related tasks that have been selected and delegated only by a supervising physical therapist. (3-19-07)
- 05. Supportive Personnel.** An individual, or individuals, who are neither a physical therapist or a physical therapist assistant, but who are employed by and/or trained under the direction of a licensed physical therapist to perform designated non-treatment patient related tasks and routine physical therapy tasks. (3-19-07)
- 06. Non-Treatment Patient Related Tasks.** Actions and procedures related to patient care that do not involve direct patient treatment or direct personal supervision, but do require a level of supervision not less than general supervision, including, but not limited to: treatment area preparation and clean-up, equipment set-up, heat and cold pack preparation, preparation of a patient for treatment by a physical therapist or physical therapist assistant, transportation of patients to and from treatment, and assistance to a physical therapist or physical therapist assistant when such assistance is requested by a physical therapist or physical therapist assistant when safety and effective treatment would so require. (3-19-07)
- 07. Routine Physical Therapy Tasks.** Actions and procedures within the scope of practice of physical therapy, which do not require the special skills or training of a physical therapist or physical therapist assistant, rendered directly to a patient by supportive personnel at the request of and under the direct personal supervision of a physical therapist or physical therapist assistant. (3-19-07)
- 08. Testing.** (3-19-07)
- a.** Standard methods and techniques used in the practice of physical therapy to gather data about individuals including: (3-19-07)
- i. Electrodiagnostic and electrophysiological measurements; (3-19-07)
 - ii. Assessment or evaluation of muscle strength, force, endurance and tone; (3-19-07)
 - iii. Reflexes; (3-19-07)
 - iv. Automatic reactions; (3-19-07)
 - v. Posture and body mechanics; (3-19-07)
 - vi. Movement skill and accuracy; (3-19-07)
 - vii. Joint range of motion and stability; (3-19-07)
 - viii. Sensation; (3-19-07)
 - ix. Perception; (3-19-07)
 - x. Peripheral nerve function integrity; (3-19-07)

- xi. Locomotor skills; (3-19-07)
 - xii. Fit, function and comfort of prosthetic, orthotic, and other assistive devices; (3-19-07)
 - xiii. Limb volume, symmetry, length and circumference; (3-19-07)
 - xiv. Clinical evaluation of cardiac and respiratory status to include adequacy of pulses, noninvasive assessment of peripheral circulation, thoracic excursion, vital capacity, and breathing patterns; (3-19-07)
 - xv. Vital signs such as pulse, respiratory rate, and blood pressure; (3-19-07)
 - xvi. Activities of daily living; and the physical environment of the home and work place; and (3-19-07)
 - xvii. Pain patterns, localization and modifying factors; and (3-19-07)
 - xviii. Photosensitivity. (3-19-07)
- b.** Specifically excluded are the ordering of electromyographic study, electrocardiography, thermography, invasive vascular study, selective injection tests, or complex cardiac or respiratory function studies without consultation and direction of a physician. (3-19-07)
- 09. Functional Mobility Training.** Includes gait training, locomotion training, and posture training. (3-19-07)
- 10. Manual Therapy.** Skilled hand movements to mobilize or manipulate soft tissues and joints for the purpose of: (3-19-07)
- a.** Modulating pain, increasing range of motion, reducing or eliminating soft tissue swelling, inflammation or restriction; (3-19-07)
 - b.** Inducing relaxation; (3-19-07)
 - c.** Improving contractile and non-contractile tissue extensibility; and (3-19-07)
 - d.** Improving pulmonary function. (3-19-07)
- 11. Physical Agents or Modalities.** Thermal, acoustic, radiant, mechanical, or electrical energy used to produce physiologic changes in tissues. (3-19-07)
- 12. General Supervision.** A physical therapist's availability at least by means of telecommunications, which does not require a physical therapist to be on the premises where physical therapy is being provided, for the direction of a physical therapist assistant. (3-19-07)
- 13. Direct Supervision.** A physical therapist's or physical therapist assistant's physical presence and availability to render direction in person and on the premises where physical therapy is being provided. (3-19-07)
- 14. Direct Personal Supervision.** A physical therapist's or physical therapist assistant's direct and continuous physical presence and availability to render direction, in person and on the premises where physical therapy is being provided. The physical therapist or physical therapist assistant must have direct contact with the patient during each session and assess patient response to delegated treatment. (3-19-07)
- 15. Supervising Physical Therapist.** A licensed physical therapist who developed and recorded the initial plan of care and/or who has maintained regular treatment sessions with a patient. Such physical therapist's designation of another licensed physical therapist if the physical therapist who developed and recorded the initial plan of care or maintained regular treatment sessions is not available to provide direction at least by means of telecommunications. (3-19-07)

16. Nationally Accredited School. A school or course of physical therapy or physical therapist assistant with a curriculum approved by: (3-19-07)

a. The American Physical Therapy Association (APTA) from 1926 to 1936; or the APTA Accreditation Commission; or (3-19-07)

b. The Council on Medical Education and Hospitals of the American Medical Association from 1936 to 1960; or (3-19-07)

c. An accrediting agency recognized by the U.S. ~~Commissioner~~ Department of Education, the Council on Postsecondary Accreditation, or a successor entity, or both. (~~3-19-07~~)()

17. Examination. The examination shall be the National Physical Therapy Examination (NPTE) administered by Federation of State Boards of Physical Therapy. The examination may also include a jurisprudence examination adopted by the Board. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

150. APPLICATION (RULE 150).

Each applicant shall submit a completed written application on forms provided by the Board together with applicable fees. The application shall be verified under oath and shall require the following information: (3-19-07)

01. Education. The educational background of the applicant; (3-19-07)

02. Evidence of Graduation. Evidence of graduation from a nationally accredited school; (3-19-07)

03. Criminal Convictions. The disclosure of any criminal conviction or charges against the applicant other than minor traffic offenses; (3-19-07)

04. Disciplinary Action. The disclosure of any disciplinary action against the applicant by any professional regulatory agency; (3-19-07)

05. License or Registration Denial. The disclosure of the denial of registration or licensure by any state or district regulatory body; (3-19-07)

06. References. Two (2) references from individuals, other than relatives or individuals living with the applicant, who have at least two (2) years of personal knowledge of the applicant's character and ability to provide physical therapy; (3-19-07)

07. Photograph. An un-mounted passport type photograph of the applicant, taken not more than one (1) year prior to the date of application; and (3-19-07)

08. Other Information. Such other information as the Board deems necessary to identify and evaluate the applicant's credentials. (3-19-07)

09. Incomplete applications. The Board shall not review incomplete applications and shall not approve licensure for applicants who have failed to provide adequate proof of having met the licensure requirements. (3-19-07)

10. Lack of Activity. Applications on file with the Board where an applicant has failed to respond to a Board request or where the applications have lacked activity for twelve (12) consecutive months shall be deemed denied and shall be terminated upon thirty (30) days written notice unless good cause is established to the Board. ()

(BREAK IN CONTINUITY OF SECTIONS)

250. CONTINUING EDUCATION REQUIREMENT (RULE 250).

On and after January 1, 2008, every person holding a license issued by the Board must annually complete sixteen (16) contact hours of continuing education prior to license renewal. (3-19-07)

01. Contact Hours. The contact hours of continuing education shall be obtained in areas of study germane to the practice for which the license is issued as approved by the board. (3-19-07)

02. Documentation of Attendance. It shall be necessary for the applicant to provide documentation verifying attendance by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be maintained by the licensee and provided to the board upon request by the board or its agent. (3-19-07)

03. Excess Hours. Continuing education hours accumulated during the twelve (12) months immediately preceding the license expiration date may be applied toward meeting the continuing education requirement for the next license renewal. Hours in excess of the required hours may be carried forward. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) time. (3-19-07)

04. Compliance Audit. The board may conduct random continuing education audits of those persons required to obtain continuing education in order to renew a license and require that proof acceptable to the board of meeting the continuing education requirement be submitted to the bureau. Failure to provide proof of meeting the continuing education upon request of the board shall be grounds for disciplinary action. (3-19-07)

05. Special Exemption. The board shall have authority to make exceptions for reasons of individual hardship, including health (certified by a medical doctor) or other good cause. The licensee must provide any information requested by the board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the board. (3-19-07)

06. Continuing Education Credit Hours. Hours of continuing education credit may be obtained by attending and participating in a continuing education activity approved by the Board. (3-19-07)

a. General Criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit: (3-19-07)

i. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee; (3-19-07)

ii. Pertains to subject matters integrally related and germane to the practice of the profession; (3-19-07)

iii. Conducted by individuals who have specialized education, training and experience to be considered qualified to present the subject matter of the program. The Board may request documentation of the qualifications of presenters; (3-19-07)

iv. Application for Board approval is accompanied by a paper, manual or outline which describes the specific offering and includes the program schedule, goals and objectives; and (3-19-07)

v. Provides proof of attendance to licensees in attendance including: Date, location, course title, presenter(s); Number of program contact hours (One (1) contact hour equals one (1) hour of continuing education credit.); and the official signature or verification of the program sponsor. (3-19-07)

b. Specific Criteria. Continuing education hours of credit may be obtained by: (3-19-07)

- i. Presenting professional programs which meet the criteria listed in these rules. Two (2) hours of credit will be awarded for each hour of presentation by the licensee. A course schedule or brochure must be maintained for audit; (3-19-07)
- ii. Providing official transcripts indicating successful completion of academic courses which apply to the field of physical therapy in order to receive the following continuing education credits: (3-19-07)
 - (1) One (1) academic semester hour = fifteen (15) continuing education hours of credit; (3-19-07)
 - (2) One (1) academic trimester hour = twelve (12) continuing education hours of credit; (3-19-07)
 - (3) One (1) academic quarter hour = ten (10) continuing education hours of credit. (3-19-07)
- iii. Attending workshops, conferences, symposiums or electronically transmitted, live interactive conferences which relate directly to the professional competency of the licensee; (3-19-07)
- iv. Authoring research or other activities which are published in a recognized professional publication. The licensee shall receive five (5) hours of credit per page; (3-19-07)
- v. Viewing videotaped presentations if the following criteria are met: (3-19-07)
 - (1) There is a sponsoring group or agency; (3-19-07)
 - (2) There is a facilitator or program official present; (3-19-07)
 - (3) The program official may not be the only attendee; and (3-19-07)
 - (4) The program meets all the criteria specified in these rules; (3-19-07)
- vi. Participating in home study courses that have a certificate of completion; (3-19-07)
- vii. Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics; (3-19-07)
- viii. Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics; ~~and~~ (3-19-07)()
- ix. Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics; ~~and~~ (3-19-07)()
- x. Supervision of a physical therapist student or physical therapist assistant student in an accredited college program. The licensee shall receive four (4) hours of credit per year. ()

07. Submitting False Reports or Failure to Comply. The Board may condition, limit, suspend, or refuse to renew the license of any individual whom the Board determines submitted a false report of continuing education or failed to comply with the continuing education requirements. (3-19-07)

08. Failure to Receive the Renewal Application. Failure to receive the renewal application shall not relieve the licensee of the responsibility of meeting the continuing education requirements and submitting the renewal application and renewal fee. (3-19-07)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS

DOCKET NO. 24-1401-1001

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 54-3204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Board of Social Work Examiners is removing rules given passage of House Bill 537 which eliminated licensure based upon education in a related field. The Board is also clarifying the type of supervised experience required for licensure at the clinical level. This clarification is needed to ensure that clinical level social workers have adequate experience in treatment.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussions were held in a noticed, open meeting of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 26th day of August, 2010.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 24-1401-1001

100. APPROVED COLLEGES ~~AND RELATED FIELDS~~ (RULE 100).

~~Social work and social work practice is a professional discipline requiring specialized knowledge and training.~~
(7-1-93)

~~01. College or University Approved by the Board.~~ Any college, university, or school of social work **which is** accredited or is a candidate for accreditation by the Northwest Association of Secondary and Higher Schools or any similar accrediting body. (5-3-03)()

~~02. Related Fields. A baccalaureate degree that includes thirty-six (36) semester credit hours with a grade of "C" or above in each course, in which the content is consistent with that recommended as minimal to social work training by an approved accrediting body. Eighteen (18) of the thirty-six (36) semester credit hours shall be taught by a social worker with a graduate degree from an accredited school of social work. The basic content areas to be required shall include:~~
(5-3-03)

~~a. Social work practice is to include a methods content of a minimum of six (6) semester credit hours; and a social work practicum with a minimum of nine (9) semester credit hours. The methods courses are to be taken previous to participation in practicum and are to be taught by a faculty member with a graduate degree (MSW) from an accredited school of social work. The practicum is to be supervised by a faculty member who has a graduate degree (MSW) from an accredited school of social work. The on-site supervisor is to be a licensed social worker. Both the methods courses and the practicum must have been completed within the past five (5) years (date computed from time of application). The program providing the practice content and internship experience is developed and monitored to assure that internship students demonstrate application of the knowledge, values and skills taught within the required basic content areas.~~
(7-1-96)

~~b. Social welfare policy and services shall include current policies and services, and shall be taught by a faculty member with a graduate degree in social work.~~
(7-1-96)

~~c. Human behavior and social environment shall include human behavior in the social environment with demonstrated content representing five (5) human systems: individual, family, group, organization and community.~~
(7-1-96)

~~d. Social research shall include social statistics and research methods.~~
(7-1-96)

~~e. Ethics shall include any three (3) credit course from a "college or university approved by the board" which includes the word "ethics" in the course title.~~
(7-1-96)

~~f. Cultural diversity shall include a three (3) credit course from a "college or university approved by the board" which includes content specific to ethnic minority group(s).~~
(7-1-96)

~~g. Course content and curriculum preparing students for practice will be evaluated by board review of course and program description provided by the college or university.~~
(7-1-96)

(BREAK IN CONTINUITY OF SECTIONS)

201. PRACTICE OF SOCIAL WORK.

01. Baccalaureate Social Work. The application of social work theory, knowledge, methods, and ethics to restore or enhance social or psychosocial functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate social work is a generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, supportive counseling, supervision, and consultation with clients. Baccalaureate social work also includes advocacy, education, community organization, and the development, implementation and administration of policies, programs, and activities. Bachelor level social workers are prohibited from performing psychotherapy. (3-20-04)

02. Master's Social Work. The application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Master's social work requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, supportive counseling, supervision and consultation with clients, advocacy, teaching, research, community organization, and the development, implementation, and administration of policies, programs, and activities. Master level social workers who do not hold clinical licensure may provide psychotherapy only under the supervision of a licensed clinical social worker, psychologist, or psychiatrist and in accordance with an approved supervision plan. (3-20-04)

03. Clinical Social Work. The practice of clinical social work is a specialty within the practice of master's social work and requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions. Clinical social work is based on knowledge and theory of psychosocial development, behavior, psychopathology, motivation, interpersonal relationships, environmental stress, social systems, and cultural diversity, with particular attention to person-in-environment. It shares with all social work practice the goal of enhancement and maintenance of psychosocial functioning of individuals, families, and small groups. Clinical social work includes, but is not limited to, individual, couples, family and group psychotherapy, and includes independent and private practice. (3-20-04)

04. Private Practice of Social Work. As defined in Section 54-3207, Idaho Code, is that independent practice in which an individual sets up and maintains responsibility for the contractual conditions of payment with clients, agencies, or institutions. (5-3-03)

05. Employment of a Social Worker. A social worker employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility, is not to be considered within the definition of an independent practitioner. Furthermore, a social worker who contracts with an agency or institution that assumes full responsibility for and supervises the services provided to clients is not considered to be a private practitioner. (5-3-03)

06. Supervision. Supervised experience shall be required for both independent practice status and clinical licensure. Consultative-teaching supervision is directed toward enhancement and improvement of the individual's social work values, knowledge, methods, and techniques. A total of three thousand (3,000) hours of supervised social work experience accumulated in not less than two (2) years is required. Actual supervisor contact shall be face-to-face and provided by a qualified and experienced professional working in the same area of practice and must occur on a regular and on-going basis and consist of a minimum of one hundred hours (100) hours. Ratio of supervisor/supervisee shall not exceed two (2) social workers to one (1) supervisor per hour of supervision. Group supervision totaling no more than fifty (50) hours will be allowed for groups of no more than six (6) persons and the allowable credit shall be prorated at the two to one (2 to 1) ratio (total session minutes divided by total supervisees multiplied by two (2) equals maximum allowable credit per supervisee for the session. i.e. an individual attending a one (1) hour group supervisory session consisting of six (6) supervisees shall be allowed twenty (20) minutes of group supervision credit). Supervisors must hold a degree in social work and a current license in good standing, except as noted in Subsection 201.06.c. (4-2-08)

a. Supervision of baccalaureate social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the baccalaureate, masters, or clinical level. (3-20-04)

b. Supervision of masters social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the masters or clinical level. (5-3-03)

c. Supervision of master level social workers pursuing licensure as clinical level practitioners must be provided by either a licensed clinical social worker who is registered as a supervisor, a licensed clinical psychologist, a person licensed to practice medicine and surgery who practices in the area of psychiatry, a licensed clinical professional counselor registered as a supervisor by the Idaho Licensing Board of Professional Counselors and

Marriage and Family Therapists or a licensed marriage and family therapist registered as a supervisor by the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists and must focus on clinical social work as defined. No less than fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker registered as a supervisor. A master level social worker pursuing licensure at the clinical level must document three thousand (3000) hours of supervised practice as follows: ()

i. ~~One thousand seven hundred fifty (1,750) hours of direct client contact of the required three thousand (3,000) hours involving treatment~~ in clinical social work as defined; and (4-2-08)()

ii. One thousand two hundred fifty (1,250) hours involving assessment, diagnosis, and other clinical social work as defined. ()

d. Supervision reports shall be submitted from each supervisor directly to the Board within thirty (30) days following each six (6) month period. Failure of the supervisor to submit the required reports in a timely manner may result in the supervisor being restricted by the Board from providing further supervision. (3-20-04)

07. Supervised Practice Required. To be eligible for licensure as an independent practitioner a candidate must: (5-3-03)

a. Meet the requirements set forth in Subsection 201.06; (4-2-08)

b. Develop a plan for supervision that must be approved by the Board prior to commencement of supervision. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by the Board prior to the commencement of supervision by the new supervisor; and (5-3-03)

c. Not have more than two (2) supervisors at any given time. (5-3-03)

08. Out-of-State Supervised Experience. The Board may consider supervised experience obtained outside the state of Idaho submitted for Idaho license purposes. Supervised experience must be provided by a licensed clinical social worker, licensed marriage and family therapist, licensed clinical psychologist, or a person licensed to practice medicine and surgery who practices in the area of psychiatry. No less than fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker. The applicant must meet the other requirements of supervised practice as set forth in these rules. (4-2-08)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.22.01 - RULES OF THE IDAHO STATE LIQUEFIED PETROLEUM GAS SAFETY BOARD

DOCKET NO. 24-2201-1001 (FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 54-5310 and 54-5312, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Idaho State Liquefied Petroleum Gas Safety Board has always required a year of supervised practical experience for licensure as a dealer. This rule establishes a dealer-in-training license and a \$50 fee for the license. This new status will allow the board to clearly verify that the applicant has obtained supervised experience under an Idaho licensed dealer.

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

This rule establishes a dealer-in-training license and a \$50.00 fee for the license pursuant to 54-5313, Idaho Code.

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

There could be an annual increase in dedicated funds of approximately \$1200.00 based on the number of dealer applications that were received in fiscal year 2010.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussion on the changes were noticed on an agenda and discussed in a public meeting.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 20th day of August, 2010.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE PROPOSED TEXT FOR FEE DOCKET NO. 24-2201-1001

175. FEES (RULE 175).

Applications should not be filed unless the applicant can meet all requirements. (3-30-06)

01. Application Fee. Application fee - thirty dollars (\$30). (3-30-06)

02. Original Individual License and Annual Renewal Fee. License fee - seventy-five dollars (\$75). (3-29-10)

03. Dealer-in-Training License Fee. License fee - fifty dollars (\$50). ()

034. Original Facility License Fee and Annual Renewal Fee. Facility with ten thousand (10,000) gallon or less storage capacity - one hundred dollars (\$100). (3-29-10)

045. Original Bulk Storage Facility Fee and Annual Renewal Fee. Bulk Storage Facility with more than ten thousand (10,000) gallon storage capacity - four hundred dollars (\$400). (3-29-10)

056. Endorsement Fee. Endorsement fee - seventy-five dollars (\$75). (3-29-10)

067. Reinstatement Fee. Reinstatement fee - fifty dollars (\$50). (3-30-06)

078. Refund of Fees. No refund of fees shall be made to any person who has paid such fees for application or reinstatement of a license. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

250. PRACTICAL EXPERIENCE (RULE 250).

Each applicant shall provide certified proof that they have successfully completed one (1) of the following. (3-30-06)

01. Supervised Practical Experience. *Supervised* Each applicant shall provide certified proof that the applicant has successfully obtained at least one (1) year of practical experience of no less than one (1) year in an LPG facility while the applicant was under supervision of a licensed dealer. A person in the process of meeting the practical experience requirement must complete the education and examination requirements and make application apply for a dealer license within eighteen (18) months of beginning to obtain supervised experience. (3-30-06)()

02. Other Experience Dealer-in-Training License. *Effective July 1, 2011, an individual may not begin obtaining supervised practical experience until the individual has applied for and obtained a dealer-in-training license from the board. Such license is issued on a "one-time" non-renewable basis and is for the purpose of enabling the individual to gain the supervised practical experience that the person must obtain to become an LPG dealer. The dealer-in-training license is valid for eighteen (18) months from the date of issue. The applicant must apply on such forms as may be prescribed by the board, and pay the required fee. (3-30-06)()*

a- Applicants prior to July 1, 2006, must document practice for not less than five (5) years in the field for which they are applying for a license including LPG industry experience in Idaho prior to July 1, 2005. (3-30-06)

b- Applicants after July 1, 2006, but prior to January 1, 2007 must document supervised experience of no less than one (1) year in an LPG facility under supervision. A person in the process of meeting the practical experience requirement must complete the education and examination requirements and make application for a dealer license within eighteen (18) months of beginning to obtain supervised experience. (3-30-06)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.25.01 - RULES OF THE IDAHO DRIVING BUSINESSES LICENSURE BOARD

DOCKET NO. 24-2501-1001 (NEW CHAPTER - FEE RULE)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-5403, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The 2009 legislature passed Senate Bill 1133 which created the State Driving Businesses Licensure Board. The law was codified at Title 54, Chapter 54, Idaho Code, and the Board adopted temporary/proposed rules to implement the law. The legislature amended the law (House Bill 564) to add educational requirements for instructors, including continuing education. In response to these legislative changes the proposed rules include substantive changes to the temporary/proposed rules that were previously extended. Therefore, the proposed rules submitted in 2009 on docket 24-2501-0901 will be vacated and not submitted as a pending rule. Rather, the Board is submitting this new set of proposed rules, which are needed to implement the law, as amended. The proposed rules also are needed to clarify ambiguities to insurance requirements, establish a deadline for the review of applications, and clarify on-line instruction.

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

The Board is setting fees as follows: initial application processing fee of \$50; original instructor license and renewal fee of \$50.00; Instructor apprentice permit fee of \$50; original business license fee and renewal of \$500 and the reinstatement fee of \$25.

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

The Board operates on temporary/proposed rules that were extended during the 2010 session. These rules have the same impact as the previously extended temporary/proposed rules. Like the proposed rule, which will be vacated and not submitted as a pending rule, these new proposed rules establish fees which will be deposited in the Bureau of Occupational Licenses dedicated fund. The fees will be used by the State Driving Businesses Licensure Board to administer the act. Since all self-governing boards are expected to be self-supporting, these fees are based on the estimated costs and the anticipated number of licensees.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussion on the changes were noticed on an agenda and discussed in a public meeting.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at 208 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 25th day of August, 2010.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State
Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE PROPOSED TEXT FOR FEE DOCKET NO. 24-2501-1001

IDAPA 24
TITLE 25
CHAPTER 01

24.25.01 - RULES OF THE IDAHO DRIVING BUSINESSES LICENSURE BOARD

000. LEGAL AUTHORITY (RULE 0).

In accordance with Section 54-5403, Idaho Code, the Idaho Driving Businesses Licensure Board hereby promulgates rules that implement the provisions of Chapter 54, Title 54, Idaho Code. ()

001. TITLE AND SCOPE (RULE 1).

These rules are cited as IDAPA 24.25.01, "Rules of the Idaho Driving Businesses Licensure Board." ()

002. WRITTEN INTERPRETATIONS (RULE 2).

The Board may have written statements that pertain to the interpretation of the rules of this chapter. Such interpretations, if any, are available for public inspection and copying at cost in the main office of the Bureau of Occupational Licenses. ()

003. ADMINISTRATIVE APPEALS (RULE 3).

Administrative appeals are governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code. ()

004. INCORPORATION BY REFERENCE (RULE 4).

These rules do not incorporate by reference any document. ()

005. ADDRESS OF IDAHO DRIVING BUSINESSES LICENSURE BOARD (RULE 5).

The office of the Idaho Driving Businesses Licensure Board is located within the Bureau of Occupational Licenses, 700 W. State Street, Boise, Idaho 83702. The Bureau is open between the hours of 8:00 a.m. and 5:00 p.m. each day except Saturdays, Sundays and holidays. The phone number of the Board is (208) 334-3233. The Board's fax number is (208) 334-3945. The Board's e-mail address is drb@ibol.idaho.gov. The Board's official website can be found at www.ibol.idaho.gov. ()

006. PUBLIC RECORDS (RULE 6).

The records associated with the Idaho Driving Businesses Licensure Board are subject to the provisions of the Idaho Public Records Act. Title 9, Chapter 3, Idaho Code. ()

007. CHANGES IN LICENSEE INFORMATION (RULE 7).

01. Information Update. Each licensee must keep the Bureau current on the information that the licensee has placed on record with the Bureau. If a change occurs to the information that a licensee provided to the Bureau under Rules 150, 225 or 250, the licensee must notify the Bureau in writing of the change within twenty (20) calendar days after the change occurs. The licensee must provide the Bureau, upon request, with appropriate documentation reflecting the change. ()

02. Address for Notification Purposes. The most recent mailing address on file with the Bureau will be used for purposes of all written communication with a licensee including, but not limited to, notification of renewal and notices related to disciplinary actions. Each licensee must keep the Bureau informed of the licensee's current mailing address. ()

008. -- 009. (RESERVED).

010. DEFINITIONS (RULE 10).

01. Board. The Idaho Driving Businesses Licensure Board as created in Section 54-5402, Idaho Code. ()

02. Bureau. The Idaho Bureau of Occupational Licenses as created in Section 67-2602, Idaho Code. ()

03. Student. A person aged fourteen and one-half (14 1/2) up to seventeen (17) years. ()

011. -- 099. (RESERVED).

100. ORGANIZATION (RULE 100).

01. Meetings. The Board shall meet at least annually at such times and places as designated by the Chairman, or upon the written request of two (2) members of the Board. ()

a. All meetings shall be held in accordance with the Idaho Open Meeting Law, Chapter 23, Title 67, Idaho Code. ()

b. A minimum of three (3) Board members shall constitute a quorum and may exercise all powers and authority conferred on the Board in order to hold a meeting of the Board. A majority vote of the Board members present at a meeting shall be considered the action of the Board as a whole. ()

02. Organization of the Board. At the first meeting of each fiscal year, the Board shall elect from its members a Chairman, who shall assume the duty of the office immediately upon such selection. ()

a. The Chairman shall, when present, preside at all meetings, appoint with the consent of the Board, all committees, and shall otherwise perform all duties pertaining to the office of Chairman. The Chairman shall be an ex-officio member of all committees. ()

b. The Bureau shall provide such services as may be authorized by Chapter 26, Title 67, Idaho Code, and as defined under contract between the Bureau and the Board. The Chief of the Bureau shall act as an agent of the Board and shall be the custodian of all records of the Board. ()

101. -- 149. (RESERVED).

150. APPLICATION (RULE 150).

Each applicant for a license, permit, or other authority from the Board must submit a complete application on Board-approved application forms. The application must be accompanied by required fee(s). The Board will not review completed applications received ten (10) or fewer days before a Board meeting. The Board also will not review incomplete applications, including applications submitted without the required fee(s). Further, an applicant must provide, or facilitate the provision of, any supplemental information or documents requested by the Board. Any application on file with the Board where an applicant has failed to respond to a Board request or where the application

has lacked activity for twelve (12) consecutive months will be deemed denied and will be terminated upon thirty (30) days written notice to the applicant unless good cause is established to the Board. ()

151. -- 174. (RESERVED).

175. FEES (RULE 175).

01. Fees. The following fees are established by the Board: ()

a. Initial application processing fee - fifty dollars (\$50). ()

b. Original instructor license fee and renewal fee - fifty dollars (\$50). ()

c. Instructor apprentice permit fee - fifty dollars (\$50). ()

d. Original business license fee and renewal fee - five hundred dollars (\$500). ()

e. Reinstatement fee - twenty-five dollars (\$25). ()

02. Refund of Fees. All fees are non-refundable. ()

176. -- 199. (RESERVED).

200. RENEWAL OF LICENSE (RULE 200).

01. Expiration Date. A license expires, unless renewed, on the birth date of an individual licensee, and on the anniversary date of the original license for a business, in accordance with Section 67-2614, Idaho Code. Licenses not renewed by those dates will be cancelled in accordance with Section 67-2614, Idaho Code. ()

02. Application for Renewal. In order to renew a license, a licensee must annually submit a timely, completed, Board-approved renewal application form and pay the required renewal fees. All renewals are subject to audit. When applying for renewal, the licensee must meet the following requirements: ()

a. The licensee must certify that the licensee continues to satisfy all requirements for the licensee's type of licensure, as set forth in Rules 225 and 250, and that the licensee is, and has been, in full compliance with Rule 007. The licensee must further certify that the licensee is in compliance with the Board's continuing education requirements. ()

b. An instructor licensee also must certify that the licensee does not suffer from any physical or mental condition or disease that would impair the licensee's ability to safely instruct drivers. ()

c. Every two (2) years, a driving instructor licensee must obtain a new medical certificate of the kind described in Subsection 250.05. The instructor licensee must annually certify that the licensee is in compliance with the requirements. ()

d. A business licensee that offers a Board-approved instructor apprentice training program must certify that the licensee's program has maintained compliance with the Board's program approval criteria as specified in Rule 275. ()

03. Reinstatement. Any license cancelled for failure to renew may be reinstated in accordance with Section 67-2614, Idaho Code, and subject to Subsection 201.01.c., below. ()

201. CONTINUING EDUCATION (RULE 201).

In order to protect the public health and safety and promote the public welfare, the Board has adopted the following rules for continuing education. ()

01. Continuing Education (CE) Requirement. Beginning July 1, 2012, each Idaho licensed driving

instructor must annually complete a minimum of eight (8) hours of continuing education. ()

a. The licensee must certify on the licensee's renewal application that the licensee has complied with the annual CE requirements for the preceding twelve (12) months. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. ()

b. A licensee is considered to have satisfied the CE requirements for the first renewal of the initial license. ()

c. After July 1, 2012, and prior to reinstatement of a license lapsed, canceled, or otherwise non-renewed for less than five (5) years, the applicant must provide proof of attendance of eight (8) hours of continuing education for the previous twelve (12) months. A license that has lapsed, been canceled, or otherwise not renewed for more than five (5) years may be reinstated in accordance with Section 67-2614, Idaho Code. ()

02. Hours. Credit for continuing education hours will only be given for actual time in attendance or for the time spent participating in the educational activity. One (1) hour of continuing education is equal to sixty (60) minutes. Courses taken by correspondence or on-line may be approved for continuing education if the courses require an exam or other proof of successful completion. Only four (4) hours of the required continuing education may be from correspondence, on-line, or self-study in each renewal period. The remaining hours must be in an interactive setting that allows participants to communicate directly with the instructor. Each licensee must maintain proof of attendance or successful completion documentation of all continuing education courses for a period of three (3) years. ()

03. Providers/Sponsors/Subjects of Continuing Education. The continuing education must be provided by a nationally or regionally accredited college or university, a national or state driver education and traffic safety association such as the Idaho Association of Professional Driving Businesses, Driving School Association of the Americas, the American Driver Traffic Safety Education Association, and the American Automobile Association, transportation and law enforcement agencies, or other person or entity approved by the Board and must be germane to driver education. ()

04. Verification of Attendance. Each licensee must maintain verification of attendance by securing authorized signatures or other documentation from the course instructors or sponsoring institution substantiating any and all hours attended by the licensee. ()

05. Failure to Fulfill the Continuing Education Requirements. The license will not be renewed for a licensee who fails to certify compliance with CE requirements. A licensee who makes a false attestation regarding compliance with the CE requirements is subject to disciplinary action by the Board. ()

06. Special Exemption. The Board has authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or other good cause. Each licensee must provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. ()

202 -- 224. (RESERVED).

225. DRIVING BUSINESS LICENSE (RULE 225).

A driving business license enables a licensee to operate a driver education business at one (1), principal classroom location as designated in the application. The licensee may also utilize secondary locations for classroom instruction, so long as the business does not conduct driver education at any given secondary location for more than sixty (60) days in a one-year period. A driving business license is not transferable. The business licensee must conspicuously display the license at the business's principal classroom location. Each applicant must apply as required by Rule 150. ()

01. Applicant Identity. The applicant must provide such identifying information as may be requested by the Board including, without limitation, the following: ()

a. The applicant's legal name (i.e., the name of the natural person or business entity to be issued the license) and assumed business name(s), if any. ()

b. The applicant's social security number, if the applicant has no employees and is a natural person (including a sole proprietor acting under an assumed business name). If the applicant has employees or is not a natural person (e.g., is a general or limited partnership, corporation, limited liability partnership, or limited liability company), then the applicant must provide its employer identification number. ()

c. The names and addresses of the applicant's officers and shareholders having a twenty-five percent (25%) or greater ownership interest (if a corporation), members and managers (if a limited liability company), and partners (if a partnership). ()

d. The applicant's contact information, including its mailing address, physical address, and telephone number. ()

02. Criminal History Background Check. The applicant, if a natural person, and all persons listed under Paragraph 225.01.c. and Subsection 225.05 of these rules, must submit to a current, fingerprint-based criminal history check conducted by an organization approved by the Board. Each applicant must ensure that such persons submit a full set of their fingerprints, and any relevant fees, directly to the organization that conducts the criminal history check, and that the organization delivers the results directly to the Bureau. The Board will not process the application until the Bureau has received all the criminal history checks. ()

03. Classroom Locations and Certificates of Occupancy. Each applicant must list all principal and secondary classroom locations to be utilized by the business. The applicant must provide a certificate of occupancy issued to the building/room by the local fire marshal or the fire marshal's designated agent, for each classroom location other than a location in a public or private school building, government building, church, or synagogue. ()

04. Certificate of Vehicle Insurance. The certificate of vehicle insurance for each vehicle utilized by the driving business for driver education must accompany the application. The minimum coverage will include: ()

a. Medical Payment for each person - five thousand dollars (\$5,000); and either ()

b. Limit of liability (Combined single limit) - five hundred thousand (\$500,000) to apply to bodily injury and/or property damage; or ()

c. Limit of liability (Split limit). Bodily injury - two hundred-fifty thousand (\$250,000) per person/ five hundred thousand (\$500,000) each accident; Property damage - two hundred-fifty thousand (\$250,000) each accident. ()

05. List of Licensed Instructors. Before beginning to offer driver education, and at all times while offering driver education, a driving business must employ or have contracted with one (1) or more licensed driving instructors to teach the classroom instruction phase and behind-the-wheel training phase of the driver education to be provided by the business. The driving business must submit to the Bureau a current list of such licensed instructors with the application, and keep such list current after licensure. ()

06. Vehicles. An applicant for a driving business license must submit to the Bureau a list of the vehicles that the business will utilize when offering driver education. A business licensee may not utilize vehicles that do not appear on the list. Each vehicle must have dual control brake pedals, safety restraints for all passengers, a side view mirror on each side of the vehicle, and an additional rear view mirror or compatible viewing device for the exclusive use of the instructor. A driving business must ensure that students are not allowed in a listed vehicle unless the vehicle is in a safe and proper operating condition. ()

a. Initial Inspection. An applicant may not include a vehicle on a business's vehicle list unless the vehicle has passed a vehicle inspection performed by an ASE mechanic or vehicle technician within the two (2) month period preceding the application. The inspection must be documented on the Board-approved inspection form

included at Appendix A to these rules, or on such other similar forms as may be approved by the Board. The person who inspected the vehicle must sign the form, certifying that the vehicle generally is in a safe and proper operating condition, and that each inspected item passed inspection or, if found to be in need of repair, was repaired on a given date. The application must be accompanied by a separate, signed form for each listed vehicle. ()

b. Annual Inspection. A business licensee must ensure that each vehicle passes an inspection every twelve (12) months, and that the inspection is performed by an ASE mechanic or vehicle technician documented on the Board-approved form referenced in Paragraph 225.06.a. of these rules. If a vehicle fails an annual inspection, the business licensee must withdraw the vehicle from service. The business licensee may not use the vehicle for behind-the-wheel training until the vehicle passes a subsequent inspection and the business licensee has submitted to the Bureau the inspection form evidencing that the vehicle has passed. ()

c. Incident Inspection. If a vehicle incident occurs that requires an investigation and report by law enforcement, or in which the damage exceeds one thousand five hundred dollars (\$1,500), the business licensee must withdraw the vehicle from service. The business licensee may not use the vehicle for behind-the-wheel training until the vehicle passes inspection by an ASE mechanic or vehicle technician and the business licensee has submitted to the Bureau the inspection form evidencing that the vehicle has passed. ()

d. Signage. The business licensee must ensure that the outside of each vehicle is equipped with safely secured signs. Signs must include "Student Driver," "Driver Education," "Driver Training," "Driving School," or similar language that clearly designates the vehicle as a driver training vehicle. ()

07. Course of Instruction. Each applicant, for an original business license, must provide with its application the course of instruction the applicant will use when instructing students. The applicant must demonstrate, to the Board's satisfaction, that the course of instruction is designed to produce safe and effective drivers and is educationally sound. The course of instruction must be based on the minimum curriculum components outlined in Rule 226, and shall consist of: ()

a. Not less than thirty (30) hours of classroom instruction; and ()

b. Not less than six (6) hours of behind-the-wheel practice driving; and ()

c. Not less than six (6) hours of student, in-vehicle observation of other persons (e.g., parents, other student drivers, etc.) driving the vehicle. ()

08. On-line Instruction. In addition to, or in lieu of offering classroom instruction at a physical classroom location, a business licensee may offer classroom instruction to students via the internet if the instruction content meets the requirements of these rules and is approved by the Board. ()

09. Instructor Apprenticeship Training Program. A driving business may offer a Board-approved instructor apprenticeship training program under the conditions specified in Rule 275. ()

226. DRIVING BUSINESS -- MINIMUM CURRICULUM COMPONENTS (RULE 226).

In order to assure consistency among driving businesses, it is necessary that every business licensee ensure that its driver education curriculum include the following minimum curriculum components: ()

01. Component One for Classroom. ()

a. Conducting a parent/student orientation and course overview. ()

02. Component Two for Classroom. ()

a. Identifying vehicle gauges, alert, and warning symbols. ()

b. Preparing to drive. ()

c. Protecting occupants. ()

- 03. Component Three for Classroom.** ()
 - a. Identifying road signs and signals. ()
 - b. Identifying lane markings. ()
- 04. Component Four for Classroom.** ()
 - a. Understanding basic traffic laws, including right-of-way rules. ()
- 05. Component Five for Classroom.** ()
 - a. Using good habits for reduced risk driving. ()
 - b. Using time and space management systems and strategies. ()
- 06. Component Six for Classroom.** ()
 - a. Explaining the effect of gravity and energy of motion on a vehicle. ()
 - b. Understanding procedures to maintain vehicle balance and traction. ()
 - c. Identify strategies to negotiate hills and curves. ()
- 07. Component Seven for Classroom.** ()
 - a. Identifying strategies to use when driving in rural and urban environments. ()
 - b. Identifying strategies to use when driving on freeways. ()
- 08. Component Eight for Classroom.** ()
 - a. Identifying strategies to use when driving in bad weather. ()
 - b. Identifying strategies to use when encountering roadside emergencies. ()
- 09. Component Nine for Classroom.** ()
 - a. Understanding ways to cooperate with other roadway users, including bicyclists. ()
 - b. Identifying responsibilities after a collision. ()
 - c. Identifying the procedure for obtaining a driver's license. ()
 - d. Identifying and avoiding common driver distractions. ()
 - e. Identifying ways to prevent drowsiness while driving. ()
 - f. Resisting aggressive driving behaviors. ()
- 10. Component Ten for Classroom.** ()
 - a. Explaining the effects of alcohol on the body. ()
 - b. Explaining the effects of alcohol on the driving task. ()

- c. Correlating drinking and driving with vehicle crashes. ()
- d. Identifying Idaho laws related to drinking and driving. ()
- e. Explaining the dangers of alcohol and other drug use. ()
- 11. Component Eleven for In-Car. ()**
 - a. Performing pre-drive procedure. ()
 - b. Identifying vehicle controls. ()
 - c. Starting the vehicle. ()
 - d. Backing the vehicle. ()
 - e. Demonstrating approved steering technique. ()
 - f. Smoothly stopping the vehicle. ()
 - g. Demonstrating proper signaling and turning technique. ()
 - h. Recognizing relevant signs and markings. ()
 - i. Distinguishing between four-way and two-way stops. ()
- 12. Component Twelve for In-Car. ()**
 - a. Negotiating controlled and uncontrolled intersections. ()
 - b. Negotiating hills and curves. ()
 - c. Angle parking in a parking lot. ()
 - d. Driving in rural environment. ()
 - e. Making lane changes. ()
- 13. Component Thirteen for In-Car. ()**
 - a. Driving in an urban environment (with one-way and two-way streets, if available). ()
 - b. Dealing with signal lights, pedestrians, and city traffic. ()
 - c. Performing a perpendicular park. ()
 - d. Merging onto the freeway. ()
 - e. Driving on the freeway. ()
 - f. Exiting the freeway and merging with traffic on surface streets. ()
- 14. Component Fourteen for In-Car. ()**
 - a. Performing a parallel park/street park. ()
 - b. Performing turnabouts. ()

- c. Passing another vehicle. ()
- d. Driving independently with the instructor. ()

227. DRIVING BUSINESS - COURSE OF INSTRUCTION (RULE 227).

01. Student Permit Required. No enrollee of any class D driver's training course will be allowed to attend classes or participate in driving instruction unless he has obtained a class D driver's training instruction permit, or a class D instruction permit, as provided in Section 49-307(4), Idaho Code. ()

02. In-Car Documentation. A business licensee must ensure that each listed vehicle contains documentation that identifies each student and the student's permit number. Permits will be given to the students following the completion of the course and used during the required graduate licensing process. ()

03. Maximum Daily Driving and Observation Time. Neither a business licensee nor an instructor licensee may permit an enrolled student to receive more than two (2) hours of behind-the-wheel driving time per day. Maximum observation time is two (2) hours per student, per day, and may be completed with a parent or legal guardian. ()

04. Maximum Number of Students In Vehicle. Neither a business licensee nor an instructor licensee may permit more than three (3) students in a vehicle at one (1) time. ()

05. Grading Criteria. A business licensee may not permit a student to graduate from the business's driver education program unless the student has achieved an eighty percent (80%) or higher in each of the three (3) course areas described in Subsection 225.07. The business licensee must utilize written grading criteria for each of the minimum components in Rule 226. Criteria may include student attitude and such other criteria as the driving business may deem appropriate. The business licensee must maintain records of the student's grades. ()

06. Driving Log. Each driving instructor must complete a log for each student's behind-the-wheel driving and each driving business licensee must ensure that its driving instructors complete the log. The log must include, for each student, at least the student's name, birthdate, phone number, driving permit number, class date, instructor's name, lesson objective, total instruction time, total observation time, final grade, and date the student passed. ()

07. Parental Involvement. Each business licensee should encourage parental involvement in the education of the student. ()

08. Record Retention. The business licensee must maintain all logs and other records required under Rule 227 for at least three (3) years from date on which the student completes, or is no longer enrolled in, the business's driver education course. The business licensee may not release these records without written consent from the student and the student's parent or legal guardian. The Board and its agents, however, may inspect these records at any time. ()

228. DRIVING BUSINESS - INITIAL AUDIT (RULE 228).

After July 1, 2009, all new driving business licensees issued licenses will automatically be audited for compliance with the Board's laws and rules following their first renewal. ()

229. -- 249. (RESERVED).

250. DRIVING INSTRUCTOR LICENSE (RULE 250).

01. Application. Each applicant for a driving instructor license must apply as required by Rule 150. Each applicant is required to provide his name, date of birth, and contact information, including mailing address and telephone number, on the Board-approved application form. ()

02. Age. An applicant for a driving instructor license must be at least twenty-one (21) years old. ()

03. Driving Record and Drivers License. Each applicant must submit a copy of a valid driver's license in good standing and a copy of a satisfactory driving record. An unsatisfactory record includes, but is not limited to, two (2) moving violations in the past twelve (12) months, or suspension or revocation of a driver's license in the last thirty-six (36) months, or a conviction involving alcohol or controlled substances within the last thirty-six (36) months. ()

04. Criminal History Background Check. Each applicant must submit to a current, fingerprint-based criminal history check conducted by an organization approved by the Board. Each applicant must submit a full set of the applicant's fingerprints, and any relevant fees, directly to the organization that conducts the criminal history check, and ensure that the organization delivers the results directly to the Bureau. The Board will not process the application until the completed criminal history check has been received. ()

05. Medical Certificate. A driving instructor licensee may not provide in-vehicle instruction to students if the instructor suffers from a medical condition that may impair the instructor's ability to safely instruct student drivers. Accordingly, each applicant for an instructor's license must obtain a medical examination conducted in accordance with the Federal Motor Carriers Safety Regulations (49 CFR 391.41-391.49). The examination must occur within the thirty (30) days preceding the application. The applicant must submit a medical affidavit or certificate, issued and signed by a licensed, qualified medical professional documenting that the examination occurred and that the applicant does not suffer from any physical or mental condition or disease that would impair the applicant's ability to safely instruct student drivers. If a medical condition exists, the applicant must re-certify as the medical professional requires and submit that information to the Board. ()

06. Education. Each applicant must submit written evidence, satisfactory to the Board, of having graduated from a high school or a regionally or nationally accredited college or university, or of having obtained a GED. ()

07. Instructor Apprenticeship Training Program. Applicants for licensure must demonstrate to the Board's satisfaction that they have successfully completed all required classroom instruction and behind-the-wheel training hours from a Board-approved instructor apprenticeship training program. The applicant must have undertaken and completed the apprenticeship training program within the five (5) year period immediately preceding the application. ()

a. Proof of successful completion must include written certificate from a Board-approved apprenticeship training program certifying that the applicant has satisfactorily completed the program. An applicant need not have completed all required classroom instruction and behind-the-wheel training hours through a single program so long as the last program attended by the applicant ensures itself, and its business licensee certifies to the Board that the applicant has satisfactorily completed all required hours through Board-approved apprenticeship training programs. ()

b. A person may not enroll in an apprenticeship training program unless the person has applied for, paid for, and obtained an apprenticeship permit from the Board. The applicant must apply on Board-approved forms, which must identify the applicant and the business licensee in whose approved apprenticeship training program the applicant will be enrolled. An apprenticeship permit automatically expires one (1) year after issuance. The Board also may suspend or revoke an apprenticeship permit, and refuse to issue another permit, if the permittee engages in any act or omission that would subject the permittee to discipline if the permittee had an instructor's license. No one may be a permittee for more than three (3) years. ()

251. -- 274. (RESERVED).

275. INSTRUCTOR APPRENTICESHIP TRAINING PROGRAM (RULE 275).

01. Application for Approval. A business licensee may operate a Board-approved instructor apprenticeship training program. The business licensee must apply for program approval on forms provided by the Board, and submit with the application such documentation as the Board may require to enable the Board to assess whether the proposed program meets the Board's approval criteria, as specified in Subsections 275.03 through 275.08 of these rules. ()

02. Suspension or Revocation of Approval and Discipline. If an approved program fails to consistently adhere to the approval criteria in Subsections 275.03 through 275.08 of these rules, the Board may suspend or revoke the approval. Further, if a business licensee that operates an approved program fails to cooperate with the Board in any inspection or audit of the program, the licensee may be disciplined. ()

03. Apprentices. The business licensee must ensure that all persons who enroll in the licensee's program possess a valid instructor apprenticeship training permit from the Board, are at least twenty-one (21) years old, hold a valid driver license and a satisfactory drivers record, have passed a criminal history background check, and have obtained a medical certificate consistent with the requirements of Subsections 250.02 through 250.05. ()

04. Instruction and Training Hours. The Board must be satisfied that the program has designed its proposed instruction and training to produce safe and effective driving instructors. The business licensee must ensure that the program includes at least the following instruction and training components: ()

a. Each apprentice must receive at least sixty (60) hours of classroom instruction covering the curriculum components for student classroom instruction specified in Subsections 226.01 through 226.10 of these rules. These hours must include both a didactic component, in which a program instructor provides in-class instruction to the apprentice, and a practical component in which the apprentice provides in-class instruction to students. A program instructor must be physically present in the classroom to supervise at least thirty (30) hours of the apprentice's in-class instruction to students. ()

b. Each apprentice must receive at least one hundred eight (108) hours of behind-the-wheel-training covering the curriculum components for student in-car instruction specified in Subsections 226.11 through 226.14 of these rules. When an apprentice begins to provide behind-the-wheel driving instruction to students, a program instructor must supervise the apprentice by riding in the vehicle with the apprentice and students for the first six (6) hours. A program instructor also must ride in the vehicle with the apprentice and students to evaluate the apprentice during the final two (2) hours of the apprentice's behind-the-wheel training. ()

05. Instructors. The business licensee must ensure that only licensed driving instructors with five (5) or more years of continuous driver education experience are allowed to teach in the program. A list of the instructors must accompany the application for approval. ()

06. Recordkeeping. The business licensee must ensure that the program maintains progress records for each apprentice. A program instructor and the apprentice must sign and date the records each month, and copies of the records must be provided to the apprentice. The records must, at a minimum, identify each lesson completed, the number of hours of instruction involved in the lesson, the date the apprentice completed the lesson, the instructor who taught the lesson, and whether the apprentice passed. When an apprentice's course of instruction has been completed or terminated, the program business licensee must maintain the records of the apprentice's progress, and the total hours recorded and maintained by the program for a period of five (5) years from completion or termination date. These records are subject to inspection by the Board at any time. ()

07. Certificate of Proficiency. The program must provide each apprentice with a certificate of proficiency evidencing all hours satisfactorily completed by the apprentice while in the program, and that the apprentice is proficient in all areas covered by the certificate. ()

08. Discontinuance of Program. If the business licensee ceases to operate the program, the business licensee must provide the program's current and prior apprentices with any progress or other records that the program is required to maintain under this Section. ()

276. -- 449. (RESERVED).

450. DISCIPLINE (RULE 450).

01. Grounds for Discipline. In addition to the grounds for discipline listed in Section 54-5408, Idaho Code, grounds for discipline also include: ()

a. Failure to cooperate with an inspection or audit conducted by the Board or its agents including, without limitation, any continuing education audit, as specified in Section 54-5403(6), Idaho Code. Failure to cooperate includes, without limitation, failure to provide documentation requested by the Board or its agents during an inspection or audit of the licensee's compliance with Board laws or rules. ()

b. Violating any of the following standards of conduct that have been adopted by the Board: ()

i. A licensee must not use fraud or deception in procuring or renewing, or in attempting to procure or renew, a license, permit, or other authorization issued by the Board. ()

ii. A licensee must not aid, abet, or assist any person or entity in conduct for which a license or permit is required under Idaho Driving Businesses Act, unless the person or entity has the required license or permit. ()

iii. A licensee must comply with final orders of the Board issued in contested cases to which the licensee is a party. ()

02. Disciplinary Sanctions. If the Board determines that grounds for discipline exist, it may impose disciplinary sanctions against the licensee including, without limitation, any or all of the following: ()

a. Revoke or suspend the licensee's license(s); ()

b. Restrict or limit the licensee's practice; ()

c. Require the licensee to pay an administrative fine not to exceed one thousand dollars (\$1000) for each violation identified in the Board's order. ()

d. Require the licensee to pay all or part of the costs and fees incurred by the Board in the investigation and prosecution of the licensee, including without limitation, all costs and fees incurred by the Board in proceedings upon which the order was entered. ()

451. -- 999. (RESERVED).

APPENDIX "A"

**IDAHO DRIVING BUSINESSES LICENSURE BOARD VEHICLE
 INSPECTION REPORT**

	DATE
BUSINESS OWNER/OPERATOR AND BUSINESS NAME	INSPECTORS NAME (PRINT OR TYPE)
ADDRESS	
CITY, STATE, ZIP CODE	VEHICLE IDENTIFICATION (LIC. PLATE NO. & VIN)
VEHICLE TYPE (YEAR, MAKE and MODEL)	ODOMETER READING

VEHICLE COMPONENTS INSPECTED

OK	Needs Repair	Repaired Date	Item	OK	Needs Repair	Repaired Date	Item	OK	Needs Repair	Repaired Date	Comments
			1. BRAKES SYSTEM				7. LIGHTING DEVICES				List any other condition which may prevent safe operation of this vehicle and whether or not the repair has been made.
			a. service brakes				a. headlights high and low beam				
			b. parking brake system				b. brake lights				
			c. brake drums/rotors/pads				c. taillights				
			d. brake hoses				d. turn signals				
			e. brake tubing				e. parking lights				
			f. low pressure warning device				f. other				
			g. hydraulic brakes				8. SUSPENSION				
			h. vacuum system				a. Any damaged or loose U-bolt(s), spring hangers or other part(s) that may cause axle to shift				
			i. dual control brake with stopping distance 20mph				b. spring assembly				
			2. EXHAUST SYSTEM				c. torque, radius or tracking components				
			a. any exhaust system determined to be leaking				d. wheel alignment				
			b. emission control				9. ELECTRICAL SYSTEM				
			3. FUEL SYSTEM				a. horn				
			a. visible leak				b. switches				
			b. fuel tank cap missing				c. wiring				
			4. STEERING MECHANISM				d. starting system				
			a. steering wheel free play				10. VISIBILITY				
			b. steering column				a. dual side view mirrors				
			c. front axle beam and all steering components other than steering column				b. rearview mirror				
			d. steering gear box				c. inside instructor mirror				
			e. pitman arm				d. windshield wipers				
			f. power steering				c. defroster				
			g. ball and socket joints				11. INTERIOR				
			h. tie rods and drag links				a. seatbelts for all occupants				
			i. nuts				b. airbag readiness light				
			j. steering system								
			5. TIRES								
			tire condition and wear								
			6. WINDSHIELD GLAZE								
			cracks, discoloration or lack of clarity								

Mechanic Verification

I verify I have inspected this vehicle and completed this form. I certify that the vehicle appears to be in a safe and proper operating condition, and that each inspected item passed inspection, or if found to be in need of repair, was repaired on the date indicated.

Print Name

ASE ID #

Signature

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

**26.01.34 - RULES GOVERNING THE IDAHO PROTECTION AGAINST
INVASIVE SPECIES STICKER RULES**

DOCKET NO. 26-0134-1001

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 Sections 67-7002, and 67-7008A Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20th 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:

To provide for an affidavit type process verifying the purchase of Idaho Invasive Species Stickers for enforcement of the program in lieu of the requirement to physically apply the Idaho Invasive Species Sticker to a licensed outfitted or guided non-motorized watercraft.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking affects only licensed outfitters and guides and is being promulgated on the basis of prior negotiations with the Department.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact David M. Ricks, 208-514-2450.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27th, 2010.

DATED this 31st day of August, 2010.

David M. Ricks, Deputy Director
Idaho Department of Parks and Recreation
5657 Warm Springs Avenue
Boise, ID 83716-8700
PO Box 87320, Boise ID 83720-0065
Telephone: 208.514.2450
FAX 208.334-3741

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 26-0134-1001

050. COLLECTION OF FEES AND DISTRIBUTION OF REVENUES INTO FUND.

In addition to any other moneys or fees collected pursuant to Section 67-7008 or any other provision of Title 67, Chapter 70, Idaho Code, all vessels are required to pay an additional fee as established in Section 67-7008A, Idaho Code. (3-29-10)

01. Operator Responsibilities. The operator of any watercraft required to display a Protection Against Invasive Species Sticker pursuant to this chapter will ensure that fees are paid and that a Protection Against Invasive Species Sticker is displayed on the vessel, except as provided in Subsection 075.01 of this chapter, prior to launch into the public waters of Idaho. (3-29-10)

02. Prorated Group Rates for Commercial Outfitters. ()

a. Group rates for commercial outfitters with nonmotorized fleets exceeding five (5) vessels will be determined using the number of vessels ~~being stickered~~ within the fleet at the time of purchase of the stickers, as provided in Section 67-7008A(1)(c). Previous or future sticker purchases will be prorated separately. ~~(3-29-10)~~()

b. Protection Against Invasive Species Stickers purchased by outfitters or guides who are duly licensed in accordance with Title 36, Chapter 21, Idaho Code, shall be accompanied by an affidavit which shall be signed by the outfitter or guide. The signed affidavit shall verify the number of vessels within the covered fleet and that the appropriate number of Protection Against Invasive Species Stickers has been purchased. The Protection Against Invasive Species Stickers and affidavit shall be kept on file at the outfitter or guide's physical address and shall be made available for inspection upon request of the Department or upon request by law enforcement. Non-motorized commercial outfitters and guides are not required to place a Protection Against Invasive Species Sticker on their vessels. Identification of commercial outfitted and guided boats shall be in compliance with IDAPA 25.01.01, "Rules of the Outfitters and Guides Licensing Board," Subsection 054.03.a. ()

03. Transfer of Funds. Fees collected will be transferred and deposited into the Fund no less than quarterly during any fiscal year. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

076. PLACEMENT OF PROTECTION AGAINST INVASIVE SPECIES STICKER.

01. Location. (3-29-10)

a. Motorized vessel. Except as provided in Subsection 075.01 of this chapter, the Protection Against Invasive Species Sticker should be affixed next to the current year Registration Validation Sticker on the port (left) side of the vessel. (3-29-10)

b. Non-motorized. Except as provided in Subsection 050.02.a. of this chapter, the Protection Against Invasive Species Sticker should be affixed in the following manner. ~~(3-29-10)~~()

i. For canoes, kayaks, and other small rigid vessels, the Protection Against Invasive Species Sticker should be affixed near the bow above the waterline on the port (left) side, or on top of the vessel if there is little or no waterline distinction. (3-29-10)

ii. For inflatable (non-rigid) vessels, the Protection Against Invasive Species Sticker can be modified to allow attachment of a zip tie, plastic attachment, or other similar mechanism, or be laminated into a hang tag. (3-29-10)

02. Removal. Protection Against Invasive Species Stickers issued in accordance with Section 67-7008A, Idaho Code, which have become invalid, shall be removed from the vessel. (3-29-10)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1001

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 37-2715, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The proposed rule changes are necessary to allow the electronic prescribing of controlled substances, in conjunction with June 1, 2010 Drug Enforcement Administration (DEA) changes allowing the electronic prescribing of controlled substances. The proposed rules eliminate requirements for handwritten signatures; prescriptions written in ink, indelible pencil, or typewriter; documentation allowed only on paper, hard copy prescriptions; the need for a prescription hard copy; and certain prescriptions that must be promptly reduced to writing. Electronic prescribing and electronic prescription drug order records for controlled substances will be allowed in accordance with federal law, as per this proposed rule. The term "emergency" has also been defined, as required by Section 37-2722(b), Idaho Code. Additional updates include prescription drug order and prescription labeling minimum requirements, as well as listing additional circumstances when a controlled substance inventory is to be taken.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because these changes were necessitated to be in harmony with 2010 federal DEA rule changes.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Mark Johnston, R.Ph., Executive Director
Board of Pharmacy
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P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 27-0101-1001

159. PRESCRIPTION **DRUG ORDER MINIMUM** REQUIREMENTS.

01. Prescription **Drug Order** Requirements. ~~All prescriptions shall at a minimum indicate A prescription drug order must comply with applicable requirements of federal law and must include at least the following:~~ ()

- a. ~~The name and, if for a controlled substance, the full name and address~~ of the patient; ()
- b. ~~The date written~~ issued; ()
- c. ~~The name, strength, quantity, and if for a controlled substance, the dosage form of the medication~~ prescribed; ()
- d. ~~The directions for use;~~ ()
- e. ~~The name and, strength, and amount of the medication if for a controlled substance, the address and DEA registration number of the prescriber; and~~ ()
- f. ~~the name of the prescriber; and, if written paper, the pre-printed, stamped, or hand-printed name of the prescriber and, if paper or electronic, the handwritten prescriber's written or electronic signature of the prescriber. No prescription is refillable unless specifically indicated by the prescriber. Further requirements for controlled substance prescriptions are contained in Subsection 433.10. of these rules.~~ (7-1-98)()

02. Prescription Labels. ~~Unless otherwise directed by these rules, Any prescription drug must be dispensed shall in a container that~~ bears a label ~~containing with~~ the following information: ()

- a. ~~The name, address, and telephone number of the dispenser (person or business);~~ ()
- b. ~~The serial number;~~ ()
- c. ~~and The date of the prescription or its filling, is filled;~~ ()
- d. ~~The name of the prescriber;~~ ()
- e. ~~and The name of the patient;~~ ()
- f. ~~Unless otherwise directed on the order by the prescriber, the name and strength of the drug (the generic name and its manufacturer's name or the brand name);~~ ()
- g. ~~Excepting compounding preparations, the physical product description, such as color, shape, and imprint;~~ ()
- h. ~~The quantity of item dispensed;~~ ()
- i. ~~The directions for use, name (generic or brand) of the medication (including the manufacturer's name if a generic), and;~~ ()
- j. ~~Any cautionary statements information as may be required to protect the consumer including, when advisable or desirable for proper use and patient safety;~~ ()
- k. ~~An expiration date which is the lesser of;~~ ()

- i. One (1) year from the date of dispensing; ()
- ii. ~~†~~The manufacturer's original expiration date, ~~the quantity of item dispensed and;~~ ()
- iii. The appropriate expiration date for a reconstituted suspension or beyond use date for a compounded product; or ()
- iv. A shorter period when warranted, pursuant to the pharmacist's professional judgment, to protect the health or safety of the individual; ()
- l. The number of refills authorized; and ()
- m. ~~†~~The initials of the ~~person~~ dispensing ~~the prescription and the statement: "Warning: Federal or state law prohibits the transfer of this prescription to any person other than the person for whom it was prescribed." When appropriate, the prescriber may request "Do Not Label", in such cases the medication name will not appear~~ pharmacist. (7-1-98)()

160. PRESCRIPTION DRUG ORDER TRANSFER.

01. Communicating Prescription Drug Order Transfers. Except for prescription drug orders for Schedule II controlled substances, ~~A~~ pharmacist may transfer prescription drug order information for the purpose of filling or refilling a prescription ~~only~~ if the information is communicated ~~orally~~ verbally directly from pharmacist to pharmacist. ()

a. ~~Such oral~~ Prescription drug order information ~~can~~ may also be communicated verbally by a student pharmacist, under the direct supervision of a pharmacist, to another pharmacist as long as one (1) of the parties involved in the communication is a pharmacist. ()

b. ~~In the alternative, the~~ When transferring ~~pharmacist may transfer the prescription order information~~ by facsimile transmission, ~~to the receiving pharmacist. In the case of a facsimile transmission, the transmission shall~~ the transfer document must be signed by the transferring pharmacist. (3-29-10)()

02. Documentation Required of the Transferring of a Prescription Pharmacy. The pharmacist ~~who transfers the~~ transferring prescription ~~shall:~~ drug order information must void or otherwise (5-8-09)

a. ~~Invalidate the original prescription by writing the word "void" across the face of the form;~~ drug order and (7-1-93)

b. ~~On the back of the form,~~ record the following information: ()

a. ~~his~~ The name of the transferring pharmacist; ()

b. The name of the receiving individual pharmacist; ()

c. The name of the receiving pharmacy; ()

d. The date of the transfer; ()

e. ~~and~~ †The number of authorized refills available; and (7-1-93)()

f. For a prescription drug order written for a controlled substance, the address and DEA registration number of the receiving pharmacy. ()

03. Documentation Required of the Receipt of a Transferred Prescription Receiving Pharmacy. The pharmacist ~~who receives~~ ing a the transferred prescription drug order shall: must (5-8-09)

a. ~~Reduce the transferred information to writing including all information required by law or rule and~~

~~a notation~~ document that the prescription drug order is a “transfer”; and (7-1-93)

~~b.~~ On the form, record the following information: ()

~~a.~~ his The name of the receiving pharmacist; ()

~~b.~~ The name of the transferring individual pharmacist; ()

~~c.~~ The name of the transferring pharmacy; ()

~~d.~~ The date of issuance of the original dispensing and transfer, prescription drug order; ()

~~e.~~ The number of refills authorized by the original prescription drug order; ()

~~f.~~ The number of valid authorized refills remaining, available; and ()

~~g.~~ If transferring a prescription drug order written for a controlled substance; ()

~~i.~~ The date and locations of the last all previous refills; and ()

~~ii.~~ The serial address, DEA registration number, and assigned prescription number of the transferring pharmacy that originally filled the prescription, transferred when different. (3-29-10)()

~~04. Documenting Prescription Transfers by Computer. Transferring pharmacies that utilize a computer prescription database that contains all of the prescription information required by law or rule may enter the information required under Section 160 of these rules into the pharmacy's prescription database (including deactivation of the transferred prescription in the database of the transferring pharmacy) in lieu of entry of the required information on the original written prescription. (3-29-10)~~

~~05. Documenting Receipt of Prescription Transfers by Computer. A receiving pharmacy that utilizes a computer prescription database that contains all of the prescription information required by law or rule must generate a hard copy to be treated as a new prescription; however, the receiving pharmacy may enter the information required under Section 160 of these rules into the pharmacy's prescription database in lieu of writing the information on the hard copy of the new prescription. (3-29-10)~~

~~074. Transferring Prescription Between Pharmacies Using Common Electronic Prescription Files. (7-1-98)()~~

~~a. Two (2) or more pharmacies may establish and use a common electronic prescription file to maintain required dispensing information. Pharmacies using the a common electronic file are not required to transfer prescriptions or drug order information for dispensing purposes between or among other pharmacies using in sharing the same common electronic prescription file. (3-29-10)()~~

~~b. All eCommon electronic prescription files must contain complete and accurate records of each prescription and refill dispensed. Hard copies must be generated and treated as new prescriptions by the receiving pharmacies. (7-1-98)()~~

~~015. Transferring Prescriptions Drug Orders for Controlled Substances. A prescription drug order for a controlled substance listed in Schedules III, IV, or V may be transferred only from the pharmacy where it was originally filled and never from the pharmacy that received the transfer, except that pharmacies electronically sharing a real-time, online database may transfer up to the maximum refills permitted by law and the prescriber's authorization. (7-1-93)()~~

~~a. In addition to the information required in Subsection 160.02 the pharmacist transferring the prescription shall record on the back of the original order the DEA number and address of the pharmacy to which the transfer was made. (7-1-93)~~

~~b. The receiving pharmacist must record the DEA number and address of the pharmacy transferring the order. (7-1-93)~~

06. **Transferring Prescription Drug Order Refills.** Prescriptions ~~drug orders~~ for non-controlled ~~drugs substances~~ may be transferred more than one (1) time ~~as long as~~ if there are refills remaining and all ~~of the provisions of these rules~~ other legal requirements are followed satisfied. (7-1-93)()

(BREAK IN CONTINUITY OF SECTIONS)

162. **PRESCRIPTION DRUG ORDER EXPIRATION.**

Prescription ~~drug~~ orders ~~that are legally refillable must have the refill instructions indicated on their face. All prescription orders~~ expire ~~no later than~~ fifteen (15) months after ~~the~~ date of issue. ~~For long term medication orders~~ ~~a~~ new prescription ~~drug order~~ must be obtained and a new file number issued ~~at least every fifteen (15) months for maintenance medications.~~ (4-6-05)()

(BREAK IN CONTINUITY OF SECTIONS)

433. **DEFINITIONS -- (H - Z).**

01. **Hospital.** The term “hospital” means an institution for the care and treatment of the sick and injured approved by the Idaho Department of Health and Welfare and entrusted with the custody of controlled substances and the professional use of controlled substances under the direction of a practitioner. (7-1-93)

02. **Individual Practitioner.** The term “individual practitioner” means a physician, dentist, veterinarian, or other individual licensed, registered, or otherwise permitted by the state in which he practices to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner. (7-1-93)

03. **Institutional Practitioner.** The term “institutional practitioner” means a hospital or other person (other than an individual) licensed, registered, or otherwise permitted by the United States or the jurisdiction in which it practices to dispense a controlled substance in the course of professional practice, but does not include a pharmacy. (7-1-93)

04. **Laboratory.** The term “laboratory” means a laboratory approved by the Board and entrusted with the custody and use of controlled substances for scientific and medical purposes and for purposes of instruction and administered by a person licensed by the state of Idaho to possess such substances. (7-1-93)

05. **Name.** The term “name” means the official name, common or usual name, chemical name, or brand name of a substance. (7-1-93)

06. **Official Idaho Register.** The term “Official Idaho Register” is defined as the official register issued by the Board that contains the required information to record the sales or disposition of Schedule V substances. The book shall be in duplicate bearing the notice to the public on the reverse side of the original sheet which is permanently bound in the book, and shall be retained for a period of two (2) years after the last dated entry. (7-1-93)

07. **Owner.** The term “owner” means any person having any right, title, or interest in a referenced vehicle. (7-1-93)

08. **Pharmacist.** The term “pharmacist” means any pharmacist licensed by a state to dispense controlled substances and includes any other person (for example, student pharmacist) authorized by a state to dispense controlled substances under the supervision of a licensed pharmacist. (7-1-93)

09. Pharmacy. The term “pharmacy” means every store or other place of business where prescriptions are compounded, dispensed, or sold by a pharmacist and where prescriptions ~~is~~ **drug orders** for controlled substances are received or processed in accordance with federal law and the pharmacy laws and rules of this state.

(7-1-93)()

~~**10. Prescription.** The term “prescription” means a prescription for a controlled substance in Schedules III, IV, or V that is an oral order given individually for the person for whom prescribed directly from the prescriber or by the prescriber’s employee or agent to the pharmacist, or indirectly by means of an order written in ink, indelible pencil, typewritten, or a computer-generated hard copy signed by the prescriber, and contains the address of the prescriber, the prescriber’s federal registry number, the name and address of the patient, the name and quantity of the drug prescribed, directions for use, and dated as of the date on which it is written. Written prescriptions may be prepared by the secretary or agent for the signature of a practitioner, but the prescribing practitioner is responsible in case the prescription does not conform in all respects to federal and state laws, regulations, and rules. A corresponding liability rests upon the pharmacist who fills a prescription not prepared in the form prescribed by these rules.~~

(4-11-06)

110. Register, Registration. The terms “register” and “registration” refer only to registration required and permitted by Section 37-2717, Idaho Code. (7-1-93)

121. Registrant. The term “registrant” means any person who is registered. (7-1-93)

132. Readily Retrievable. The term “readily retrievable” means that certain records are kept by automatic data processing systems or other electronic or mechanized recordkeeping systems in such a manner that they can be separated out from all other records in a reasonable time or records are kept on which certain items are asterisked, redlined, or in some other manner visually identifiable apart from other items appearing on the records, or both. (7-1-93)

143. Sale. The term “sale” as used herein includes barter, exchange, gift, or offer thereof, and each such transaction made by any person, whether as principal, proprietor, agent, servant, or employee. (7-1-93)

154. Transport. The term “transport” with reference to controlled substances, includes “conceal,” “convey,” and “carry.” (7-1-93)

165. Vehicle. The term “vehicle” means any vehicle or equipment used for the transportation of persons or things. (7-1-93)

176. Physician, Veterinarian, Dentist, Podiatrist, Osteopath, Optometrist, Pharmacist. These titles or any similar designation, refer to persons who hold valid, unrevoked licenses to practice their respective professions in this state, issued by their respective examining boards. (12-7-94)

187. Physician. The term “physician” includes only persons licensed under Title 54, Chapter 18, Idaho Code. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

442. REQUIREMENT OF EMERGENCY PRESCRIPTION DRUG ORDER - SCHEDULE II.

~~An emergency situation, as defined referenced in Section 37-2722(b), Idaho Code, a pharmacist may dispense a is one in which the prescriber determines: immediate administration of the controlled substance listed in is necessary for proper treatment of the intended ultimate user; and that no appropriate alternative treatment is available, including administration of a drug which is not a Schedule II upon receiving oral authorization of a prescribing individual practitioner controlled substance; and that it is not reasonably possible for the prescriber to provide a written prescription drug order to be presented to the person dispensing the substance prior to the dispensing. (7-1-93)()~~

#01. Quantity Limited. The quantity prescribed and dispensed ~~is~~ **must be** limited to the amount

adequate to treat the patient during the emergency period (dispensing beyond the emergency period must be pursuant to a written prescription drug order signed by the prescriber individual practitioner). (7-1-93)(____)

b02. Prescription Drug Order Reduced to Writing. The prescription shall drug order must be immediately reduced to writing by the pharmacist and shall must contain all of the information required in Section 37-2723, Idaho Code, except for the signature of the prescriber individual practitioner. (7-1-93)(____)

~~e. If the prescribing individual practitioner is not known to the pharmacist, he must make a reasonable effort to determine that the oral authorization came from a registered individual practitioner, which may include a callback to the prescribing individual practitioner using his phone number as listed in the telephone directory or other good faith effort to ensure his identity, or both. (7-1-93)~~

d03. Written Prescription Drug Order. Within seven (7) days after authorizing issuing verbal authorization for the dispensing of an emergency oral prescription for a Schedule II controlled substance, the prescriber individual practitioner shall cause must provide a written prescription drug order for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirement of Section 37-2723, Idaho Code, the prescription shall drug order must have written on its face "Authorization for Emergency Dispensing" and the date of the oral verbal prescription drug order was issued. (7-1-99)(____)

e04. Delivery of Paper Prescription Drug Order The written paper prescription drug order may be delivered to the pharmacist in person or by mail; however, if delivered by mail, it must be postmarked within the seven (7)-day period. (7-1-99)(____)

f05. Attachment of Paper Prescription Drug Order. ~~Upon receipt, the dispensing pharmacist shall attach the written~~ A paper prescription drug order must be attached to the oral verbal emergency prescription drug order that had was previously been reduced to writing. For electronic prescriptions, the pharmacist must annotate the record of the electronic prescription with the original authorization and date of the verbal order. (7-1-93)(____)

g06. Notification to the Board. The pharmacist shall must notify the Board if the prescriber individual practitioner fails to deliver provide a written prescription to him drug order within the seven (7)-day period. Failure of the pharmacist to so notify the Board shall void the prescribing individual practitioner's authority, conferred by this Subsection to dispense without a written prescription. (7-1-93)(____)

(BREAK IN CONTINUITY OF SECTIONS)

444. **PARTIAL-FILLING DISPENSING OF SCHEDULE II PRESCRIPTIONS.**

01. Conditions for Partial-Fill Dispensing. ~~The partial filling of a prescription for a controlled substance listed in A Schedule II is permissible if~~ controlled substance prescription may be partially filled and dispensed when the pharmacist is unable to supply the full quantity called for in a written or emergency oral prescription and a notation is made of the quantity supplied on the face of the written prescription (or written record of the emergency oral prescription) ordered. (7-1-93)(____)

01a. Remaining Portion of Prescription. The remaining portion of the prescription may only be filled within the seventy-two (72) hours period of the first partial filling; however, if the remaining portion is not or cannot be filled within seventy-two (72) hours, the pharmacist shall must so notify the prescriber individual practitioner. (7-1-93)(____)

02b. Supplying Further Quantity. ~~No further quantity may~~ Additional quantities must not be supplied dispensed after the seventy-two (72) hours period from the time the initial quantity was dispensed without a new prescription drug order. (7-1-93)(____)

032. Partial-Fill Quantities Dispensing to LTCF and Terminal Illness Patients. A Schedule II controlled substance prescription for a Schedule II controlled substance written for a patient in a Long Term Care

Facility (LTCF) or for a patient with a ~~medical diagnosis~~ documented ~~ing~~ a terminal illness may be filled in partial quantities ~~to include~~ and individual dosage units. ()

a. ~~If there is any question as to whether a patient may be classified as having a terminal illness, the pharmacist must contact the prescriber prior to partially filling the prescription. Both the pharmacist and the prescriber have a corresponding responsibility to ensure that the controlled substance is for a terminally ill patient.~~ ()

b. The pharmacist must record ~~on that~~ the ~~prescription whether the~~ patient is either “terminally ill” or an “LTCF patient.” (7-1-99)()

03. **Partial-Fill Documentation.** For each ~~partial filling, the dispensing pharmacist shall record on the back of the~~ partially filled prescription ~~(or on another appropriate record, uniformly maintained and readily retrievable)~~ dispensed, the following information must be recorded: ()

a. ~~The date of the partial filling;~~ ()

b. The quantity dispensed; ()

c. The remaining quantity authorized ~~to be for~~ dispensed ing; and ()

d. ~~The~~ identification of the dispensing pharmacist. (7-1-99)()

~~b. Schedule II prescriptions for patients in a LTCF or patients with a medical diagnosis documenting a terminal illness shall be valid for a period not to exceed sixty (60) days from the issue date, unless sooner terminated by the discontinuance of medication.~~ (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

446. REQUIREMENT OF PRESCRIPTION—SCHEDULE III OR IV PRESCRIBER ADMINISTRATION AND DELIVERY OF CONTROLLED SUBSTANCES.

An authorized prescriber may administer or deliver a controlled substance listed in Schedules II, III, IV, or V in the course of the prescriber’s professional practice, pursuant to the inventory and recordkeeping requirements of federal law; Section 37-2720, Idaho Code; and these rules. ()

~~01. **Dispensing a Controlled Substance—Pharmacist.** A pharmacist may dispense a controlled substance listed in Schedule III or IV, that is a prescription drug as determined under the federal Food, Drug, and Cosmetic Act, only pursuant to either a written prescription signed by a prescribing individual practitioner or an oral prescription made by a prescribing individual practitioner and promptly reduced to writing by the pharmacist containing all information required in Section 37-2722(e), Idaho Code, except for the signature of the prescribing individual practitioner.~~ (7-1-93)

~~02. **Dispensing a Controlled Substance—Individual Practitioner.** An individual practitioner may administer or dispense a controlled substance listed in Schedule III or IV in the course of his professional practice without a prescription, subject to Section 37-2720, Idaho Code.~~ (7-1-93)

~~03. **Dispensing a Controlled Substance—Institutional Practitioner.** An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in Schedule III or IV pursuant to a written prescription signed by a prescribing individual practitioner, pursuant to an oral prescription made by a prescribing individual practitioner and promptly reduced to writing by the pharmacist (containing all of the information required in Section 37-2723, Idaho Code, except for the signature of the prescribing individual practitioner), or pursuant to an order for medication made by an individual practitioner that is dispensed for immediate administration to the ultimate user subject to Section 37-2720, Idaho Code.~~ (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

450. ~~REQUIREMENT OF PRESCRIPTION SCHEDULE V~~ **RESERVED.**

~~01. Dispensing Schedule V Controlled Substances. A pharmacist may dispense a controlled substance listed in Schedule V pursuant to a prescription as required for controlled substances listed in Schedule III and IV in Section 451 of these rules. (7-1-93)~~

~~02. Refilling Schedule V Controlled Substances Requires Authorization. A prescription for a controlled substance listed in Schedule V may be refilled only as expressly authorized by the prescribing individual practitioner on the prescription. If no such authorization is given, the prescription may not be refilled. (7-1-93)~~

~~03. Labeling Schedule V Controlled Substances for Dispensing. A pharmacist dispensing a Schedule V substance pursuant to a prescription shall label the substance in accordance with Section 448 of these rules and file the prescription in accordance with Section 449 of these rules. (7-1-93)~~

~~04. Dispensing Schedule V Controlled Substances by Individual Practitioner. An individual practitioner may administer or dispense a controlled substance listed in Schedule V in the course of his professional practice without a prescription, subject to Section 37-2720, Idaho Code. (7-1-93)~~

~~05. Dispensing Schedule V Controlled Substances by Institutional Practitioner. An institutional practitioner may administer or dispense directly (but not prescribe) a controlled substance listed in Schedule V only pursuant to a written prescription signed by the prescribing individual practitioner, pursuant to an oral prescription made by a prescribing individual practitioner and promptly reduced to writing by the pharmacist (containing all information required in Section 37-2723, Idaho Code, except for the signature of the prescribing individual practitioner), or pursuant to an order for medication made by an individual practitioner that is dispensed for immediate administration to the ultimate user subject to Section 37-2720, Idaho Code. (7-1-93)~~

(BREAK IN CONTINUITY OF SECTIONS)

496. **CONTROLLED SUBSTANCE INVENTORY**IES**, **PRESCRIPTION DRUG ORDERS**, **AND RECORDS**.**

Each ~~registered pharmacy shall~~ **controlled substance registrant must** maintain the **prescription drug orders, inventories,** and records of controlled substances as follows: (7-1-93)()

01. **Inventories and Records for Schedules I and II. Prescription drug orders, inventories,** and records of ~~all~~ **controlled substances listed in Schedules I and II shall must** be maintained separately from ~~all~~ other **prescription drug orders and** records of the pharmacy, ~~and prescriptions for Schedule I and II substances shall be maintained in a separate prescription file. (7-1-93)()~~

02. **Inventories and Records for Schedules III, IV, and V. Prescription drug orders, inventories,** and records of controlled substances listed in Schedules III, IV, and V ~~shall must~~ be maintained ~~either~~ separately from ~~all~~ other **prescription drug orders and** records ~~of the pharmacy~~ or in such ~~form manner~~ that the information required is readily retrievable ~~from ordinary business records of the pharmacy. Prescriptions for such substances shall be maintained either in a separate prescription file for controlled substances listed in Schedules III, IV, and V only or in such form that they are readily retrievable from the other prescription records of the pharmacy. (7-1-93)()~~

03. **Readily Retrievable Paper Prescription Drug Orders. Controlled substance P**prescriptions ~~will be deemed drug orders, inventories, and records are considered readily retrievable if, at the time they are initially filed, the face of the prescription is stamped in red ink in the lower right corner with the letter "C" no less than one (1) inch high and filed either in the prescription file for controlled substances listed in Schedules I and II or in the usual consecutively numbered prescription file for non-controlled substances, except that for pharmacies employing~~

stored in an electronic recordkeeping or an alternative system ~~for prescriptions that permits identification by prescription number and retrieval of original documents by prescriber's name, patient's name, drug dispensed, and date filled, the requirement to mark the hard copy prescription with a red "C" is waived in such a manner that they can be separated from all other records in a reasonable time or if they are made in some manner visually identifiable and distinguished from other records or from other items appearing on the records.~~ Electronic prescription drug order records must be maintained in compliance with applicable federal law. (7-1-99)()

04. Annual Inventory of Stocks of Controlled Substances. Each ~~registered pharmacy shall annually, within seven (7) days of the prior year's inventory, take~~ controlled substance registrant must conduct an inventory of all stocks of controlled substances ~~on hand, following at least annually in a form and manner that satisfies~~ the general inventory requirements ~~for inventories of federal law, regulations, and these rules.~~ (5-8-09)()

a. ~~The annual inventory, required in these rules, shall be a written record resulting~~ Inventories of controlled substances required by these rules must result from a physical (or actual) count of stock on hand or in the control of the ~~pharmacist in charge of a particular pharmacy registrant.~~ (7-1-93)()

b. ~~Automated data processing equipment~~ An electronic recordkeeping system may be used to ~~provide lists of items (products) and to~~ record receipts and ~~issues~~ distributions of ~~various items, but not~~ controlled substances ~~and to produce record~~ the annual inventory if the inventory is also maintained in a written, typewritten, or printed form at the registered location. (7-1-93)()

~~e.~~ The record of inventory shall be kept in the inventory book provided by the Board or in another bound book (not loose leaf) suitable to meet the needs of inventory reports. (7-1-93)

d. Upon completion, the inventory ~~will~~ must be dated as of the day ~~taken conducted, indicating noted~~ as to whether it was ~~taken conducted~~ at the opening or closing of business, and signed by the party that ~~took completed~~ the inventory. (7-1-93)()

d. Complete inventories conducted as otherwise required by these rules may also be considered in complying with the annual inventory requirement. ()

05. Separate Inventories for Each Location. A separate inventory ~~shall~~ must be ~~made by a registrant for conducted and maintained at~~ each registered location ~~and shall be kept at the registered location.~~ (7-1-93)()

06. Inventory Must Be In Written Form on Change of Pharmacist-in-Charge (PIC). A ~~complete controlled substance~~ inventory must be ~~maintained in a written, typewritten or printed form. If taken by use of an oral recording device it must be promptly transcribed~~ conducted in the event of a PIC change. The inventory must be conducted following the close of business on the last day of employment of the outgoing PIC and prior to opening for business on the first day of employment of the incoming PIC. However, a single inventory is sufficient if there is no lapse of employment between the outgoing and the incoming PICs. (7-1-93)()

~~07. Maintaining Written Inventory. Such inventory must be maintained on the premises for a minimum of three (3) years.~~ (7-1-93)

07. Inventory on Discovery of Theft or Loss of Controlled Substances. A complete controlled substance inventory must be conducted within forty-eight (48) hours of the discovery of a theft or reportable loss of a controlled substance. ()

08. Inventory on Additions to Schedules of Controlled Substances. On the effective date of ~~a rule adding an addition of~~ a substance to ~~any~~ schedule of controlled substances, ~~which substance was, immediately prior to that date, not listed on a schedule,~~ every registrant ~~required to keep records~~ who possesses that substance ~~shall take~~ must conduct an inventory of all stocks of the substance on hand, and thereafter, ~~such substance shall be~~ included the substance in each inventory ~~made~~ conducted by the registrant ~~pursuant to Subsection 496.04 of these rules.~~ (7-1-93)()

09. Maintaining Current List Record of Each Substance. Each ~~registered pharmacy shall~~ controlled substance registrant must maintain a current, complete, and ~~current list~~ accurate record of each substance

manufactured, imported, received, ordered, sold, delivered, exported, or otherwise disposed of by the pharmacy;
order forms; and other required records registrant in such a manner as to be readily retrievable manner, except that a
registrant is not required by this rule to maintain a perpetual inventory. (7-1-93)()

10. Maintaining Inventories. Inventories must be maintained on the registered premises for a
minimum of three (3) years. ()

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1002

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 37-2715, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Training and recordkeeping requirements for pharmacists administering immunizations are needed to protect the health and welfare of the citizens of Idaho. The proposed rule would establish qualifications for pharmacists to immunize and establish recordkeeping requirements.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was held with the Idaho Pharmacy Leadership Counsel, whose members include the Idaho State Pharmacy Association, the Idaho Society of Health-Systems Pharmacists, and Idaho State University's School of Pharmacy.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Mark Johnston, R.Ph., Executive Director
Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
Boise, ID 83720-0067
Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 27-0101-1002

166. IMMUNIZATION RECORD.

- 01. Definitions.** ()
- a.** ACPE means the Accreditation Council for Pharmacy Education. ()
- b.** CDC means the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention. ()
- c.** “Compromised Patient” means an individual who may have an absolute or relative contraindication to receive immunizations. ()
- d.** “Healthy Patient” means an individual with no contraindications to receive immunizations. ()
- 02. Qualifications.** ()
- a.** A pharmacist may administer immunizations to healthy patients, and pursuant to prescription drug order to compromised patients. ()
- b.** To qualify to administer immunizations, a pharmacist must first: ()
- i.** Successfully complete an ACPE accredited or comparable course that meets the standards for pediatric, adolescent, and adult immunization practices recommended and approved by the United States Public Health Service Advisory Committee on Immunization Practices and includes at least: ()
- (1) Basic immunology, vaccine and immunization protection; ()
- (2) Diseases that are preventable through vaccination and immunization; ()
- (3) Recommended immunization schedules; ()
- (4) Vaccine and immunization storage and management; ()
- (5) Informed consent; ()
- (6) Physiology and techniques for administration of immunizations; ()
- (7) Pre-immunization and post-immunization assessment and counseling; ()
- (8) Immunization reporting and records management; and ()
- (9) Identification, response, documentation, and reporting of adverse events. ()
- ii.** Hold a current certification in basic cardiopulmonary resuscitation (CPR) offered by the American Heart Association or the American Red Cross; ()
- c.** Pharmacists qualified to administer immunizations must also annually complete a minimum of one (1) hour of ACPE approved continuing education related to vaccines, immunizations, or their administration within the continuing education required by Section 134 of these rules. ()
- d.** The authority to administer immunizations may not be delegated; however, a registered student pharmacist that has satisfied the immunizing pharmacist qualifications may administer immunizations under the direct supervision of a qualified immunizing pharmacist. ()
- e.** An immunizing pharmacist must maintain written policies and procedures for disposal of used or contaminated supplies. ()

f. An immunizing pharmacist must report any adverse events to the health care provider identified by the patient, if any, and to the CDC. ()

03. **Immunization Administration.** Immunizations must be administered pursuant to the latest recommendations issued by the CDC. A pharmacist must have a current copy of, or on-site access to, the CDC's "Epidemiology and Prevention of Vaccine-Preventable Diseases." ()

04. **Vaccine Information Statement.** A current CDC-issued Vaccine Information Statement corresponding to the vaccine administered must be provided to the patient or the patient's representative for each immunization administered. ()

05. **Recordkeeping.** For each immunization administered, the following information must be maintained in the patient profile: ()

a. The name, address, allergies, and date of birth of the patient; ()

b. The date of administration; ()

c. The name, manufacturer, dose, lot number, and expiration date of the vaccine; ()

d. Documentation identifying the Vaccine Information Statement provided; ()

e. The site and route of administration; ()

f. The name and address of the patient's health care provider, if any; ()

g. The name of the immunizing pharmacist and, if any, the student pharmacist; ()

h. Any adverse events encountered; and ()

i. The date on which an adverse event was reported to the patient's health care provider, if any. ()

06. **Emergencies.** ()

a. An immunizing pharmacist must maintain a immediately-retrievable emergency kit sufficiently stocked to manage an acute allergic reaction to an immunization. ()

b. An immunizing pharmacist may initiate and administer auto-inject epinephrine to treat an acute allergic reaction to an immunization pursuant to guidelines issued by the American Pharmacy Association (APhA). ()

1667. -- 175. (RESERVED).

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1003

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 37-2715, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Rule 358 (IDAPA 27.01.01.358) needs to be stricken because it is in conflict with the Idaho Wholesale Drug Distribution Act, Sections 54-1752(16) and 54-1753, Idaho Code. The proposed change strikes Rule 358 in its entirety because it is in conflict with the Idaho Wholesale Drug Distribution Act.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Idaho Wholesale Drug Distribution Act prohibits the acts allowed by this rule. Interested parties were notified in writing that they would need to initiate a proposed change to Idaho Code in order to continue the acts detailed in this rule.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356. Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Mark Johnston, R.Ph., Executive Director
Board of Pharmacy
3380 Americana Terrace, Ste. 320

P. O. Box 83720, Boise, ID 83720-0067
Phone: (208) 334-2356, Fax: (208) 334-3536

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 27-0101-1003

358. ~~DISTRIBUTION RESERVED.~~

~~Wholesale distribution of legend drugs will be permitted only to registered veterinarians or other licensed retail veterinary drug outlets. (7-1-93)~~

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1004

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 37-2715, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The proposed rule is necessary to include information on controlled substances delivered by practitioners in the controlled substances prescriptions database maintained by the Board pursuant to Sections 37-2726 and 37-2730(A), Idaho Code. This information is not currently captured in the database and should be included in order to protect the health and welfare of the citizens of Idaho. The proposed rule would mandate that prescribers who deliver controlled substances to ultimate users would have to report certain data to the Board, just as dispensing pharmacies are required to do currently.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted as the need for this rule was not apparent until such time that negotiated rulemaking was infeasible; however, informal negotiated rulemaking is scheduled with entities, including the Idaho Board of Medicine, before the public comment period ends, allowing for potential changes before the rule becomes pending.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, at (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Mark Johnston, R.Ph., Executive Director
Board of Pharmacy
3380 Americana Terrace, Ste. 320
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THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 27-0101-1004

469. **PRESCRIPTION DRUG ORDER REPORTING.**

Certain data on all controlled substances must be reported weekly or more often as required by the Board by Aall pharmacies ~~that~~ holding a DEA retail pharmacy registration ~~will report certain data on all Schedule II, III, IV, and V that dispense~~ controlled substances, ~~prescriptions filled, as required by the Board, by the first of every month or more often, as directed by the Board~~ and by practitioners that deliver controlled substances. The data may be reported in the form of diskette, direct computer link, magnetic tape or other method approved by the Board. Data on controlled substance prescription drug samples does not need to be reported. (5-8-09)()

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.01.01 - RULES OF PROCEDURE OF THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-0101-1001

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Public Utilities Commission and is now pending review by the 2011 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Public Utilities Commission has adopted a pending rule. The action is authorized pursuant to Sections 61-401, 61-404, and 61-601, Idaho Code.

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

The Commission received no comments regarding the proposed rule. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the [July 7, 2010 Idaho Administrative Bulletin, Vol. 10-7, pages 96 through 104.](#)

FISCAL IMPACT: There is no fiscal impact on the State General Fund in excess of ten thousand dollars (\$10,000) during the fiscal year.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

DATED this 26th day of August, 2010.

Barbara Barrows
Assistant Commission Secretary
Idaho Public Utilities Commission
472 W. Washington Street (83702-5918)
PO Box 83720
Boise, ID 83720-0074
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FAX: (208) 334-3762

DOCKET NO. 31-0101-1001 - ADOPTION OF PENDING RULE

No substantive changes have been made to the pending rule.

The complete text of the proposed rule was published in the Idaho Administrative Bulletin, [Volume 10-7, July 7, 2010, pages 96 through 104.](#)

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2011 Idaho State Legislature for final adoption.

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.11.01 - SAFETY AND ACCIDENT REPORTING RULES FOR UTILITIES REGULATED BY THE IDAHO PUBLIC UTILITIES COMMISSION

DOCKET NO. 31-1101-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. This action is authorized pursuant to Sections 61-515 and 61-517, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

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

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The Commission's Safety and Accident Reporting Rule 201 currently adopts by incorporation the federal pipeline safety regulations issued by the Pipeline and Hazardous Material Safety Administration (PHMSA) in the 2009 edition of the Code of Federal Regulations (CFRs). Rule 201 applies to natural gas and pipeline utilities in Idaho. The Commission proposes to adopt the 2010 edition of the CFRs.

There are two major revisions included in the 2010 edition to the federal pipeline safety regulations. First, in December 2009, PHMSA amended 49 C.F.R. Parts 192 and 195 to address human factors and other aspects of control room management for pipelines where controllers use "supervisory control and data acquisition" (SCADA) systems. Among other things, pipeline operators were required to implement methods to prevent controller fatigue and procedures to manage SCADA alarms. These changes to the CFRs required pipeline operators to develop control room management procedures by August 1, 2011, and to implement the procedures by February 1, 2013. In February 2010, PHMSA corrected errors contained in the December 2009 changes.

Second, in December 2009, PHMSA amended its pipeline safety regulations in 49 C.F.R. Part 192 to require operators of gas distribution pipelines to develop and implement integrity management (IM) programs similar to those required for gas transmission pipelines but tailored to reflect the differences in and among distribution pipelines. The federal regulations allow for risk-based adjustments of prescribed intervals for leak detection surveys and other fixed-interval requirements for gas distribution pipelines. To minimize regulatory burdens, the federal rules established simpler requirements for master meter and small liquefied petroleum gas (LPG) operators. The changes also requires pipeline operators to install excess flow valves on new and replaced residential service lines, subject to feasibility criteria outlined in the rule. These changes became effective February 12, 2010. In February 2010, PHMSA made minor corrections to terminology.

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

FISCAL IMPACT: There is no fiscal impact on the state general fund resulting from this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this proposed rule adopts updated federal safety regulations necessary for the safety of utility employees and the public during the installation, operation, or maintenance of natural gas pipelines.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

Adoption of the 2010 edition of 49 C.F.R. Parts 192 and 195 will make Rule 201 consistent with the federal safety regulations concerning gas and pipeline utilities and avoid confusion. Updating Rule 201 is also necessary to maintain full funding of the Commission's safety inspection program funded by PHMSA.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the Commission Secretary and must be delivered on or before October 27, 2010. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 26th day of August, 2010.

Barbara Barrows
Assistant Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:

472 W Washington
Boise, Idaho 83702-5918

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 31-1101-1001

201. FEDERAL NATURAL GAS SAFETY REGULATIONS (RULE 201).

The Commission incorporates by reference Part 260.9, Title 18 (April 1, 2009~~10~~) and Parts 191, 192, 193, 195, and 199, Title 49, the Code of Federal Regulations (October 1, 2009~~10~~), except that federal accident reporting requirements contained in the rules adopted by reference in Rule 201 are replaced for state reporting purposes by orders of the Commission or rules of the Commission. These regulations are found in the Code of Federal Regulations, available on the web from the U.S. Government ~~Printing Office, Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954~~ Bookstore at <http://bookstore.gpo.gov> and click on "Code of Federal Regulations," or by calling toll-free 866-512-1800. The incorporated CFR Parts are also available in electronic format at www.gpoaccess.gov/cfr/index.html. All gas and pipeline corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of these federal regulations adopted by reference. ~~(3-29-10)()~~

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.71.03 - RAILROAD SAFETY AND ACCIDENT REPORTING RULES

DOCKET NO. 31-7103-1001

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that the Idaho Public Utilities Commission has initiated proposed rulemaking procedures. This action is authorized pursuant to Sections 61-515 and 61-517, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 2010.

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

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

The Commission's Railroad Safety and Accident Reporting Rule 103 adopts by reference the federal safety regulations pertaining to the transportation of hazardous materials by railroads issued by the federal Pipeline and Hazardous Material Safety Administration (PHMSA). Railroad Safety Rules 103 and 104 (Reporting Rail Accidents) adopt the 2008 and 2007 editions of the Code of Federal Regulations (CFRs), respectively. The Commission proposes to adopt the 2010 edition of the CFRs.

There are four major revisions included in the 2010 edition of the federal hazardous material safety regulations. First, in October 2009, PHMSA amended 49 C.F.R. Parts 172 and 174 to clarify requirements governing emergency response information provided by shippers of hazardous materials. In particular, PHMSA requires that shippers' names and contact numbers be included on shipping papers so that emergency responders are able to obtain additional information about the hazardous materials being shipped by rail. Second, in March 2010, PHMSA modified the current security plan requirements applicable to the commercial transportation of hazardous materials by rail. The agency amended 49 C.F.R. Part 172 to decrease the number of hazardous materials subject to security plan requirements. This reduces regulatory costs and paperwork burden. Third, PHMSA amended 49 C.F.R. Section 107.62 to adjust the annual federal fee for entities shipping hazardous materials by rail. This change became effective on April 29, 2010. Finally, PHMSA amended 49 C.F.R. Parts 107, 171, 173, 174, and 179 concerning the procedures for issuing special permits for hazardous material shipments that have established safety records. These revisions were intended to provide wider access to the regulatory flexibility offered in special permits and eliminate the need for numerous requests. This change is effective October 1, 2010.

The Commission is also proposing that Rule 8 be modified to conform to changes that the Legislature enacted requiring agencies to disclose where electronic copies of incorporated materials can be obtained. Adoption of the 2010 edition of 49 C.F.R. Parts 107, 171-174, 178, 179, 180 and 225 will make Rules 103 and 104 consistent with the federal safety regulations concerning the transportation of hazardous materials by rail.

FEE SUMMARY: There are no fees associated with this proposed rulemaking.

FISCAL IMPACT: There is no fiscal impact on the state general fund resulting from this rulemaking.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this proposed rule adopts updated CFR Parts necessary for the safe transportation of hazardous materials by rail.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

There are four major revisions included in the 2010 edition of the federal hazardous material safety regulations. These revisions are listed in detail in the descriptive summary of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Donald L. Howell, II, Deputy Attorney General, at (208) 334-0312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the Commission Secretary and must be delivered on or before October 27, 2010. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 26th day of August 2010.

Barbara Barrows
Assistant Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
Boise, ID 83720-0074
Telephone: (208) 334-0338
Facsimile: (208) 334-3762

Street address for express delivery:

472 W Washington
Boise, Idaho 83702-5918

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 31-7301-1001

008. INCORPORATION BY REFERENCE - CODE OF FEDERAL REGULATIONS (RULE 008).

The Code of Federal Regulations (CFR) is referred to in Rules 103 and 104. The annual volumes of the CFR may be obtained on the web from the Superintendent of Documents, Attn: New Orders, PO Box 371954, Pittsburgh, PA 15250-7954 U.S. Government Bookstore at <http://bookstore.gpo.gov/> and click on "Code of Federal Regulations," or by calling toll-free 866-512-1800. The full text of the CFR is also available in electronic format at www.gpoaccess.gov/cfr/index.html. The incorporated CFR Parts are also available for inspection and copying at the office of the Idaho Public Utilities Commission and the Idaho State Law Library. Whenever a federal regulation is adopted by reference in these rules, subsequent annual compilations are also adopted by reference, but subsequent amendments to the CFR are not adopted by reference. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

103. TRANSPORTATION OF HAZARDOUS MATERIAL BY RAIL (RULE 103).

01. Hazardous Material Defined. "Hazardous material" means a substance or material which has been determined by the United States Secretary of Transportation to be capable of posing an unreasonable risk to health, safety, and property when transported in commerce, and which has been so designated by the Secretary of Transportation. The term includes hazardous substances, hazardous wastes, marine pollutants, elevated temperature materials as defined in 49 C.F.R. Section 171.8, materials designated as hazardous under the provisions of 49 C.F.R. Section 172.101, and materials that meet the defining criteria for hazardous classes and divisions in 49 C.F.R. Part 173. (3-30-01)

02. Adoption of Federal Safety Regulations. The Commission hereby adopts by reference 49 C.F.R. Parts 107, 171, 172, 173, 174, 178, 179, and 180 (October 1, 2008~~10~~). All customers offering hazardous materials for

shipment by rail and all railroads operating in Idaho that transport hazardous materials listed in, defined by, or regulated by the adopted federal safety regulations must comply with 49 C.F.R. Parts 107, 171, 172, 173, 174, 178, 179 and 180. (~~5-8-09~~)()

03. Recognition of Federal Exemptions. Whenever a railroad or shipper has applied to a federal agency and has been granted an exemption from the transportation or packaging requirements of the federal safety regulations adopted in Subsection 103.02, the federal exemption will also be recognized under these rules. The Commission shall not administer a program to duplicate consideration or approval of federal exemptions on a state level. (3-30-01)

104. REPORTING OF RAILROAD ACCIDENTS (RULE 104).

The Commission incorporates by reference 49 C.F.R. Part 225 (October 1, 20~~07~~10). Pursuant to 49 C.F.R. 225.1, all railroads that are required to file a copy of any accident/incident report with the Federal Railroad Administration shall also file a copy of such report with the Commission Secretary for accidents or incidents occurring in Idaho. Copies of accident or incident reports shall be mailed to: Commission Secretary, Idaho Public Utilities Commission, PO Box 83720, Boise, Idaho 83720-0074 ((208) 334-0338). Copies of such reports may also be provided by facsimile at (208) 334-3762 or by electronic mail to secretary@puc.idaho.gov. (~~4-2-08~~)()

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 - 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 57-728(2), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

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 (Program). The new chapter of rules specifies the application procedure for school districts seeking to participate in the 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.

This docket was published as a temporary rule in the [May 5, 2010 Idaho Administrative Bulletin, Vol. 10-5, pages 54 through 58](#), with a temporary effective date of March 30, 2010.

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

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.

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

The rules will not result in a fiscal impact to the State of Idaho general fund. School districts will experience lower interest rates on school bonds through participation in the Program. The Public School Endowment will recover its costs for providing the benefit to school districts.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this new chapter of rules was necessary to confer a benefit by allowing the Program to provide guarantees to school districts.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Larry Johnson, Manager of Investments, (208) 334-3312.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 12th day of August, 2010.

Larry Johnson
Manager of Investments
Endowment Fund Investment Board
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Phone: (208) 334-3312
Fax: (208) 334-3786

Pursuant to Section 67-5221(1) this docket is being published as a Proposed Rule.

**This docket has been previously published as a Temporary Rule.
The temporary effective date is March 30, 2010.**

**The original text of the Temporary Rule was published in the Idaho
Administrative Bulletin, [Volume 10-5, May 5, 2010](#),
pages 54 through 58.**

THE FOLLOWING IS THE PROPOSED TEXT FOR FEE 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. ()

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.” ()

02. Scope. These rules contain the provisions for implementation of the Credit Enhancement Program. ()

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. ()

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. ()

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. ()

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. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

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. ()

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. ()

03. Credit Enhancement Program. The Credit Enhancement Program for School District Bonds established in Section 57-728, Idaho Code. ()

04. EFIB. Endowment Fund Investment Board. ()

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. ()

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. ()

07. Guaranty Program. The Idaho School Bond Guaranty Program established in Title 33, Chapter

53, Idaho Code. ()

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. ()

09. School District. Shall have the meaning provided in Section 33-5302, Idaho Code. ()

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). ()

011. -- 019. (RESERVED).

020. APPLICATION.

01. Required Materials. School Districts shall submit the following application materials to the EFIB: ()

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. ()

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. ()

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. ()

d. Upon request of the EFIB, documentation substantiating the information set forth in materials submitted pursuant to Subsection 020.01 of these rules. ()

02. Submission Deadlines. School Districts may submit an application at any time. ()

021. -- 029. (RESERVED).

030. FEES.

01. Guarantee Fee. ()

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. ()

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. ()

c. Use of Fee. The EFIB will deposit the Guarantee Fee in the Public School Endowment. ()

02. Administrative Fees. ()

a. Application Fee. ()

i. Amount. School Districts shall submit to the EFIB an Application Fee of five hundred dollars (\$500). ()

ii. When Paid. School Districts shall submit the Application Fee to the EFIB with the application materials. ()

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. ()

b. Pass-through Fee. ()

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. ()

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

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. ()

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. ()

02. Delegation of Review and Approval. ()

a. Staff Review. The EFIB may delegate review of applications to EFIB staff. ()

b. Experts. The EFIB may engage experts to review an application. Experts include legal, accounting, and financial professionals. ()

c. Staff Approval. The EFIB may delegate approval of applications to the EFIB's manager of investments. ()

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. ()

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. ()

041. -- 999. (RESERVED).

IDAPA 34 - SECRETARY OF STATE
34.01.01 - FEES FOR AUTOMATED DATA RETRIEVAL
DOCKET NO. 34-0101-1001 (CHAPTER REPEAL)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-903(9), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Secretary of State's Office wishes to repeal this chapter of administrative rules as the services to which this chapter applies and the subsequent fees have become obsolete. Ad hoc reports and fees are also referenced in IDAPA 34.05.01, making these rules redundant.

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

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

No fiscal impact is expected as a result of this repeal, as these rules have become obsolete.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the chapter is being repealed because the rules are obsolete.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeff Harvey, UCC Supervisor, at (208) 332-2849.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August 2010.

Jeff Harvey, UCC Supervisor
Office of the Secretary of State
450 N. 4th St.
P. O. Box 83720
Boise, ID 83720-0080
Phone: (208) 332-2849
Facsimile: (208)334-2847

IDAPA 34.01.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 34 - SECRETARY OF STATE

34.01.02 - RULES GOVERNING FACSIMILE SERVICES AND FEES

DOCKET NO. 34-0102-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-903(9), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Secretary of State's Office wishes to repeal this chapter of administrative rules as the services to which this chapter applies and the subsequent fees have become obsolete.

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

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

Minimal fiscal impact is expected, as these fees are only charged sporadically.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the chapter is being repealed because the rules are obsolete.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeff Harvey, UCC Supervisor, at (208) 332-2849.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August 2010.

Jeff Harvey, UCC Supervisor
Office of the Secretary of State
450 N. 4th St.
P. O. Box 83720
Boise, ID 83720-0080
Phone: (208) 332-2849
Facsimile: (208)334-2847

IDAPA 34.01.02 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 34 - SECRETARY OF STATE

34.01.03 - RULES GOVERNING THE PUBLIC ACCESS INFORMATION SYSTEM (PAIS)

DOCKET NO. 34-0103-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-903(9), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Secretary of State's Office wishes to repeal this chapter of administrative rules as the services to which this chapter applies and the subsequent fees have become obsolete.

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

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

No fiscal impact is expected as the PAIS system has not been used in many years.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the chapter is being repealed because the rules are obsolete.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeff Harvey, UCC Supervisor, at (208) 332-2849.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Jeff Harvey, UCC Supervisor
Office of the Secretary of State
450 N. 4th St.
P. O. Box 83720
Boise, ID 83720-0080
Phone: (208) 332-2849
Facsimile: (208)334-2847

IDAPA 34.01.03 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 34 - SECRETARY OF STATE

34.01.04 - RULES GOVERNING THE ELECTRONIC BULLETIN BOARD SERVICE

DOCKET NO. 34-0104-1001 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-903(9), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Secretary of State's Office wishes to repeal this chapter of administrative rules as the services to which this chapter applies and the subsequent fees have become obsolete.

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

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

No fiscal impact is expected as the Electronic Bulletin Board Service has not been used in many years.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the chapter is being repealed because the rules are obsolete.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeff Harvey, UCC Supervisor, at (208) 332-2849.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Jeff Harvey, UCC Supervisor
Office of the Secretary of State
450 N. 4th St.
P. O. Box 83720
Boise, ID 83720-0080
Phone: (208) 332-2849
Facsimile: (208)334-2847

IDAPA 34.01.04 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 34 - SECRETARY OF STATE
34.05.04 - RULES GOVERNING PUBLIC ACCESS TO UCC FILES
DOCKET NO. 34-0504-1001 (CHAPTER REPEAL)
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-903(9), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Secretary of State's Office wishes to repeal this chapter of administrative rules as the services to which this chapter applies and the subsequent fees have become obsolete. The majority of this chapter addresses internal management issues. The fees referenced in this chapter have not been enforced, nor charged for many years.

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

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

No fiscal impact is expected, as the fees referenced in this chapter have not been charged in many years.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the chapter is being repealed because the rules are obsolete.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeff Harvey, UCC Supervisor, at (208) 332-2849.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Jeff Harvey, UCC Supervisor
Office of the Secretary of State
450 N. 4th St.
P. O. Box 83720
Boise, ID 83720-0080
Phone: (208) 332-2849
Facsimile: (208)334-2847

IDAPA 34.05.04 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1002

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Rule 032 is being amended to conform to changes to the Servicemembers Civil Relief Act (Act). The Act now exempts from Idaho income tax the income earned from services performed in Idaho by qualifying spouses of servicemembers stationed in Idaho. Terms were modified to be consistent with those used in the Act.

Rule 075 is being amended to add the tax brackets for calendar year 2010, and remove the information for calendar year 2005 so only five years of historical data is retained in the rule. Idaho Code section 63-3024 establishes the tax rates for individuals, trusts and estates and requires adjusting the income tax brackets annually for the effects of inflation.

Rule 108 is being amended consistent with House Bill 386a, which was passed by the 2010 Idaho Legislature. The bill amended Idaho Code section 63-3022 to limit the amount added to taxable income for rollovers to other state's college savings accounts to the amount deducted in the current and prior tax years.

Rule 165 is being amended consistent with Senate Bill 1330, which was passed by the 2010 Idaho Legislature. The bill amended Idaho Code section 66-402 to revise terminology. Idaho Code section 66-402 is referenced in Idaho Code sections 63-3022E and 63-3025D and Rule 165 uses some of the same language that was revised in the bill.

Rule 170 is being amended to include gains treated as ordinary income pursuant to Internal Revenue Code (IRC) section 1231 in the examples of when gains are treated as ordinary income and don't qualify for the Idaho capital gains deduction. Guidance is added to the rule on how to allocate the recharacterization of capital gains to ordinary income as required by IRC section 1(h)(8) to property that does and does not qualify for the Idaho capital gains deduction. Information related to tax year 2001 is being removed.

Rules 171, 172, 745 and 756 are being amended consistent with House Bill 388, which was passed by the 2010 Idaho Legislature. The bill amended Idaho Code section 63-3022H to define real property for purposes of the Idaho capital gains deduction. It also amended Idaho Code section 63-3029E to link the definition of revenue-producing enterprise for purposes of the credit for qualifying new employees to the definition used for purposes of the Idaho capital gains deduction as provided in Idaho Code section 63-3022H. Information is being added to Rule 171 to specifically identify items that don't qualify for the Idaho capital gains deduction. A cross reference to Idaho Code section 63-3022H(4) and Rule 172 is being added for the definition of revenue-producing enterprise. Rule 172 is being expanded to include examples previously included in Rule 745 that now apply to both the credit and the deduction. The specific information in Rule 745 regarding qualifying and nonqualifying activities and the examples are being removed and a reference to Rule 172 is being added where this information can now be found. Changes to Rule 746 include the removal of references to tax years beginning on and after 2004 and to address consistency in the computation of qualifying new employees.

Rule 200 is being amended to remove subsection 200.02, which addresses net operating losses in the case of corporate mergers. This information is now included in Idaho Code section 63-3021 as a result of House Bill 381, passed by the 2010 Idaho Legislature. An example of how net operating losses of unitary corporations are computed and applied against income in carryback years is being added to the rule

Rule 201 is being amended to include excess net passive income as income that also may be offset with a net operating loss carried over from years an S corporation was a C corporation.

Rule 253 is being amended consistent with House Bill 386a, which was passed by the 2010 Idaho Legislature. The bill amended Idaho Code section 63-3022 to limit the amount added to taxable income for rollovers to other state's college savings accounts to the amount deducted in the current and prior tax years. Rule 253 addresses nonresident and part-year residents. Rollovers of amounts in Idaho college savings accounts were not previously addressed in the rule. Various changes were made throughout the rule to improve readability.

Rule 255 is being amended consistent with Idaho Code section 63-3022 to include local income taxes and general sales tax to the exception to the federal deductions allowed to nonresidents and part-year residents. Obsolete information related to the standard deduction for tax year 1999 is being removed.

Rule 261 is being amended consistent with House Bill 471, which was passed by the 2010 Idaho Legislature. The bill amended Idaho Code section 63-3026A to change the sourcing of income from resident estates and trusts that a nonresident must include in income subject to Idaho tax.

Rules 290, 291, and 877 are being amended to conform to changes made in House Bill 382a, which was passed by the 2010 Idaho Legislature. The bill modified Idaho Code section 63-3022L regarding the taxation of pass-through entity income when an individual makes the election to have the pass-through entity pay his tax on such income. The bill also added new Idaho Code section 63-3036B to require backup withholding by a pass-through entity, including trusts and estates, in certain situations. Changes to Rule 290 include removing obsolete information, clarifying who can make the election and how it is made, and adding a reference to new Rule 877 with regard to backup withholding. Changes to Rule 291 include removing obsolete information and expanding on the computation of Idaho taxable income. New Rule 877 discusses the withholding requirement, exceptions to withholding, the certification of residency, the requirements of payments and reporting of withholding, and the consequences of failing to file or remit the backup withholding.

Rules 720 and 721 relate to the credit for Idaho research activities. Both rules contain information that related to tax years beginning in 2001. Since the statute of limitations has expired on all the years credit earned in tax years beginning in 2001 could be carried to, this information is no longer needed in the current administrative code and is being removed from both of these rules.

Rules 755, 756, 757, and 758 relate to the credit for qualifying new employees for tax years beginning in 2001 only. Since the statute of limitations has expired on all the years this credit could be carried to, the rules are no longer needed in the current administrative code and are being repealed.

Rule 771 is being amended to include the grocery credit amounts for 2010. These amounts are scheduled for increases each year as provided by Idaho Code section 63-3024A.

Rule 830 is being amended consistent with House Bill 380, which was passed by the 2010 Idaho Legislature. The bill amended Idaho Code section 63-3037 to specify the last day of February as the date for filing information returns instead of following the requirements of the Internal Revenue Code, unless a different due date is set by rule. The rule is being amended consistent with Rule 874 so that the due date for all information returns required to be filed with the State Tax Commission is the last day of February, the same as the due date for W-2s.

Rule 840 is being repealed consistent with House Bill 379, which was passed by the 2010 Idaho Legislature. The bill repealed Idaho Code section 63-3088 to eliminate the campaign funding check-off option on the Idaho individual income tax returns. As a result, Rule 840 is no longer necessary and is being repealed.

Rule 860 is being amended consistent with House Bill 615, which added new Idaho Code section 63-3067D. The bill allows taxpayers to make a donation to the opportunity scholarship program on their tax returns. Rule 860 addresses donations to trust accounts and is being modified to include the new code section in its title.

Rule 874 is being amended to require the Idaho withholding permit number on the copy of Forms W-2 submitted to the Tax Commission and discusses the consequences of not submitting complete or correct forms.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd at (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0101-1002

032. MEMBERS OF THE UNIFORMED SERVICES (RULE 032).

01. ~~Idaho Residency Status~~ **Servicemembers Civil Relief Act.** Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. App. Section 571) provides that a servicemember will neither lose nor acquire a residence or domicile with regard to his income tax as a result of being absent or present in a state due to military orders. (4-2-08)()

#02. **Servicemember.** A servicemember is defined to include any member of the uniformed services as that term is defined in 10 U.S.C. Section 101(a)(5). A member of the uniformed services includes: (4-2-08)()

#a. A member of the armed forces, which includes a member of the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty. It also includes a member of the National Guard who has been called to active service by the President of the United States or the Secretary of Defense of the United States for a period of more than thirty (30) consecutive days under 32 U.S.C. Section 502(f), for purposes of responding to a national emergency declared by the President and supported by federal funds. (4-2-08)

#b. The commissioned corps of the National Oceanic and Atmospheric Administration in active service; and (4-2-08)

#c. The commissioned corps of the Public Health Service in active service. (4-2-08)

b03. ~~As a result of the Servicemembers Civil Relief Act:~~ **Idaho Residency Status.** (4-2-08)()

~~i~~**a.** A *qualifying* servicemember is not a resident of or domiciled in Idaho solely as a result of being stationed in Idaho. (4-2-08)()

~~ii~~**b.** The safe harbor exception to being a resident of Idaho set forth in Section 63-3013(2), Idaho Code, *shall does* not apply to a *qualified* servicemember. (4-2-08)()

c. A *qualifying* servicemember is an Idaho resident only if he is domiciled in Idaho for the entire taxable year. The domicile of a *qualified* servicemember is presumed to be that member's military home of record until the *qualified* servicemember establishes a new domicile. (3-20-97)()

d. A *qualified* servicemember who is domiciled in Idaho for less than the entire taxable year is a part-year resident. (3-20-97)()

e. A *qualified* servicemember who is not domiciled in Idaho anytime during the taxable year is a nonresident. (3-20-97)()

f. ~~The Servicemembers Civil Relief Act does not affect the Idaho residency status of a spouse of a qualified service member. The spouse of a qualified service member shall determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. See Subsection 032.05 of this rule for information relating to a spouse of a servicemember.~~ (4-6-05)()

024. Active Duty Military Pay Service Compensation. (3-20-97)()

a. Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. App. Section 571) provides that the *active duty* military *pay service compensation* of a *qualified* servicemember who is not domiciled in Idaho is *exempt from Idaho income tax. The active duty military pay is* not considered income from *services performed within, or from sources within* Idaho *sources*. See Section 63-3026A(3)(c), Idaho Code. (4-2-08)()

b. The *active duty* military *pay service compensation* of a servicemember who is domiciled in Idaho is subject to Idaho income tax. However, Section 63-3022(h), Idaho Code, provides that compensation paid *by to a member of* the United States Armed Forces for *active duty* military service performed outside Idaho is deducted from taxable income in determining the member's Idaho taxable income. A member of the armed forces does not include the commissioned corps of the National Oceanic and Atmospheric Administration or the commissioned corps of the Public Health Service, unless they have been militarized by Presidential Executive Order under Title 42, United States Code. See Section 63-3022(h), Idaho Code, for the specific qualifications of this deduction. (4-2-08)()

035. Military Separation Pay. Military separation pay received for voluntary or involuntary separation from active military service is not considered *active duty* military *pay service compensation*. Therefore, Subsection 032.024 of this rule does not apply. (4-6-05)()

a. Military separation pay is included in Idaho taxable income only if the recipient is domiciled in or residing in Idaho when the separation pay is received. (3-20-97)

b. For purposes of this rule, a former active duty servicemember whose home of record at the time of separation from the military was a state other than Idaho is not deemed to be residing in Idaho if he moves from Idaho within thirty (30) days from the date of separation from active duty. (3-20-97)

046. Nonmilitary Income. All Idaho source income earned by a *military* servicemember is subject to Idaho taxation except as expressly limited by the Idaho Income Tax Act and these rules. (3-20-97)()

057. Nonmilitary Spouses of Servicemembers. ~~Subsection 032.02 of this rule does not apply to the income earned by a nonmilitary spouse of a military service member. If the nonmilitary spouse is an Idaho resident, he is subject to Idaho taxation on his income from all sources. If the nonmilitary spouse is a nonresident or a part-year resident, he is subject to Idaho taxation on his income from all sources earned while residing in or domiciled in Idaho, plus his income from Idaho sources earned while not residing and not domiciled in Idaho. Beginning on January 1, 2009, Section 511 of the Servicemembers Civil Relief Act also applies to the spouse of a servicemember if~~

the spouse has the same residence or domicile as the servicemember's home of record. In such cases: ~~(4-6-05)~~()

a. The Idaho residency status of the spouse will not change as a result of residing in another state solely to be with the servicemember. ()

b. If the spouse is domiciled in Idaho, all the spouse's income is subject to tax by Idaho. ()

c. If the spouse is not domiciled in Idaho, income for services performed in Idaho by the spouse will not be deemed to be income from Idaho sources. ()

(BREAK IN CONTINUITY OF SECTIONS)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075).

Section 63-3024, Idaho Code.

(3-20-04)

01. In General. The tax rates applied to the Idaho taxable income of an individual, trust or estate for the latest five (5) years are identified in Subsection 075.03 of this rule. The Idaho income tax brackets are adjusted for inflation. ~~For taxable years beginning on or after January 1, 2003, the~~ The maximum tax rate as listed for ~~that the~~ applicable taxable year in Subsection 075.03 of this rule ~~shall apply~~ ies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. ~~(5-8-09)~~()

02. Tax Computation. (5-3-03)

a. The tax rates and income tax brackets listed in Subsection 075.03 of this rule are those for a single individual or married individuals filing separate returns. (4-6-05)

b. The tax imposed on individuals filing a joint return, filing as a surviving spouse, or filing as a head of household ~~shall be~~ is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. ~~(5-3-03)~~()

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax ~~would be~~ is computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount ~~would then be~~ is multiplied by two (2). ~~(5-3-03)~~()

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

~~a. For taxable years beginning in 2005:~~

IF IDAHO TAXABLE INCOME IS			IDAHO TAX	
At least	But less than	Is	Plus	
\$0.00	\$1,159.00	\$0	+ 1.6% of taxable income	
\$1,159.00	\$2,318.00	\$18.54	+ 3.6% of the amount over \$1,159.00	
\$2,318.00	\$3,477.00	\$60.26	+ 4.1% of the amount over \$2,318.00	
\$3,477.00	\$4,636.00	\$107.78	+ 5.1% of the amount over \$3,477.00	
\$4,636.00	\$5,794.00	\$166.89	+ 6.1% of the amount over \$4,636.00	
\$5,794.00	\$8,692.00	\$237.53	+ 7.1% of the amount over \$5,794.00	
\$8,692.00	\$23,178.00	\$443.29	+ 7.4% of the amount over \$8,692.00	

IF IDAHO TAXABLE INCOME IS			IDAHO TAX	
At least	But less than	Is	Plus	
\$23,178.00 or more		\$1,515.25	+	7.8% of the amount over \$23,178.00

(4-11-06)

ba. For taxable years beginning in 2006, ~~as calculated on June 7, 2006:~~

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$0.00	\$1,198.00	\$0	+	1.6% of taxable income
\$1,198.00	\$2,396.00	\$19.17	+	3.6% of the amount over \$1,198.00
\$2,396.00	\$3,594.00	\$62.30	+	4.1% of the amount over \$2,396.00
\$3,594.00	\$4,793.00	\$111.43	+	5.1% of the amount over \$3,594.00
\$4,793.00	\$5,991.00	\$172.53	+	6.1% of the amount over \$4,793.00
\$5,991.00	\$8,986.00	\$245.62	+	7.1% of the amount over \$5,991.00
\$8,986.00	\$23,963.00	\$458.30	+	7.4% of the amount over \$8,986.00
\$23,963.00 or more		\$1,566.59	+	7.8% of the amount over \$23,963.00

~~Tax and bracket amounts were calculated using consumer price index amounts published on June 7, 2006.~~

(3-30-07)()

eb. For taxable years beginning in 2007, ~~as calculated on May 17, 2007:~~

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$0.00	\$1,237.00	\$0	+	1.6% of taxable income
\$1,237.00	\$2,474.00	\$19.79	+	3.6% of the amount over \$1,237.00
\$2,474.00	\$3,710.00	\$64.31	+	4.1% of the amount over \$2,474.00
\$3,710.00	\$4,947.00	\$115.02	+	5.1% of the amount over \$3,710.00
\$4,947.00	\$6,184.00	\$178.10	+	6.1% of the amount over \$4,947.00
\$6,184.00	\$9,276.00	\$253.55	+	7.1% of the amount over \$6,184.00
\$9,276.00	\$24,736.00	\$473.08	+	7.4% of the amount over \$9,276.00
\$24,736.00 or more		\$1,617.13	+	7.8% of the amount over \$24,736.00

~~Tax and bracket amounts were calculated using consumer price index amounts published on May 17, 2007.~~

(4-2-08)()

dc. For taxable years beginning in 2008, ~~as calculated on March 12, 2008:~~

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1.00	\$1,272.00	\$0	+	1.6% of taxable income
\$1,272.00	\$2,544.00	\$20.35	+	3.6% of the amount over \$1,272.00
\$2,544.00	\$3,816.00	\$66.15	+	4.1% of the amount over \$2,544.00
\$3,816.00	\$5,088.00	\$118.30	+	5.1% of the amount over \$3,816.00
\$5,088.00	\$6,360.00	\$183.17	+	6.1% of the amount over \$5,088.00
\$6,360.00	\$9,540.00	\$260.77	+	7.1% of the amount over \$6,360.00
\$9,540.00	\$25,441.00	\$486.55	+	7.4% of the amount over \$9,540.00
\$25,441.00 or more		\$1,663.19	+	7.8% of the amount over \$25,441.00

Tax and bracket amounts were calculated using consumer price index amounts published on March 12, 2008.

(5-8-09)()

ed. For taxable years beginning in 2009, ~~as calculated on April 28, 2009~~:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,321	\$0	+	1.6% of taxable income
\$1,321	\$2,642	\$21.13	+	3.6% of the amount over \$1,321
\$2,642	\$3,963	\$68.69	+	4.1% of the amount over \$2,642
\$3,963	\$5,284	\$122.84	+	5.1% of the amount over \$3,963
\$5,284	\$6,604	\$190.21	+	6.1% of the amount over \$5,284
\$6,604	\$9,907	\$270.78	+	7.1% of the amount over \$6,604
\$9,907	\$26,418	\$505.24	+	7.4% of the amount over \$9,907
\$26,418 or more		\$1,727.05	+	7.8% of the amount over \$26,418

Tax and bracket amounts were calculated using consumer price index amounts published on April 28, 2009.

(3-29-10)()

e. For taxable years beginning in 2010:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$1	\$1,316	\$0	±	1.6% of taxable income
\$1,316	\$2,632	\$21.06	±	3.6% of the amount over \$1,316
\$2,632	\$3,948	\$68.44	±	4.1% of the amount over \$2,632
\$3,948	\$5,264	\$122.40	±	5.1% of the amount over \$3,948

IF IDAHO TAXABLE INCOME IS		IDAHO TAX	
At least	But less than	Is	Plus
\$5,264	\$6,580	\$189.52 ±	6.1% of the amount over \$5,264
\$6,580	\$9,870	\$269.80 ±	7.1% of the amount over \$6,580
\$9,870	\$26,320	\$503.39 ±	7.4% of the amount over \$9,870
\$26,320 or more		\$1,720.69 ±	7.8% of the amount over \$26,320

Tax and bracket amounts were calculated using consumer price index amounts published on May 4, 2010.

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(BREAK IN CONTINUITY OF SECTIONS)

108. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED ONLY OF INDIVIDUALS (RULE 108).

Section 63-3022, Idaho Code.

(3-20-97)

01. Lump Sum Distributions. As provided in Section 63-3022(k), Idaho Code, an individual must add the taxable amount of a lump sum distribution excluded from taxable income. ~~(3-30-01)~~()

02. Withdrawals from an Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, an account holder must add the amount of a withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. See Rule 190 of these rules. ~~(7-1-98)~~()

03. Withdrawals from an Idaho College Savings Program. (4-2-08)

a. As provided in Section 63-3022(o), Idaho Code, an account owner must add the amount of any nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. (3-20-04)

b. As provided in Section 63-3022(p), Idaho Code, an account owner must add the amount of a withdrawal from an Idaho college savings program that is transferred on or after July 1, 2007 to a qualified tuition program operated by a state other than Idaho. For taxable years beginning on or after January 1, 2008, ~~only the amounts contributed by the account owner~~ the addback is limited to the total of the amounts contributed to the Idaho college savings program ~~within twelve (12) months from the date of the transfer shall be added to taxable income that were deducted on the account owner's Idaho income tax returns for the year of the transfer and the immediately preceding taxable year.~~ ~~(5-8-09)~~()

04. Certain Expenses of Eligible Educators. As provided in Section 63-3022O, Idaho Code, an eligible educator as defined in Section 62, Internal Revenue Code, must add the amount of out-of-pocket classroom expenses deducted as allowed by Section 62, Internal Revenue Code, in computing adjusted gross income. (3-20-04)

05. State and Local Sales Tax. As provided in Section 63-3022(j), Idaho Code, an individual must add the amount of state and local general sales taxes deducted as an itemized deduction. ~~(4-11-06)~~()

(BREAK IN CONTINUITY OF SECTIONS)

165. ADDITIONAL HOUSEHOLD DEDUCTION OR CREDIT FOR ELDERLY OR DEVELOPMENTALLY DISABLED DEPENDENTS (RULE 165).
Sections 63-3022E and 63-3025D, Idaho Code. (7-1-99)

01. Developmentally Disabled Defined. For purposes of the deduction allowed by Section 63-3022E, Idaho Code, or the credit allowed by Section 63-3025D, Idaho Code, developmentally disabled means a chronic disability that meets all of the following conditions: (7-1-99)

a. Is attributable to an impairment, such as ~~mental retardation~~ intellectual disability, cerebral palsy, epilepsy, autism, or other condition closely related to or similar to one (1) of these impairments that requires similar treatment or services, or is attributable to dyslexia resulting from the impairment. The other condition must result in ~~impairments~~ limitations of general intellectual functioning or adaptive behavior similar to those required for individuals with ~~mental retardation~~ an intellectual disability. See IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 501 for the developmental disability determination standards. (~~3-20-97~~)()

b. Has continued or can be expected to continue indefinitely. (3-20-97)

c. Has substantial functional limitations in three (3) or more areas of major life activity. Individuals with mild ~~mental retardation~~ intellectual disabilities, controlled epilepsy, and mild cerebral palsy may not be viewed as developmentally disabled since the criteria of substantial ~~handicap~~ limitation may not be met. Individuals who succeed in developing skills to function adequately in five (5) or more major life skill areas will no longer meet the definition of developmental disability. The following are areas of major life activity: (~~3-20-97~~)()

i. Self-care; (3-20-97)

ii. Receptive and expressive language; (3-20-97)

iii. Learning; (3-20-97)

iv. Mobility; (3-20-97)

v. Self-direction; (3-20-97)

vi. Capacity for independent living; and (3-20-97)

vii. Economic self-sufficiency. (3-20-97)

d. Reflects the need for a combination and sequence of special, interdisciplinary or generic care, treatment or other services that are of lifelong or extended duration and individually planned and coordinated. Individuals who have limited or no need for services specific to disabilities do not qualify. (3-20-97)

02. Qualifying Individual. (3-20-97)

a. Immediate Family Member. An immediate family member is an individual who meets the relationship test for being claimed as a dependent on the taxpayer's federal income tax return. The family member does not have to be claimed as a dependent on the taxpayer's income tax return to qualify. The family member must receive over one-half (1/2) of his support from the taxpayer. A spouse does not qualify as an immediate family member. (7-1-99)

b. Additional Household Deduction or Credit for Elderly. For purposes of the additional household deduction or credit for the elderly, a qualifying individual must be an immediate family member. (7-1-99)

c. Additional Household Deduction or Credit for Developmentally Disabled Dependents. For purposes of the additional household deduction or credit for a developmentally disabled dependent, a qualifying individual includes an immediate family member, the taxpayer, or his spouse. (7-1-99)

03. Fractions of Years. (7-1-99)

a. The deduction ~~shall be~~ is prorated at eighty-three dollars (\$83) per month if the qualified individual lives in the household for less than a full year. A fraction of a calendar month exceeding fifteen (15) days ~~shall be~~ is treated as a full month. (7-1-99)()

b. The credit is not available to part-year or nonresident individuals. If the qualified individual lives in the household for less than a full year, the credit ~~shall be~~ is prorated at eight dollars and thirty-three cents (\$8.33) per month. (7-1-99)()

(BREAK IN CONTINUITY OF SECTIONS)

170. IDAHO CAPITAL GAINS DEDUCTION -- IN GENERAL (RULE 170).

Section 63-3022H, Idaho Code.

(3-20-97)

01. Qualifying for the Idaho Capital Gains Deduction. To qualify for the Idaho capital gains deduction, a taxpayer must report capital gain net income, as defined in Section 1222(9), Internal Revenue Code, on his federal income tax return. (4-11-06)

02. Capital Gain Net Income Limitation. (4-11-06)

a. The Idaho capital gains deduction may not exceed the capital gain net income included in taxable income. (4-11-06)

b. Example. A taxpayer recognizes a capital gain of five thousand dollars (\$5,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock. These are the only sales during the taxable year. Sixty percent (60%) of the capital gain net income from qualified property is greater than the capital gain net income included in the taxpayer's taxable income. Therefore, the taxpayer's Idaho capital gains deduction is limited to the capital gain net income included in taxable income of two thousand five hundred dollars (\$2,500), not sixty percent (60%) of the capital gain net income from the qualified property. ~~For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, limited to the capital gain net income included in taxable income.~~ (4-11-06)()

03. Ordinary Income Limitation. ~~The Idaho capital gains deduction may not include any g~~ Gains treated as ordinary income pursuant to the Internal Revenue Code: do not qualify for the Idaho capital gains deduction, including the following: ()

a. ~~For example, any g~~ Gain from ~~the sale, exchange, or involuntary conversion~~ dispositions of certain depreciable property treated as ordinary income pursuant to Sections 1245 or 1250, Internal Revenue Code, ~~may not be included when computing the Idaho capital gains deduction.~~ (4-11-06)()

b. Gain treated as ordinary income pursuant to Section 1231(c), Internal Revenue Code, and allocated among the separate categories of net section 1231 gain as provided by Section 1(h)(8), Internal Revenue Code. Gain treated as ordinary income under Section 1231(c) and allocated among the separate categories of net section 1231 gain as provided by Section 1(h)(8), Internal Revenue Code, must be prorated within each category between the gains on property that qualifies for the Idaho capital gains deduction and gains on property that do not qualify for the Idaho capital gains deduction. ()

c. Example. One hundred thousand dollars (\$100,000) of capital gain income is treated as ordinary income. The first seventy thousand dollars (\$70,000) of ordinary income is allocated to the net section 1231 gain in the twenty-eight percent (28%) category. None of the gain in this category qualifies for the Idaho capital gains deduction since it is all treated as ordinary income. The remaining thirty thousand dollars (\$30,000) of ordinary income is allocated to gain from property in the twenty-five percent (25%) group. The gain in this category is derived from the sale on three (3) items of equipment. Two (2) of the items were qualified property located in Idaho. The third

item was located in Oregon. Each item generated a gain of twenty-five thousand dollars (\$25,000). The gain treated as ordinary income is prorated between the three (3) items, ten thousand dollars (\$10,000) to each. As a result, fifteen thousand dollars (\$15,000) of the gain on each item remains as capital gain. The fifteen thousand dollars (\$15,000) of capital gain on each of the two items of Idaho equipment qualify for the Idaho capital gains deduction. Ten thousand dollars (\$10,000) of the gain on each of the items do not qualify since it is treated as ordinary income. The gain on the Oregon equipment does not qualify for the capital gains deduction since the equipment is not located in Idaho.

<u>\$100,000 of Gain Treated as Ordinary Income</u>	<u>28% Group</u>	<u>25% Group</u>		
		<u>Idaho Equipment</u>	<u>Idaho Equipment</u>	<u>Oregon Equipment</u>
<u>Total Gain in Category</u>	<u>\$70,000</u>	<u>\$25,000</u>	<u>\$25,000</u>	<u>\$25,000</u>
<u>Gain Treated as Ordinary Income</u>	<u>\$70,000</u>	<u>\$100,000 - \$70,000 = \$30,000 X \$25,000/\$75,000 = \$10,000</u>	<u>\$100,000 - \$70,000 = \$30,000 X \$25,000/\$75,000 = \$10,000</u>	<u>\$100,000 - \$70,000 = \$30,000 X \$25,000/\$75,000 = \$10,000</u>
<u>Amount Remaining as Capital Gain</u>	<u>\$0</u>	<u>\$25,000 - \$10,000 = \$15,000</u>	<u>\$25,000 - \$10,000 = \$15,000</u>	<u>\$25,000 - \$10,000 = \$15,000</u>
<u>Gain Qualifying for Idaho Capital Gains Deduction</u>	<u>\$0</u>	<u>\$15,000</u>	<u>\$15,000</u>	<u>\$0</u>

()

04. Losses From Nonqualified Property. Losses from property not qualifying for the Idaho capital gains deduction may not be netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. (4-11-06)

05. Losses From Qualified Property. (7-1-99)

a. Losses from property qualifying for the Idaho capital gains deduction ~~shall be~~ **are** netted against gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. (7-1-99)()

b. A capital loss carryover from property qualifying for the Idaho capital gains deduction will be netted against current year gains from property qualifying for the Idaho capital gains deduction before the amount of the deduction is determined. If a taxpayer has a capital loss carryover consisting of qualified and nonqualified property, the qualified capital loss carryover ~~shall be~~ **is** the proportion that the qualified capital loss bears to the total capital loss shown on the return in the prior year multiplied by the capital loss carryover. (7-1-99)()

06. Examples. (3-20-97)

a. A taxpayer sells two (2) parcels of Idaho real property that qualify for the deduction. These are the only sales during the taxable year. A capital gain of seven thousand five hundred dollars (\$7,500) is recognized on the sale of Parcel A. A capital loss of five thousand dollars (\$5,000) is recognized on the sale of Parcel B. Since both parcels are qualified property, the gain and loss are netted, resulting in capital gain net income from qualified property of two thousand five hundred dollars (\$2,500). ~~For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or two thousand dollars (\$2,000). After 2001, the capital gains deduction returns to is~~ **is** sixty percent (60%) or one thousand five hundred dollars (\$1,500). (5-3-03)()

b. A taxpayer recognizes a capital gain of twenty thousand dollars (\$20,000) on the sale of Idaho real property that qualifies for the deduction. The taxpayer also recognizes a capital loss of two thousand five hundred dollars (\$2,500) from the sale of shares of stock that he has held for more than one (1) year. These are the only sales

during the taxable year. In this case, since the long-term capital loss is not from qualified property, the loss on the sale of stock does not reduce the gain from qualified property for purposes of computing the deduction. The entire gain from qualified property of twenty thousand dollars (\$20,000) is eligible for the Idaho capital gains deduction. ~~For taxable year 2001 only, the capital gains deduction is eighty percent (80%) of the capital gain net income from qualified property, or sixteen thousand dollars (\$16,000). After 2001, the capital gains deduction returns to is~~ sixty percent (60%) or twelve thousand dollars (\$12,000). (5-3-03)()

171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171). (3-20-97)
Section 63-3022H, Idaho Code.

01. Tangible Personal Property. Tangible personal property qualifies for the Idaho capital gains deduction if it was used in Idaho for at least twelve (12) months by a revenue-producing enterprise as defined by Section 63-3022H(4), Idaho Code, and Rule 172 of these rules. ()

02. Real Property. Real property qualifies for the Idaho capital gains deduction. Section 63-3022H(5), Idaho Code, defines real property to be land and other tangible property permanently upon or affixed to the land. Real property does not include intangible property or severable property rights. Examples of intangible assets or property rights that do not qualify for the Idaho capital gains deduction include: ()

- a.** Easements and rights of way, including agricultural, forest, historic, or open-space easements; ()
- b.** Grazing permits; ()
- c.** Leasehold interests; ()
- d.** Options; ()
- e.** Water, mineral, hunting and fishing, renewable energy, and land surface rights; ()
- f.** Conservation easements; ()
- g.** Scenic easements. ()

03. Gain from Forfeited Rights and Payments. Gain attributable to a cancellation, lapse, expiration, or other termination of a contract right or obligation does not qualify for the Idaho capital gains deduction. This includes any gain from the lapse of an option or from forfeited earnest money, down payment, or similar payments, related to otherwise qualifying property. ()

04. Timber. As used in Section 63-3022H(3)(e), Idaho Code, qualified timber grown in Idaho includes: (3-20-97)

- a.** Standing timber held as investment property that is a capital asset pursuant to Section 1221, Internal Revenue Code; and (3-20-97)
- b.** Cut timber if the taxpayer elects to treat the cutting of timber as a sale or exchange pursuant to Section 631(a), Internal Revenue Code. (3-20-97)

05. Holding Periods. (3-20-97)

a. In General. To qualify for the capital gains deduction, property otherwise eligible for the Idaho capital gains deduction must be held for specific time periods. The holding periods for Idaho purposes generally follow Sections 1223 and 735, Internal Revenue Code. (5-8-09)

b. Exception to the Tacked-On Holding Period. The holding period of property given up in a tax-free exchange is not tacked on to the holding period of the property received if the property given up was nonqualifying property based on the requirements of Section 63-3022H(3), Idaho Code. Nonqualifying property includes: (7-1-98)

- i. Real or tangible personal property not having an Idaho situs at the time of the exchange; and (7-1-98)
- ii. Tangible personal property not used by a revenue-producing enterprise. (7-1-98)
- iii. Intangible property. (5-8-09)

c. Installment Sales. The determination of whether the property meets the required holding period is made using the laws applicable for the year of the sale. If the required holding period is not met in the year of sale, the gain is not from qualified property. The classification as nonqualified property will not change even though the gain may be reported in subsequent years when a reduced holding period is applicable. (4-5-00)

- d.** Examples of nonqualifying property. (7-1-98)

i. A taxpayer purchased land in California. After owning the land three (3) years, he gave up the California land in a tax-free exchange for land in Idaho. He owned the Idaho land for ten (10) months until selling it at a gain. For federal purposes the holding period of the California land tacks on to the holding period of the Idaho land. The gain from the sale of the California land would not qualify for the Idaho capital gains deduction since it is real property located outside Idaho. The holding period of the California land does not tack on to the holding period of the Idaho land for purposes of the Idaho capital gains deduction. Because the Idaho land was not held for twelve (12) months, the gain from the sale of the Idaho land does not qualify for the Idaho capital gains deduction. (3-30-07)

ii. Assume the same facts as in the example in Subsection paragraph 171.025.d.i. except the taxpayer's original purchase was land in Idaho. Because the taxpayer owned real property in Idaho that was exchanged for a second parcel of real property in Idaho, the holding period of the Idaho land given up tacks on to the holding period of the second parcel of Idaho land. Because the holding period of the second property, which includes the holding period of the first property, was at least twelve (12) months, the gain from the sale of the second parcel of real property qualifies for the Idaho capital gains deduction. (~~3-30-07~~)

036. Holding Periods of S Corporation and Partnership Property. (7-1-98)

a. Property Distributed by an S Corporation to a Shareholder or by a Partnership to a Partner. The holding period of property received in a distribution from an S corporation or partnership generally includes the holding period of the S corporation or partnership. However, the holding period of property received in exchange for a shareholder's stock or a partner's partnership interest does not include the holding period of the stock or partnership interest given up since the stock and partnership interests are nonqualifying property. (5-8-09)

b. Property Contributed by a Shareholder to an S Corporation or by a Partner to a Partnership. A shareholder or partner who contributes otherwise qualified property to an S corporation or partnership may treat the pass-through gain on the sale of that property as a qualifying Idaho capital gain if the property has, in total, been held by the shareholder or partner and the S corporation or partnership for the required holding period. The noncontributing shareholders or partners may treat the pass-through gain as a qualifying Idaho capital gain only if the S corporation or partnership held the property for the required holding period. (5-8-09)

172. IDAHO CAPITAL GAINS DEDUCTION -- REVENUE-PRODUCING ENTERPRISE (RULE 172).
Section 63-3022H, Idaho Code. (3-20-97)

01. In General. Only the activities listed in Section 63-3022H(4), Idaho Code, qualify as a revenue-producing enterprise. ~~A revenue producing enterprise does not include retail sales, professional, managerial, or repair services.~~ (3-20-97)()

02. Nonqualifying Activities. Examples of activities that do not qualify as a revenue-producing enterprise include the following: ()

- a. Retail sales;** ()

- b.** Professional or managerial services: ()
- c.** Repair services or other service related activities: ()
- d.** Transportation activities, unless they are an integral part of the taxpayer's qualifying activity: ()
- e.** Telephone, cable, and internet services: ()
- f.** Agricultural services, such as horse training, veterinarian services, and crop dusting. ()

023. Multiple Activities. If a business is engaged in both revenue-producing and nonrevenue-producing activities, tangible personal property must be used in the revenue-producing activity to qualify for the Idaho capital gains deduction. (3-20-97)

04. Examples. ()

a. A taxpayer's Idaho business includes buying wool and processing it into yarn, using the yarn to manufacture clothes, and selling the clothes to the customers. Only part of the taxpayer's business activity qualifies as a revenue-producing enterprise. The activity related to retail sales does not qualify as a revenue-producing enterprise and any tangible personal property used in that activity does not qualify for the Idaho capital gains deduction. ()

b. A taxpayer's Idaho business includes cutting timber in a forest, transporting the logs to a sawmill, processing the logs into plywood, and selling the plywood to a furniture manufacturer. The entire business qualifies as a revenue-producing enterprise, including the selling activity, because the selling activity is at wholesale. ()

c. A taxpayer's Idaho business includes growing potatoes and operating a long-haul trucking business unrelated to the potato operations. Only the portion of the Idaho business involved in activities necessary to the growing of potatoes qualifies as a revenue-producing enterprise. Tangible personal property used in the taxpayer's long-haul trucking business does not qualify for the Idaho capital gains deduction. ()

(BREAK IN CONTINUITY OF SECTIONS)

200. NET OPERATING LOSS -- CORPORATIONS (RULE 200).
Section 63-3021, Idaho Code.

(3-20-97)

01. Unitary Taxpayers. Each corporation included in a unitary group must determine its respective share of the Idaho apportioned net operating loss incurred by the unitary group for the taxable year. A corporation's share of the net operating loss is computed using its Idaho apportionment factor for the year of the loss. The corporation must add or subtract its nonbusiness income or loss allocated to Idaho to its share of the apportioned loss. (3-20-97)

02. ~~Net Operating Losses That Survive a Merger.~~ ~~Subject to the provisions of Sections 381 and 382, Internal Revenue Code, Idaho net operating losses incurred by a corporation will survive a merger.~~ **Example.** (3-20-97)()

a- ~~Changes in the location of a loss corporation's business or its key employees shall not be treated as a failure to satisfy the continuity of business requirements.~~ (3-20-97)

b- ~~If the pre-merger corporation conducted multistate operations, the Section 382, Internal Revenue Code, loss limitation is limited further by the pre-merger loss corporation's Idaho apportionment factor for the last taxable year preceding the date of the merger.~~ (3-20-97)

	<u>XYZ USA, Inc.</u>	<u>Idaho XYZ</u>	<u>Oregon XYZ</u>	<u>Combined</u>
<u>Computation of Idaho Net Operating Loss (NOL):</u>				
<u>Federal Taxable Income</u>	<u>(50,000,000)</u>	<u>5,000,000</u>	<u>(7,000,000)</u>	<u>(52,000,000)</u>
<u>State Adjustments</u>	<u>(5,000,000)</u>	<u>(150,000)</u>	<u>450,000</u>	<u>(4,700,000)</u>
<u>Unitary Business Income (Loss) Subject to Apportionment</u>				<u>(56,700,000)</u>
<u>Idaho Apportionment Factor</u>	<u>.000329</u>	<u>.006217</u>	<u>.000000</u>	
<u>Loss Apportioned to Idaho</u>	<u>(18,654)</u>	<u>(352,504)</u>	<u>0</u>	
<u>Income (Loss) Allocated to Idaho</u>		<u>35,000</u>	<u>0</u>	
<u>Idaho NOL</u>	<u>(18,654)</u>	<u>(317,504)</u>	<u>0</u>	
<u>Application of Idaho NOL:</u>				
<u>Idaho Taxable Income Before Carryback:</u>				
<u>2nd Preceding Tax Year</u>	<u>15,987</u>	<u>212,852</u>		
<u>1st Preceding Tax Year</u>	<u>29,854</u>	<u>447,962</u>		
<u>Maximum Loss Available for Carryback – Limited to the lesser of the current year NOL or \$100,000.</u>				
	<u>(18,654)</u>	<u>(100,000)</u>		
<u>NOL Applied to:</u>				
<u>2nd Preceding Tax Year</u>	<u>(15,987)</u>	<u>(100,000)</u>		
<u>1st Preceding Tax Year</u>	<u>(2,667)</u>	<u>0</u>		
<u>NOL Available for Carryover</u>	<u>0</u>	<u>(217,504)</u>		
<u>Taxable Income Remaining in Carryback Years:</u>				
<u>2nd Preceding Tax Year</u>	<u>0</u>	<u>112,852</u>		
<u>1st Preceding Tax Year</u>	<u>27,187</u>	<u>447,962</u>		

()

(BREAK IN CONTINUITY OF SECTIONS)

201. NET OPERATING LOSS CARRYBACKS AND CARRYOVERS (RULE 201).
Section 63-3022(c), Idaho Code.

(7-1-99)

01. Definitions for Purposes of Net Operating Loss Carrybacks and Carryovers.

(3-20-97)

a. The term net operating loss deduction means the sum of the Idaho net operating losses carried to another taxable year and subtracted in computing Idaho taxable income. (3-20-97)

b. A net operating loss is absorbed when it has been fully subtracted from Idaho taxable income, as modified by Section 63-3021, Idaho Code. (4-5-00)

02. Adjustments to Net Operating Losses. (3-20-97)

a. Adjustments to a net operating loss will be determined pursuant to the law applicable to the loss year. (3-20-97)

b. Adjustments to a net operating loss deduction may be made even though the loss year is closed due to the statute of limitations. (3-20-97)

03. Adjustments in Carryback and Carryover Years. (3-20-97)

a. Adjustments to income, including modifications pursuant to Section 63-3021, Idaho Code, in a carryback or carryover year must be made for purposes of determining, how much, if any, of the net operating loss may be carried over to subsequent years. (4-5-00)

b. Adjustments are made pursuant to the law applicable to the carryback or carryover year. (4-5-00)

c. Adjustments may be made even though the year is closed due to the statute of limitations. (3-20-97)

04. Net Operating Loss Carrybacks. (3-20-97)

a. The net operating loss carryback allowed for the entire carryback period ~~shall~~ may not exceed one hundred thousand dollars (\$100,000) per taxpayer. Each corporation that has a net operating loss and is included in a unitary group is limited to a maximum carryback of one hundred thousand dollars (\$100,000). ~~(4-5-00)~~()

b. Except as provided in Paragraph 201.04.c., the net operating loss carryback ~~shall be~~ is applied as follows: ~~(4-5-00)~~()

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss carryback is applied to the third preceding taxable year and if not absorbed, the difference applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the fifteen (15) succeeding taxable years, in order, until absorbed. (4-5-00)

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, the net operating loss carryback is applied to the second preceding taxable year and if not absorbed, the difference applied to the first preceding taxable year. The loss not absorbed in the carryback years is subtracted in the twenty (20) succeeding taxable years, in order, until absorbed. (4-5-00)

c. If the taxpayer makes a valid election to forego the carryback period as provided in Subsection 201.05, the provisions of 201.04.b. do not apply and the net operating loss carryover ~~shall be~~ is applied as follows: ~~(5-3-03)~~()

i. For net operating losses incurred in taxable years beginning on and after January 1, 1990, but prior to January 1, 2000, the net operating loss is subtracted in the fifteen (15) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)

ii. For net operating losses incurred in taxable years beginning on and after January 1, 2000, the net operating loss is subtracted in the twenty (20) succeeding taxable years, in order, until the loss is absorbed. (4-5-00)

d. If the taxpayer fails to make a valid election to forego the carryback period, the net operating loss must be carried back. If a carryback year is closed due to the statute of limitations, the net operating loss carryback ~~shall~~ may not result in a refund for the closed taxable year. (3-29-10)()

05. Timing and Method of Electing to Forego Carryback. (3-30-01)

a. Net operating losses incurred in taxable years beginning on or after January 1, 2010. The election must be made by the due date of the loss year return, including extensions. Once the completed return is filed, the extension period expires. Unless otherwise provided in the Idaho return or in an Idaho form accompanying a return for the taxable year, the election referred to in this Subsection ~~shall~~ may be made by attaching a statement to the taxpayer's income tax return for the taxable year of the loss. The statement must contain the following information: (3-29-10)()

i. The name, address, and taxpayer's social security number or employer identification number; (3-20-97)

ii. A statement that the taxpayer makes the election pursuant to Section 63-3022(c)(1), Idaho Code, to forego the carryback provision; and (7-1-99)

iii. The amount of the net operating loss. (3-20-97)

b. Attaching a copy of the federal election to forego the federal net operating loss carryback to the Idaho income tax return for the taxable year of the loss ~~shall~~ does not constitute an election for Idaho purposes. (3-29-10)()

c. If the election is made on an amended or original return filed subsequent to the time allowed in Paragraph 201.05.a., it is considered untimely and the net operating loss ~~shall be~~ is applied as provided in Paragraph 201.04.b. (3-29-10)()

06. Order in Which Losses Are Applied in a Year. Loss carryovers are deducted before deducting any loss carrybacks applicable to the same taxable year. (3-20-97)

07. Documentation Required When Claiming a Net Operating Loss Deduction. A taxpayer claiming a net operating loss deduction for a taxable year must file with his return for that year a concise statement setting forth the amount of the net operating loss deduction claimed and all material and pertinent facts, including a detailed schedule showing the computation of the net operating loss and its carryback or carryover. (3-20-97)

08. Conversion of C Corporation to S Corporation. ~~A net operating loss carryback or carryover from a taxable year in which a corporation is a C corporation cannot be carried to a taxable year in which the corporation is an S corporation. An S corporation may not carry over or back a net operating loss from a taxable year in which the corporation was a C corporation.~~ However, an S corporation subject to ~~the~~ Idaho tax on net recognized built-in gains ~~is allowed to~~ or excess net passive income may deduct a net operating loss carryover from a taxable year in which the corporation was a C corporation against its net recognized built-in gain and excess net passive income. (7-1-99)()

(BREAK IN CONTINUITY OF SECTIONS)

253. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- ADDITIONS REQUIRED IN COMPUTING IDAHO ADJUSTED INCOME.

Section 63-3026A(6), Idaho Code. The following items must be added to Idaho adjusted gross income in computing the Idaho adjusted income of nonresident and part-year resident individuals. (3-20-97)()

01. Interest and Dividends Not Taxable Pursuant to the Internal Revenue Code. (3-20-97)

a. Part-Year Residents. ~~Add-i~~Interest and dividend income not taxable pursuant to the Internal Revenue Code that was received while residing in or domiciled in Idaho must be added. However, ~~do not include~~ interest received from obligations of the state of Idaho or any political subdivision of Idaho. ~~This interest~~ is exempt from Idaho income tax and is not added. (7-1-98)()

b. Nonresidents. ~~Add-i~~Interest and dividend income reportable from a pass-through entity that was transacting business in Idaho must be added to the extent the income was apportioned or allocated as Idaho income. See Rule 263 of these rules for multistate apportionment rules. (7-1-98)()

02. **Net Operating Loss Deduction.** ~~Add-any~~ The amount of the net operating loss deduction included in Idaho adjusted gross income must be added. (3-20-97)()

03. **Capital Loss.** ~~Add-e~~Capital losses included in Idaho adjusted gross income must be added if the loss was incurred while not residing in and not domiciled in Idaho, or if the loss relates to an activity not taxable by Idaho at the time the loss was incurred. (3-20-97)()

04. **Lump Sum Distributions.** Part-year residents must Aadd the taxable amount of a lump sum distribution, deducted ~~from gross income pursuant to Section 402(d), Internal Revenue Code,~~ in calculating taxable income received while residing in or domiciled in Idaho. This includes both the ordinary income portion and the amount eligible for the capital gain election. (3-20-97)()

05. **Idaho Medical Savings Account.** An account holder must Aadd the amount of any nonqualified withdrawal from an Idaho medical savings account ~~to the extent the withdrawal is treated as income by Idaho law if the withdrawal was not made for the purpose of paying eligible medical expenses.~~ (7-1-98)()

06. **Idaho College Savings Program.** ()

a. An account owner must Aadd the amount of a nonqualified withdrawal from an Idaho college savings program, less the amount included in the account owner's Idaho adjusted gross income. Nonqualified withdrawal is defined in Section 33-5401, Idaho Code. (3-20-04)()

b. As provided in Section 63-3022(p), Idaho Code, an account owner must add the amount of a withdrawal from an Idaho college savings program that is transferred on or after July 1, 2007, to a qualified tuition program operated by a state other than Idaho. For taxable years beginning on or after January 1, 2008, the addback is limited to the total of the amounts contributed to the Idaho college savings program that were deducted on the account owner's Idaho income tax returns for the year of the transfer and the immediately preceding taxable year. ()

07. **Special First-Year Depreciation Allowance.** As provided by Section 63-3022O, Idaho Code, if a taxpayer claims the special first-year depreciation allowance on property pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes must be computed without regard to the special first-year depreciation allowance. An individual must Aadd the amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes. This addition does not apply to depreciation computed on property acquired after 2007. (3-20-04)()

08. **Certain Expenses of Eligible Educators.** ~~Add-t~~The amount of out-of-pocket classroom expenses deducted pursuant to Section 62, Internal Revenue Code, ~~in computing adjusted gross income~~ must be added. (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

255. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PRORATION OF EXEMPTIONS AND DEDUCTIONS (RULE 255).
Section 63-3026A(4), Idaho Code. (3-30-07)

01. **In General.** The exemptions and deductions allowable for federal purposes, except for the deduction of state and local income taxes and the deduction for state and local general sales taxes, are allowed in part in computing Idaho taxable income. To determine the portion of exemptions and deductions allowable for part-year and nonresident individuals, the total exemptions and deductions allowed by Section 151, Internal Revenue Code, and Section 63-3022(j), Idaho Code, ~~shall be~~ are multiplied by the calculated proration. (4-2-08)()

02. **Proration.** For taxable years beginning in or after 2007, the proration is calculated by dividing Idaho adjusted income by total adjusted income. Calculate four (4) digits to the right of the decimal point. If the fifth digit is five (5) or greater, the fourth digit is rounded to the next higher number ($\$10,000 / \$15,000 = .66666 = .6667 = 66.67\%$). If the fifth digit is less than five (5), the fourth digit remains unchanged and any digits remaining to its right are dropped ($\$10,000 / \$30,000 = .33333 = .3333 = 33.33\%$). The percentage may not exceed one hundred percent (100%), nor be less than zero (0). (4-2-08)

a. Idaho adjusted income means the Idaho taxable income of the taxpayer as computed pursuant to Title 63, Chapter 30, Idaho Code, except for any adjustments for the standard deduction or itemized deductions and personal exemptions. Total adjusted income means the Idaho taxable income of the taxpayer computed as if he were a resident of Idaho for the entire taxable year, except no adjustments are made for the standard deduction, itemized deductions, personal exemptions, the deduction for active military service pay as provided in Section 63-3022(h), Idaho Code, and any deduction for income earned within a federally recognized Indian reservation. (3-30-01)

b. Generally, both Idaho adjusted income and total adjusted income are positive amounts. If Idaho adjusted income is less than or equal to the total adjusted income, the percentage ~~shall be~~ is between zero (0) and one hundred percent (100%). If Idaho adjusted income is greater than the total adjusted income, the percentage ~~shall be~~ is one hundred percent (100%). If Idaho adjusted income is a positive amount and total adjusted income is a negative amount, the percentage ~~shall be~~ is one hundred percent (100%). If Idaho adjusted income is a negative amount and total adjusted income is a positive amount, the percentage ~~shall be~~ is zero (0). (3-20-97)()

03. **Standard Deduction for Married Filing Joint Returns.** The proration percentage ~~shall be~~ is applied after making the following calculations: (3-30-01)

~~a. For taxable year 1999 the standard deduction allowed on a married filing joint return shall be increased by one hundred fifty dollars (\$150). (3-30-01)~~

~~b. For taxable years beginning on or after January 1, 2000, the standard deduction allowed on a married filing joint return shall be equal to two (2) times the basic standard deduction for a single individual. Add to this amount any additional standard deduction for the aged or blind allowed for federal income tax purposes. (3-30-01)()~~

(BREAK IN CONTINUITY OF SECTIONS)

261. INCOME FROM ESTATES AND TRUSTS (RULE 261).

Section 63-3026A(3), Idaho Code. ~~All income, gain, loss, or deduction of an estate or trust distributed or distributable to a nonresident beneficiary is income derived from or related to sources within Idaho if the estate or trust is treated as a resident pursuant to Rules 034 and 035 of these rules. If the estate or trust is treated as a nonresident, only those items of income, gain, loss and or deduction of the estate or trust that are derived from or related to sources within Idaho are Idaho source income of the beneficiary would be Idaho source income pursuant to Section 63-3026A, Idaho Code, if received directly by a nonresident individual. (3-20-97)()~~

(BREAK IN CONTINUITY OF SECTIONS)

290. TAX PAID BY PASS-THROUGH ENTITIES FOR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS OWNERS, OR BENEFICIARIES -- ELECTION FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2011 (RULE 290).

Section 63-3022L, Idaho Code. (3-30-07)

01. Election Provided in Section 63-3022L, Idaho Code. (3-30-01)

a. The election to have a qualifying pass-through entity pay the tax as provided in Section 63-3022L, Idaho Code, is available only to an individual who is an officer, director, ~~shareholder, partner, member~~ owner, or beneficiary. ~~If the individual has Idaho taxable income in addition to income described in Section 63-3022L, Idaho Code, the election is not available. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code.~~ (5-8-09)()

b. The election is not available to: ()

i. ~~e~~Corporations; ()

ii. ~~p~~Partnerships; ~~or~~ ()

iii. ~~e~~Electing small business trusts; ~~or to~~ ()

iv. ~~a~~Any other person who is not an individual; ~~or~~ (3-30-01)()

v. Idaho resident individuals. ()

e. ~~Permission from the Tax Commission to make the election is not required.~~ (3-30-01)

d. ~~The election is made by the individual. No statement or form is required. If the election is made, the entity shall report and pay the tax on the individual's Idaho taxable income. The individual's Idaho taxable income is described in Rule 291 of these rules.~~ (3-30-07)

e. ~~An individual may not make the election for his income received from a corporation other than an S corporation if the corporation reports less than fifty percent (50%) of its taxable income to Idaho.~~ (5-8-09)

02. Making the Election. The election for a pass-through entity to report and pay the tax for a qualified nonresident individual must be made by the individual. Permission from the Tax Commission is not required. ()

a. The election must be made for each taxable year to which it will apply. ()

b. The election must be made on a form as prescribed by the Tax Commission. The pass-through entity must keep and maintain the election form and make it available to the Tax Commission upon request. ()

c. The election must be provided to the pass-through entity by January 31 following the end of the tax year for which it is to apply. ()

d. Once the election is made, it is irrevocable for that tax year. ()

023. Failure to Make Election. If the individual fails to make the election to have the entity pay the tax, ~~and does not report and pay the tax on the income described in Rule 291 of these rules on an Idaho individual income tax return when such return is required;~~ the pass-through entity ~~shall be required to pay~~ must remit the tax withheld on such income any cash distributions paid to the individual as required in Section 63-3036B, Idaho Code, and Rule 877 of these rules. (3-30-07)()

03. Multiple Pass-Through Entities. ~~An individual may make the election even though he is an officer, director, shareholder, partner, member, or beneficiary in more than one (1) qualifying entity provided that all his income is subject to the election in Section 63-3022L(2), Idaho Code.~~ (5-8-09)

~~04. Examples. (5-8-09)~~

~~a. An individual is a partner in Partnership A and Partnership B. He has no other Idaho taxable income. The individual may make the election for both partnerships. (5-8-09)~~

~~b. An individual is a partner in Partnership A and a shareholder of S Corporation B. He has no other Idaho taxable income. The individual may make the election for both entities. (5-8-09)~~

~~c. An individual is a partner in Partnership A and a director of Corporation B, which has an Idaho apportionment factor of twelve percent (12%) and no nonbusiness income reported to Idaho. The individual received compensation from Corporation B for his work as a director. Because the provisions of Section 63-3022L, Idaho Code, do not apply to a corporation with less than fifty percent (50%) of its income taxable to Idaho, the individual has Idaho taxable income not subject to Section 63-3022L, Idaho Code. As a result, the individual may not make the election for either Partnership A or Corporation B. (5-8-09)~~

~~d. An individual is a partner in Partnership A and received rental income from a house he owned in Idaho. Because the individual has Idaho taxable income not subject to Section 63-3022L, Idaho Code, the individual may not make the election for Partnership A. (5-8-09)~~

291. TAX PAID BY PASS-THROUGH ENTITIES FOR OFFICERS, DIRECTORS, SHAREHOLDERS, PARTNERS, MEMBERS OWNERS, OR BENEFICIARIES -- COMPUTATION OF IDAHO TAXABLE INCOME FOR TAXABLE YEARS BEGINNING ON OR AFTER JANUARY 1, 2011 (RULE 291).

Sections 63-3022L and 63-3026A, Idaho Code. (3-30-07)()

01. Compensation Reportable to Idaho In General. A pass-through entity is responsible for reporting and paying the tax for nonresident individual officers, directors, owners, or beneficiaries who make the election allowed by Section 63-3022L, Idaho Code. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (3-30-07)()

~~a. C Corporations. A C corporation with fifty percent (50%) or more of its income taxable to Idaho may be required to pay the tax on the compensation reportable to Idaho that the corporation paid to an individual who is an officer, director, shareholder, or member. (3-30-07)~~

~~b. S Corporations. An S corporation may be required to pay the tax on the compensation reportable to Idaho that the S corporation paid to an individual who is an officer, director, or shareholder. (3-30-07)~~

~~c. Partnerships. A partnership may be required to pay the tax on the compensation reportable to Idaho that the partnership paid to an individual who is a partner or member. (3-30-07)~~

~~d. Estates and trusts. An estate or trust may be required to pay the tax on the compensation reportable to Idaho that the estate or trust paid to an individual beneficiary. (3-30-07)~~

~~e. Compensation reportable to Idaho for an Idaho part year resident or nonresident is determined pursuant to Rule 270 of these rules. (3-30-07)~~

02. Pass-Through Items Income Reportable to Idaho. The following items must be included in the computation of Idaho taxable income for an electing individual: (3-30-07)()

~~a. S Corporations. An S corporation may be required to pay the tax on the pass through items reportable to Idaho by an individual shareholder. Compensation paid by the pass-through entity to the officer, director, owner, or beneficiary that is income from Idaho sources as determined pursuant to Rules 270 through 272 of these rules. (3-30-07)()~~

~~b. Partnerships. A partnership may be required to pay the tax on the pass-through items reportable to that are income from Idaho by sources of an individual who is a partner or member owner as determined pursuant to Rule 263 of these rules. (3-30-07)()~~

~~c. Pass through items reportable to Idaho from an S corporation or a partnership for an Idaho part-year resident or nonresident are determined pursuant to Rule 263 of these rules. Distributable net income from an estate or trust that is income from Idaho sources as determined pursuant to Rule 261 of these rules. (3-30-07)()~~

~~03. Distributable Net Income Reportable to Idaho. (3-30-07)~~

~~a. Estates and trusts. An estate or trust may be required to pay the tax on the distributable net income from the estate or trust that is reportable to Idaho by an individual beneficiary. (3-30-07)~~

~~b. Distributable net income reportable to Idaho from an estate or trust for an Idaho part-year resident or nonresident is determined pursuant to Rule 261 of these rules. (3-30-07)~~

~~04. Deductions That Are Subject to Limitations or Elections by Individuals. A pass through entity is not allowed to deduct items that are subject to limitations or elections at the individual level. Examples of such items include the Section 179 deduction, research and experimental expenses, mining exploration and development costs, pre-productive period expenses, and passive activity losses. Individuals may not bypass limitations on deductions by electing to have the pass-through entity pay the tax. (3-30-07)~~

~~053. Deductions That Are Not Allowed to S Corporations and Partnerships. Pass-through entities paying the tax under Section 63-3022L, Idaho Code, are not entitled to claim the following deductions on behalf of an individual. (3-30-07)()~~

~~a. Capital Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any capital loss provided for in Section 1212, Internal Revenue Code. (3-30-07)~~

~~b. Net Operating Loss. As provided in Section 63-3022(i), Idaho Code, S corporations and partnerships are not allowed to carry over or carry back any net operating loss provided for in Section 63-3022(c), Idaho Code. (3-30-07)~~

~~c. Nonbusiness Deductions. Deductions are not allowed for nonbusiness expenses of an individual, such as those claimed as itemized deductions, charitable contributions, or personal exemptions. Idaho Capital Gains Deduction. As provided in Section 63-3022H, Idaho Code, the Idaho capital gains deduction may only be claimed by individual taxpayers on an individual income tax return. (3-30-07)()~~

~~d. Informational Items. Amounts provided to owners of pass-through entities and beneficiaries of trusts and estates on the federal Schedule K-1 that are informational only may not be used as a deduction in computing the taxable income reportable under Section 63-3022L, Idaho Code. Informational items include the domestic production activities information and net earnings from self-employment. ()~~

~~e. Items Not Deductible Under the Internal Revenue Code. A deduction is not allowed for items disallowed under the Internal Revenue Code. For example, a deduction is not allowed for items disallowed as a deduction in Sections 162(c) and 262 through 280E, Internal Revenue Code, unless specifically allowed by Idaho law. Items allowed by Idaho law include expenses related to tax-exempt income under Section 265, Internal Revenue Code, which are allowed to be deducted as a result of Section 63-3022M, Idaho Code. ()~~

~~f. Items Not Reported as a Pass-Through Deduction. Amounts not reported from the pass-through entity to the pass-through owner are not allowed as a deduction under Section 63-3022L, Idaho Code. These include: ()~~

~~i. The standard deduction; ()~~

~~ii. Personal exemptions; ()~~

~~iii. Itemized deductions that result from activity of the pass-through owner. For example, a deduction is not allowed for charitable contributions made personally by the pass-through owner, but is allowed for the pass-~~

through owner's share of charitable contributions made by the pass-through entity. ()

04. Double Deductions Disallowed. A pass-through owner may not deduct amounts that previously have been deducted by a pass-through entity paying the tax on his behalf. If the pass-through owner files an Idaho individual income tax return reporting federal taxable income that includes amounts previously deducted by a pass-through entity on his behalf, the pass-through owner must add back the duplicated deduction amounts in computing his Idaho taxable income on his individual income tax return. ()

(BREAK IN CONTINUITY OF SECTIONS)

720. CREDIT FOR IDAHO RESEARCH ACTIVITIES -- IN GENERAL (RULE 720).

Section 63-3029G, Idaho Code. (3-15-02)

01. ~~Credit Allowed~~ Definitions. (3-15-02)

~~a. The credit for Idaho research activities allowed by Section 63-3029G, Idaho Code, applies to taxable years beginning on and after January 1, 2001.~~ (4-6-05)

~~b.~~ The Idaho credit ~~shall be~~ **is** computed using the same definitions of qualified research expenses, qualified research, basic research payments, and basic research as are found in Section 41, Internal Revenue Code, except only the amounts related to research conducted in Idaho qualify for the Idaho credit. If an expense does not qualify for the federal credit under Section 41, Internal Revenue Code, it will not qualify for purposes of the Idaho credit. (3-15-02)()

02. Limitations. The credit for Idaho research activities allowable in any taxable year ~~shall be~~ **is** limited as follows: (3-15-02)()

a. Tax Liability. The total amount of any credit for Idaho research activities claimed during a taxable year may not exceed one hundred percent (100%) of the tax, after allowing all other income tax credits that may be claimed before the credit for Idaho research activities, regardless of whether the credit for Idaho research activities results from a carryover earned in prior years, the current year, or both. See Rule 799 of these rules for the priority order for nonrefundable credits. (3-15-02)

b. Credit for Qualifying New Employees. If the credit for qualifying new employees is claimed in the current taxable year or carried forward to a future taxable year, the credit for Idaho research activities is limited by the provisions of Section 63-3029F, Idaho Code. (3-15-02)

c. Unitary Taxpayers. Limitations apply to each taxpayer according to its own tax liability. Each corporation in a unitary group is a separate taxpayer. See Rule 711 of these rules. (3-15-02)

03. Carryovers. The carryover period for the credit for Idaho research activities is fourteen (14) years. (3-15-02)

04. Pass-Through Entities. The credit may be earned by a partnership, S corporation, estate, or trust and passed through to the partner, shareholder, or beneficiary. See Rule 785 of these rules for the method of attributing the credit, for pass-through entities paying tax, and the application of limitations on pass-through credits. (3-15-02)

05. Short Taxable Year Calculations. Short taxable year calculations provided in Section 41, Internal Revenue Code, and related regulations ~~shall be~~ **are** used to compute the Idaho credit if the taxpayer must use short taxable year calculations for purposes of computing the federal credit. ~~If the taxpayer makes the election in Section 63-3029G(1)(a)(i), Idaho Code, and the taxpayer's taxable year is not a calendar year for 2001, the taxpayer must use the federal short taxable year calculations to compute the credit applicable for the period beginning January 1, 2001, and ending the last day of the taxpayer's fiscal year ending in 2001.~~ (4-6-05)()

721. CREDIT FOR IDAHO RESEARCH ACTIVITIES -- ELECTIONS (RULE 721).

Section 63-3029G, Idaho Code.

(3-15-02)

~~**01. Five Year Election.** A taxpayer may elect to claim the credit for Idaho research activities for one (1) of the following five (5) year periods:~~ (3-15-02)

~~**a.** The five (5) year period beginning with the first day of the taxpayer's taxable year beginning in 2001; or~~ (3-15-02)

~~**b.** The five (5) year period beginning with January 1, 2001.~~ (3-15-02)

~~**c.** If a fiscal year taxpayer elects to claim the credit for the five (5) year period beginning with January 1, 2001, the credit for Idaho research activities allowed on the taxpayer's return for the fiscal year beginning in 2005 shall be computed using only the amounts for research activities occurring prior to January 1, 2006.~~ (3-15-02)

~~**d.** The five (5) year period election shall be made by checking the appropriate box on Form 67. The election may not be changed unless the statute of limitations is open for assessment for all years to which the credit was claimed and all such returns are amended consistently with the change in election.~~ (3-15-02)

021. Election to Be Treated as a Start-Up Company. Regardless of whether a taxpayer qualifies as a start-up company for purposes of the federal credit for increasing research activities under Section 41, Internal Revenue Code, a taxpayer may elect to be treated as a start-up company for the credit for Idaho research activities.

(3-15-02)

a. The election once made is irrevocable. (3-15-02)

b. The election ~~shall be~~ **is** made by checking the appropriate box on Form 67. (3-15-02)()

c. A taxpayer who makes the election under Section 63-3029G, Idaho Code, to be treated as a start-up company must use the fixed-base percentage that would be used by the taxpayer if the taxpayer had qualified as a start-up company for purposes of the federal credit under Section 41, Internal Revenue Code. For example, if the taxpayer's fiscal year beginning in 2001 is the 8th such taxable year beginning after December 31, 1993 **in which the taxpayer had Idaho qualified research expenses**, the fixed-base percentage is one-half (1/2) of the percentage ~~which that~~ the aggregate qualified research expenses of the taxpayer for the 5th, 6th, and 7th such taxable years is of the aggregate gross receipts of the taxpayer for such years. (3-15-02)()

032. Unitary Sharing. A corporation included as a member of a unitary group may elect to share the credit for Idaho research activities it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the credit for Idaho research activities to the extent allowable against its tax liability. The credit available to be shared is the amount of credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029G(3), Idaho Code, or Paragraph 720.02.b. of these rules, whichever is applicable. The limitation is applied against the tax computed for the corporation that claims the credit. Credit shared with another member of the unitary group reduces the carryforward. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

745. CREDIT FOR QUALIFYING NEW EMPLOYEES -- REVENUE-PRODUCING ENTERPRISE (RULE 745).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in ~~2000 and~~ **or** after 2001**0**.

(5-3-03)()

01. In General. A revenue-producing enterprise ~~means an Idaho business that begins with a natural~~

~~resource and produces, assembles, fabricates, manufactures, or processes a value-added product. A revenue-producing enterprise includes a business that conducts or is engaged in the following: is defined in Section 63-3022H, Idaho Code, and Rule 172 of these rules.~~ (3-30-01)()

~~a. Farming activities identified in Section 464, Internal Revenue Code, that result in a value added product;~~ (3-30-01)

~~b. Mining;~~ (3-30-01)

~~c. Logging;~~ (3-30-01)

~~d. Extracting a natural resource.~~ (3-30-01)

~~02. Nonqualifying Activities. Examples of businesses that do not qualify as a revenue producing enterprise include a business performing the following activities:~~ (3-30-01)

~~a. Retail sales;~~ (3-30-01)

~~b. Professional or managerial services;~~ (3-30-01)

~~c. Repair services or other service related activities;~~ (3-30-01)

~~d. The operation of laboratories or other facilities for scientific, agricultural, animal husbandry, or industrial research, development, or testing;~~ (3-30-01)

~~e. The storage, warehousing, distribution, or sale at wholesale of any products of agriculture, mining, or manufacturing;~~ (3-30-01)

~~f. Transportation activities, unless they are an integral part of a qualifying activity;~~ (3-30-01)

~~g. Activities that consume a natural resource in a process, but do not add value to the natural resource.~~ (3-30-01)

~~03. Examples.~~ (3-30-01)

~~a. A taxpayer's Idaho business included buying wool in raw form, processing the wool into yarn, and using the yarn to manufacture articles of clothing. The taxpayer's business activity qualifies as a revenue producing enterprise.~~ (3-30-01)

~~b. A taxpayer's Idaho business includes buying the yarn to manufacture articles of clothing. The taxpayer's activity does not qualify as a revenue producing enterprise due to the fact the taxpayer did not begin with a natural resource.~~ (3-30-01)

~~c. A taxpayer's Idaho business includes cutting lumber in a forest, transporting the logs to a sawmill, processing the logs into plywood, and selling the plywood to a furniture manufacturer. The taxpayer's cutting, transporting and processing activities qualify as a revenue producing enterprise. The selling activity does not qualify.~~ (3-30-01)

~~d. A taxpayer's Idaho business includes buying plywood to manufacture furniture. The taxpayer's activity does not qualify as a revenue producing enterprise due to the fact the taxpayer did not begin with a natural resource.~~ (3-30-01)

~~e. A taxpayer's Idaho business includes training horses. Because the Idaho business does not result in a value added product, but rather provides a service, the taxpayer's business activity does not qualify as a revenue producing enterprise.~~ (3-30-01)

~~f. A taxpayer's Idaho business includes using water in a process to produce electricity. Because the~~

~~Idaho business does not begin with a natural resource that is made into a value-added product, but rather uses the natural resource in a process, the taxpayer's Idaho business activity does not qualify as a revenue-producing enterprise. (3-30-01)~~

~~g. A taxpayer's Idaho business includes growing potatoes and operating a long haul trucking business unrelated to the potato operations. Only the portion of the Idaho business involved in activities necessary to the growing of potatoes qualifies as a revenue-producing enterprise. (3-30-01)~~

042. Multiple Activities. If a taxpayer's trade or business includes both a revenue-producing enterprise and other activities, the taxpayer must calculate qualifying new employees based on that portion of the Idaho business that qualifies as a revenue-producing enterprise. (3-30-07)

053. Seasonal or New Business. An individual employed in a seasonal or new business that was in operation during the taxable year for less than nine (9) months does not qualify as a new employee. (3-30-01)

064. Unitary Taxpayers. The activities of a taxpayer that qualify as a revenue-producing enterprise ~~shall be~~ are determined separately for each corporation that is a member of the unitary group. (3-30-01)()

746. CREDIT FOR QUALIFYING NEW EMPLOYEES -- CALCULATIONS USED TO DETERMINE THE CREDIT AND CREDIT CARRYOVER (RULE 746).
Sections 63-3029E and 63-3029F, Idaho Code, ~~as in effect for taxable years beginning on and after January 1, 2004.~~
(4-6-05)()

01. In General. ~~For taxable years beginning on and after January 1, 2004, a~~ Δ n employer may be able to earn either a one thousand dollar (\$1,000) credit or a five hundred dollar (\$500) credit for a qualifying new employee. However, the employer cannot earn both credits for the same employee. The applicable credit rate depends on whether the new employee meets certain wage and benefit criteria. If the new employee does not meet the criteria for either credit rate, the employer may not claim the credit for such new employee. (4-6-05)()

02. Qualifying for the One Thousand Dollar (\$1,000) Credit. (4-6-05)

a. The new employee must meet both of the following criteria to qualify for the one thousand dollar (\$1,000) credit: (4-6-05)

i. He must have received annual earnings at an average rate of fifteen dollars and fifty cents (\$15.50) or more per hour worked; and (4-6-05)

ii. He must have been eligible to receive employer provided coverage under an accident or health plan described in Section 105, Internal Revenue Code. (4-6-05)

b. The new employee does not have to be employed in a revenue-producing enterprise to qualify for the one thousand dollar (\$1,000) credit. (4-6-05)

03. Qualifying for the Five Hundred Dollar (\$500) Credit. If a new employee does not meet the criteria for the one thousand dollar (\$1,000) credit, the employer may be eligible to claim the five hundred dollar (\$500) credit. To qualify for the five hundred dollar (\$500) credit, the new employee must have been employed in a revenue-producing enterprise as defined in Section 63-3029E, Idaho Code. (4-6-05)

04. Calculating Number of Employees. (3-30-01)

a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Section 63-3029E(1)(a), Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (3-20-04)

i. The employee must have been subject to Idaho income tax withholding. (3-20-04)

ii. The employee must have been employed by the employer on a regular full-time basis or on a part-

time basis if customarily performing such duties at least twenty (20) hours per week. Leased employees do not qualify as employees of the lessee. (4-6-05)

iii. The employee must have been performing such duties for the employer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. (4-6-05)

iv. The employee must have been covered for Idaho unemployment insurance purposes. (3-20-04)

b. Idaho Department of Labor Reports. The employer should begin with his Idaho Department of Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (4-6-05)

c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (3-30-01)

05. Calculating the Number of New Employees. (3-30-01)

a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (3-30-01)

i. The number of employees for the prior taxable year; or (3-30-01)

ii. The average of the number of employees for the three (3) prior taxable years. (3-30-01)

b. ~~The requirements as to who qualifies for the calculation of number of employees in Paragraph 746.02.a., of this rule shall apply in computing the number of employees in Subparagraphs 746.05.a.i., and 746.05.a.ii., of this rule. Calculations used in computing~~ In determining who qualifies to be included in the number of employees, the law applicable to the year in which the credit is being earned must be used in calculating the number of employees for the prior years. The computations of the number of ~~new~~ employees for the prior taxable year and average for the three (3) prior taxable years must be made consistent with the computations and law applicable for the ~~current~~ taxable year in which the credit is earned. (4-2-08)()

i. For example, an employer may qualify as a revenue-producing enterprise under the law applicable to 2010, but did not qualify as a revenue-producing enterprise under the law applicable to the prior years. For purposes of calculating the five hundred dollar (\$500) credit earned in 2010, the number of employees for the prior years must be calculated using the law applicable to 2010. ()

ii. The employer must include in the number of employees for the prior years employees who qualify under the current law, even though the employer was unable to include these employees as qualifying employees in the prior years and did not earn the credit in the prior years. ()

c. The number of new employees must be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. (4-6-05)

d. The employer must determine the number of new employees who qualify for the one thousand dollar (\$1,000) credit and the number who qualify for the five hundred dollar (\$500) credit. If the new employees do not meet the criteria set forth in Sections 63-3029E and 63-3029F, Idaho Code, and this rule, the employer ~~shall~~ may not earn the credit. For example, if a new employee has an average wage rate of ten dollars (\$10) and the employer's business does not qualify as a revenue-producing enterprise, the new employee does not qualify for either the one thousand dollar (\$1,000) credit or the five hundred dollar (\$500) credit. (4-6-05)()

06. Computing the Credit Earned. The credit earned is the lesser of the amounts determined in Paragraphs 746.06.a. and 746.06.b. of this rule. (4-6-05)

a. The number of new employees who qualify for the five hundred dollars (\$500) credit multiplied by five hundred dollars (\$500), plus the number of new employees who qualify for the one thousand dollar (\$1,000)

- credit multiplied by one thousand dollars (\$1,000); or (4-6-05)
- b.** The net income of the trade or business, as determined pursuant to Rule 747 of these rules, multiplied by three and one-quarter percent (3.25%). (4-6-05)
- 07. Limitations.** In the year the credit for qualifying new employees is earned or claimed: (3-20-04)
- a.** This credit and all other credits may not exceed fifty percent (50%) of the taxpayer's income tax for that year after deducting the credit for taxes paid to other states. The credit for taxes paid to other states is not subject to this limitation. (4-6-05)
- b.** See Section 63-3029P, Idaho Code, and Rule 799 of these rules for the priority order of credits. (4-6-05)
- 08. Carryover.** To claim the carryover, the employer must maintain the employment level on which the credit was computed during the three (3) succeeding taxable years to which the unused credit is carried. If the employment level that generated the credit decreases, the employer is not required to recapture the credit claimed in previous taxable years. However, the employer must recompute the credit based on the reduced employment level to determine the correct amount of carryover. (4-6-05)
- 09. Pass-Through Entities.** See Rule 785 of these rules for pass-through entities and the calculation of credits. (3-15-02)
- 10. Unitary Taxpayers.** (3-30-01)
- a.** A corporation may not use the credit for qualifying new employees earned by another member of the unitary group. See Rule 365 of these rules. (3-30-01)
- b.** Each corporation in a unitary group that claims the credit for qualifying new employees is subject to Section 63-3029P, Idaho Code, and Rule 799 of these rules for the priority order of credits. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

754. ~~-- 759.~~ (RESERVED).

~~755. CREDIT FOR QUALIFYING NEW EMPLOYEES — IN GENERAL (RULE 755).
Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001. (3-15-02)~~

~~01. Limitations. If the credit for qualifying new employees is earned or claimed in a taxable year beginning in 2001, this credit and all other credits may not exceed fifty percent (50%) of the taxpayer's income tax liability after deducting the credit for taxes paid to other states. The credit for taxes paid to other states is not subject to this limitation. See Section 63-3029H, Idaho Code, and Rule 799 of these rules for the priority order of credits. (3-15-02)~~

~~02. Carryover. To claim the carryover, the taxpayer must maintain the employment level on which the credit was computed during the three (3) succeeding taxable years to which the unused credit is carried. If the employment level that generated the credit decreases, the taxpayer is not required to recapture the credit claimed in previous taxable years. However, the taxpayer shall recompute the credit based on the reduced employment level to determine the correct amount of carryover. (3-15-02)~~

~~03. Pass-Through Entities. See Rule 785 of these rules for pass-through entities and the calculation of credits. (3-15-02)~~

~~04. Unitary Taxpayers. (3-15-02)~~

~~a. A corporation may not claim the credit for qualifying new employees earned by another member of the unitary group. See Rule 365 of these rules. (3-15-02)~~

~~b. Each corporation in a unitary combined group that claims the credit for qualifying new employees is subject to Section 63-3029H, Idaho Code, and Rule 799 of these rules for the priority order of credits. (3-15-02)~~

~~**756. CREDIT FOR QUALIFYING NEW EMPLOYEES — CALCULATIONS USED TO DETERMINE THE CREDIT AND CREDIT CARRYOVER (RULE 756).**~~

~~Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001. (3-15-02)~~

~~**01. In General.** A taxpayer is allowed a credit of five hundred dollars (\$500) per new employee in the taxable year. To compute the credit for qualifying new employees, the taxpayer shall first calculate the number of employees in the Idaho business. (3-15-02)~~

~~**02. Calculating Number of Employees.** (3-15-02)~~

~~a. Number of Employees Clarified. Only employees who meet the qualifications set forth in Section 63-3029E(1)(a), Idaho Code, are included when computing the number of employees for a taxable year. Such requirements include the following: (3-15-02)~~

~~i. The employee must have had Idaho income tax withheld from his wages. (3-15-02)~~

~~ii. The employee must have been employed by the taxpayer on a regular full time basis or on a part-time basis if customarily performing such duties at least twenty (20) hours per week. Leased employees do not qualify as employees of the lessee. (3-15-02)~~

~~iii. The employee must have been performing such duties for the taxpayer for a minimum of nine (9) months during the taxable year. An individual employed in a seasonal or new business that was in operation for less than nine (9) months during the taxable year does not qualify. (3-15-02)~~

~~iv. The employee must have been covered for Idaho unemployment insurance purposes. (3-15-02)~~

~~b. Idaho Department of Labor Reports. The taxpayer should begin with his Idaho Department of Labor reports to determine the number of employees. However, all employees reported on these reports do not automatically qualify for the calculation of the number of employees. (3-15-02)~~

~~c. Calculation. To calculate the number of employees for a taxable year, add the total qualified employees for each month and divide that sum by the number of months of operation. (3-15-02)~~

~~**03. Calculating the Number of New Employees.** (3-15-02)~~

~~a. The number of new employees is the increase in the number of employees for the current taxable year over the greater of the following: (3-15-02)~~

~~i. The number of employees for the prior taxable year; or (3-15-02)~~

~~ii. The average of the number of employees for the three (3) prior taxable years. (3-15-02)~~

~~b. The requirements as to who qualifies for the calculation of number of employees in Subsection 756.02.a. shall apply in computing the number of employees in Subsections 756.03.a.i. and 756.03.a.ii. Calculations used in computing the credit earned in prior years when the credit was limited to employees in a revenue producing enterprise may not be used in computing the credit earned in taxable years beginning in 2001. (3-15-02)~~

~~**04. Computing the Credit Earned.** The number of new employees shall be rounded to the nearest tenth (.10) and must equal or exceed one (1) or no credit is earned. The credit earned is the lesser of the following: (3-15-02)~~

- ~~a. The number of new employees multiplied by five hundred dollars (\$500); or (3-15-02)~~
- ~~b. The net income of the Idaho business, as determined pursuant to Rule 757 of these rules, multiplied by three and one-quarter percent (3.25%). (3-15-02)~~

~~757. CREDIT FOR QUALIFYING NEW EMPLOYEES—NET INCOME OF IDAHO BUSINESS (RULE 757).~~

~~Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001. The net income of the Idaho business is calculated as follows: (3-15-02)~~

~~01. Proprietorships. The amount reported as net profit or net loss on Schedule C or Schedule F of the federal income tax return that is from Idaho activities. (3-15-02)~~

~~02. C-Corporations. The amount of Idaho taxable income, reported on Idaho Form 41, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocated to Idaho. (3-15-02)~~

~~03. S-Corporations. The amount of Idaho taxable income reported on Idaho Form 41S, modified to restore the deduction of income reported by shareholders on their Idaho income tax returns and before addition of compensation or income attributable to individual shareholders who do not report this income on Idaho income tax returns. (3-15-02)~~

~~04. Partnerships. The amount of Idaho taxable income reported on Idaho Form 65, modified to restore the deduction of income reported by partners on their Idaho income tax returns and before addition of compensation or income attributable to individual partners who do not report this income on Idaho income tax returns. (3-15-02)~~

~~05. Unitary Taxpayers. Each corporation included in a unitary combined group shall use its Idaho taxable income as determined pursuant to Section 63-3027, Idaho Code, modified to restore all net operating loss deductions, and excluding any nonbusiness income and expenses allocable to Idaho. (3-15-02)~~

~~758. CREDIT FOR QUALIFYING NEW EMPLOYEES—RECORD KEEPING REQUIREMENTS (RULE 758).~~

~~Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning in 2001. (3-15-02)~~

~~01. Information Required. Each taxpayer must retain and make available, on request, records to document the credit earned or claimed. The records must include all of the following: (5-3-03)~~

~~a. The Employer Quarterly Unemployment Insurance Tax Reports and the Unemployment Insurance Wage Reports filed with the Idaho Department of Labor; (5-3-03)~~

~~b. Payroll records and reports documenting length of employment and hours worked; (5-3-03)~~

~~c. The computation of the number of qualifying new employees; (3-15-02)~~

~~d. The computation of the credit; (3-15-02)~~

~~e. The computation of net income; (3-15-02)~~

~~f. The continued maintenance of adequate employment levels into carryover years; and (3-15-02)~~

~~g. The computation of any carryovers. (3-15-02)~~

~~02. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit. (3-15-02)~~

~~759. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

771. GROCERY CREDIT -- TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 2007 (RULE 771).
Section 63-3024A, Idaho Code. (5-8-09)

01. Residents. (5-8-09)

a. A resident individual may claim a credit for each personal exemption for which a deduction is permitted and claimed on his Idaho income tax return provided the personal exemption represents an individual who is a resident of Idaho. ~~Such~~ The maximum credit ~~shall be~~ allowed per qualifying exemption is as follows:

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
<u>2010</u>	<u>\$70</u>	<u>\$50</u>
2009	\$60	\$40
2008	\$50	\$30

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

b. A resident individual claiming the credit who is age sixty-five (65) or older may claim an additional twenty dollars (\$20). An additional twenty dollar (\$20) credit may be claimed for a spouse who is age sixty-five (65) or older. The additional twenty dollar (\$20) credit may not be claimed for other dependents who are age sixty-five (65) or older. (5-8-09)

02. **Part-Year Residents.** A part-year resident is entitled to a prorated credit based on the number of months he was domiciled in Idaho during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. If the credit exceeds his tax liability, the part-year resident is not entitled to a refund. (5-8-09)

03. **Circumstances Causing Ineligibility.** A resident or part-year resident individual is not eligible for the credit for the month or part of the month for which the individual: (5-8-09)

a. Received assistance under the federal food stamp program; or (5-8-09)

b. Was incarcerated. (5-8-09)

04. **Nonresidents.** A nonresident is not entitled to the credit even though the individual may have been employed in Idaho for the entire year. (5-8-09)

05. **Illegal Residents.** An individual residing illegally in the United States is not entitled to the credit. (5-8-09)

06. **Members of the ~~Armed Forces~~ Uniformed Services.** A member of the ~~United States Armed Forces~~ uniformed services who is: ~~(5-8-09)~~ ()

a. Domiciled in Idaho is entitled to this credit; (5-8-09)

b. Residing in Idaho but who is a nonresident pursuant to the Servicemembers Civil Relief Act is not entitled to this credit. (5-8-09)

c. See Rule 032 of these rules for the definition of member of the uniformed services. ()

07. **Spouse or Dependents of Members of the ~~Armed Forces~~ Uniformed Services. A Beginning on January 1, 2009, a spouse ~~or dependent~~ of a nonresident member of the ~~Armed Forces~~ uniformed services stationed in Idaho ~~may be an Idaho resident or part-year resident~~ who has the same domicile as the military service member's home of record and who is residing in Idaho solely to be with the servicemember is a nonresident and is not entitled to the grocery credit. A spouse who is domiciled in Idaho is entitled to the credit.** The domicile of a dependent child is presumed to be that of the nonmilitary spouse. (5-8-09)()

08. **Claiming the Credit.** (5-8-09)

a. An individual who is required to file an Idaho individual income tax return ~~shall~~ **must** claim the credit on his return. If the credit exceeds his tax liability, the resident ~~shall~~ **will** receive a refund. (5-8-09)()

b. An individual who is not required to file an Idaho **individual** income tax return must file a claim for refund of the credit on a form approved by the Tax Commission on or before April 15 following the year for which the credit relates. (5-8-09)()

c. No credit ~~shall~~ **may** be refunded three (3) years after the due date of the claim for refund, including extensions, if a return was required to be filed under Section 63-3030, Idaho Code. (5-8-09)()

09. **Donating the Credit.** Taxpayers may elect to donate the entire credit to the Cooperative Welfare Fund created pursuant to Section 56-401, Idaho Code. A taxpayer may not make a partial donation of the credit. The election must be made as indicated on the form on which the credit was claimed. The election is irrevocable and may not be changed on an amended return. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

830. INFORMATION RETURNS (RULE 830).

Section 63-3037, Idaho Code. (3-20-97)

01. **In General.** Information returns are not required to be filed with the Tax Commission except as follows: (3-20-97)

a. Form 1098, Mortgage Interest Statement, if the property was located in Idaho. (4-5-00)

b. Form 1099-A, Acquisition or Abandonment of Secured Property, if the property was located in Idaho. (4-5-00)

c. Form 1099-B, Proceeds From Broker and Barter Exchange Transactions, if the property was located in Idaho or the service was performed in Idaho. (4-5-00)

d. Form 1099-C, Cancellation of Debt, if the secured property was located in Idaho. (4-5-00)

e. Form 1099-MISC, Miscellaneous Income, if it was issued for transactions related to property located or utilized in Idaho or for services performed in Idaho. (4-5-00)

f. Form 1099-R, Distributions from Pensions, Annuities, Retirement or Profit-Sharing Plans, IRA's, Insurance Contracts, etc., if Idaho income tax was withheld. (4-5-00)

g. Form 1099-S, Proceeds From Real Estate Transactions, if it was issued for transactions related to property located in Idaho. (4-5-00)

h. Form W-2G, Certain Gambling Winnings, if the gambling took place in Idaho. (7-1-98)

02. Submitting Returns. Information returns must be submitted to the Tax Commission through ~~magnetic media~~, electronic filing, or on a paper copy of federal Form 1099. ~~Taxpayers reporting on magnetic media shall contact the Tax Commission for specifications prior to submitting the information.~~ (3-30-07)()

03. Due Date of Information Returns. Information returns ~~shall be~~ are made on a calendar year basis. The due date for information returns submitted through ~~magnetic media~~ electronic filing or on paper is the last day of February following the close of the calendar year. ~~The due date for information returns submitted through electronic filing is March 31 following the close of the calendar year.~~ (5-8-09)()

04. Voluntary Withholding. Each person who withholds Idaho income tax from amounts reported on information returns required by Section 63-3037, Idaho Code, must: ()

a. Obtain an Idaho withholding account number as required by Rule 870 of these rules; and ()

b. Submit an annual reconciliation return to the Tax Commission and comply with the requirements provided for filing of annual reconciliation returns as discussed in Rule 872 of these rules. The reconciliation return must report amounts paid during the preceding calendar year and reconcile the state income tax withheld with the tax remitted for the preceding calendar year. The reconciliation return must be filed on or before the last day of February. ()

831. -- 839~~54.~~ (RESERVED).

~~840. ELECTION CAMPAIGN FUND (RULE 840).
Section 63-3088, Idaho Code.~~ (3-20-97)

~~01. In General. The individual income tax return has a block where each taxpayer may designate a portion of his income tax to be paid into the election campaign fund of a specific party qualified with the Secretary of State as of July 1 of each calendar year or he may designate no specific party.~~ (3-20-97)

~~02. Changing Election. An election to designate a portion of the income tax to the election campaign fund may not subsequently be changed or withdrawn once the return is filed.~~ (3-20-97)

~~841. — 854. (RESERVED).~~

(BREAK IN CONTINUITY OF SECTIONS)

860. DONATIONS TO TRUST ACCOUNTS (RULE 860).
Sections 63-3067A, and 63-3067B, and ~~63-3067D~~, Idaho Code. A donation to a trust account may not be withdrawn or reduced once the return or amended return on which it was made is filed. (3-20-97)()

(BREAK IN CONTINUITY OF SECTIONS)

874. EMPLOYEE'S WAGE AND TAX STATEMENTS (RULE 874).
Sections 63-3035 and 63-3036, Idaho Code. (4-6-05)

01. Form and Information Required. Federal Form W-2 (W-2) or a form of similar size and design may be used. In addition to the information required by the Internal Revenue Code, total Idaho wages paid, Idaho income tax withheld, Idaho withholding permit number, and the name of the state must be shown in the appropriate boxes. Incomplete, incorrect or Altered forms are not accepted ed able and may be returned to the employer for correction. (4-6-05)()

02. Furnishing Forms W-2 to Employees. The employer ~~shall~~ must furnish each employee a W-2

before February 1, or at the request of the employee within thirty (30) days after termination of his employment.

(4-6-05)()

03. Filing Forms W-2 With the Tax Commission. On or before the last day of February, each employer must file with the Tax Commission a state copy of the W-2 for each employee to whom Idaho taxable wages were paid, regardless of whether Idaho income tax was withheld. If the employer had no employees and subsequently did not pay wages or withhold tax, no W-2s are required. (3-30-07)

04. Corrected Forms W-2. If a corrected W-2 is filed with the Internal Revenue Service, the W-2c must be filed with the Tax Commission. (4-6-05)

05. Employers With Fifty or More Idaho Employees. Each employer with fifty (50) or more Idaho employees who is required to file W-2s electronically by Section 6011, Internal Revenue Code, must file through electronic filing with Idaho. In addition to the information required by the Internal Revenue Code, the electronic filing must also include the employer's Idaho withholding account number, Idaho wages, and Idaho withholding. Employers who are required to file electronically but fail to do so are subject to the provisions of Section 63-3046(e)(1), Idaho Code, and treated as if no W-2s were filed. (5-8-09)

06. Services Performed Within and Without Idaho. If services are performed within and without Idaho, the state wages shown on the W-2 furnished to the employee must include the portion of the employee's total wages reasonably attributed to services performed within Idaho as determined using the calculations in Rule 270 of these rules. (5-8-09)

07. Extension of Time to File Form W-2. The Tax Commission may allow a one (1) month extension of time to file the W-2s. (4-6-05)

a. The employer must file a written request by the due date of the W-2s that identifies the reason for the extension. (4-6-05)

b. The employer must file the W-2s within one (1) month of the due date. A penalty of two dollars (\$2) per W-2 per month not filed may be applied if the W-2s are not submitted by the due date. (4-6-05)

875. -- 879. (RESERVED).

877. BACKUP WITHHOLDING BY PASS-THROUGH ENTITIES. (RULE 877).

Sections 63-3022L and 63-3036B, Idaho Code.

()

01. In General. A pass-through entity that makes a cash distribution to an individual owner or beneficiary must withhold Idaho income tax from such distribution unless exempt from withholding by Section 63-3036B, Idaho Code, or this rule. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code.

()

02. Exceptions to Withholding. Withholding by a pass-through entity is not required on distributions paid to the following pass-through owners and beneficiaries:

()

a. Owners and beneficiaries who are not natural persons, including corporations, partnerships, trusts, and estates.

()

b. Unit holders of a publicly traded partnership as defined by Section 7404(b), Internal Revenue Code, if the publicly traded partnership:

()

i. Is treated as a partnership for purposes of the Internal Revenue Code; and

()

ii. Has agreed to file an annual information return reporting the name, address, taxpayer identification number, and other information requested by the Tax Commission of each unit holder with a distributive share of partnership income in Idaho in excess of five hundred dollars (\$500) for the taxable year.

()

- c.** Resident individuals. ()
- d.** Nonresident individuals if: ()
- i.** Such individual elects to have his Idaho tax on income from the pass-through entity reported and paid by the pass-through entity; ()
- ii.** Such individual's share of income of the pass-through entity from Idaho sources is less than one thousand dollars (\$1,000) for the taxable year in which the distribution is paid; or ()
- iii.** The distribution is subject to withholding under Section 63-3035 or 63-3036, Idaho Code. ()
- 03.** Certification of Residency. Withholding is not required on distributions made to an individual owner or beneficiary who certifies to the pass-through entity that he is an Idaho resident. The certification must be made on a form approved by the Tax Commission. The pass-through entity may rely on the certificate as evidence that distributions to such individual are exempt from withholding unless the pass-through entity knowingly accepts a false certificate. ()
- 04.** Payment of Backup Withholding. ()
- a.** The pass-through entity must withhold amounts from distributions to nonresident individuals at the highest marginal rate applicable for the taxable year under Section 63-3024, Idaho Code. The amount withheld during a calendar year must be remitted to the Tax Commission annually on or before January 31 of the following year, unless one of the exceptions under Subsection 877.02 of this rule apply to the owner or beneficiary. The amount withheld must be remitted on the appropriate return as required by the Tax Commission. ()
- b.** Amounts remitted as backup withholding for a calendar year in accordance with the provisions of this rule will be considered to be in part payment of the tax imposed on such owner or beneficiary for his tax year which begins within such calendar year. The return made by the pass-through entity under Subsection 877.05 of this rule will be accepted by the Tax Commission as evidence of the amount withheld from his distribution. ()
- 05.** Backup Withholding Returns. Returns submitted to the Tax Commission reporting amounts withheld as required by Section 63-3036B, Idaho Code, must include the following information: ()
- a.** The amount of income described in Section 63-3022L(2), Idaho Code; ()
- b.** The amount of tax withheld; ()
- c.** Name, address, and social security number of each owner or beneficiary; ()
- d.** The pass-through entity's name, federal employer identification number, and signature. ()
- 06.** Failure to File Returns or Remit Backup Withholding. Returns that fail to meet the requirements of this rule are invalid and may be returned to the pass-through entity to be refiled. Failure to file a valid return or remit the proper amount of withholding by the due date may cause interest and penalties to be imposed. ()
- 878. -- 879.** (RESERVED).

IDAPA 35 - STATE TAX COMMISSION
35.01.01 - INCOME TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0101-1003
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105 and 63-3039, Idaho Code.

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

Monday, October 25, 2010 at 10:00 a.m.

**Idaho State Tax Commission
800 Park Blvd. Plaza IV
Boise, ID 83712
1st Floor, Conference Room 5**

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

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

The Income Tax Administrative Rules currently incorporate by reference the Multistate Tax Commission (MTC) Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. After working with these rules since 1998, the Tax Commission has determined that the financial rules include various areas that are subjective and ambiguous. Many of the difficulties to administer and comply with the rule lie with the property factor calculation, where the value of loans and credit card receivables are assigned to a state numerator by determining where the preponderance of substantive contacts occur. This determination is required to be made on a case-by-case basis by an extensive analysis of the substantive contacts associated with each individual loan, measured by the activities of solicitation, investigation, negotiation, approval, and administration (referred to as the SINAA provisions). The SINAA provisions are difficult to apply: taxpayers do not apply them on a case-by-case basis as required by the rule; the SINAA activities are difficult to quantify, resulting in subjective determinations; and the analysis required is not clearly defined, making the determination ambiguous. Other problems found in the current rules include the failure to address or fully develop definitions for issues that can be subject to varying interpretations, and the unanticipated widespread use of REMICs in entity restructuring, which separates the ownership of the loans and receivables from the ownership of the income streams. Due to the fact the MTC is years away from recommending a new formula and because the current rule is causing substantial resources to be exhausted, both by the Tax Commission and taxpayers attempting to comply with it, the Tax Commission is proposing a set of rules that will clarify the computation of the apportionment factor for financial institutions, making it easier to administer and to comply with. The new rules will be modeled on the MTC Recommended Formula, but will not adopt it in its entirety. The new rules will simplify the computation by moving away from the SINAA analysis to a more workable and realistic solution for the apportionment and allocation of net income of financial institutions as well as define areas that are currently ambiguous or subjective.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd at (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Janice Boyd
Tax Policy Specialist
State Tax Commission
P.O. Box 36
Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0101-1003

006. INCORPORATION BY REFERENCE (RULE 006).

These rules incorporate by reference the following documents, which may be obtained from the main office of the Idaho State Tax Commission: (3-15-02)

01. MTC Special Industry Regulations. These documents are found on the Multistate Tax Commission (MTC) Web site at www.mtc.gov/Uniformity.aspx?id=496, or can be obtained by contacting the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. See Rules 580 and 581 of these rules. (4-2-08)

02. MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. ~~This document~~ The Tax Commission has modeled its rule for financial institutions on the MTC "Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions," but does not incorporate the MTC Recommended Formula in its entirety. See Rules 582 through 587 of these rules. The MTC Recommended Formula is found on the MTC Web site at www.mtc.gov/Uniformity.aspx?id=496, or can be obtained by contacting the MTC, 444 N. Capitol Street, NW, Suite 425, Washington, DC 20001. ~~See Rule 582 of these rules.~~ (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

280. PARTNERSHIPS OPERATING WITHIN AND WITHOUT IDAHO (RULE 280).

Sections 63-3027 and 63-3030(a)(9), Idaho Code. (3-30-07)

01. In General. A partnership that operates within and without Idaho must apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of partnership income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. (4-5-00)

02. Exceptions to Apportionment Formula. If the method described in Subsection 280.01 does not fairly represent the extent of the business activity in Idaho, the partnership may file a request to use, or the Tax

Commission may require, an alternative method, including the following: (3-30-07)

- a. Separate accounting as provided in Rule 58~~59~~ of these rules; (~~3-30-07~~)()
- b. The exclusion of a factor pursuant to Rule 590 of these rules; (3-30-07)
- c. An additional factor or substitute factor pursuant to Rule 595 of these rules; or (3-30-07)
- d. The employment of any other method that would fairly represent the extent of business activity in Idaho. (3-30-07)

03. Information Provided to Partners. The partnership must provide to each partner information necessary for the partner to compute his Idaho income tax. Such information must include: (4-5-00)

- a. The ~~apportioned~~ partner's share of each pass-through item of income and deduction; (~~4-5-00~~)()
- b. The ~~apportioned~~ partner's share of each Idaho addition and subtraction; (~~4-5-00~~)()
- c. ~~The partner's share of Idaho qualifying contributions,~~ Idaho tax credits, and tax credit recapture; (~~4-5-00~~)()
- d. ~~Income~~ The partner's share of income allocated to Idaho; (~~3-15-02~~)()
- e. The partnership's ~~apportionment factor, and if the partner is not an individual, the partnership's~~ property, payroll and sales factor numerators and denominators ~~if the partner is not an individual~~ amounts, including the amount of capitalized rent expense; and (~~3-15-02~~)()
- f. The partner's distributive share of partnership gross income ~~multiplied by the Idaho apportionment factor,~~ if the partner is an individual, trust, or estate. (~~3-15-02~~)()

(BREAK IN CONTINUITY OF SECTIONS)

286. S CORPORATIONS OPERATING WITHIN AND WITHOUT IDAHO (RULE 286).
Sections 63-3027 and 63-3030(a)(4), Idaho Code. (4-2-08)

01. In General. An S corporation that operates within and without Idaho must apply the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules to determine the extent of S corporation income that is derived from or related to Idaho sources. The use of a combined report, however, is available only to C corporations. (4-2-08)

02. Exceptions to Apportionment Formula. If the method described in Subsection 286.01 of this rule does not fairly represent the extent of the business activity in Idaho, the S corporation may file a request to use or the Tax Commission may require an alternative method, including the following: (4-2-08)

- a. Separate accounting as provided in Rule 58~~59~~ of these rules; (~~4-2-08~~)()
- b. The exclusion of a factor pursuant to Rule 590 of these rules; (4-2-08)
- c. An additional factor or substitute factor pursuant to Rule 595 of these rules; or (4-2-08)
- d. The employment of any other method that would fairly represent the extent of business activity in Idaho. (4-2-08)

03. Information Provided to Shareholders. An S corporation must provide to each shareholder information necessary for the shareholder to compute his Idaho income tax. Such information must include: (4-2-08)

- a. The ~~apportioned~~ shareholder's share of each pass-through item of income and deduction; (4-2-08)()
- b. The ~~apportioned~~ shareholder's share of each Idaho addition and subtraction; (4-2-08)()
- c. The shareholder's share of Idaho qualifying contributions. Idaho tax credits, and tax credit recapture; (4-2-08)()
- d. ~~Income~~ The shareholder's share of income allocated to Idaho; ~~and~~ (4-2-08)()
- e. The S corporation's apportionment factor; and ()
- ef. The shareholder's distributive share of S corporation gross income ~~multiplied by the Idaho apportionment factor.~~ (4-2-08)()

04. Protection Under Public Law 86-272. An S corporation whose Idaho business activities fall under the protection of Public Law 86-272 is exempt from the taxes imposed by Sections 63-3025 and 63-3025A, Idaho Code, including the minimum tax. (4-2-08)

05. Qualified Subchapter S Subsidiary. A corporation that is a qualified subchapter S subsidiary (QSSS) must include its apportionment attributes with its parent's apportionment attributes to compute one Idaho apportionment factor for the S corporation. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

580. SPECIAL RULES -- SPECIAL INDUSTRIES (RULE 580).
Section 63-3027(s), Idaho Code. (3-20-97)

01. Adoption of MTC Special Industry Regulations. This rule incorporates by reference the MTC special industry regulations as adopted in Subsection 006.01 of these rules. Copies of the MTC special industry regulations may also be obtained from the main office of the Idaho State Tax Commission. The following special industries must apportion income in accordance with the applicable MTC regulation: (5-3-03)

- a. Construction Contractors. The apportionment of income derived by a long-term construction contractor must be computed in accordance with MTC Regulation IV.18.(d). as adopted July 10, 1980; (3-20-97)
- b. Airlines. The apportionment of income derived by an airline must be computed in accordance with MTC Regulation IV.18.(e). as adopted July 14, 1983; (3-20-97)
- c. Railroads. The apportionment of income derived by a railroad must be computed in accordance with MTC Regulation IV.18.(f). as adopted July 16, 1981; (3-20-97)
- d. Trucking Companies. The apportionment of income derived by motor common carriers, motor contract carriers, or express carriers that primarily transport tangible personal property of others must be computed in accordance with MTC Regulation IV.18.(g). as amended July 27, 1989, for taxable years beginning on or after January 1, 1997. (7-1-98)
- e. Television and Radio Broadcasting. The apportionment of income derived from television and radio broadcasting must be computed in accordance with MTC Regulation IV.18.(h). as amended April 25, 1996, for taxable years beginning on or after January 1, 1995. (3-20-97)

f. Publishing. The apportionment of income derived from the publishing, sale, licensing or other distribution of books, newspapers, magazines, periodicals, trade journals or other printed material must be computed in accordance with MTC Regulation IV.18.(j). as adopted July 30, 1993, for taxable years beginning on or after January 1, 1995. (3-20-97)

~~g. Financial Institutions. See Rule 582 of these rules for the apportionment of income by a financial institution for taxable years beginning on or after January 1, 1998. (7-1-98)~~

02. Financial Rules Modeled on the MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. The Tax Commission has modeled its rules for financial institutions on the MTC “Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions,” but does not incorporate the MTC Recommended Formula in its entirety. Financial institutions must apportion income in accordance with Rules 582 through 587 of these rules for taxable years beginning on or after January 1, 2011. ()

023. References. See Rule 581 of these rules for the applicability of references used in the MTC special industry regulations and the calculation of the apportionment percentage. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

582. SPECIAL RULES -- FINANCIAL INSTITUTIONS -- DEFINITION OF FINANCIAL INSTITUTION (RULE 582).

Section 63-3027(s), Idaho Code.

(7-1-98)

01. Adoption of Modeled on MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. ~~This rule incorporates by reference Rules 582 through 587 of these rules are modeled on the MTC “Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions,” as adopted in Subsection 006.02 of these rules.~~ A copy of ~~this regulation~~ the MTC’s Recommended Formula may be obtained from the main office of the Idaho State Tax Commission. (5-3-03)()

02. Definition of Financial Institution. ~~For purposes of Section 2(h) of the “Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions”~~ The term financial institution means a person that predominantly deals in money or moneyed capital in substantial competition with the business of national banks. For purposes of this rule, the following definitions apply: (7-1-99)()

a. Predominantly means over fifty percent (50%) of a taxpayer’s gross income is attributable to dealings in money or moneyed capital in substantial competition with the business of national banks. ~~Generally, the determination of predominance will be made based upon the division of gross income for the year in issue. However,~~ The classification of a taxpayer as a financial institution or as a nonfinancial institution will not be changed based upon an occasional year in which its gross income does or does not exceed the fifty percent (50%) level. For the classification of a taxpayer as a financial or nonfinancial institution to be changed, there must be a shift in the predominant character of the gross income for two (2) consecutive years and the average of the corporation’s gross income in the current and the immediately preceding two (2) years must fail or satisfy the predominance test. If substantial amounts of gross income arise from an incidental or occasional sale of an asset of the taxpayer, such gross income ~~shall~~ **must** be excluded for purposes of this subsection. For example, gross income from the sale of a headquarters building ~~shall be~~ **is** excluded. (7-1-98)()

b. Deals in means conducting transactions in the course of a trade or business on its own account ~~as opposed to~~ **and includes** brokering the capital of others. (7-1-98)()

c. Money or moneyed capital includes, but is not limited to, coin, cash, currency, mortgages, deeds of trust, conditional sales contracts, loans, commercial paper, installment notes, credit cards, and accounts receivable. (7-1-98)

d. In substantial competition means that a corporation and national banks both engage in seeking and securing in the same locality capital investment of the same class which are substantial in amount, even though the terms and conditions of the business transactions of the same class are not identical. It does not mean there must be competition as to all phases of the business of national banks, or competition as to all types of loans or all possible borrowers. The activities of a corporation need not be identical to those performed by a national bank in order to constitute substantial competition; It is sufficient if there is competition with some, but not all, bases of the business of national banks, or capital is invested in particular operations or investments like those of national banks. (7-1-98)

03. Entities Presumed to Be Financial Institutions. The following entities are presumed to be financial institutions as defined in Subsection 582.02: (7-1-98)

a. Any corporation or other business entity registered under state law as a bank holding company or registered under the Federal Bank Holding Company Act of 1956, as amended, or registered as a savings and loan holding company under the Federal National Housing Act, as amended; (7-1-98)

b. A national bank organized and existing as a national bank association pursuant to the provisions of the National Bank Act, Title 12, Sections 21 et seq., United States Code; (7-1-98)

c. A savings association or federal savings bank as defined in the Federal Deposit Insurance Act, Title 12, Section 1813(b)(1), United States Code; (7-1-98)

d. Any bank or thrift institution incorporated or organized under the laws of any state; (7-1-98)

e. Any corporation organized under the provisions of Title 12, Sections 611 to 631, United States Code; (7-1-98)

f. Any agency or branch of a foreign depository as defined in Title 12, Section 3101, United States Code; (7-1-98)

g. Any corporation whose voting stock is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in Subsections 582.03.a. through 582.03.f. other than an insurance company exempted from tax by Section 41-405, Idaho Code; and (7-1-98)

h. A corporation or other business entity that, in the current tax year and immediately preceding two (2) tax years, derived more than fifty percent (50%) of its total gross income for financial accounting purposes from finance leases. For purposes of this subsection, a finance lease means any lease transaction which is the functional equivalent of an extension of credit and that transfers substantially all of the benefits and risks incident to the ownership of property. The phrase includes any direct financing lease or leverage lease that meets the criteria of Financial Accounting Standards Board Statement No. 13, Accounting for Leases or any other lease that is accounted for as a financing lease by a lessor under generally accepted accounting principles. (7-1-98)

04. Exclusion from Rule. The Tax Commission is authorized to exclude any person from the application of Subsection 582.01 upon such person proving, by clear and convincing evidence, that the income-producing activity of such person is not in substantial competition with those persons described in [Subsections Paragraphs](#) 582.03.a. through 582.03.f. and 582.03.h. (7-1-98)()

~~05. Act Defined. For purposes of applying the rules applicable to Section 63-3027, Idaho Code, references to [Act] in the MTC Recommended Formula for Financial Institutions refers to the Idaho Income Tax Act. (7-1-99)~~

~~06. The Apportionment Percentage. References in Section 1(b) of the MTC Recommended Formula for Financial Institutions to the computation of the apportionment percentage being determined by adding the taxpayer's receipts factor, property factor, and payroll factor together and dividing the sum by three (3) shall be replaced with adding two (2) times the taxpayer's sales factor, the taxpayer's property factor, and the taxpayer's payroll factor together and dividing the sum by four (4) as required by Section 63-3027(i), Idaho Code. (7-1-99)~~

~~583.---584. (RESERVED).~~

583. SPECIAL RULES -- FINANCIAL INSTITUTIONS -- DEFINITIONS APPLICABLE TO THE FINANCIAL RULES (RULE 583).
Section 63-3027(s), Idaho Code. ()

01. In General. The definitions in Subsection 583.02 of this rule apply to Rules 582 through 587, unless the context provides otherwise. ()

02. Terms. ()

a. “Billing address” means the location indicated in the books and records of the taxpayer on the first day of the taxable year (or on such later date in the taxable year when the customer relationship began) as the address where any notice, statement, or bill relating to a customer's account is mailed. ()

b. “Borrower or credit card holder located in Idaho” means: ()

i. A borrower, other than a credit card holder, that is engaged in a trade or business that maintains its commercial domicile in Idaho; or ()

ii. A borrower that is not engaged in a trade or business or a credit card holder whose billing address is in Idaho. ()

c. “Business income” means “business income” as defined in Section 63-3027(a)(1), Idaho Code. ()

d. “Commercial domicile” means: ()

i. The headquarters of the trade or business, that is, the place from which the trade or business is principally managed and directed; or ()

ii. If a taxpayer is organized under the laws of a foreign country, or of the Commonwealth of Puerto Rico, or any territory or possession of the United States, such taxpayer's commercial domicile is deemed for the purposes of this rule to be the state of the United States or the District of Columbia from which such taxpayer's trade or business in the United States is principally managed or directed. It is presumed, subject to rebuttal, that the location from which the taxpayer's trade or business is principally managed and directed is the state of the United States or the District of Columbia to which the greatest number of employees are regularly connected or out of which they are working, no matter where the services of such employees are performed, as of the last day of the taxable year. ()

e. “Compensation” means “compensation” as defined in Section 63-3027(a)(3), Idaho Code. ()

f. “Credit card” means credit, travel, or entertainment card. ()

g. “Credit card issuer’s reimbursement fee” means the fee a taxpayer receives from a merchant's bank because one of the persons to whom the taxpayer has issued a credit card has charged merchandise or services provided by the merchant to the credit card. ()

h. “Financial corporation” means “financial institution” as defined in Rule 582 of these rules. ()

i. “Financial organization” means “financial institution” as defined in Rule 582 of these rules. ()

j. “Loan” means any extension of credit resulting from direct negotiations between the financial institution and its customer, or the purchase, in whole or in part, of such extension of credit from another. Loans include participations, syndications, credit card receivables, and leases treated as loans for federal income tax purposes. Loans do not include: loans representing property acquired in lieu of or pursuant to a foreclosure under Section 595, Internal Revenue Code; futures or forward contracts; options; notional principal contracts such as swaps; noninterest bearing balances due from other depository institutions; cash items in the process of collection;

federal funds sold; securities purchased under agreements to resell; and assets held in a trading account. ()

k. “Loan secured by real property” means that fifty percent (50%) or more of the aggregate value of the collateral used to secure a loan or other obligation, when valued at fair market value as of the time the original loan or obligation was incurred, was real property. ()

l. “Merchant discount” means the fee or negotiated discount charged to a merchant by the taxpayer for the privilege of participating in a program that accepts a credit card in payment for merchandise or services sold to the card holder. ()

m. “Nonbusiness income” means “nonbusiness income” as defined in Section 63-3027(a)(4), Idaho Code. ()

n. “Participation” means an extension of credit in which an undivided ownership interest is held on a pro rata basis in a single loan or pool of loans and related collateral. In a loan participation, the credit originator initially makes the loan and then subsequently resells all or a portion of it to other lenders. The participation may or may not be known to the borrower. ()

o. “Person” means an individual, estate, trust, partnership, corporation, and any other business entity. ()

p. “Principal base of operations” with respect to transportation property means the place of more or less permanent nature from which said property is regularly directed or controlled. With respect to an employee, the “principal base of operations” means the place of more or less permanent nature from which the employee regularly: ()

i. Starts his or her work and to which the employee customarily returns in order to receive instructions from the employer; or ()

ii. Communicates with customers or other persons; or ()

iii. Performs any other functions necessary to the exercise of the employee's trade or profession at some other point or points. ()

q. “Real property and tangible personal property owned” means real property and tangible personal property: ()

i. On which the taxpayer may claim depreciation for federal income tax purposes; or ()

ii. To which the taxpayer holds legal title and on which no other person may claim depreciation for federal income tax purposes, or could claim depreciation if subject to federal income tax; but ()

iii. Excluding coin, currency, or property acquired in lieu of or pursuant to a foreclosure. ()

r. “Regular place of business” means an office at which the taxpayer conducts business in a regular and systematic manner and that is continuously maintained, occupied, and used by employees of the taxpayer. ()

s. “Syndication” means an extension of credit funded by two or more persons and each person is at risk only up to a specified percentage of the total extension of credit or up to a specified dollar amount. ()

t. “Taxable in another state” means “taxable in another state” as defined in Section 63-3027(c), Idaho Code and related rules. ()

u. “Transportation property” means vehicles and vessels capable of moving under their own power, such as aircraft, trains, water vessels, and motor vehicles, as well as any equipment or containers attached to such property, such as rolling stock, barges, trailers, or the like. ()

584. (RESERVED).

585. SPECIAL RULES -- FINANCIAL INSTITUTIONS -- SALES FACTOR (RULE 585).

Section 63-3027(s), Idaho Code.

()

01. In General.

()

a. The sales factor is a fraction as provided in Section 63-3027(p), Idaho Code. The sales factor includes only those receipts described in this rule that constitute business income and are included in apportionable income for the taxable year.

()

b. Net gains. When referenced in this rule, "net gains" means the amount of net gains, but not less than zero (0).

()

02. Receipts from the Lease of Real Property. The numerator of the sales factor includes receipts from the lease or rental of real property owned by the taxpayer if the property is located within Idaho or receipts from the sublease of real property if the property is located within Idaho.

()

03. Receipts from the Lease of Tangible Personal Property.

()

a. Tangible personal property located in the state when placed in service. Except as described in Paragraph 585.03.b. of this rule, the numerator of the sales factor includes receipts from the lease or rental of tangible personal property owned by the taxpayer if the property is located within Idaho when it is first placed in service by the lessee.

()

b. Receipts from the lease or rental of transportation property. Receipts from the lease or rental of transportation property owned by the taxpayer are included in the numerator of the sales factor to the extent that the property is used in Idaho. The extent an aircraft is deemed to be used in Idaho is determined by multiplying the receipts from the lease or rental of the aircraft by a fraction, the numerator of which is the number of departures of the aircraft in Idaho and the denominator of which is the total number of departures of the aircraft for the taxable year. If the extent of the use of any transportation property within Idaho cannot be determined, the property is deemed to be used wholly in the state in which the property has its principal base of operations. A motor vehicle is deemed to be used wholly in the state in which it is registered.

()

04. Interest, Fees, and Penalties Imposed in Connection with Loans Secured by Real Property.

()

a. The numerator of the sales factor includes interest, fees, and penalties imposed in connection with loans secured by real property if the property is located within Idaho. If the property is located both within Idaho and one or more other states, the receipts described in this subsection are included in the numerator of the sales factor if more than fifty percent (50%) of the fair market value of the real property is located within Idaho. If more than fifty percent (50%) of the fair market value of the real property is not located within any one (1) state, the receipts described in this subsection are included in the numerator of the sales factor if the borrower is located in Idaho.

()

b. The determination of whether the real property securing a loan is located within Idaho is made as of the time the original agreement was made and any and all subsequent substitutions of collateral are disregarded.

()

05. Interest, Fees, and Penalties Imposed in Connection with Loans Not Secured by Real Property. The numerator of the sales factor includes interest, fees, and penalties imposed in connection with loans not secured by real property if the borrower is located in Idaho.

()

06. Net Gains from the Sale of Loans. The numerator of the sales factor includes net gains from the sale of loans. Net gains from the sale of loans include income recorded under the coupon stripping rules of Section 1286, Internal Revenue Code.

()

a. Sale of loans secured by real property. The amount of net gains from the sale of loans secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to Subsection 585.04 of this rule and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans secured by real property. ()

b. Sale of loans not secured by real property. The amount of net gains from the sale of loans not secured by real property included in the numerator is determined by multiplying such net gains by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to Subsection 585.05 of this rule and the denominator of which is the total amount of interest and fees or penalties in the nature of interest from loans not secured by real property. ()

07. Receipts from Fees, Interest, and Penalties Charged to Card Holders. The numerator of the sales factor includes fees, interest, and penalties charged to credit, debit, or similar card holders, including annual fees and overdraft fees, if the billing address of the card holder is in Idaho. ()

08. Net Gains from the Sale of Credit Card Receivables. The numerator of the sales factor includes all net gains from the sale of credit card receivables multiplied by a fraction, the numerator of which is the amount included in the numerator of the sales factor pursuant to Subsection 585.07 of this rule and the denominator of which is the taxpayer's total amount of fees, interest, and penalties in the nature of interest from credit card receivables and fees charged to card holders. ()

09. Card Issuer's Reimbursement Fees. The numerator of the sales factor includes: ()

a. Credit cards. All credit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to credit card holders included in the numerator of the sales factor pursuant to Subsection 585.07 of this rule and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to credit card holders. ()

b. Debit cards. All debit card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to debit card holders included in the numerator of the sales factor pursuant to Subsection 585.07 of this rule and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to debit card holders. ()

c. Other cards. All other card issuer's reimbursement fees multiplied by a fraction, the numerator of which is the amount of fees, interest, and penalties charged to all other card holders included in the numerator of the sales factor pursuant to Subsection 585.07 of this rule and the denominator of which is the taxpayer's total amount of fees, interest, and penalties charged to all other card holders. ()

10. Receipts from Merchant Discount. The numerator of the sales factor includes receipts from merchant discount if the commercial domicile of the merchant is in Idaho. Such receipts are computed net of any card holder charge backs and must be reduced by any interchange transaction fees and any issuer's reimbursement fees paid to another for charges made by its card holders. ()

11. Receipts from ATM Fees. The sales factor includes all ATM fees that are not forwarded directly to another bank. ()

a. Fees charged by taxpayer issuing ATM card. The numerator of the sales factor includes fees charged to a cardholder for the use at an ATM of a card issued by the taxpayer if the cardholder's billing address is in Idaho. ()

b. Fees charged by another. The numerator of the sales factor includes fees charged to a cardholder, other than the taxpayer's cardholder, for the use of such card at an ATM owned or rented by the taxpayer, if the ATM is in Idaho. ()

12. Loan Servicing Fees. ()

a. Servicing fees from loans secured by real property. The numerator of the sales factor includes loan servicing fees derived from loans secured by real property located in Idaho. If the real property is located both within Idaho and one (1) or more other states, the determination of whether the receipts are included in the numerator is made pursuant to Subsection 585.04 of this rule. ()

b. Servicing fees from loans not secured by real property. The numerator of the sales factor includes loan servicing fees derived from loans not secured by real property if the borrower is located in Idaho. ()

c. Servicing fees received from loans not owned by servicer. If the taxpayer receives loan servicing fees for servicing either the secured or the unsecured loans of another, the numerator of the sales factor includes such fees if the borrower is located in Idaho. ()

13. Receipts from Services. The numerator of the sales factor includes receipts from services not otherwise apportioned under this section if the receipts would be included in the Idaho numerator pursuant to Section 63-3027, Idaho Code. ()

14. Receipts from Investment Assets and Activities and Trading Assets and Activities of the Financial Institution. ()

a. Interest, dividends, net gains, and other income from investment assets and activities and from trading assets and activities are included in the sales factor. Investment assets and activities and trading assets and activities include investment securities, trading account assets, federal funds; securities purchased and sold under agreements to resell or repurchase, options, future contracts, forward contracts, notional principal contracts such as swaps, equities, and foreign currency transactions. With respect to the investment and trading assets and activities described in Subparagraphs 585.14.a.i. and 585.14.a.ii. of this rule, the sales factor includes the amounts described in such subparagraphs. ()

i. The sales factor includes the amount by which interest from federal funds sold and securities purchased under resale agreements exceeds interest expense on federal funds purchased and securities sold under repurchase agreements. ()

ii. The sales factor includes the amount by which interest, dividends, gains, and other income from trading assets and activities, including but not limited to assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, exceed amounts paid in lieu of interest, amounts paid in lieu of dividends, and losses from such assets and activities. ()

b. The numerator of the sales factor includes interest, dividends, net gains, and other income from investment assets and activities and from trading assets and activities described in Paragraph 585.14.a. of this rule that are attributable to Idaho. ()

i. The amount of interest, dividends, net gains, and other income from investment assets and activities in the investment account to be attributed to Idaho and included in the numerator of the sales factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the average value of such assets that are properly assigned to a regular place of business of the taxpayer within Idaho and the denominator of which is the average value of all such assets. ()

ii. The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to Idaho and included in the numerator of the sales factor is determined by multiplying the amount described in Subparagraph 585.14.a.i. of this rule from such funds and such securities by a fraction, the numerator of which is the average value of federal funds sold and securities purchased under agreements to resell that are properly assigned to a regular place of business of the taxpayer within Idaho and the denominator of which is the average value of all such funds and such securities. ()

iii. The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in Subparagraphs 585.14.b.i. and 585.14.b.ii. of this rule attributable to Idaho and ()

included in the numerator of the sales factor is determined by multiplying the amount described in Subparagraph 585.14.a.ii. of this rule by a fraction, the numerator of which is the average value of such trading assets that are properly assigned to a regular place of business of the taxpayer within Idaho and the denominator of which is the average value of all such assets. ()

iv. For purposes of this paragraph, average value is determined using the rules for determining the average value of tangible personal property set forth in Subsections 586.03 and 586.04 of these rules. ()

c. If the method set forth in Paragraph 585.14.b. of this rule does not fairly represent the taxpayer's business activity in Idaho, the taxpayer may elect or the Tax Commission may require the use of the method set forth in this paragraph. ()

i. The amount of interest, dividends, net gains (but not less than zero (0)), and other income from investment assets and activities in the investment account to be attributed to Idaho and included in the numerator of the sales factor is determined by multiplying all such income from such assets and activities by a fraction, the numerator of which is the gross income from such assets and activities that are properly assigned to a regular place of business of the taxpayer within Idaho and the denominator of which is the gross income from all such assets and activities. ()

ii. The amount of interest from federal funds sold and purchased and from securities purchased under resale agreements and securities sold under repurchase agreements attributable to Idaho and included in the numerator of the sales factor is determined by multiplying the amount described in Subparagraph 585.14.a.i. of this rule from such funds and such securities by a fraction, the numerator of which is the gross income from such funds and such securities that are properly assigned to a regular place of business of the taxpayer within Idaho and the denominator of which is the gross income from all such funds and such securities. ()

iii. The amount of interest, dividends, gains, and other income from trading assets and activities, including assets and activities in the matched book, in the arbitrage book, and foreign currency transactions, but excluding amounts described in Subparagraphs 585.14.c.i. and 585.14.c.ii. of this rule, attributable to Idaho and included in the numerator is determined by multiplying the amount described in Subparagraph 585.14.a.ii. of this rule by a fraction. The numerator of the fraction is the gross income from such trading assets and activities that are properly assigned to a regular place of business of the taxpayer within Idaho. The denominator of the fraction is the gross income from all such assets and activities. ()

d. If the taxpayer elects or is required by the Tax Commission to use the method set forth in Paragraph 585.14.c. of this rule, it must use this method on all subsequent returns unless the taxpayer receives prior written permission from the Tax Commission, or the Tax Commission requires the use of a different method. ()

e. The taxpayer has the burden of proving that an investment asset or activity or trading asset or activity was properly assigned to a regular place of business outside of Idaho by demonstrating that the day-to-day decisions regarding the asset or activity occurred at a regular place of business outside Idaho. Where the day-to-day decisions regarding an investment asset or activity or trading asset or activity occur at more than one (1) regular place of business, and one (1) such regular place of business is in Idaho and one (1) such regular place of business is outside Idaho, such asset or activity is considered to be located at the regular place of business of the taxpayer where the investment or trading policies or guidelines with respect to the asset or activity are established. Unless the taxpayer demonstrates to the contrary, such policies and guidelines are presumed to be established at the commercial domicile of the taxpayer. ()

f. Interest in a REMIC, or other mortgage-backed or asset-backed security is not a trade or investment asset if the holder of the interest is directly or indirectly related to the person who originated or issued the loans that were later securitized. ()

15. All Other Receipts. The numerator of the sales factor includes all other receipts that would be included in the Idaho numerator pursuant to Section 63-3027, Idaho Code. ()

16. Receipts Not Taxable. ()

a. All receipts that would be assigned under this section to a state in which the taxpayer is not taxable must be excluded from both the numerator and the denominator of the sales factor. ()

b. All receipts that are excluded or removed from apportionable income, such as U.S. Government interest, must be excluded from both the numerator and the denominator of the sales factor. ()

586. SPECIAL RULES -- FINANCIAL INSTITUTIONS -- PROPERTY FACTOR (RULE 586).
Section 63-3027(s), Idaho Code. ()

01. In General. The property factor is a fraction, the numerator of which is the average value of real property and tangible personal property rented to the taxpayer that is located or used within Idaho during the taxable year, the average value of real property and tangible personal property owned by the taxpayer that is located or used within Idaho during the taxable year, and the average value of the taxpayer's loans and credit card receivables that are located within Idaho during the taxable year, and the denominator of which is the average value of all such property located or used within and without Idaho during the taxable year. ()

02. Property Included. The property factor includes property only when the income or expenses of such property are included in the computation of apportionable income for the taxable year. This includes property that would have been included in the computation of apportionable income if not fully depreciated or expensed, or depreciated or expensed to a nominal amount. ()

03. Value of Property Owned by the Taxpayer. ()

a. The value of real property and tangible personal property owned by the taxpayer is the original cost or other basis of such property for federal income tax purposes without regard to depletion, depreciation, or amortization. ()

b. Loans are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a loan is charged-off in whole or in part for federal income tax purposes, the portion of the loan charged off is not outstanding. A specifically allocated reserve established pursuant to regulatory or financial accounting guidelines that is treated as charged-off for federal income tax purposes must be treated as charged-off for purposes of this section. ()

c. Credit card receivables are valued at their outstanding principal balance, without regard to any reserve for bad debts. If a credit card receivable is charged-off in whole or in part for federal income tax purposes, the portion of the receivable charged-off is not outstanding. ()

04. Average Value of Property Owned by the Taxpayer. The average value of property owned by the taxpayer is computed on an annual basis by adding the value of the property on the first day of the taxable year and the value on the last day of the taxable year and dividing the sum by two (2). If averaging on this basis does not properly reflect average value, the taxpayer may elect or the Tax Commission may require averaging on a more frequent basis. When averaging on a more frequent basis is elected by the taxpayer or required by the Tax Commission, the same method of valuation must be used consistently by the taxpayer with respect to property within and without Idaho and on all subsequent returns unless the taxpayer receives prior permission from the Tax Commission or the Tax Commission requires a different method of determining average value. ()

05. Average Value of Real Property and Tangible Personal Property Rented to the Taxpayer. ()

a. The average value of real property and tangible personal property that the taxpayer has rented from another and which is not treated as property owned by the taxpayer for federal income tax purposes must be determined annually by multiplying the gross rents payable during the taxable year by eight (8). ()

b. If the use of the general method described in this subsection results in inaccurate valuations of rented property, any other method that properly reflects the value may be adopted by the Tax Commission or by the taxpayer when approved in writing by the Tax Commission. Once approved, such other method of valuation must be used on all subsequent returns unless the taxpayer receives prior approval from the Tax Commission or the Tax

Commission requires a different method of valuation. ()

06. Location of Real Property and Tangible Personal Property Owned by or Rented to the Taxpayer. Real property and tangible personal property owned by or rented to the taxpayer is considered to be located within Idaho in the same manner as that determination is made pursuant to Section 63-3027, Idaho Code. ()

07. Location of Loans. ()

a. Secured Loans. A loan is considered to be located within Idaho if fifty percent (50%) or more of the aggregate value of the collateral used to secure the loan was real or personal property located in Idaho at the time the loan was incurred. The term "value" as used in this paragraph means the fair market value as of the time the original loan was incurred. ()

b. Unsecured Loans. If a loan is not secured by real or personal property, the loan is considered to be located within Idaho if the billing address of the borrower is in Idaho. ()

08 Location of Credit Card Receivables. Credit card receivables are considered to be located within Idaho if the billing address of the card holder is in Idaho. ()

09. Period for Which Properly Assigned Loan Remains Assigned. A loan that has been properly assigned to a state remains assigned to said state for the length of the original term of the loan unless a change of material fact occurs. A material change includes refinancing the loan with collateral that is not located within the originally-assigned state at the time of refinancing. It is presumed that a material change does not include transferring the loan to a related entity. ()

587. SPECIAL RULES -- FINANCIAL INSTITUTIONS -- PAYROLL FACTOR (RULE 587). Section 63-3027(s), Idaho Code. The payroll factor is a fraction, the numerator of which is the total amount paid in Idaho during the taxable year by the taxpayer for compensation and the denominator of which is the total compensation paid both within and without Idaho during the taxable year. The payroll factor for a financial institution must be computed in the same manner as set forth in Section 63-3027(n), Idaho Code, and related rules. ()

588. (RESERVED).

5859. EXCEPTIONS TO APPORTIONMENT FORMULA -- SEPARATE ACCOUNTING (RULE 5859). Section 63-3027(s), Idaho Code. Separate accounting may be used only with prior approval of the Tax Commission. A written request must be filed with the Tax Commission at least thirty (30) days prior to the due date for filing the return. The Tax Commission ~~shall~~ **must** notify the taxpayer whether the request has been approved or denied. This determination ~~shall~~ **must** be based on whether the taxpayer has overcome the presumption that separate accounting will not be allowed when unitary filing and apportionment more accurately reflect the taxpayer's income.

(3-20-97)()

~~586. — 589. (RESERVED).~~

IDAPA 35 - IDAHO STATE TAX COMMISSION
35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0102-1001
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 Sections 63-105, 63-3624, 63-3635, and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Rule 012 is being amended to extend the definition of "land leveling" to rock that is obtained on a building site, crushed, and then used as backfill on the same building site.

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

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

Sales of rock crushing services are generally taxable. The amendment to Rule 012 creates an exception for certain sales of rock crushing and, at the same time, denies the production exemption to certain rock crushers. The fiscal impact is the difference between the revenue lost on the crushing sales and the revenue gained on certain rock crushing equipment purchases that would otherwise be exempt.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [February 3, 2010, Idaho Administrative Bulletin, Volume 10-02, page 21](#).

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0102-1001

012. CONTRACTORS IMPROVING REAL PROPERTY (RULE 012).

01. In General. This rule applies to contractors who construct, alter, repair, or improve real property. Contractors are defined as consumers of materials they use, whether or not they resell the material. All sales of tangible personal property to contractors are taxable. (7-1-93)

a. Contractors include bricklayers, plumbers, heating specialists, painters, sheet metal workers, carpet layers, electricians, land levelers, well drillers, landscapers, and all others who do contract work on real property. Unless these persons are employees of a contractor, they are acting as contractors and are consumers just as other contractors. (7-1-93)

b. Persons doing residential repairs, such as plumbers and electricians, as well as those who both sell and install carpet, also are contractors improving real property. Such contractors are defined as the consumers of the materials they install and are required to pay sales or use tax on their cost for the materials. They do not charge sales tax to their customers unless they make a sale of materials only, with no installation. (7-1-93)

c. The terms “contractor” and “subcontractor” are not applicable to persons who merely sell tangible personal property in the form of building materials, supplies, or equipment to construction contractors for delivery at the job site without any requirement that they install such tangible personal property. (3-4-10)

02. Contract. A contract to improve real property may be in any of the following forms. (7-1-93)

a. Lump Sum Contract. A lump sum contract is an agreement to furnish materials and services for a lump sum. (7-1-93)

b. Cost-plus Contract. A cost-plus contract is an agreement to furnish materials and services at the contractor’s cost plus a fixed sum or percentage of the cost. (7-1-93)

c. Guaranteed Price Contract. A guaranteed price contract is an agreement to furnish materials and services with a guaranteed price which may not be exceeded. (7-1-93)

d. Time and Material Contract. A time and material contract is an agreement to sell a specific list of materials and supplies at retail or an agreed price and to complete the work for an additional agreed price or hourly rate for services rendered. (7-1-93)

e. The contractor or repairman who affixes or installs the personal property into real property is the consumer of tangible personal property regardless of the type of contract entered into, whether it is a lump sum, time and material, or a cost-plus contract. (3-4-10)

03. Use. As used in this rule, the term use includes exercising any right or power over tangible personal property in performing a contract to improve real property, regardless of who owns the material or if the material is leased. (7-1-93)

04. Real Property. See Rules 010 and 067 of these rules. (3-15-02)

05. Use Tax Reporting Number. Contractors need a use tax number if they make purchases on which sales tax has not been charged. In this case, they are required to report and pay the Idaho use tax to the state. If a contractor pays sales tax to his vendors on ALL purchases, he does not have to obtain a use tax number. (7-1-93)

06. Purchases by Contractors. Contractors are consumers of equipment they use in their business such as trucks, tractors, road graders, scaffolding, pipe cutters, trowels, wrenches, tools in general, oxygen, acetylene, oil, and similar items. They must pay the sales or use tax on their purchase of equipment, tools, and supplies. They

must also pay tax on their purchase of building materials and fixtures. Fixtures include items such as lighting fixtures, plumbing fixtures, furnaces, boilers, heating units, air-conditioning units, refrigeration units, elevators, hoists, conveying units, awnings, blinds, vaults, cabinets, counters, and lockers. (7-1-93)

07. Fuels. A contractor must pay tax on fuels used in off-road equipment unless on-road fuels excise taxes have been paid. (7-1-93)

08. Custom-Made Goods. Sales tax applies to the entire price charged for custom-made goods sold by the maker. If a contractor orders fabricated steel from a steel company, he must pay sales tax on the entire price of the fabricated item, including the cost of the labor involved. On the other hand, if the contractor buys the steel and fabricates it himself for the job, he pays a tax only on the materials he buys. (7-1-93)

09. Value. The contractor owes use tax on the value of the job materials at the time he exercises right or power over them. Value, as used in Section 63-3621, Idaho Code, means: (7-1-93)

a. When a contractor fabricates and installs tangible personal property into Idaho real property, the value is the cost of materials and parts he uses. If a contractor, with a contract to furnish and install goods, fabricates the goods and hires a subcontractor to do the installation, the amount subject to tax is the cost of material to the contractor who fabricated the goods. (7-1-93)

b. When a contractor who is also a retailer fabricates tangible personal property, puts it in his resale inventory, and later withdraws it for a job, tax applies to the fully fabricated value. This is true regardless of whether the fabricator installs the property himself or through an agent or subcontractor. (7-1-93)

10. Materials Provided by Project Owner. (7-1-93)

a. If a project owner who is not exempt from tax buys materials for a job and hires a contractor to install them, he must pay sales or use tax when he buys the material. If the owner does not pay tax on the materials, the contractor may be held liable for the tax. (7-1-93)

b. If material needed for a contract is purchased or supplied by an owner who is exempt from sales and use taxes, then the use by the contractor is subject to use tax. This is true even if the property is owned by an exempt entity such as the federal government or a state government agency. For example, if a contractor has a public works contract to build a structure using materials owned and supplied by the government, whether federal, state, or local, he is the consumer of the materials and is subject to a use tax on their value. This tax falls directly upon the contractor and not the owner of the property. (7-1-93)

c. A contractor who buys tangible goods cannot avoid tax just because the goods will be built in to a structure which will belong to, or be used by an exempt entity. Contractors and subcontractors may not avoid paying sales or use tax due to a contract which allows invoices to be made out in the name of the exempt entity, such as the U.S. Government, and designate the contractor or subcontractor as an agent of the exempt entity. In this case, the contractor or subcontractor is the user or consumer of the material and its use, while it is in his possession and subject to his labor, is taxable. (7-1-93)

11. Subcontractor. In general, a subcontractor is treated the same as a general contractor. Whether his contract is with the owner or the general contractor, the subcontractor pays tax on materials he buys to improve real property. Like any contractor, the subcontractor could be employed to work on or with material purchased by the general contractor or the owner, with one or the other paying tax on the material purchased. These services rendered by the subcontractor are not taxable. His relationship with the owner or general contractor is no different than the relationship between the contractor and owner. However, the provisions of Subsection 011.10 of this rule apply equally to a subcontractor. (6-23-94)

12. Land Leveling. ()

a. Persons who contract to level land are improving real property and are contractors under this rule. Accordingly, they are subject to tax on equipment, material, and supplies purchased for land leveling. (7-1-93)

b. Notwithstanding the provisions of Rule 013 of these rules, contractors who crush rock are performing a nontaxable service if the rock is obtained on a construction site, and the crushed rock is used on the same site, for such purposes as backfill, land leveling, site preparation, or site cleanup. The use of such rock, backfill, or other related materials is not subject to tax; however, such a contractor is not primarily devoted to mining and his use of rock crushing equipment, or other equipment and supplies, does not qualify for exemption under Section 63-3622D, Idaho Code. ()

c. The sale or use of crushed rock that is removed from a construction site and used elsewhere is taxable. See Rule 013 of these rules. ()

13. Exempt Purchases by Contractors. A contractor can buy materials tax exempt, provided that he will install them into real property in a state that does not have a sales tax, such as Oregon, Montana, or Alaska. This exemption also applies to a contractor improving real property in Washington if he will not owe a sales or use tax for his activity there, even though a sales or use tax may be owed by a third party. Prior to July 1, 1993, this exemption was extended only to Idaho resident contractors. In order to grant this exemption the retailer must have a properly completed exemption certificate on file. See Rule 128 of these rules. Idaho tax applies to materials purchased or withdrawn from inventory for use in a contract to improve real property in states with a sales tax, such as Nevada, Utah, or Wyoming. (3-15-02)

- 14. Cross-References.** (7-1-93)
- a. Road and paving contractors, see Rule 013 of these rules. (3-15-02)
 - b. Contractor/retailers, see Rule 014 of these rules. (3-15-02)
 - c. Well drillers/pump installers, see Rule 015 of these rules. (3-15-02)

IDAPA 35 - IDAHO STATE TAX COMMISSION
35.01.02 - IDAHO SALES AND USE TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0102-1002
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 63-105, 63-3624, 63-3635, and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Rule 037 is being amended to add a provision similar to Rule 107 which states: "A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more airplanes is not a nonresident."

Rule 114 is being amended to state that purchases of food made with coupons or any other authorized form of payment under federal law qualify for the exemption.

Rule 136 is being amended to state that after a developer has identified the location and boundaries of the center, identified the qualifying retailers, and has met the expenditure requirements the Commission will start depositing 60% of the sales tax revenue from the center into the Demonstration Pilot Project Fund. Rule 136 also changes the language and expenditure requirements to conform to the new statute.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jim Husted (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0102-1002

037. AIRCRAFT AND FLYING SERVICES (RULE 037).

01. Definitions. For the purposes of this rule, the following terms have the following meanings: (7-1-94)

a. Recreational Flight. The hiring on demand of an aircraft with a pilot to transport passengers for a recreational purpose. Examples are a pleasure ride, sightseeing, wildlife viewing, hot air balloon rides, or other similar activities. (4-11-06)

b. Freight. Goods transported by a carrier between two (2) points. Freight does not include goods which are being transported for the purpose of aerial spraying or dumping. See Subsection 037.05 of this rule. (4-11-06)

c. Transportation of Passengers. The transportation of passengers means the service of transporting passengers from one (1) point to another. It does not include survey flights, recreational or sightseeing flights, nor does it include any flight that begins and ends at the same point. (4-11-06)

d. Nonresident Individual. An individual as defined by Section 63-3014, Idaho Code. (7-1-94)

e. Nonresident Businesses and Other Organizations. A corporation, partnership, limited liability company, or other organization will be considered a nonresident if it is not formed under the laws of the state of Idaho, is not **required to be** registered to do business with the Idaho Secretary of State, does not have significant contacts with this state, and does not have consistent operations in this state. A limited liability company (LLC) or other legal entity formed by an Idaho resident under the laws of another state primarily for the purpose of purchasing and owning one (1) or more airplanes or other aircraft is not a nonresident. The use of an airplane owned by such an entity will be subject to use tax upon its first use in Idaho. (3-20-04)()

f. Day. For the purpose of this rule any part of a day is a day. (7-1-94)

g. Transportation of freight or passengers for hire. "Transportation of freight or passengers for hire" means the business of transporting persons or property for compensation from one (1) location on the ground or water to another. Such transportation must be offered indiscriminately to the general public. Entities such as LLCs or closely held corporations, that only transport related parties, including but not limited to employees or family members of the owner of the aircraft are not in the business of transporting freight or passengers for hire. (3-4-10)

02. Sales of Aircraft. Sales of aircraft are taxable unless an exemption applies. Section 63-3622GG, Idaho Code, provides an exemption for the sale, lease, purchase, or use of an aircraft: (4-11-06)

a. Primarily used to transport passengers or freight for hire; (2-18-02)

b. Primarily used for emergency transportation of sick or injured persons; or (2-18-02)

c. Purchased for use outside this state, when the aircraft is upon delivery taken outside this state, but only if: (3-20-04)

i. The aircraft is sold to a nonresident as defined in Subsection 037.01.d. or 037.01.e. of this rule; and (3-30-07)

ii. The registration will be immediately changed to show the new owner and the aircraft will not be used in this state more than ninety (90) days in any twelve (12) month period. (3-20-04)

03. Federal Law Prohibits States From Taxing Sales of Air Transportation. See 49 U.S.C. Section

40116. For this reason, sales of intrastate transportation as described by Section 63-3612(i), Idaho Code, are not taxable in Idaho. (4-11-06)

04. Rentals and Leases of Aircraft. The rental or lease of an aircraft without operator is a sale subject to sales tax, other than as provided in Subsection 037.02 of this rule. See Rule 024 of these rules. (4-11-06)

05. Aerial Contracting Services. Businesses primarily engaged in the application of agricultural chemicals as described in Federal Aviation Regulation Part 137, or in activities involving the carrying of external loads as described in Federal Aviation Regulation Part 133, such as aerial logging, are performing aerial contracting services. Such businesses are not primarily engaged in the transportation of freight. (4-11-06)

a. Aircraft purchased, rented, or leased for aerial contracting are subject to sales tax. It makes no difference whether or not the service is provided to a government agency or a private individual or company. Sales or use tax also applies to the purchase of repair parts, oil, and other tangible personal property. (7-1-94)

b. When aircraft held for resale are used by the owner, who is an aircraft dealer, for aerial contracting services, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (4-11-06)

06. Air Ambulance Service. Charges for the emergency transportation of sick or injured persons, including standby time, are not subject to sales tax. (7-1-94)

07. Flying Instructions. Flying instructions or lessons which may include solo flights are a service and the fees are not subject to sales tax. (7-1-94)

a. Aircraft purchased, rented, or leased to be used primarily for flying instruction are subject to sales or use tax. (7-1-94)

b. When aircraft held for resale are used by the aircraft dealer for flying instructions or lessons, a taxable use occurs. The use tax is due on a reasonable rental value for the time the aircraft is used to provide the service. (7-1-94)

08. Recreational Flights. Sales and purchase of aircraft used primarily for providing recreational flights are subject to sales or use tax. (4-11-06)

09. Aircraft Held for Resale. Aircraft purchased and held for resale become taxable when used for purposes other than demonstration or display in the regular course of business. (7-1-94)

a. Rentals of aircraft held for resale are taxable as provided by Subsection 037.04 of this rule. (7-1-93)

b. When an aircraft held for resale is used for a taxable purpose, the dealer owes tax on that use. The use tax applies to a reasonable rental value for the time the aircraft is used. (7-1-94)

c. Parts and oil purchased to repair or maintain aircraft held for resale are not subject to sales tax. The aircraft dealer must provide the supplier with a properly completed resale certificate. See Rule 128 of these rules. (2-18-02)

10. Fuel. The sale or purchase of fuels subject to motor fuels tax, or on which a motor fuels tax has been paid, pursuant to Chapter 24, Title 63, Idaho Code, is exempt from sales and use tax. (7-1-94)

(BREAK IN CONTINUITY OF SECTIONS)

114. RECORDS REQUIRED, FOOD STAMPS, ELECTRONIC BENEFITS TRANSFERS, AND WIC CHECKS (RULE 114).

01. **In General.** ~~The sales~~ of food purchased ~~with food stamps or with electronic benefits transfer cards issued~~ under the Federal Food Stamp Program, the Federal Food, Conservation and Energy Act of 2008, or ~~with food checks issued by~~ the Federal Special Supplemental Food Program for Women, Infants, and Children, WIC, is are exempt from the Idaho sales tax. Sales of food under these programs are exempt whether the purchaser uses food stamps, vouchers, electronic benefits transfer cards, or any other exchange medium authorized by federal law. (7-1-99)()

02. **Records Required.** Retailers who accept food stamps, electronic benefits transfer cards, and WIC checks must maintain accurate records of exempt sales. (7-1-99)

a. **WIC Checks.** WIC checks must be separately stated on daily bank deposit records or the retailer must maintain verifiable records accounting for food purchased with WIC checks. Reporting of nontaxable WIC check sales on sales tax returns must reconcile to the daily deposit record. (7-1-99)

b. **Food Stamps.** Retailers may deduct as nontaxable sales only the amount of the food actually purchased with food stamps. Retailers must keep separate record on bank deposits of food stamp coupons deposited. For reporting of nontaxable sales on sales tax returns, retailers may elect to either deduct the actual amount of food purchased with food stamps, by programming cash registers to separately account for the total of the sales of food purchased with food stamps, or by maintaining hand or machine posted records of actual sales, or deduct ninety-seven and five tenths percent (97.5%) of federal food stamps actually deposited by the retailer in lieu of actual sales amounts. (7-1-99)

c. **Electronic Benefits Transfer (EBT) Payments.** Retailers may claim as nontaxable only the actual amount of eligible food sales through EBT under the Federal Food Stamp Program. Accounting for the actual EBT transfers shall be accomplished with and be verifiable through state supplied EBT sales and reporting devices or through other electronic devices approved for use by the Federal Food Stamp Program and the state. (7-1-99)

02. **Records Required.** Retailers who accept food stamps, electronic benefits transfer cards, and WIC checks must maintain accurate records of exempt sales. (7-1-99)

a. **WIC Checks.** WIC checks must be separately stated on daily bank deposit records or the retailer must maintain verifiable records accounting for food purchased with WIC checks. Reporting of nontaxable WIC check sales on sales tax returns must reconcile to the daily deposit record. (7-1-99)

b. **Food Stamps.** Retailers may deduct as nontaxable sales only the amount of the food actually purchased with food stamps. Retailers must keep separate record on bank deposits of food stamp coupons deposited. For reporting of nontaxable sales on sales tax returns, retailers may elect to either deduct the actual amount of food purchased with food stamps, by programming cash registers to separately account for the total of the sales of food purchased with food stamps, or by maintaining hand or machine posted records of actual sales, or deduct ninety-seven and five tenths percent (97.5%) of federal food stamps actually deposited by the retailer in lieu of actual sales amounts. (7-1-99)

c. **Electronic Benefits Transfer (EBT) Payments.** Retailers may claim as nontaxable only the actual amount of eligible food sales through EBT under the Federal Food Stamp Program. Accounting for the actual EBT transfers shall be accomplished with and be verifiable through state supplied EBT sales and reporting devices or through other electronic devices approved for use by the Federal Food Stamp Program and the state. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

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~~ six million dollars (\$~~86~~,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. Qualified ~~R~~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~~ report sales separately for that location. For instance, if a retailer has multiple stores in Idaho it must file a separate return for any store located in a qualifying shopping center. 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~~ approved transportation improvements. ~~(4-2-08)~~ ()

06. Disposition of Revenue from a Qualifying Shopping Center. The Tax Commission will deposit sixty percent (60%) of the sales and use tax reported by qualifying retailers in the demonstration pilot project fund after a developer has: ()

- a.** Identified the location and boundaries of the retail complex; ()
- b.** Identified the qualified retailers making retail sales within the complex; and ()
- c.** Verified that it has met the expenditure requirements of Subsection 136.01 of this rule. ()

IDAPA 35 - STATE TAX COMMISSION

35.01.03 - PROPERTY TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0103-1003

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Rule 006 is being amended to update references to appropriate and current editions of guides and professional standards used to determine values of certain property and to measure assessment level and uniformity.

Rule 114 is being amended to update the dates of guides and standards used as references. Assessors do not need to report personal property by the North American Industrial Classification System (NAICS) code.

Rule 131 is being amended to provide procedures for conducting equalization ratio studies and to allow a follow-up ratio study of secondary categories be conducted if they are likely to be out of compliance as a result of assessment changes made by the county board of equalization.

Rule 317 is being amended to explain that for the funds listed in Section 50-2908, Idaho Code, the occupancy tax is not distributed to the urban renewal during the year in which the urban renewal revenue allocation is formed, however, the occupancy tax raised for all other funds is distributed to the urban renewal.

Rule 609 is being amended to delete the U.S. Office of Federal Housing Enterprise Oversight and replace it with the Federal Housing Finance Agency and clarifies that the Idaho House Price Index - All Transactions is the index that has been used and will be used to adjust the maximum homeowner's exemption.

Rule 610 is being amended define Multidwelling or Multipurpose Building and Related Land and requires that the related land value be included in the determination of the exemption amount.

Rule 613 is being amended to recognize that the value of or the income attributed to exempt irrigation equipment should not be included or considered when valuing agricultural land and the definition of "Economic Rent" has been changed to state that the rent attributable to exempt irrigation equipment is not included in economic rent, only the rent solely attributable to the agricultural land is included in economic rent.

Rule 614 is being amended to provide guidance to appraisers for when crop share or cash rent analysis should be applied in determining the value of agricultural land and to clarify the given examples by indicating that only the income attributed to the land should be used when considering either analysis.

Rule 802 is being amended to explain how to compute the amount of urban renewal increment value to be included on the new construction roll in the year in which a portion of a revenue allocation area is de-annexed and to update the data included in the examples.

Rule 961 is being amended to explain that the value and classification of a homesite adjacent to forest lands will be valued independently from the adjacent forest lands.

Rule 989 is being amended to provide instructions on how to compute the prorated portion of the funds effected by Idaho Code sections 50-2908(1)(a) through (e) when computing the levy upon which a QIE recapture is to be based.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed changes were of a simple nature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: Rule 006 references working documents and requires yearly maintenance. The reference to the IAEO's website for the ratio study standard and the various dates for the manuals will be verified and updated.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Alan Dornfest at (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Alan Dornfest
Tax Policy Supervisor
State Tax Commission
PO Box 36
Boise, ID 83722-0410
(208) 334-7544

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0103-1003

006. INCORPORATION BY REFERENCE (RULE 006).

Unless provided otherwise, any reference in these rules to any document identified in Rule 006 of these rules shall constitute the full incorporation into these rules of that document for the purposes of the reference, including any notes and appendices therein. The term "documents" includes codes, standards, or rules adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (5-3-03)

01. Availability of Reference Material. Copies of the documents incorporated by reference into these rules are available at the main office of the State Tax Commission as listed in Rule 005 of these rules or can be electronically accessed as noted in Subsection 006.02 of this rule. (5-8-09)

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (5-3-03)

a. "Standard on Ratio Studies" published in 2007~~10~~ by the International Association of Assessing Officers. This document can be electronically accessed at <http://www.iaao.org/documents/index.cfm?Category=23> which was last accessed and verified on ~~June~~ ~~July~~ ~~1822~~, 2009~~10~~. (~~3-29-10~~)()

- b.** “Recreation Vehicle Guide of the National Automobile Dealers Association” published in 2009~~10~~ for the September through December period by the National Appraisal Guides Incorporated. ~~(3-29-10)~~()
- c.** “Van/Truck Conversion and Limousine Appraisal Guide of the National Automobile Dealers Association” published in 2009~~10~~ for the September through December period by the National Appraisal Guides Incorporated. ~~(3-29-10)~~()
- d.** “Official Railway Equipment Register” published for the last three (3) quarters in 2009~~10~~ and the first quarter in 2010~~1~~ by R. E. R. Publishing Corporation, Agent as a publication of ~~Commonwealth Business Media, Inc~~ UBM Global Trade. ~~(3-29-10)~~()
- e.** “Forest Habitat Types of Northern Idaho: A Second Approximation” published by the Government Printing Office for the U. S. Forest Service in 1991, General Technical Report INT-236, written by Cooper, Stephen V., Neiman, Kenneth E., Rev, David W., and Roberts, Kenneth E. (4-6-05)
- f.** “Forest Habitat Types of Central Idaho” published by the Government Printing Office for the Intermountain Forest and Range Experimentation Station of the U. S. Forest Service in 1981, General Technical Report INT-114, written by Kittams, Jay A., Pfister, Robert D., Ryker, Russell A., and Steele, Robert. (5-3-03)
- g.** “Yield of Even-Aged Stands of Ponderosa Pine” published by the Government Printing Office for the U. S. Department of Agriculture in 1938, Technical Bulletin No. 630. (5-3-03)
- h.** “Second-Growth Yield, Stand, and Volume Table for the Western White Pine Type” published by the Government Printing Office for the U. S. Department of Agriculture in 1932, Technical Bulletin No. 323. (5-3-03)
- i.** “Manual of Instructions for the Survey of the Public Lands of the United States” published by the Government Printing Office for the Bureau of Land Management in 1973, Technical Bulletin No. 6. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

114. POWERS AND DUTIES - PROPERTY TAX - VALUE INFORMATION (RULE 114).

Sections 63-105A and 63-509, Idaho Code. To provide needed value information under Subsection 63-105A(2), Idaho Code, ~~each assessor will to the extent practicable report the following information to the State Tax Commission in the same manner and at the same time as the abstracts under Section 63-509, Idaho Code.~~ ~~(3-30-07)~~

~~01- Homeowner's Exemption Information. Beginning in 2007 and each year thereafter, each county assessor will, to the extent practicable, report to the State Tax Commission in the same manner and at the same time as the abstract under Section 63-509, Idaho Code, the total market value and exempted value of all property (land and improvements) used for residential purposes and granted the homeowner's exemption under Section 63-602G, Idaho Code, for the current year's assessment roll. Additionally, beginning in 2007 and each year thereafter, each county assessor will, to the extent practicable, report to the State Tax Commission the following stratification for improved properties granted the homeowner's exemption number of properties and the aggregate total market value of the properties granted the homeowner's exemption in each group starting with the group of properties valued at less than or equal to twenty-five thousand dollars (\$25,000) and including each subsequent group with value increases of twenty-five thousand dollars (\$25,000) and ending with the group of properties exceeding the value of more than two hundred fifty thousand dollars (\$250,000).~~ ~~(3-30-07)~~()

~~a- Total quantity and total market value of all properties less than or equal to twenty five thousand dollars (\$25,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually less than or equal to twenty five thousand dollars (\$25,000) in market value.~~ ~~(3-30-07)~~

~~b- Total quantity and total market value of all properties more than twenty five thousand dollars~~

~~(\$25,000) but less than or equal to fifty thousand dollars (\$50,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than twenty five thousand dollars (\$25,000) but less than or equal to fifty thousand dollars (\$50,000) in market value.~~

~~(3-30-07)~~

~~**e.** Total quantity and total market value of all properties more than fifty thousand dollars (\$50,000) but less than or equal to seventy five thousand dollars (\$75,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than fifty thousand dollars (\$50,000) but less than or equal to seventy five thousand dollars (\$75,000) in market value.~~

~~(3-30-07)~~

~~**d.** Total quantity and total market value of all properties more than seventy five thousand dollars (\$75,000) but less than or equal to one hundred thousand dollars (\$100,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than seventy five thousand dollars (\$75,000) but less than or equal to one hundred thousand dollars (\$100,000) in market value.~~

~~(3-30-07)~~

~~**e.** Total quantity and total market value of all properties more than one hundred thousand dollars (\$100,000) but less than or equal to one hundred twenty five thousand dollars (\$125,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred thousand dollars (\$100,000) but less than or equal to one hundred twenty five thousand dollars (\$125,000) in market value.~~

~~(3-30-07)~~

~~**f.** Total quantity and total market value of all properties more than one hundred twenty five thousand dollars (\$125,000) but less than or equal to one hundred fifty thousand dollars (\$150,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred twenty five thousand dollars (\$125,000) but less than or equal to one hundred fifty thousand dollars (\$150,000) in market value.~~

~~(3-30-07)~~

~~**g.** Total quantity and total market value of all properties more than one hundred fifty thousand dollars (\$150,000) but less than or equal to one hundred seventy five thousand dollars (\$175,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred fifty thousand dollars (\$150,000) but less than or equal to one hundred seventy five thousand dollars (\$175,000) in market value.~~

~~(3-30-07)~~

~~**h.** Total quantity and total market value of all properties more than one hundred seventy five thousand dollars (\$175,000) but less than or equal to two hundred thousand dollars (\$200,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than one hundred seventy five thousand dollars (\$175,000) but less than or equal to two hundred thousand dollars (\$200,000) in market value.~~

~~(5-8-09)~~

~~**i.** Total quantity and total market value of all properties more than two hundred thousand dollars (\$200,000) but less than or equal to two hundred twenty five thousand dollars (\$225,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than two hundred thousand dollars (\$200,000) but less than or equal to two hundred twenty five thousand dollars (\$225,000) in market value.~~

~~(5-8-09)~~

~~**j.** Total quantity and total market value of all properties more than two hundred twenty five thousand dollars (\$225,000) but less than or equal to two hundred fifty thousand dollars (\$250,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than two hundred twenty five thousand dollars (\$225,000) in market value but less than or equal to two hundred fifty thousand dollars (\$250,000) in market value.~~

~~(5-8-09)~~

~~**k.** Total quantity and total market value of all properties more than two hundred fifty thousand dollars (\$250,000). Each county assessor will report the total number of and the total market value for all properties granted the homeowner's exemption that are individually more than two hundred fifty thousand dollars (\$250,000) in market value.~~

~~(5-8-09)~~

~~02. **Personal Property Data.** Beginning in 2008 and each year thereafter, each county assessor will to the extent practicable separately report to the State Tax Commission the total market value and any exempt value of personal property for each of the following classifications or subclassifications thereof from the North American Industry Classification System (NAICS) and will separately detail this value by applicable secondary categories. (3-30-07)~~

~~a. **Forestry and logging personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all forestry and logging personal property within NAICS classifications 113, 115, and 1133 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~b. **Mining personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all mining personal property within NAICS classifications 21, 212, and 213 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~c. **Heavy construction personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all heavy construction personal property within NAICS classification 234 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~d. **Food manufacturing personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all food manufacturing personal property within NAICS classification 311 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~e. **Dairy product manufacturing personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all dairy product manufacturing personal property within NAICS classification 3115 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~f. **Wood product manufacturing personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all wood product manufacturing personal property within NAICS classification 321 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~g. **Chemical manufacturing personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all chemical manufacturing personal property within NAICS classification 325 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~h. **Computer and electronic product manufacturing (high tech) personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all computer and electronic product manufacturing (high tech) personal property within NAICS classification 334 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~i. **Locally assessed telecommunications personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all locally assessed telecommunications personal property within NAICS classifications 5133 and 51332 as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~j. **Other personal property data.** Each county assessor will separately report to the State Tax Commission the total market value and any exempt value and detail these values by applicable secondary categories for all other personal property within NAICS classification 81 or any other NAICS classification not listed in~~

~~Paragraphs 114.02.a. through 114.02.i. as listed on the personal property declaration by the property owner or an agent for the property owner. (3-30-07)~~

~~03. Cross-Reference. For the descriptions of secondary categories, see Rules 510, 511, and 512 of these rules. (3-30-07)~~

(BREAK IN CONTINUITY OF SECTIONS)

131. USE OF RATIO STUDY TO TEST FOR EQUALIZATION IN COUNTIES (RULE 131). (3-30-07)
Section 63-109, Idaho Code.

01. Equalization Ratio Study. Each year the State Tax Commission shall conduct a ratio study to assist in the equalization of assessments of property within and among the primary categories established in Rule 130 of these rules. The ratio study shall be conducted in accordance with the "Standard on Ratio Studies" referenced in Rule 006 of these rules. The annual ratio study shall test assessments as of January 1 of each year. Except when sales or appraisals must be added or deleted to improve representativeness, sales used will be those occurring within each county between October 1 of the year preceding the year for which assessments are to be tested and September 30 of the year for which assessments are to be tested. Each sale price is to be adjusted for time and compared to market value for assessment purposes for the year for which assessments are to be tested, to compute ratios to be analyzed. The State Tax Commission may use sales from extended time periods and may add appraisals when data is lacking. Equalization ratio studies must consist of at least five (5) sales and/or appraisals. The State Tax Commission may delete sales when necessary to improve representativeness. The study shall be completed in February following the end of the period studied. The appropriate ratio study statistical measure of level shall be the median. (4-2-08)(____)

02. Tested For Equalization. ~~Beginning with the 2007 ratio study to be complete prior to the first Monday in April, 2008,~~ Except as provided in Subsection 131.03 of this rule, categories to be tested for equalization purposes are the primary categories, described in Subsections 130.02 through 130.06 of these rules, provided adequate samples can be obtained. (3-30-07)(____)

03. Follow-Up Ratio Study. When indicated, based on criteria in Paragraph 131.03.a. and 131.03.b. of this rule, a follow-up ratio study shall be conducted to test the assessments for January 1 of the year following the year tested by the annual ratio study and shall be based on property sales occurring during the calendar year immediately preceding that date. A follow-up ratio study shall be indicated whenever: (4-2-08)

a. The annual ratio study, provided in Subsections 131.01 and 131.02 of this rule, discloses that assessments in any primary category as described in Subsections 130.02 through 130.06 of these rules are out of compliance with the equalization standards of this rule; or (4-2-08)

b. The State Tax Commission is informed after the county board of equalization adjourns and before the state board of equalization adjourns of the implementation of assessment changes likely to result in a finding that a primary category found in compliance with equalization standards following the annual ratio study would be found out of compliance with these standards for the current year's assessments. The follow-up ratio study authorized under this option shall be conducted for the primary category likely to be out of compliance with equalization standards and for any secondary categories comprising the primary category, provided adequate samples can be obtained. (4-2-08)(____)

04. Notice of Follow-Up Ratio Study. The State Tax Commission shall notify the county assessor of the reason for and results of the follow-up ratio study. If the follow-up ratio study is conducted as provided in Paragraph 131.03.b. of this rule, the notice shall be sent to the county board of equalization and county assessor and shall describe the assessment changes that resulted in the need for the follow-up ratio study. The notice shall indicate whether any adjustments will be considered by the State Tax Commission at its next equalization meeting in August based on either the annual, or any follow-up ratio study, and the reason for the proposed adjustments. (4-2-08)

05. Use of Ratio Study Results. The results of the annual ratio study or any follow-up ratio study shall

be one (1) source of information upon which the State Tax Commission may rely when testing assessments for equalization purposes under Section 63-109, Idaho Code. When the results of any ratio study on any primary, or, if applicable under the provisions of Subsection 131.03.b. of this rule, secondary category, described in Subsections 130.02 through 130.06~~7~~ of these rules, show, with reasonable statistical certainty as defined in Subsection 131.09 of this rule, that the appropriate measure of level of ~~any primary~~ the category studied is less than ninety percent (90%) or greater than one hundred ten percent (110%), the assessment of property within that ~~primary~~ category may be considered not equalized. When this occurs, the State Tax Commission may, at its annual meeting commencing on the second Monday in August, order the county auditor to adjust the value of all property in ~~any primary~~ the category or ~~subcategory~~ any portion of the category included in the analysis conducted in an amount the State Tax Commission finds necessary to accomplish equalization of assessments of property. Within any primary category, except as provided in Subsection 131.06 of this rule, adjustment will not be considered for any secondary category, described in Rule 510, 511, or 512 of these rules, that does not have at least one (1) observation in the ratio study conducted for that primary category. (4-2-08)()

06. Exception from Requirement for at Least One (1) Observation for Use of Secondary Category in Adjusted Value Determination. Properties identified as secondary categories 10 and 31 rarely sell separately from farms and therefore do not appear in any ratio study. However, the level of assessment typically is similar to that of other rural residential property, including property in secondary categories 12, 15, 34, and 37. For any ratio study where there is an adjustment to be made to the assessed values in the residential designation, such adjustment shall be applied to any assessed value in secondary category 10, provided there is at least one observation (sale) of property identified in either secondary category 12 or 15. Such adjustment shall also be applied to any assessed value in secondary category 31, provided there is at least one (1) observation (sale) of property identified in either secondary category 34 or 37. (3-30-07)

07. Use of Alternate Ratio Study. When the follow-up ratio study required by Subsection 131.03 of this rule does not measure the true assessment level, the State Tax Commission may consider adjustment based on the most recent annually conducted ratio study or other information relevant to equalization. If the State Tax Commission has reason to question the representativeness of the sample used in an annual or follow-up ratio study conducted on any primary category, the State Tax Commission may delay implementation of any order to adjust property values until two (2) successive years' ratio studies fail to produce an appropriate measure of level between ninety percent (90%) and one hundred ten percent (110%). (3-30-07)

08. Submission of Additional Information. Any party may petition the State Tax Commission to consider any information or studies relevant to equalization. The petition shall include a description of the information to be presented and the petitioner's conclusions drawn from the information. (4-5-95)

09. Reasonable Statistical Certainty. For the purposes of Rule 131 and equalization pursuant to Section 63-109, Idaho Code, "reasonable statistical certainty" that any primary category is not equalized shall mean that the appropriate measure of level determined by the ratio study for ~~the primary~~ any category tested for equalization must be provably less than ninety percent (90%) or greater than one hundred ten percent (110%) of market value for assessment purposes. Such a determination shall occur if: (3-30-07)()

a. The appropriate measure of level for the ~~primary~~ category(ies) being tested is less than ninety percent (90%) or greater than one hundred ten percent (110%) and a ninety percent (90%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%); or (3-30-07)()

b. The appropriate measure of level for the ~~primary~~ category(ies) being tested has been less than ninety percent (90%) or greater than one hundred ten percent (110%) as determined by the most recent previous two (2) ratio studies on the ~~primary~~ category(ies) and an eighty percent (80%) two-tailed confidence interval around the appropriate measure of level fails to include ninety percent (90%) or one hundred ten percent (110%). No ratio study completed prior to August 31, 2007 will be considered as one of the most recent previous two (2) ratio studies. (4-2-08)()

10. Cross References. The primary categories are described in Subsections 130.02 through 130.06 of these rules, and the secondary categories are described in Rules 510, 511, and 512 of these rules. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

317. OCCUPANCY TAX ON NEWLY CONSTRUCTED IMPROVEMENTS ON REAL PROPERTY (RULE 317).

Section 63-317, Idaho Code.

(5-3-03)

01. Property Subject to Occupancy Tax. Excluding additions to existing improvements, the occupancy tax shall apply to improvements upon real property, whether under the same or different ownership. The occupancy tax shall also apply to new manufactured housing, as defined in Section 63-317, Idaho Code, excluding additions to existing manufactured housing. (4-6-05)

02. Prorated Market Value. The market value for occupancy tax purposes shall be the full market value on January 1 and shall be prorated at least monthly from the occupancy date to the end of the year. (3-29-10)

03. Notice of Appraisal. When notifying each owner of the appraisal, the county assessor shall include at a minimum the full market value before any exemptions and before any prorating of the value, the length of time subject to the occupancy tax, and the prorated value. (5-3-03)

04. Examples for Calculation of Value Less Homestead Exemption (HO). The following examples show the procedure for the calculation of the taxable value subject to the occupancy tax less the homestead exemption (HO): (3-30-07)

a. Example for prorated market value exceeding maximum amount of the homestead exemption for tax year 2009. Each year the maximum amount of the homestead exemption is subject to modification by the Housing Price Index.

Full Market Value of Home - \$300,000
Prorated Market Value for 11 Month Occupancy - $\$300,000 \times 11/12 = \$275,000$
Taxable Value - $\$275,000 - \$104,471 \text{ (HO)} = \$170,529$

(3-29-10)

b. Example for prorated market value resulting in less than the maximum amount of the homestead exemption.

Full Market Value of Home - \$120,000
Prorated Market Value for 3 Month Occupancy - $\$120,000 \times 3/12 = \$30,000$
Taxable Value - $\$30,000 - \$15,000 \text{ (HO)} = \$15,000$

(3-30-07)

05. Market Value. The market value for occupancy tax purposes shall be entered on an occupancy tax valuation roll. Occupancy tax valuation shall not be included in the assessed value of any taxing district, but occupancy tax must be declared in the certified budget. (3-30-07)

06. Allocation to Urban Renewal Agencies. Occupancy tax revenue shall be distributed to urban renewal agencies in the same manner as property taxes. ()

a. The portion of the occupancy tax raised for funds specified in Section 50-2908, Idaho Code, and Rule 804 of these rules must be distributed to the taxing districts levying property taxes for those funds and, therefore, must not be distributed to the urban renewal agency. (5-8-09)

b. Except for occupancy tax raised for funds specified in Section 50-2908, Idaho Code, and Rule 804 of these rules, for parcels within a newly formed revenue allocation area or within an area newly annexed to an existing revenue allocation area, occupancy tax for the tax year during which the formation or annexation took effect must be distributed to the urban renewal agency. ()

07. Property Qualifying for the Homestead Exemption on Occupancy Value. When property is subject to occupancy tax, only the improvements shall be eligible for the homestead exemption found in Section 63-602G, Idaho Code. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

609. PROPERTY EXEMPT FROM TAXATION -- HOMESTEAD (RULE 609). Sections 63-602G, 63-701, 63-703, and 63-3077, Idaho Code. (3-30-07)

01. Homestead Exemption. The Homestead Exemption granted in 63-602G, Idaho Code shall also be known as the homeowner's exemption. (3-30-07)

02. Idaho Annual Housing Price Index Change. The successor to the United States Office of Federal Housing Enterprise Oversight is the Federal Housing Finance Agency. Annually, the State Tax Commission shall calculate the maximum dollar-value limit for the homeowner's exemption based on the annual change in the Idaho ~~annual housing price index~~ Price Index-All-Transactions, published by the ~~United States office of federal housing enterprise oversight~~ Federal Housing Finance Agency or its successor. The following procedure shall be used: (3-30-07)()

a. Step 1. Calculate the average Idaho ~~housing price index~~ Price Index-All-Transactions of the four (4) most recently available quarters as of September 15. (3-30-07)()

b. Step 2. Calculate the average Idaho ~~housing price index~~ Price Index-All-Transactions of the four (4) quarters immediately preceding the earliest quarter used in Step 1. (3-30-07)()

c. Step 3. Divide the Step 1 average by the Step 2 average to determine a factor. (3-30-07)

d. Step 4. Multiply the factor determined in Step 3 by the current maximum dollar-value limit on the homeowner's exemption to produce the new dollar-value limit. (3-30-07)

03. Partial Ownership. Any partial ownership shall be considered ownership for determining qualification for the homeowner's exemption; however, the amount of the exemption shall be decided on the reduced proportion of the value commensurate with the proportion of partial ownership. The proportional reduction shall not apply to the ownership interests of a partner of a limited partnership, a member of a limited liability company or a shareholder of a corporation when that person has no less than five percent (5%) ownership interest in the entity unless any ownership interest is shared by any entity other than the limited partnership, limited liability company or corporation. For tenants in common with two (2) improvements located on one (1) parcel of land, determine the applicable value for the homeowner's exemption using the procedure shown in Example 1 of Paragraph 609.03.a., of this rule unless the owner-occupant provides documented evidence of a different ownership interest in the improvement. See Examples 2, 3, and 4 in Paragraphs 609.03.b., 609.03.c., and 609.03.d. of this rule for additional partial ownership guidance. To calculate property tax reduction benefits when partial ownership exists, see Paragraph 700.05.b. of this rule. (4-2-08)

a. Example 1. John Smith and Bob Anderson own a property as tenants in common with two (2) residential improvements located on the property. Each residential improvement is owner occupied by one (1) of the tenants in common. The homeowner's exemption is calculated as follows:

Description	Value	Notes
Land	\$42,000	
Residential Improvement	\$82,000	Occupied by Mr. Smith
Prorated Ownership Interest (land and improvement)	\$62,000	Mr. Smith's interest
Homeowner's Exemption	\$31,000	For Mr. Smith as owner occupant
Residential Improvement	\$67,000	Occupied by Mr. Anderson
Prorated Ownership Interest (land and improvement)	\$54,500	Mr. Anderson's interest
Homeowner's Exemption	\$27,250	For Mr. Anderson as owner occupant

(3-30-07)

b. Example 2. John Smith and Bob Anderson own a parcel of land as tenants in common with two (2) residential improvements located on the parcel. Mr. Smith has documented evidence of one hundred percent (100%) interest in one (1) residential improvement and Mr. Anderson has documented evidence of one hundred percent (100%) interest in the remaining residential improvement. Each residential improvement is owner occupied. The homeowner's exemption is calculated as follows:

Item Description	Value	Notes
Land	\$42,000	
Residential Improvement	\$82,000	Owned and occupied by Mr. Smith
Homeowner's Exemption	\$51,500	For Mr. Smith
Residential Improvement	\$67,000	Owned and occupied by Mr. Anderson
Homeowner's Exemption	\$44,000	For Mr. Anderson

(3-30-07)

c. Example 3. Tom Johnson and Marie Johnson, husband and wife, and June Smith jointly own a property and occupy one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	\$95,000	
Residential Improvement	\$215,000	
Land and Improvement	\$310,000	
Prorated ownership interest (land and improvement) (\$310,000 X 66.67%)	\$206,677	Mr. & Mrs. Johnson's interest
Homeowner's Exemption Maximum for 2007 10 (\$ 89,325 101,153 X 66.67%)	\$ 59,550 67,439	Mr. & Mrs. Johnson's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$310,000 X 33.33%)	\$103,323	Ms. Smith's interest

Description	Value	Notes
Homeowner's Exemption Maximum for 200710 (\$89,325 101,153 X 33.33%)	\$29,775 33,714	Ms. Smith's Homeowner's Exemption

(4-2-08)()

d. Example 4. John and Susan Doe, husband and wife, and Mike Person jointly own a property, and Mr. and Mrs. Doe occupy the one (1) residential improvement located on the property. The following example shows how to calculate each homeowner's exemption.

Description	Value	Notes
Land	\$65,000	
Residential Improvement	\$195,000	
Land and Improvement	\$260,000	
Prorated ownership interest (land and improvement) (\$260,000 X 66.67%)	\$173,342	Mr. & Mrs. Doe's interest
Homeowner's Exemption (Maximum for 200710 is 50% up to \$89,325 101,153)	\$86,671	Mr. & Mrs. Doe's Homeowner's Exemption
Prorated ownership interest (land and improvement) (\$260,000 X 33.33%)	\$86,658	Mr. Person's interest
Homeowner's Exemption	\$0	Mr. Person does not qualify for a homeowner's exemption on this property.

(4-2-08)()

04. Determination of Residency. The State Tax Commission may release pertinent information from any Idaho income tax return to the county assessor and the county Board of Equalization for the sole purpose of providing one (1) indicator of eligibility for the homeowner's exemption. According to Section 63-3077(4), Idaho Code, this information is confidential and is not subject to public disclosure. (4-11-06)

05. Notification of Erroneous Claims. When it is determined that an exemption granted under this Section to a taxpayer who has also received property tax relief under Chapter 7, Idaho Code, should not have been granted, the county assessor shall notify the State Tax Commission of the determination. (3-29-10)

610. PROPERTY EXEMPT FROM TAXATION -- RESIDENTIAL IMPROVEMENTS -- SPECIAL SITUATIONS (RULE 610).

Sections 63-602G and 63-701(2), Idaho Code.

(4-5-00)()

01. Scope. This rule addresses issues relating to the homeowner's exemption as it applies to certain unusual factual situations. It states general principles applicable to unusual cases and provides some illustrative examples. The rule cannot address every conceivable situation that may arise, but the principles established may apply to the resolution of situations not addressed in the rule. (7-1-99)

02. Definitions. The following definitions apply to this rule: ()

02a. Dual Residency Couples. As used in this rule, "dual residency couple" means a husband and wife, each of whom has established a different dwelling place as his or her primary dwelling place as defined in Section 63-602G, Idaho Code, and Subsection 609.03 of these rules. (4-2-08)

b. Multidwelling or Multipurpose Building. "Multidwelling or Multipurpose Building" means a

building which is the primary dwelling place of the owner and which has a portion used for any purpose other than the primary dwelling place of the owner. ()

c. Related Land. "Related Land" means land, not to exceed one (1) acre, that is reasonably necessary for the use of the dwelling as a home. ()

03. Dual Residency Couples -- General Principles. (7-1-99)

a. Whether a particular residential improvement is an individual's primary dwelling place is a question of fact for each individual. Each spouse of a dual residency couple can maintain a separate primary dwelling place for purposes of the homeowner's exemption. The test to be applied is the general test set out in Subsection 609.03 of these rules. (4-2-08)

b. If a residential improvement is community property, either the husband or wife may exercise full management or control over it, except that neither the husband nor the wife can sell or encumber the property without the written consent of the other. Thus, either the husband or the wife can file an application for the homeowner's exemption regarding community property on his or her own authority. The signature of the other spouse is not required on the application. See Section 32-912, Idaho Code. (7-1-99)

c. Neither spouse is a partial owner of community property. (This principle is an exception to laws generally governing community property interests. It applies only for matters relating to the homeowner's exemption or the circuit breaker property tax relief program. See Section 63-701(7) Idaho Code.) Thus, there is no authority to reduce the value of the improvement proportionally to reflect one (1) spouse's ownership in community property before determining the amount of the homeowner's exemption. For purposes of the homeowner's exemption, a community property interest is treated the same as a full ownership interest. (3-15-02)

d. An owner may apply only once for the homeowner's exemption. See Section 63-602G(c), Idaho Code. Thus, an application by one (1) spouse regarding a residential improvement that is community property, precludes the other spouse from making a second application on any other residential improvement whether held by the other spouse as community or separate property except as provided in Subsection 610.07. (3-15-02)

04. Example -- Both Residences are Community Property. (7-1-99)

a. Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement, each of which is owned by the couple as community property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

b. The first application is valid. Any subsequent application, though filed by the other spouse, is not valid because the couple can not make more than one (1) application. The homeowner's exemption applies to the full value of the first residential improvement to qualify without any proportional reduction. The other residential improvement does not qualify. (3-15-02)

05. Example -- One Residence Is Community Property, the Other Is Separate Property. (7-1-99)

a. Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement. One (1) is owned by the spouse who resides in it as his or her separate property, the other is owned by the couple as community property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

b. The first application is valid. Any subsequent application, though filed by the other spouse, is not valid. If the first application relates to the community property, it is an application on behalf of both members of the community. Thus, the other spouse can not file a second application relating to his or her separate property. If the first application relates to the separate property, then the subsequent application relating to the community property is a second application by the spouse owning the separate property and is not valid. The homeowner's exemption applies to the full value of the first residential improvement to qualify without any proportional reduction. The other residential improvement does not qualify. (3-15-02)

06. Example -- Both Residences are Separate Property. (7-1-99)

a. Each member of a dual residency couple maintains his or her primary dwelling in a different residential improvement, each of which is owned by the spouse residing in it as his or her separate property. Each applies for the homeowner's exemption for the residence in which he or she resides. (7-1-99)

b. Both residential improvements qualify for the full homeowner's exemption. Neither application is a second application by the same owner. Each spouse is a sole owner of the residential improvement, so the proportional reduction provisions for partial ownership do not apply. (7-1-99)

07. Apportionment of Homeowner's Exemption by Dual Residency Couples. Both spouses of a dual residency couple may elect to equally apportion the homeowner's exemption between the two (2) residential improvements if each files a written election with the county assessor of the county in which each property is located. When the election is made each residential improvement shall be entitled to one-half (1/2) of the exemption applicable to that property alone. The total exempted value of both properties shall not exceed the amount of exemption available to the individual residential improvement with the greatest market value if no election were made. (4-5-00)

08. Multiple Ownerships Including Community Interests as Partial Owners. A community property interest in a residential improvement is a partial ownership when combined with the ownership of another individual who is not a member of the marital community. For example, if a deed conveys title to real property to a husband and wife and to an adult child of theirs, the husband and wife hold a community property interest in the improvement and the child is a tenant-in-common. The parents collectively hold a two-thirds (2/3) partial interest and the child holds a one-third (1/3) partial interest in the property. Qualification of the property for the homeowner's exemption is as follows: (7-1-99)

a. If the residential improvement is the primary dwelling of the husband and wife but not the child, the homeowner's exemption applies to two-thirds (2/3) of the value of the improvement. (3-15-02)

b. If the residential improvement is the primary dwelling of the child, but not of the husband or wife, the homeowner's exemption applies to one-third (1/3) of the value of the improvement. (3-15-02)

c. If the residential improvement is the primary dwelling of the husband, wife and child, the homeowner's exemption applies to the full value of the improvement. (3-15-02)

d. If the residential improvement is the primary dwelling of one (1) spouse but of neither the other spouse nor the child, the homeowner's exemption applies to two-thirds (2/3) of the value of the improvement unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02 through 610.07. The two-thirds (2/3) qualification results from the statutory provision that a community property interest is not considered a partial interest of either spouse. See [Subsection Paragraph 610.03.c. of this rule.](#) (3-15-02)()

e. If the residential improvement is the primary dwelling of one (1) spouse and the child, the homeowner's exemption applies to the full value of the improvement unless the residential improvement of the other spouse has previously qualified for the homeowner's exemption under the dual residency couple rules set out in Subsections 610.02 through 610.07. (3-15-02)

09. Determining the Qualifying Portion of a Multidwelling or Multipurpose Building and the Related Land. The portion of a Multidwelling or Multipurpose Building and Related Land used for the primary dwelling place of the owner qualifies for the homeowner's exemption. When determining the value of the qualifying portion, the assessor shall include the Related Land value. ()

(BREAK IN CONTINUITY OF SECTIONS)

613. PROPERTY EXEMPT FROM TAXATION -- SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND (RULE 613).

Section 63-602K, Idaho Code. (4-6-05)

01. Definitions. (4-5-00)

a. Taxable Value of Agricultural Land. The taxable value of agricultural land shall be the landlord's share of net income per acre, capitalized by the annual rate required by Section 63-602K, Idaho Code, plus a component for the local tax rate. The component for local taxes achieves the necessary allowance for the expense of property taxes. (4-5-00)

b. Speculative Portion. The speculative portion is the difference between the current market value and the taxable value of agricultural land. The market value of agricultural land is established from market sales of similar land. (4-5-00)

c. Economic Rent. Economic rent is the average gross income per acre received by a landlord from either a cash rent or crop share rental agreement. The rent attributable to exempt irrigation equipment is not included in economic rent. Only the rent solely attributable to the agricultural land is included in economic rent. (4-5-00)()

d. Net Income. Net income is determined by deducting the landlord's share of current expenses from economic rent per acre. (4-5-00)

02. Calculation of Net Income from Cash Rent. Net Income from cash rent is calculated in the following manner. (4-5-00)

a. Crops Grown. Determine the crops typically grown in the area. (4-5-00)

b. Economic Rent. Determine the average per acre gross income from individual crop rents typical to the area over the immediate past five (5) years. (4-5-00)

c. Landlord's Expenses. Determine the landlord's share of typical contracted expenses paid in the immediately preceding growing season. (4-5-00)

d. Landlord's Net Income. Subtract the landlord's share of typical contracted expenses from the average gross income per acre for the immediately preceding growing season to determine net income. (4-5-00)

03. Calculation of Net Income from Crop Share Rent. Net income from crop share rent is calculated in the following manner. (4-5-00)

a. Crops Grown. Determine the crops typically grown in the area. (4-5-00)

b. Average Crop Production. Determine average crop production per acre based on the most recent five (5) years. (4-5-00)

c. Average Commodity Prices. Determine average commodity prices based on the most recent five (5) years. (4-5-00)

d. Gross Income. Multiply average crop production per acre times the average commodity price to determine gross income per acre. (4-5-00)

e. Landlord's Share of Gross Income. Determine the landlord's share of gross income per acre from a crop rotation typical to the area. (4-5-00)

f. Expenses. Determine the landlord's share of water, fertilizer, chemical, seed and harvest cost per acre for the immediately preceding growing season. (4-5-00)

g. Net Income. Subtract the landlord's share of expenses from the landlord's share of gross income to determine net income. (4-5-00)

04. Determination of Five Year Average Crop Prices. The State Tax Commission shall determine five (5) year average crop prices to be used in determining net income by surveying publicly available data from various sources, including the annual crop summary published by the Idaho Agricultural Statistics Service. Average crop prices determined in this manner by the State Tax Commission should be considered guidelines subject to modification based on local market data. (4-6-05)

05. Farm Credit System Interest Rate. Annually, the State Tax Commission shall calculate the five (5) year rolling average Farm Credit System interest rate (FCSIR). Using the twenty (20) year fixed rate interest rates received bi-monthly from Northwest Farm Credit Services in Spokane, Washington, calculate the average Farm Credit System interest rate for the prior year applying the formula in Paragraph 613.05.a. of this rule. Calculate the five (5) year rolling average Farm Credit System interest rate applying the formula in Paragraph 613.05.b. of this rule. (3-30-07)

a. Formula for Calculating Average Farm Credit System Interest Rate for Prior Year. $FCSIR_5 = (R_1 + R_2 + R_3 + R_4 + R_5 + R_6 + R_7 + R_8 + R_9 + R_{10} + R_{11} + R_{12})/12$.

FCSIR ₅	is the average Farm Credit System interest rate for the prior year.
R ₁	is the interest rate received for January of the prior year.
R ₂	is the interest rate received for February of the prior year.
R ₃	is the interest rate received for March of the prior year.
R ₄	is the interest rate received for April of the prior year.
R ₅	is the interest rate received for May of the prior year.
R ₆	is the interest rate received for June of the prior year.
R ₇	is the interest rate received for July of the prior year.
R ₈	is the interest rate received for August of the prior year.
R ₉	is the interest rate received for September of the prior year.
R ₁₀	is the interest rate received for October of the prior year.
R ₁₁	is the interest rate received for November of the prior year.
R ₁₂	is the interest rate received for December of the prior year.

(3-30-07)

b. Formula for Calculating Five (5) Year Rolling Average Farm Credit System Interest Rate. $FCSIR = (FCSIR_1 + FCSIR_2 + FCSIR_3 + FCSIR_4 + FCSIR_5)/5$.

FCSIR ₅	is the average Farm Credit System interest rate for the prior year.
FCSIR ₄	is the average Farm Credit System interest rate for two (2) years ago.
FCSIR ₃	is the average Farm Credit System interest rate for three (3) years ago.
FCSIR ₂	is the average Farm Credit System interest rate for four (4) years ago.
FCSIR ₁	is the average Farm Credit System interest rate for five (5) years ago.

(3-30-07)

06. Notification. In addition to providing notification of the Farm Credit System interest rate, the State Tax Commission will annually notify each county assessor of the most recent five (5) year average crop prices for the state. (4-6-05)

07. Cross Reference. For agricultural land taxable value calculation examples, see Rule 614 of these rules. For eligibility criteria, see Rule 645 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules. (3-30-07)

614. SPECULATIVE PORTION OF VALUE OF AGRICULTURAL LAND - EXAMPLES (RULE 614). Sections 63-602K and 63-604, Idaho Code. The following examples show calculations for the taxable value of agricultural land. The example in Subsection 614.01 of this rule shows one (1) calculation of an average property tax rate, the example in Subsection 614.02 of this rule shows one (1) calculation of a capitalization rate (cap rate), the example in Subsection 614.03 of this rule shows calculations using cash rent agreements, and the example in Subsection 614.04 of this rule shows calculations using crop share agreements. The choice to use cash rent or crop share analysis in determining the taxable value of agricultural land should be predicated on the quantity and quality of data available and the analysis that produces the most reliable and supportable value conclusion. (3-30-07)(____)

01. Average Property Tax Rate Calculation Example.

	Tax Code Areas	Property Tax Rates
	8	1.1323951%
	9	1.1186222%
	10	1.1226782%
	11	1.1714841%
	12	1.1674300%
	13	1.0692041%

	Tax Code Areas	Property Tax Rates
	15	1.1603100%
	16	1.1323951%
	17	1.1323951%
Average Property Tax Rate		1.1341015%

(3-30-07)

02. Capitalization Rate Calculation Example.

Average Property Tax Rate	1.13%
5-Year Average Farm Credit Bank Interest Rate	8.22%
Total Capitalization Rate (Cap Rate)	9.35%

(3-30-07)

03. Cash Rent Agreement Calculation Example.

Crops	Contract Rents Per Acre (Land Only)	Rotation In Percent	Weighted Income Per Acre
Barley	\$100.00	14.42%	\$14.42
Beans	\$100.00	22.46%	\$22.46
Beets	\$170.00	20.33%	\$34.56
Corn/Grain	\$100.00	0.00%	\$0.00
Corn/Silage	\$110.00	0.00%	\$0.00
Hay/Alfalfa	\$120.00	21.32%	\$25.58
Potatoes	\$200.00	0.00%	\$0.00
Wheat	\$100.00	21.48%	\$21.48
Peas	\$125.00	0.00%	\$0.00
Oats	\$110.00	0.00%	\$0.00
Total Income Per Acre			\$118.50

Value per acre equals net income per acre divided by Cap rate:

Total Income Per Acre	\$118.50
Less Water Costs	\$23.00
Less Management (@ 5%)	\$5.93
Net Income Per Acre	\$88.57
Cap Rate	9.35%
Value Per Acre	\$958

(3-30-07)()

04. Crop Share Agreement Calculation Example:

Crop	Yield	Price	Gross Income	Landlord Share	Landlord Share Gross Income to Land	Rotation Percent	Per Acre Share of Gross Inc. to Land
Barley	100.00	\$2.83	\$283.00	33.33%	\$94.32	14.42%	\$13.60
Beans	20.00	\$21.20	\$424.00	33.33%	\$141.32	22.46%	\$31.74
Beets	23.00	\$39.74	\$914.02	25.00%	\$228.51	20.33%	\$46.46
G/Corn	0.00	\$3.22	\$0.00	33.33%	\$0.00	0.00%	\$0.00
S/Corn	0.00	\$24.40	\$0.00	33.33%	\$0.00	0.00%	\$0.00
Hay	5.50	\$84.10	\$462.55	50.00%	\$231.28	21.32%	\$49.31
Potatoes	0.00	\$4.74	\$0.00	25.00%	\$0.00	0.00%	\$0.00
Wheat	98.00	\$3.73	\$365.54	33.33%	\$121.83	21.48%	\$26.17
Peas	0.00	\$8.68	\$0.00	33.33%	\$0.00	0.00%	\$0.00
Oats	0.00	\$1.66	\$0.00	33.33%	\$0.00	0.00%	\$0.00
Total Income Per Acre						100.00%	\$167.28

Value per acre equals net income per acre divided by Cap rate:

Total Income Per Acre \$167.28		Expenses
Water	=	\$23.00
Fertilizer	=	\$14.77
Chemicals	=	\$9.04
Seed	=	\$2.05
Management	=	\$8.36
Harvest	=	\$14.67
Total Expense Per Acre	=	\$71.89
Net Income	=	\$95.39
Cap Rate	=	9.35%
Value Per Acre	=	\$1,020

(3-30-07)()

05. **Cross Reference.** For definitions and general principles relating to the taxable value of land actively devoted to agriculture, see Rule 613 of these rules. For eligibility criteria, see Rule 645 of these rules. For information relating to Christmas tree farms, other annual forest products, and yield tax, see Rule 968 of these rules.

(3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

802. BUDGET CERTIFICATION RELATING TO NEW CONSTRUCTION AND ANNEXATION (RULE 802).

Sections 63-802, 63-301A, 63-602W, and 63-602NN, Idaho Code. (5-8-09)

01. Definitions. (4-5-00)

a. “Change of Land Use Classification.” “Change of land use classification” shall mean any change in land use resulting in a secondary category change and in an ~~increase~~ change in taxable land value to be reflected on the current property roll. (3-30-07)()

~~i. This increase in value due to change of land use classification shall be reported on the new construction roll in the year in which the new category appears on the current property roll unless the increase in value was previously included on the new construction roll. (3-30-07)~~

~~ii. The increase in taxable land value due to change of land use classification shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. (3-30-07)~~

~~iii. When the land value, had the land remained in its previous use category, is less than the land value for a previous year in which value for the same property was included in the value reported on the new construction roll, the value calculated in Subparagraph 802.01.a.ii. of this Rule shall be reduced by the value included on any previous new construction roll. (3-30-07)~~

b. “Incremental Value as of December 31, 2006.” “Incremental value as of December 31, 2006” means the total of the increment values on the property roll, subsequent property roll, missed property roll, and operating property roll ~~in~~ for the 2006 tax year. (4-2-08)()

c. “Nonresidential Structure.” “Nonresidential structure” shall mean any structure listed by the assessor in any secondary category not described as residential, manufactured homes, or improvements to manufactured homes in Rule 511 of these rules. (4-2-08)

02. New Construction Roll Listing. “Listing” shall mean a summary report of the net taxable value of property listed on the new construction roll. This listing shall include the taxable value of qualifying new construction throughout each taxing district or unit, but shall not include otherwise qualifying new construction, the value of which will be included in the increment value of any revenue allocation area (RAA) within any urban renewal district encompassed by the taxing district or unit. This report is to summarize the value reported on the new construction roll by taxing district or unit. Taxing districts and units shall be listed in the same order that is used for the certification of value required pursuant to Section 63-510(1), Idaho Code. ()

a. Previously allowable new construction that has never been included. When a taxing district proves new construction described by Section 63-301A(3), Idaho Code, has never been included on a new construction roll, the county assessor must list that property on the immediate next new construction roll at the value proven by the taxing district. Any such additional new construction must also be separately listed for each taxing district or unit, ~~and the separate listing must show the year or years of the new construction roll that would have been appropriate for this additional new construction.~~ The taxing district has the burden of proving the new construction was omitted from any new construction roll and the value that would have been listed for that property had it been listed on the appropriate new construction roll. No taxing district shall ever be granted any increase in budget authority greater than the amount that would have resulted had the property been listed on the appropriate new construction roll. Regardless of the year that the new construction should have been listed on the appropriate new construction roll, additional budget authority resulting from new construction previously omitted from a new construction roll and listed on the current year’s new construction roll shall be permitted only if the taxing district is in compliance with the budget hearing notification requirements of Section 63-802A, Idaho Code, for the current year. (4-2-08)()

b. Reporting the amount of taxable market value to be deducted. For each taxing district or unit, the new construction roll listing shall separately identify the total amount of taxable market value to be deducted as required in Section 63-301A(1)(f), Idaho Code. ()

c. Determining the amount of taxable market value to be deducted. The amount of taxable market value to be deducted under Section 63-301A(1)(f)(i), Idaho Code, shall be determined by the highest authority to which the assessment is ultimately appealed. Accordingly, adjustments should not be made until there has been a final decision on any appeal. ()

03. Special Provisions for Value Increases and Decreases. Special provisions for value increases and decreases related to change of land use classification as defined in Paragraph 802.01.a. of this rule. ()

a. Value increases. Certain related land value increases are to be included on the new construction roll. ()

i. Increases in land value shall be reported on the new construction roll in the year in which the new category appears on the current property roll provided, however, that no amount previously included shall be reported again. ()

ii. The increase in taxable land value to be reported shall be computed by subtracting the taxable land value, had the land remained in its previous use category, from the taxable land value in the current use category. ()

b. Value decreases. Certain related land value decreases are to be included on the new construction roll and subtracted from total new construction value for any taxing district. ()

i. Value decreases are to be reported only for land for which taxable market value had previously been added to any new construction roll. ()

ii. If the current land category is the same as the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall equal the amount originally added. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as dry grazing land and is to be assessed at fifteen thousand dollars (\$15,000). The forty thousand dollar (\$40,000) difference that was added to the year one (1) new construction roll must be deducted from the value shown on the new construction roll in year two (2). ()

iii. If the current land category is different than the category prior to the change that resulted in an addition to the new construction roll, the amount to be subtracted shall be the lesser of the amount originally added or the amount that would have been added had the first change in land use been from the current land category. For example, a dry grazing land parcel that would have had a value of ten thousand dollars (\$10,000) became commercial land and was assessed at fifty thousand dollars (\$50,000). The forty thousand dollar (\$40,000) difference was reported on the new construction roll in year one (1). In year two (2), the parcel is reclassified as irrigated agricultural land and would have had a value in year one (1) of twenty thousand dollars (\$20,000). The amount to be subtracted from the value shown on the new construction roll in year two (2) is thirty thousand dollars (\$30,000). ()

iv. Value decreases resulting from previously included land value becoming exempt are to be reported and subtracted. ()

v. Only land value decreases that meet the criteria listed in Subparagraphs 802.03.b.i. or 802.03.b.iv. of this rule and include and result from a change in land secondary category can be considered. ()

034. Manufactured Housing. "Installation" of new or used manufactured housing shall mean capturing the net taxable market value of the improvement(s) that did not previously exist within the county. (7-1-97)

045. Partial New Construction Values. Except as provided in Subsection 802.056 of this rule, the net taxable market value attributable directly to new construction shall be reported on the new construction roll in the tax year it is placed on the current assessment roll. Except as provided in Subsection 802.056 of this rule, any increase in a nonresidential parcel's taxable value, due to new construction, shall be computed by subtracting the previous year's

or years' partial taxable value(s) from the current taxable value. If any of this difference is attributable to inflation, such value, except as provided in Subsection 802.056 of this rule, shall not be included on the new construction roll.

Example: Assume a partially completed, nonresidential improvement was assessed at ten thousand dollars (\$10,000) as of January 1, 20049. The improvement was occupied February 2, 20049. Assume the ten thousand dollar (\$10,000) value was on the 20049 new construction roll. Assume that in 200510 the improvement is assessed at ninety thousand dollars (\$90,000). Assume there has been no inflation. The value that can be reported on the 200510 new construction roll is calculated as follows:

200510 Value	\$90,000
20049 Value Already Reported on New Construction Roll	<\$10,000>
200510 New Construction Roll Value (this improvement)	\$80,000

(4-2-08)()

056. Change in Status.

(4-2-08)

a. A previously exempt improvement which becomes taxable shall not be included on the new construction roll, unless the loss of the exemption occurs during the year in which the improvement was constructed or unless the improvement has lost the exemption provided in Section 63-602W, Section 63-602E(3), or Section 63-602NN, Idaho Code. For any such property, the amount that may be included on the new construction roll shall be the value of the portion of the property subject to the exemption at the time the exemption was first granted.

(5-8-09)()

b. Upon receipt by the State Tax Commission of a resolution recommending adoption of an ordinance for termination of an revenue allocation area RAA under Section 50-2903(5), Idaho Code, any positive difference of the most current increment value minus the "incremental value as of December 31, 2006," shall be added to the appropriate year's new construction roll. When this information is received after the fourth Monday in July, this positive net increment value shall be added to the following year's new construction roll.

(4-2-08)()

c. When a portion of an RAA is de-annexed, the following steps must be used to determine the amount to be added to the current year's new construction roll and the amount to be subtracted from the "incremental value as of December 31, 2006."

()

i. Step 1. For the parcels in the de-annexed area, determine the December 31, 2006, increment value.

()

ii. Step 2. Subtract the increment value determined in Step 1 from the most current increment value for the parcels in the de-annexed area.

()

iii. Step 3. Add any positive difference calculated in Step 2 to the current year's new construction roll value.

()

iv. Step 4. Adjust the "incremental value as of December 31, 2006" for the RAA by subtracting the increment value determined in Step 1.

()

v. The following table shows the amount to be added to the current year's new construction roll and the amount to be subtracted from the "incremental value as of December 31, 2006" applicable to the adjusted remaining RAA. The table assumes an area is de-annexed from an original RAA effective December 31, 2009.

<u>Steps (as designated in Paragraph 802.06.c.)</u>	<u>Area</u>	<u>Value</u>
	<u>December 31, 2006, increment value of the original RAA</u>	<u>\$10,000,000</u>

<u>Steps (as designated in Paragraph 802.06.c.)</u>	<u>Area</u>	<u>Value</u>
<u>Step 1</u>	<u>December 31, 2006, increment value of the de-annexed area</u>	<u>\$1,000,000</u>
	<u>December 31, 2009, increment value of the de-annexed area</u>	<u>\$3,000,000</u>
<u>Steps 2 and 3</u>	<u>Amount related to the de-annexed area to be added to the 2010 new construction roll</u>	<u>\$2,000,000</u>
<u>Step 4</u>	<u>Adjustment amount to be deducted from the original RAA's "incremental value as of December 31, 2006"</u>	<u><\$1,000,000></u>
	<u>Adjusted "incremental value as of December 31, 2006" for the remaining RAA (base for future new construction roll additions upon dissolution of all or part of remaining RAA)</u>	<u>\$9,000,000</u>

()

067. Limitation on Annexation and New Construction Roll Value. For any taxing district annexing property in a given year, the new construction roll for the following year shall not include value that has been included in the annexation value. When an annexation includes any part of a revenue allocation area, only taxable value that is part of the current base value of the taxing district is to be included in the annexation value reported for that taxing district for the year following the year of the annexation. (3-29-10)

078. Notification of New Construction Roll and Annexation Values. On or before the fourth Monday in July, each county auditor must report the net taxable values on the new construction roll and within annexed areas for each appropriate taxing district or unit to that taxing district or unit. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

961. HOMESITE ASSESSMENT AND FORESTLANDS OF LESS THAN FIVE ACRES AND CONTIGUOUS PARCELS (RULE 961). Sections 63-1702 and 63-1703, Idaho Code. ()

01. Definitions. The following definitions apply to the valuation of residential parcels that are contiguous to lands classified as forestlands. ()

a. Homesite. The "homesite" is that portion of land, contiguous with but not qualifying as forestlands, and the associated site improvements used for residential purposes. ()

b. Associated Site Improvements. The "associated site improvements" include developed access, grading, sanitary facilities, water systems, and utilities. ()

02. Homesite Assessment. Each homesite and residential and other improvements, located on the homesite, shall be assessed at market value each year. ()

a. Accepted Assessment Procedures. Market value shall be determined through procedures, methods, and techniques recommended by nationally recognized appraisal and valuation associations, institutes, and societies and according to guidelines and publications approved by the State Tax Commission. Acceptable techniques include those that are either time tested in Idaho, mathematically correlated to market sales, endorsed by assessment organizations, or widely accepted by assessors in Idaho and other states. ()

b. Appropriate Market and Comparable Selection. The appropriate market is the market most similar to the homesite and improvements located on the homesite. In applying the sales comparison approach, the appraiser

should select comparables having actual or potential residential use. ()

c. The value and classification of the homesite will be independent of the classification and valuation of the remaining land. ()

d. Assigning secondary category. List and report the secondary category for the homesite using the chart in Paragraph 961.02.d. of this rule.

<u>Description of Land</u>	<u>Secondary Category</u>
<u>Rural and Nonsubdivided</u>	<u>10</u>
<u>Rural and Subdivided</u>	<u>15</u>
<u>Urban</u>	<u>20</u>

()

03. Forestlands of Less Than Five Acres and Contiguous Parcels. A parcel of forestland that is less than five (5) acres is not eligible for valuation and taxation as forestland unless the land is contiguous with one (1) or more other parcels of forestland under the same ownership and the contiguous parcels together constitute five (5) acres or more of forestland as defined in Section 63-1701, Idaho Code. The five (5) acre minimum requirement must exclude any homesite. In the following examples each parcel of land is forestland as defined in Section 63-1701, Idaho Code, unless otherwise stated in the example. (4-6-05)()

04a. Example 1. A landowner owns a fifteen (15) acre parcel which contains four (4) acres of forestland, nine (9) acres of irrigated row crop, and two (2) acres of homesite. The four (4) acres of forestland is not eligible for valuation and taxation as forestland. (4-6-05)

04b. Example 2. A landowner owns five hundred and six (506) acres consisting of one (1) five hundred (500) acre parcel of forestland and six (6) one (1) acre parcels of forestland, that are not contiguous either to one another or to the five hundred (500) acre parcel. The five hundred (500) acre parcel is eligible for valuation and taxation as forestland. The six (6) one (1) acre parcels, are not eligible for valuation and taxation as forestland. (4-6-05)

04c. Example 3. A landowner owns five hundred and six (506) acres consisting of one (1) five hundred (500) acre parcel of forestland and six (6) one (1) acre parcels of forestland that are contiguous to the five hundred (500) acre parcel but may or may not be contiguous to one another. The entire five hundred and six (506) acres are eligible for valuation and taxation as forestland. (4-6-05)

04d. Example 4. A landowner owns six (6) noncontiguous one (1) acre parcels of forestland. The six (6) one (1) acre parcels are not eligible for valuation and taxation as forestland. (4-6-05)

04e. Example 5. A landowner owns six (6) contiguous one (1) acre parcels of forestland. The six (6) one (1) acre parcels are eligible for valuation and taxation as forestland. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

989. QUALIFIED INVESTMENT EXEMPTION (QIE) RECAPTURE (RULE 989).
Section 63-3029B, Idaho Code. (4-6-05)

01. In General. If a taxpayer has elected the property tax exemption (also known as the QIE) allowed by Section 63-3029B, Idaho Code, for property sold or otherwise disposed of prior to being held five (5) full years, or property that ceases to qualify or failed to originally qualify pursuant to Section 63-3029B, Idaho Code, the property

tax benefit shall be subject to recapture. (3-29-10)

02. Notification by Taxpayer That Property Ceases to Qualify. If an item on which a taxpayer claimed the QIE ceases to qualify during the recapture period or was incorrectly claimed by the taxpayer as qualified investment, the taxpayer shall provide notification of the amount owing and shall remit said amount to the State Tax Commission by the due date of that taxpayer's income tax return, irrespective of any income tax extensions of the income tax payment, for the income taxable year in which such event occurs. Notification shall be accomplished by filing State Tax Commission Form 49ER. For each item of property, for each year in which the QIE was granted, the taxpayer shall include with such notification the following: (3-29-10)

- a. A description of the item that ceases to qualify, (4-6-05)
- b. The county where the item was located, (4-6-05)
- c. The date the item was placed in service, (4-6-05)
- d. The date the item was no longer qualified for the QIE, (4-6-05)
- e. The amount of value exempted from property tax each year, and (4-6-05)
- f. The amount of the property tax benefit recapture. (4-6-05)

03. Notification in Case of Failure by Taxpayer to File Form 49ER. If any taxpayer who is required to file Form 49ER fails to do so by the date specified in Subsection 989.02 of this rule, the State Tax Commission shall issue a Notice of Deficiency in the manner provided in Section 63-3045, Idaho Code, to the taxpayer who claimed the QIE. The notice shall show the calculation of the recaptured property tax benefit. (4-6-05)

04. Protest of Recapture. If a taxpayer does not agree with the Notice of Deficiency issued to assert the recapture, the taxpayer may file a protest with the State Tax Commission to request a redetermination of the deficiency. The protest shall meet the requirements as provided in Section 63-3045, Idaho Code, and IDAPA 35.02.01, "Tax Commission Administrative and Enforcement Rules," Rule 320. (4-6-05)

05. Property Tax Benefit Subject to Recapture. For any item determined to be subject to the recapture of the property tax benefit under Section 63-3029B(4)(d), Idaho Code, the taxpayer shall multiply the exempt value of the property by the applicable average property tax levy determined by the State Tax Commission under Subsection 989.06 or 989.07 of this rule. The result of this calculation shall be multiplied by the recapture percentage found in the following table.

Table for Reduction of Property Tax Benefit Subject to Recapture	
Time Held/Time Qualifying	Recapture Percentage
Less than one (1) year	100%
Equal to one (1) year but less than two (2) years	80%
Equal to two (2) years but less than three (3) years	60%
Equal to three (3) years but less than four (4) years	40%
Equal to four (4) years but less than five (5) years	20%

The taxpayer shall report this calculation on Form 49ER and shall submit this form and remit the amount calculated to the State Tax Commission no later than the date indicated in Section 989.02 of this rule. (3-30-07)

06. County Average Property Tax Levy -- Locally Assessed Property Located in One (1) County

or Nonapportioned Centrally Assessed Property. For locally assessed property located in one (1) county or nonapportioned centrally assessed property, the State Tax Commission shall compute and report the county average property tax levy according to the following procedure. (4-6-05)

a. Property Tax Budget Summation - General. Except as provided in Paragraph 989.06.b. of this rule, For each year, sum the property tax portion of the annual budget of each taxing district wholly located within the county for which the average levy is to be calculated. This is the approved amount found on the taxing district's L-2 Form in the column entitled "Balance to be levied" as described in Rule 803 of these rules. To this amount, add the prorated portion of the approved "Balance to be levied" for any taxing district located partially within the county for which the average levy is to be calculated. The prorated portion is determined by multiplying the levy for the taxing district by the taxable value (as defined in Section 63-803(4), Idaho Code) of the portion of the taxing district within the county for which the average levy is to be calculated. (4-6-05)()

b. Property Tax Budget Summation - Special Rules for Counties with Urban Renewal Revenue Allocation Areas. This provision is applicable when taxing districts in the county have funds with levies calculated including all or part of an urban renewal revenue allocation area increment value pursuant to Sections 50-2908(1)(a) through (e), Idaho Code. ()

i. For any such fund, the prorated portion is determined by multiplying the levy of the fund by the taxable value within the county, including the increment value, used to determine the levy for that fund. ()

ii. For any such fund for which the entire increment value is added to the taxable value before computing the levy, the sum of the property tax portion of the annual budgets and prorated portions of such budgets must be determined. ()

iii. For any such fund for which part of the increment value is added to the taxable value before computing the levy, the sum of the property tax portion of the annual budgets and prorated portions of such budgets must be determined. ()

iv. Provided that some taxing district funds within the county are subject to the levy calculation procedures identified in Subparagraphs 989.06.b.ii. and/or iii. of this rule, for all funds other than those identified in this rule, the sum of the property tax portion of the annual budgets and prorated portions of such budgets must be determined. ()

b.c. Average Property Tax Levy. ()

i. For counties without urban renewal revenue allocation areas, The average property tax levy shall be computed by dividing the total of the property tax budgets computed in Paragraph 989.06.a. of this rule, by the taxable value (as defined in Section 63-803(4), Idaho Code) of the county for which the average levy is to be calculated. (4-6-05)()

ii. For counties with urban renewal revenue allocation areas and funds with levies calculated including all or part of urban renewal revenue allocation area increment value pursuant to Sections 50-2908(1)(a) through (e), Idaho Code, the average property tax levy shall be computed by summing the quotients determined by dividing the sums determined in Subparagraphs 989.06.b.ii., iii., and iv., by the taxable value of the county including the entire increment value, part of the increment value, or none of the increment value, depending on whether all, part, or none of the increment value has been used to determine the levy. ()

ed. Notice to Each County Auditor. The State Tax Commission will notify each county auditor of the county's current year's average property tax levy no later than the first Monday in December each year. (4-6-05)

07. Statewide Average Property Tax Levy -- Locally Assessed Property Located in More Than One County or Apportioned Centrally Assessed Property. For locally assessed property located in more than one (1) county or apportioned centrally assessed property, the State Tax Commission shall determine the average urban property tax levy of the state and shall notify each county auditor of said average no later than the first Monday in December each year. (4-6-05)

08. Noticing Remittance for the Recapture of the Property Tax Benefit. When the State Tax Commission remits to a county the property tax benefit recaptured under Section 63-3029B(4)(f), Idaho Code, it shall include with this remittance a notice identifying the following: (4-6-05)

- a.** Owner. Name of the owner receiving the QIE; (4-6-05)
- b.** Property Description. A description of the property that received the QIE; (4-6-05)
- c.** First Year Value of QIE. The amount of exempt value in the first year the QIE was elected and an identification of the year; (4-6-05)
- d.** Second Year Value of QIE. The amount of exempt value in the second year after the QIE was elected; (4-6-05)
- e.** Tax Code Area Number. The number of the tax code area within which that item was located; and (4-6-05)
- f.** Amount Remitted. The amount of money remitted for any item. (4-6-05)

09. No Allocation of Remittances to Urban Renewal Agencies. Remittances received by a county for property tax benefits recaptured under Section 63-3029B(4)(f), Idaho Code, shall not be subject to allocation to urban renewal agencies. (4-6-05)

10. Penalty and Interest. Penalty and interest shall be determined as provided in Sections 63-3045 and 63-3046, Idaho Code. Penalty and interest shall be computed from the due date found in Subsection 989.02 of this rule. (4-6-05)

11. Cross Reference. For more information relating to QIE, refer to Section 63-3029B, Idaho Code, and Rule 988 of these rules. (4-6-05)

IDAPA 35 - IDAHO STATE TAX COMMISSION
35.01.05 - MOTOR FUELS TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0105-1003
NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 63-105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Rule 137 is being added due to the passage of House Bill 384 by the 2010 Legislature. This rule will require an in-state pipeline terminal operator to report ethanol that was placed into storage at its Idaho pipeline terminal. This information will help the Tax Commission to account for all ethanol that was imported into the state by tanker truck or railcar.

Rule 320 is being amended due to the passage of House Bill 384 by the 2010 Legislature to show that records for all types of motor fuels not just those for gasoline and special fuels must be kept for three years.

Rule 400 Subsection 05 is being amended to include motor vehicles powered by gaseous fuels that display a gaseous fuel permit because these motor vehicles do not prejudice the collection of the special fuels tax and do not render wholly or partially ineffective the procedures for the collection of that tax.

Rule 510, Subsection 05, is being amended due to the passage of House Bill 384 by the 2010 Legislature. This legislation imposed the motor fuels tax on ethanol and natural gasoline. The Tax Commission's current reporting system for fuel distributors requires that the motor fuels tax and transfer both be paid when a load of fuel is received. Ethanol and natural gasoline must be included in the definition of petroleum and petroleum products in order to impose the transfer fee on these fuels when they are imported into Idaho or removed from a production plant in Idaho.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because the proposed changes are of a simple nature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Randy Nilson, at (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 27th day of August, 2010.

Randy Nilson
Tax Policy Specialist
Idaho State Tax Commission
800 Park Blvd., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0105-1003

136. ~~139.~~ (RESERVED).

137. INSTATE PIPELINE TERMINAL, PRODUCTION TERMINAL, AND STORAGE REPORTS (RULE 137).

01. Monthly Reports. Every instate pipeline terminal operator and production terminal operator shall file with the state tax commission a monthly tax report and supporting detailed schedules on forms prescribed by the state tax commission. The pipeline terminal operator and production terminal operator must keep detailed inventory records. The number of gallons of motor fuels and other petroleum products shall be stated in gross gallons on all reports. The pipeline terminal operator and production terminal operator shall report the quantity of motor fuels and other petroleum products received during the month including a listing of each person from inside and/or outside Idaho supplying motor fuels and other petroleum products to the pipeline terminal or production terminal. Such reports shall contain a declaration by the person filing the report that the statements contained therein are true and are made under penalties of perjury. The report shall include the following information together with such other information as the state tax commission may require: ()

a. The beginning inventory of motor fuels and other petroleum products on the first day of the month; ()

b. The total quantity of motor fuels or other petroleum products received or produced during the month including gasoline blend stocks and ethanol; ()

c. The total quantity of motor fuels and other petroleum products disbursed during the month on a load-by-load basis; ()

d. The ending inventory of motor fuels and other petroleum products on the last day of the month; ()

02. Machine Tabulated Data. Machine tabulated data will be accepted in lieu of detailed schedules on state tax commission provided forms but only if the data is in the same format as shown on the required schedules. Before any other format may be used, the distributor must make a written request to the state tax commission with a copy of the format and must be granted written authorization to use that format. ()

138. -- 139. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

320. RECORDS RETENTION REQUIREMENTS (RULE 320).

01. Records Required. Any person importing, manufacturing, refining, dealing in, transporting, storing or selling any motor fuels in this state shall keep such records, receipts and invoices as will show all purchases, sales, receipts, or deliveries of motor fuels in this state. Such records shall be maintained for at least three (3) years. (6-23-94)

02. Motor Fuels Subject to Use Tax. Any person who has purchased tax-exempt motor fuel and subsequently uses the fuel in a manner that is subject to a motor fuel use tax, shall maintain records sufficient to establish the quantity of motor fuel subject to tax. (7-1-98)

03. Original Invoice Retention. The original invoices required by Rule 270 of these rules, relating to refunds of ~~gasoline and special~~ motor fuels tax paid on certain fuel used off-road, shall be retained for the greater of either three (3) years or the time during which the taxpayer's Idaho income tax return is subject to adjustment by either the State Tax Commission or by voluntary action of the taxpayer. (7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

400. IFTA LICENSING AND SPECIAL FUELS PERMITTING REQUIREMENTS FOR MOTOR VEHICLES OVER TWENTY-SIX THOUSAND POUNDS MAXIMUM GROSS WEIGHT (RULE 400).

The following rules relate to the special fuels tax licensing system provided in Sections 63-2438 through 63-2440, Idaho Code, inclusive and, where expressly stated, supplements the requirements of IFTA. (7-1-98)

01. In General. It is unlawful for any person to operate a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels as defined in Section 63-2401, Idaho Code, on the highways of this state without having obtained one (1) of the following: (3-30-07)

a. A registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code. (7-1-98)

b. A temporary permit from the Idaho Transportation Department. (3-15-02)

c. An IFTA license. (7-1-98)

d. In the case of vehicles powered by gaseous fuels, a gaseous fuels permit as provided by Section 63-2424, Idaho Code. (7-1-98)()

02. Federal or In-State Governmental Vehicles. Motor vehicles owned or leased and operated by the federal government or the state of Idaho or their instrumentalities or political subdivisions are exempt from these requirements. (3-15-02)

03. Out-of-State Governmental Vehicles. Motor vehicles owned or operated by another state of the United States or any agency or subdivision thereof are exempt from permitting and reporting under this rule if the state in which they are owned grants a reciprocal privilege to Idaho and its agencies and subdivisions. (7-1-98)

04. Temporary Permits. Any person who operates a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels on the highways of this state and is not registered solely for operation in this state under Section 49-434, Idaho Code, or IFTA licensed, shall secure a temporary permit from the Idaho Transportation Department in the manner provided and required by that department. (3-30-07)

05. Failure to Obtain an IFTA License, ~~or a~~ Temporary Permit, or a Gaseous Fuels Permit. Operation of a motor vehicle over twenty-six thousand (26,000) pounds maximum registered gross weight or a motor vehicle with three (3) or more axles regardless of weight, that uses special fuels on the highways of this state without a registration to operate the motor vehicle solely within this state under Section 49-434, Idaho Code, an IFTA license,

or an Idaho temporary permit, or a gaseous fuels permit for motor vehicles powered by gaseous fuels as provided by Section 63-2424, Idaho Code, is hereby deemed to be an act tending to prejudice the collection of the special fuels tax and an act that renders wholly or partially ineffective the procedures for collection of that tax. Accordingly, any deputy of the Commission, including those designated as deputies in Section 300 of these rules, may issue a jeopardy assessment under the authority of Sections 63-2434 and 63-3065, Idaho Code. Such deputy is authorized to institute immediate collection procedures, including issuance of a tax warrant and distraint of the motor vehicle required to display, but failing to display, either an IFTA license or a temporary permit. (3-30-07)()

(BREAK IN CONTINUITY OF SECTIONS)

510. APPLICATION AND REPORTING OF THE PETROLEUM TRANSFER FEE (RULE 510).

01. Application. (6-23-94)

a. The Petroleum Transfer Fee applies to the receipt of any petroleum or petroleum product within this state. The amount of the fee is one cent (\$.01) for each gallon of petroleum or petroleum product received. The fee shall be paid by the distributor who receives any petroleum or petroleum product not excluded from the fee, unless the fee has previously been paid on the same petroleum or petroleum product. (7-1-99)

b. The legal incident of the fee is on the distributor required to report it to the State Tax Commission. The fee is not required to be separately stated on any invoice, receipt, or other billing document. A choice to state separately the fee does not change its legal incidence or its nature. (6-23-94)

02. Receipt of Petroleum Products. Receipt of petroleum or petroleum products shall be determined according to Section 63-2403, Idaho Code. (7-1-99)

03. Exemption to Application of the Transfer Fee. The Petroleum Transfer Fee does not apply to petroleum or petroleum products that are: (6-23-94)

a. Returned to the refinery or pipeline terminal. (6-23-94)

b. Exported from this state. No fuel will be considered exported, unless the distributor can prove the export by documentation required by Rule 140 of these rules. (7-1-99)

c. Received by a railroad or railroad corporation or any employee of them. Petroleum or petroleum products sold by a licensed distributor to a railroad or railroad corporation or any employee of them is subject to the Petroleum Transfer Fee unless the petroleum or petroleum products are "received" by the railroad or railroad corporation as defined in Section 63-2403, Idaho Code. The exclusion for railroad employees applies only when the activity relating to the fuel is part of their employment with the railroad or railroad corporation. (7-1-99)

d. Received in retail containers of fifty-five (55) gallons or less or petroleum products to be packaged or repackaged into retail containers of fifty-five (55) gallons or less, if such containers are intended to be transferred to the ultimate consumer of the petroleum or petroleum products. (6-23-94)

04. Casualty Loss and Shrinkage Not Deductible. All petroleum and petroleum products received in this state that are not within an exemption or exclusion listed in this rule are subject to the fee, without further deductions or discounts despite the product's use. The deductions allowed to motor fuel distributors for fuel lost by fire or similar casualty, see Section 63-2407(3), Idaho Code; and the two percent (2%) discount for loss by shrinkage or evaporation, see Section 63-2407(4), Idaho Code; are not deductions applicable to the Petroleum Transfer Fee. (4-2-08)

05. Petroleum and Petroleum Products. The products subject to the Petroleum Transfer Fee are crude oil or any fraction of it that is liquid at a temperature of sixty (60) degrees Fahrenheit and a pressure of fourteen and seven tenths (14 7/10) psi. These products are all products refined from crude oil including but not limited to

motor gasoline, alcohol blended fuels, such as E-10 and E-85, including the alcohol content of blended fuel, diesel fuel (#1 - #6), biodiesel, biodiesel blended fuels, such as B-20, including the biodiesel content of the blended fuel, heating oil, aviation fuel, naphtha, naphtha-type jet fuel, kerosene-type jet fuel (JP#1 - #8), motor oil, brake fluid, tractor fuel, distillate fuel oil, stove fuel, unfinished oils, turpentine substitutes, lamp fuel, diesel oils (#1 - #6), engine oils, railroad oils, kerosene, commercial solvents, lubricating oils, fuel oil, boiler fuel, refinery fuel, industrial fuel, bunker fuel, residual fuel oil, road oils, and transmission fluids. Ethanol (E00), natural gasoline, and biodiesel (B00) are also defined as petroleum and petroleum products that are subject to the Petroleum Transfer Fee. (4-2-08)()

06. Licensed Distributors and Limited Licenses. Any person holding a distributor's license issued by the State Tax Commission under Section 63-2427A, Idaho Code, is also licensed for the Petroleum Transfer Fee. No additional license is required. Any person who receives any petroleum or petroleum product in this state, but who is not a licensed distributor nor required to obtain a license under Section 63-2427A, Idaho Code, shall apply to the State Tax Commission for a limited license. The limited license is only for reporting the Petroleum Transfer Fee and is not a license for any purpose under Chapter 24, Title 63, Idaho Code. (7-1-99)

07. Reporting Requirements. (6-23-94)

a. Distributors licensed under Section 63-2427A, Idaho Code, shall report and pay the Petroleum Transfer Fee with the distributor's report required by Section 63-2406, Idaho Code. For fuel subject to the taxes imposed by Sections 63-2402 and 63-2408, Idaho Code, the Petroleum Transfer Fee shall be included in the report in which the distributor is required to report the tax on the same fuel. (5-3-03)

b. Persons holding a limited license shall file a monthly report with the State Tax Commission on forms prescribed by the State Tax Commission on or before the last day of the month following the month to which the report relates. (7-1-99)

c. The provisions of Rule 130 of these rules, apply to reports of the Petroleum Transfer Fee. (7-1-99)

08. Payment. (6-23-94)

a. Payment of the fee is due on the due date of the report. For method of payment, including required use of electronic funds transfer, see Rule 010 of these rules. (6-23-94)

b. Any partial payment or collection of amounts shown due or required to be shown due on a distributor's report, plus any additional amount of penalty or interest due, shall be allocated between the motor fuels tax and the Petroleum Transfer Fee in the same proportion that the liability for the tax and the fee bear to the total liability. (6-23-94)

09. Incorporation of Other Relevant Rules. Section 41-4909, Idaho Code, incorporated by reference various provisions of the Income Tax Act, Chapter 30, Title 63, Idaho Code, to apply to the administration and enforcement of the Petroleum Transfer Fee. For applying and construing those sections as they apply to the Petroleum Transfer Fee, the Administration and Enforcement Rules relating to those sections of the Income Tax Act are adopted as part of these rules, as if set out in full. In addition, Administration and Enforcement Rule 110, (IDAPA 35.02.01.110) relating to requests for declaratory rulings, is adopted as part of these rules, as if set out in full.(4-6-05)

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-1001

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 Sections 63-105 and 63-3039, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

New Rule 153 is being promulgated to adopt the Internal Revenue Service alternative methods allowed to tax preparers for signing income tax returns.

Rule 155 is being amended to address the methods allowed for filing motor fuels tax returns electronically and the risks of disclosure when filing returns electronically.

Rule 310 is being amended to add the interest rate and applicable Revenue Ruling for calendar year 2011 to the table that identifies this information by year.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a simple nature.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Janice Boyd at (208) 334-7544.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2009.

DATED this 25th day of August, 2010.

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

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 35-0201-1001

151. -- 154~~2~~. (RESERVED).

153. TAX PREPARERS -- ALTERNATIVE METHODS OF SIGNING INCOME TAX RETURNS (RULE 153).

A tax preparer, as defined in Section 48-603B, Idaho Code, may sign an Idaho income tax return in a manner allowed by Internal Revenue Service Notice 2004-54. This includes signing the return by means of a rubber stamp, mechanical device, or computer software program. The requirements for using the alternative methods under Internal Revenue Service Notice 2004-54 must be followed for Idaho income tax purposes if this method of signing a return is used for the Idaho return. Use of the alternative signature for the tax preparer does not alter the requirement for the taxpayer or authorized officer or representative to sign the return as provided in Rule 150 of these rules or to follow the requirements of Section 48-603B, Idaho Code. ()

154. (RESERVED).

155. TAX RETURNS AND OTHER DOCUMENTS FILED ELECTRONICALLY (RULE 155).
Sections 63-115, 63-3039, and 9-328, Idaho Code. (4-2-08)

01. Tax Returns Filed Electronically. Pursuant to Section 63-115, Idaho Code, a taxpayer may file a tax return with the Tax Commission electronically only when the Tax Commission has established and implemented procedures permitting electronic filing of a specific tax return. A return may only be filed electronically by using the procedures and formats established by the Tax Commission for the particular return. (7-1-99)

02. Signatures. See Rule 150 of these rules. (7-1-99)

03. Acknowledgment of Data Transmissions. Persons filing returns by electronic data stream may be sent an acknowledgment of receipt of a successfully transmitted return. An acknowledgment means only that the Tax Commission received the return. An acknowledgment is not a finding by the Tax Commission about the correctness of the return. If any transmission is received in an unintelligible, unreadable, or garbled corrupted form and the Tax Commission cannot identify the taxpayer, no acknowledgment will be sent. (7-1-99)()

04. Methods Allowed for Filing Motor Fuels Tax Returns Electronically. The following methods are acceptable methods for filing motor fuels tax returns electronically. ()

a. Secured methods. Encrypted e-mail secured through public or private key encrypting. ()

b. Unsecured methods. Nonencrypted e-mail. ()

05. Risks of Disclosure. By filing a return electronically, the taxpayer agrees to the risks of disclosure in submitting information electronically. A taxpayer or third party may not hold the Tax Commission responsible for any loss, liability, damage, whether direct, indirect or consequential, personal injury, or expenses of any nature whatsoever that may be suffered by the taxpayer or any third party as a result of or which may be attributable, directly or indirectly, from transmitting the taxpayer's information to the Tax Commission. ()

(BREAK IN CONTINUITY OF SECTIONS)

310. INTEREST RATES (RULE 310).
Sections 63-3045 and 63-3073, Idaho Code. (3-20-04)

01. In General. The annual rate of interest applicable to delinquent taxes accruing or unpaid during all

or any part of a calendar year is determined in accordance with Section 63-3045, Idaho Code. The rates starting with the rate applicable at July 1, 1981, and the Internal Revenue Service Revenue Rulings, if applicable for the calculation of the rate, are listed in Subsection 310.02 of this rule. These interest rates also apply to the allowance of a credit or refund of tax erroneously or illegally assessed or collected as provided in Section 63-3073, Idaho Code.

(4-6-05)

02. Idaho Interest Rates and Applicable Revenue Rulings.

PERIOD	RATE OF INTEREST	INTERNAL REVENUE SERVICE REVENUE RULING
July 1, 1981, through December 31, 1993	12% simple interest	Not Applicable
Calendar Year 1994	7% simple interest	Revenue Ruling 93-64
Calendar Year 1995	9% simple interest	Revenue Ruling 94-61
Calendar Year 1996	8% simple interest	Revenue Ruling 95-67
Calendar Year 1997	9% simple interest	Revenue Ruling 96-49
Calendar Year 1998	8% simple interest	Revenue Ruling 97-41
Calendar Year 1999	7% simple interest	Revenue Ruling 98-50
Calendar Year 2000	8% simple interest	Revenue Ruling 99-41
Calendar Year 2001	8% simple interest	Revenue Ruling 2000-45
Calendar Year 2002	7% simple interest	Revenue Ruling 2001-49
Calendar Year 2003	5% simple interest	Revenue Ruling 2002-61
Calendar Year 2004	6% simple interest	Revenue Ruling 2003-107
Calendar Year 2005	6% simple interest	Revenue Ruling 2004-69
Calendar Year 2006	6% simple interest	Revenue Ruling 2005-57
Calendar Year 2007	7% simple interest	Revenue Ruling 2006-44
Calendar Year 2008	7% simple interest	Revenue Ruling 2007-57
Calendar Year 2009	5% simple interest	Revenue Ruling 2008-46
Calendar Year 2010	5% simple interest	Revenue Ruling 2009-29
<u>Calendar Year 2011</u>	<u>4% simple interest</u>	<u>Revenue Ruling 2010-20</u>

(3-29-10)()

IDAPA 38 - DEPARTMENT OF ADMINISTRATION

38.05.01 - RULES OF THE DIVISION OF PURCHASING

DOCKET NO. 38-0501-1001

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 Sections 67-5717(11) and 67-5732, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Update rules to require federal contracting qualification of a vendor submitting a bid proposal; increase small purchase exemption limit and professional services exemption limit under which agencies can purchase without formal bid process, from \$75,000 to \$100,000; increase small purchase limit from \$5,000 to \$10,000; clarify mandatory use of open contracts; and establish a mandatory pre-proposal conference for vendors to further communication and clarify Request for Proposals' requirements.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the substance and nature of the rules does not warrant negotiated rulemaking.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Edith L. Pacillo, Deputy Attorney General, Department of Administration at (208) 332-1832.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 8th day of September, 2010.

Edith L. Pacillo
Deputy Attorney General
Department of Administration
650 W. State Street
P.O. Box 83720
Boise, Idaho 83720-0303
Telephone: (208) 332-1832

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 38-0501-1001

000. LEGAL AUTHORITY.

The following rules are promulgated in accordance with Sections 67-5717(11); ~~and~~ 67-5732 ~~and 67-2356(1)~~, Idaho Code, by the administrator of the division of purchasing. ~~(3-15-02)~~()

(BREAK IN CONTINUITY OF SECTIONS)

011. DEFINITIONS.

- 01. Acquisition.** The process of procuring or purchasing property by the state of Idaho. (3-15-02)
- 02. Administrator.** The administrator for the division of purchasing. The administrator is the chief buyer. (3-15-02)
- 03. Agency.** All offices, departments, divisions, bureaus, boards, commissions and institutions of the state, including the public utilities commission, but excluding other legislative and judicial branches of government, and excluding the governor, the lieutenant-governor, the secretary of state, the state controller, the state treasurer, the attorney general, and the superintendent of public instruction. (3-15-02)
- 04. Alternate.** Property or services that are not at least a functional equal in features, performance or use of the brand, model or specification designated as the standard. (3-15-02)
- 05. Bid.** A written offer that is binding on the bidder to perform a contract to purchase or supply property or services in response to an invitation to bid. (3-15-02)
- 06. Bidder.** A vendor who has submitted a bid or quotation on specific property. (3-15-02)
- 07. Brand Name or Equal Specification.** This means a specification that uses a brand name to describe the standard of quality, performance or other characteristics being solicited and that invites the submission of equivalent products. (3-15-02)
- 08. Brand Name Specification.** This means a specification calling for one (1) or more products by manufacturers' names or catalogue numbers. (3-15-02)
- 09. Buyer.** An employee of the division of purchasing designated as a buyer, contract administrator, purchasing agent, contracting officer, or similar designation by the administrator, including, where appropriate, the administrator and other management personnel. The term also includes authorized employee(s) of a purchasing activity. (3-15-02)
- 10. Component.** An item of property normally assembled or incorporated with other items into a unified productive whole at the site of use, which items belong to functional classes that may be interchangeable units of similar function but differing operational or productive capabilities. (3-15-02)
- 11. Concession Services.** The granting by the purchasing activity of a right, franchise, authority, property interest or option to a contractor, regardless of whether an expenditure of state or other funds occurs. (3-15-02)
- 12. Consultant Services.** This means work, rendered by either individuals or firms who possess specialized knowledge, experience, and expertise to investigate assigned problems or projects and to provide counsel, review, design, development, analysis or advice in formulating or implementing programs or services or

improvements in programs or services, including but not limited to such areas as management, personnel, finance, accounting and planning. The consultant's services, opinions or recommendations will be performed according to the consultant's methods without being subject to the control of the agency except as to the result of the work. (3-15-02)

13. Contract. Contract means any state written agreement, including a solicitation or specification documents and the accepted portions of the solicitation, for the acquisition of property. Generally, the term is used to describe term contracts, definite or indefinite quantity or delivery contracts or other acquisition agreements whose subject matter involves multiple payments and deliveries. A contract shall also include any amendments mutually agreed upon by both parties. (3-15-02)

14. Contractor. A bidder or offeror who has been awarded an acquisition contract. (3-15-02)

15. Director. The chief officer of the department of administration. (3-15-02)

16. Division. The division of purchasing of the department of administration as established by Section 67-5714, Idaho Code. Whenever a purchase is made by the division on behalf of another agency, the division shall be deemed to be acting as the agent for such agency. (3-15-02)

17. Document. When used in these rules, may include electronic documents. (3-15-02)

18. Equal. Property that meets or exceeds the quality, performance and use of the brand, model or specifications in the invitation to bid, request for proposals or request for quotation. (3-15-02)

19. Equipment. Items of personal property that have a normal useful life expectancy or measurable service life of two (2) or more years. (3-15-02)

20. Formal Sealed Procedure. Procedure by which the buyer solicits competitive sealed bids or competitive sealed proposals by means of an invitation to bid or request for proposals. (3-15-02)

21. Goods. Items of personal property including concession services, not qualifying as equipment, parts or supplies. (3-15-02)

22. Information Technology Property. Includes, but is not limited to, all present forms of computer hardware, computer software or services used or required for automated data processing, computer related office automation or telecommunications. (3-15-02)

23. Invitation to Bid. Means all documents, whether attached or incorporated by reference, utilized for soliciting formal sealed bids. (3-15-02)

24. Lowest Responsible Bidder. The responsible bidder whose bid conforms in all material respects to the invitation to bid or request for proposals and reflects the lowest acquisition price to be paid by the state; except that when specifications are valued or comparative performance examinations are conducted, the results of such examinations and the relative score of valued specifications will be weighed, as set out in the specifications, in determining the lowest acquisition price. (3-15-02)

25. Offeror. A vendor who has submitted a proposal in response to a request for proposals for property to be acquired by the state. (3-15-02)

26. Open Contract. A contract awarded by the state of Idaho through the division of purchasing to one (1) or more vendors who have agreed to allow all agencies to procure or purchase specified property under the terms and conditions set forth in the contract. ()

267. Person. Any business, individual, union, committee, club or other organization or group of individuals, not including a state or public agency. (3-15-02)

278. Procurement. The process of obtaining property for state use by lease, rent or any manner other than by purchase or gift. (3-15-02)

289. Professional Services. Work rendered by an independent contractor whose occupation is the rendering of such services and who has a professional knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, including but not limited to accounting and auditing, legal, medical, nursing, education, engineering, actuarial, architecture, veterinarian, and research. The knowledge is founded upon prolonged and specialized intellectual training that enables a particular service to be rendered. The word “professional” implies professed attainments in special knowledge as distinguished from mere skills. (3-15-02)

2930. Property. Goods, services, parts, supplies and equipment, both tangible and intangible, including, but nonexclusively, designs, plans, programs, systems, techniques and any rights and interests in such property. Includes concession services and rights to access or use state property or facilities for business purposes. (3-15-02)

301. Proposal. A written response including pricing information to a request for proposals that describes the solution or means of providing the property requested and which proposal is considered an offer to perform a contract in full response to the request for proposals. Price may be an evaluation criterion for proposals, but will not necessarily be the predominant basis for contract award. (3-15-02)

342. Public Agency. Has the meaning set forth in Section 67-2327, Idaho Code. (3-15-02)

323. Purchase. The act of acquiring or procuring property for state use or the result of an acquisition action. (3-15-02)

334. Purchase Order. See also definition of Contract, typically used to acquire property. It is a notification to the contractor to provide the stated property, required material, equipment, supplies or services under the terms and conditions set forth in the purchase order. It may include the form of the state’s acceptance of a bidder’s proposal or bid. (3-15-02)

345. Purchasing Activity. The division or an agency delegated that authority by the administrator for the division. (3-15-02)

356. Quotation. An offer to supply property in response to a request for quotation and generally used for small or emergency purchases. (3-15-02)

367. Request for Proposals. Includes all documents, whether attached or incorporated by reference, utilized for soliciting competitive proposals and is generally utilized in the acquisition of services or complex purchases. (3-15-02)

378. Request for Quotation. The document, form or method generally used for purchases solicited in accordance with small purchase or emergency purchase procedures. (3-15-02)

389. Requisition. A standard state or agency specific form that serves as a purchasing request and that requests that the purchasing activity acquire the stated requirements. (3-15-02)

3940. Sealed. Includes bids electronically sealed and submitted in accordance with requirements or standards set by the division and bids manually sealed and submitted. (3-15-02)

401. Sealed Procedure Limit. That dollar amount, as established by these rules, above which the formal sealed bid procedure will be used. Said amount may be lowered by the administrator to maintain full disclosure or competitive purchasing or otherwise achieve overall state efficiency and economy. (3-15-02)

442. Services. Personal, general, professional or consultant services, in excess of personnel regularly employed for whatever duration and/or covered by personnel system standards, for which bidding or competition is not prohibited or made impractical by statute, rules and regulations or generally accepted ethical practices. (3-15-02)

423. Small Purchase. An acquisition that costs less than the sealed procedure limit. (3-15-02)

~~43~~**44.** **Solicitation.** Means an invitation to bid, a request for proposals or other document issued by the purchasing activity for the purpose of soliciting bids, proposals, or offers to perform a contract. (3-15-02)

~~44~~**45.** **Specifications.** The explicit requirements furnished with an invitation to bid, request for proposals or request for quotations upon which a purchase order or contract is to be based. Unless specifically provided in a solicitation, specifications do not include solicitation conditions or contractual terms including, without limitation, items such as vendor qualification requirements, bid closing times, delivery time or payment terms. (3-15-02)

~~45~~**46.** **State.** This means the state of Idaho including each agency unless the context implies other states of the United States. (3-15-02)

~~46.~~ ~~**State or Statewide Contract.** Contracts for property or services administered by the division on behalf of or for the benefit of an agency. Statewide contracts apply to more than one (1) agency. The contract document will identify the conditions under which usage by agencies is required.~~ (3-15-02)

47. **Supplies.** Items of personal property having an expendable quality or during their normal use are consumed and that require or suggest acquisition in bulk. (3-15-02)

48. **Telecommunications.** Means all present and future forms of hardware, software or services used or required for transmitting voice, data, video or images. (3-15-02)

49. **Vendor.** A person or entity capable of supplying property to the state. (3-15-02)

50. **Written.** When used in these rules, may include an electronic writing. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

031. COOPERATIVE PURCHASING POLITICAL SUBDIVISIONS.

The various bid statutes relating to municipal corporations, school districts, and counties may authorize these political subdivisions to utilize any contract resulting from a state bid process. A public agency may use state open contracts as authorized by statute and the terms of the state open contract. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

041. PROCEDURE FOLLOWED IN THE SOLICITATION OF BIDS AND PROPOSALS.

Except as otherwise provided, the acquisition of property exceeding seventy five one hundred thousand dollars (\$75100,000) (the sealed procedure limit) shall be by the formal sealed procedure. All vendors submitting responses to solicitations issued by the state must be qualified. All vendors are qualified unless disqualified as defined by Section 67-5730, Idaho Code. (4-2-08)()

042. EXCEPTIONS TO FORMAL SEALED PROCEDURE.

Purchases meeting the following criteria need not be purchased by the formal sealed procedure: (3-15-02)

01. Emergency Purchases. Emergency purchases as authorized by Section 67-5720, Idaho Code, and Section 43. (3-15-02)

02. Small Purchases. Small purchases, unless the administrator specifically requires a formal sealed procedure, made in accordance with Section 044. (3-15-02)

03. Sole Source Purchases. Sole source purchases made through direct solicitation with documented source selection, in accordance with Section 67-5720, Idaho Code, and Section 045. (3-15-02)

04. Reverse Auctions. Purchases through reverse public auctions as authorized by Section 67-5720, Idaho Code. (3-15-02)

05. Federal Government Acquisitions. Acquisitions from the United States of America or any agency thereof. (3-15-02)

06. Rehabilitation Agency Acquisitions. Acquisitions of property that is provided by non-profit corporations and public agencies operating rehabilitation facilities serving the handicapped and disadvantaged and that is offered for sale at fair market price as determined by the administrator in accordance with these rules. (3-15-02)

07. Correctional Industries. Purchases of road or street signs, metal motor license plates, wearing apparel, furniture, articles or containers for state use not for resale on the open market or any other property marketed directly by Correctional Industries in accordance with Section 20-245, Idaho Code. (3-15-02)

08. Purchases from General Services Administration Federal Supply Contractors. Acquisitions of property may be made from General Services Administration federal supply contractors without the use of competitive bid. The administrator shall determine whether such property meets the purchasing activity's requirements and whether the price of acquisition is advantageous to the state. The administrator shall commemorate the determination in a written statement that shall be incorporated in the applicable file. If the administrator determines that the acquisition of property from General Services Administration contractors is not advantageous to the state, the acquisition shall be in accordance with competitive bidding procedures and requirements. (3-15-02)

09. Existing ~~State or Statewide~~ Open Contracts. Supplies, services or other property available under these contracts shall be purchased under such contracts in accordance with the provisions or requirements for use thereof. ~~(3-15-02)~~()

10. Exempt Purchases. By written policy the administrator may exempt from the formal sealed procedure or the requirement for competitive acquisition that property for which bidding is impractical, disadvantageous or unreasonable under the circumstances. (3-15-02)

a. Examples include, but are not limited to: (3-15-02)

i. Special market conditions; (3-15-02)

ii. Property requiring special contracting procedures due to uniqueness; (3-15-02)

iii. Legal advertising, publication or placement of advertisements by state agency personnel directly with media sources; or (3-15-02)

iv. Services for which competitive solicitation procedures are impractical. (3-15-02)

b. Such policy shall describe the property exempted, the duration of the exemption, and any other requirements or circumstances appropriate to the situation. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

044. SMALL PURCHASES.

01. General. Small purchases are those purchases or procurements expected to cost ~~seventy five one hundred~~ thousand dollars (~~\$75~~100,000) or less. Costs are determined based on the following: ~~(4-2-08)~~()

a. One-time purchases of property; or (3-15-02)

b. Total cost of a contract for services, including renewal or extension periods. (3-15-02)

02. Splitting of Requirements. Acquisition requirements shall not be artificially divided to avoid bid statutes, rules or policies. (3-15-02)

03. Procedure. Unless impractical or impossible and documented in the file, these small purchase procedures require the acquisition to be publicly posted. Except as otherwise provided in this rule, no less than three (3) vendors having a significant Idaho presence as defined by Section 67-2349, Idaho Code, shall be solicited to submit quotations. Award shall be made to the responsible and responsive bidder offering the lowest acceptable quotation. The purchasing file will be fully documented for unacceptable quotations. Should it be impractical or impossible to solicit three (3) vendors, the file shall be fully documented and every effort should still be made to obtain the most favorable terms, conditions and price possible. (3-15-02)

04. Form of Request for Quotation. Unless otherwise prohibited by the buyer, the request for quotation and the quotation may be written, oral, electronic, telephonic or facsimile. (3-15-02)

05. Quoting Time. The quoting time shall be determined by the buyer and should provide sufficient time for the vendor to prepare and return a quotation. The amount of time shall take into consideration such factors as complexity, urgency, availability of property and the number and location of vendors. (3-15-02)

06. Statewide Open Contracts. Property available under single agency or statewide open contracts shall be purchased under such contracts and not as a small purchase under this rule unless otherwise authorized by the administrator. (~~3-15-02~~)()

07. Professional, Consultant, and Information Technology Services. Professional, consultant, and information technology services acquired under this rule, where the services are reasonably expected to cost ~~seventy-five one hundred~~ thousand dollars (~~\$75~~100,000) or less through a fixed price/not to exceed price contract for a non-renewable term not to exceed one (1) year, may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state, and if the service is not available under an open contract. (~~4-2-08~~)()

08. Purchases in Amounts Less Than Five Ten Thousand Dollars. If the property to be acquired is expected to cost less than ~~five ten~~ thousand dollars (~~\$510~~100,000), it may be acquired as each agency sees fit, in accordance with good business practice and in the best interest of the state, and if the property is not available under an open contract. (~~3-15-02~~)()

(BREAK IN CONTINUITY OF SECTIONS)

051. CONTENT OF THE INVITATION TO BID OR REQUEST FOR PROPOSALS.
The following shall be included in an invitation to bid or a request for proposals: (3-15-02)

01. Submission Information. Information regarding the applicable opening date, time and location. (3-15-02)

02. Specifications. Specifications developed in accordance with these rules including, if applicable, scope of work. (3-15-02)

03. Contract Terms. Terms and conditions applicable to the contract. (3-15-02)

04. Evaluation Criteria. Any evaluation criteria to be used in determining property acceptability. (3-15-02)

05. Trade-In Property. If trade-in property is to be included, a description of the property and location where it may be inspected. (3-15-02)

06. Incorporation by Reference. A brief description of any documents incorporated by reference that

specifies where such documents can be obtained.

(3-15-02)

07. Pre-Proposal Conference. The date, time and location of the pre-proposal conference must be included in the Request for Proposals. ()

(BREAK IN CONTINUITY OF SECTIONS)

062. -- ~~070~~69. (RESERVED).

070. PRE-PROPOSAL CONFERENCE.

All Request for Proposals' solicitations will have a pre-proposal conference for vendors and will be conducted by the procurement team and project personnel. The conference will consist of a general overview of the procurement process as well as the scope of work and requirements of the subject Request for Proposal. The procurement team will allow attendees to submit written questions and may provide an opportunity for a verbal question and answer period, provided, however, that only questions submitted and answered in written form and posted to the state's eProcurement system as an amendment to the Request for Proposal, will have any force or effect. ()

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-1001

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 54-2105, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

Rule 004 is being amended to identify a facsimile number for the Board of Veterinary Medicine (BVM) and authorize a procedure for filing of written communications and documents by facsimile, as enabled by Section 54-2105, Idaho Code.

Rule 150 is being amended to provide clarity to the definition of a valid veterinarian/client/patient relationship (VCPR) regarding the time period for examination of an animal. A valid VCPR must exist prior to the administration, dispensation, distribution, or prescription of any legend/prescription drug or controlled substance as provided by Section 54-2115(15), Idaho Code.

Rule 200 is being amended to increase the term of service for members of the Certified Euthanasia Task Force (CETF) from two (2) years to three (3) years, due to the complex nature of the BVM's certified euthanasia program, as enabled by Section 54-2105, Idaho Code.

The BVM and CETF find it necessary to amend Rule 201 to clarify the three (3) specific categories of approved euthanasia, pre-euthanasia sedation, and chemical capture drugs. A 2009 rule change resulted in the allowance of all Certified Euthanasia Technicians (CETs) to use pre-euthanasia sedation drugs to enhance safety of personnel. This rule change provides clarification of the three (3) drug categories, and restricts the use of chemical capture drugs to CETs classified as law enforcement personnel, working at Certified Euthanasia Agencies classified as law enforcement agencies. In addition, the use of carbon monoxide-induced euthanasia chambers is removed as an approved method of euthanasia, based on the authorization of euthanasia by injection in the State of Idaho. Rule 201 is enabled by Section 54-2105, Idaho Code.

Rule 205 is being amended to remove unnecessary verbiage regarding euthanasia injections, and to reorganize a rule section regarding animal restraint and human safety. The modification of Rule 205 also includes clarification regarding certification invalidation and reinstatement procedures for CETs whose employment at a Certified Euthanasia Agency has been terminated, and adds a requirement that law enforcement CETs using chemical capture must attend recertification training every third year. Rule 201 is also enabled by Section 54-2105, Idaho Code.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because one of the rule changes is merely a "housekeeping" matter to authorize facsimile filing with the agency and the remaining rulemaking has been a subject of discussion during several board meetings during which the Board received and considered input from affected parties. In addition, the bulk of the rulemaking concerns revisions to euthanasia procedures and requirements proposed by the Euthanasia Task Force, which is composed of representatives from the profession that perform or have an interest in animal euthanasia. For these reasons, the rulemaking has been substantially "vetted" to all interested and affected parties.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Karen Ewing, Executive Director, at (208) 332-8588.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Karen Ewing, Executive Director
Board of Veterinary Medicine
2270 Old Penitentiary Rd.
P. O. Box 7249
Boise, ID 83707
Phone: (208) 332-8588
Fax: (208) 334-2170

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 46-0101-1001

004. GENERAL PROVISIONS.

- 01. Office.** (7-1-97)
- a.** The office of the Board is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (7-1-97)
- b.** The office mailing address is P.O. Box 7249, Boise, Idaho 83707. (7-1-97)
- c.** The office telephone number is (208) 332-8588. (7-1-97)
- d.** The Board's facsimile (FAX) number is (208) 334-2170. ()
- e.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday except holidays designated by the state of Idaho. (7-1-97)

02. Communications. All written communications and documents concerning any matter covered by these rules should be addressed to the office of the Board, and not to individual members of the Board or the Board's staff. All communications and documents are deemed to be officially received only when delivered to the Board office during office hours. (7-1-97)

03. Filing of Documents. All written communications and documents that are intended to be part of an official record for decision in a rulemaking or contested case must be filed with the executive director of the Board. One (1) original is sufficient for submission to the executive director, one (1) copy for the Board, one (1) copy for the hearing officer, and one (1) copy submitted to the opposing party, as applicable. Whenever documents are filed by FAX transmission, originals and copies shall be deposited in the mail the same day or hand delivered the following business day to the executive director, the Board, the hearing officer, and opposing parties, as applicable. ()

(BREAK IN CONTINUITY OF SECTIONS)

150. VALID VETERINARIAN/CLIENT/PATIENT RELATIONSHIP.

An appropriate veterinarian/client/patient relationship will exist when: (7-1-97)

01. Responsibility. The veterinarian has assumed the responsibility for making medical judgements regarding the health of the animal and the need for medical treatment, and the client (owner or other caretaker) has followed the instructions of the veterinarian. (7-1-97)

02. Medical Knowledge. There is sufficient knowledge of the animal by the veterinarian to initiate at least a general or preliminary diagnosis of the medical condition of the animal. This means that the veterinarian has ~~recently~~ seen ~~the animal within the last twelve (12) months~~ ~~and~~ ~~or~~ is personally acquainted with the keeping and care of the animal, ~~either~~ by virtue of an examination of the animal, or by medically appropriate ~~and timely~~ visits to the premises where the animals are ~~kept~~ ~~maintained within the last twelve (12) months.~~ (~~7-1-97~~)()

03. Availability. The practicing veterinarian or designate is readily available for follow-up in case of adverse reactions or failure of the regimen of therapy. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

200. EUTHANASIA TASK FORCE.

Pursuant to Section 54-2105(8), Idaho Code, a Certified Euthanasia Task Force (CETF) is established for the purpose of training, examining, and certifying euthanasia agencies and euthanasia technicians. The CETF shall consist of no fewer than five (5) members appointed by the Board. At its discretion, the Board may appoint itself as the CETF. The membership of the CETF shall always include at least one (1) member of the Board. New members shall be nominated by either the Board or the CETF and be confirmed by the Board. Applicants for a CETF position shall be certified euthanasia technicians (CETs) as defined by Section 54-2103(9), Idaho Code, and employed by a certified euthanasia agency as defined by Section 54-2103(8), Idaho Code, or be an Idaho licensed veterinarian. (4-2-08)

01. Term. Each member shall serve for ~~two~~ ~~three~~ ~~(23)~~ years, at the pleasure of the Board. A CETF member may be eligible for reappointment. If there is a vacancy for any cause, the CETF or the Board shall nominate and the Board shall confirm a successor to fill the unexpired term. (~~7-1-97~~)()

02. Duties. The duties of CETF members shall include, but not be limited to, the following: (7-1-93)

a. Coordinate and provide euthanasia training classes as needed. (7-1-97)

b. Inspect and certify agencies. (3-30-01)

c. Review the applications, records, performance, methods and procedures used by agencies and persons seeking to be certified or to renew their certification as a Certified Euthanasia Agency (CEA) or Certified Euthanasia Technician (CET). (3-30-01)

d. Conduct written and practical examinations for applicants applying for certification and authorize certification through the Board. (3-30-01)

e. Recommend suspension or revocation of a certification when necessary. (3-30-01)

03. Compensation. Members of the CETF shall be compensated as provided by Section 59-509(n), Idaho Code. (7-1-97)

201. METHODS OF EUTHANASIA, PRE-EUTHANASIA SEDATION, AND CHEMICAL CAPTURE.

Methods ~~of euthanasia~~ approved by the CETF and used for the purpose of humanely euthanizing ~~sedating, or remote chemical capturing~~ injured, sick, homeless, or unwanted pets and animals: (7-1-97)()

~~01. Approved Drugs. (7-1-97)~~

~~a01. Euthanasia ~~d~~Drugs. ~~are a~~Any Schedule II non-narcotic or Schedule III non-narcotic euthanasia drug covered by the Controlled Substances Act that has first been approved in writing by the ~~Idaho Board of Pharmacy, the~~ CETF and the Board. A list of approved euthanasia drugs is on file at the Board office. (3-30-01)()~~

~~b02. Restraint Pre-Euthanasia Sedation ~~d~~Drugs. ~~are a~~Any Schedule III or Schedule IV narcotic or non-narcotic controlled substance as defined by the Controlled Substances Act, or other legend drugs that have been approved for use by ~~certified~~ CEAs or CETs ~~at a CEA facility~~. Such ~~restraint pre-euthanasia sedation~~ drugs shall be limited to those approved in writing by the ~~Idaho Board of Pharmacy, the~~ CETF and the Board. A list of approved ~~restraint pre-euthanasia sedation~~ drugs is on file at the Board office. (3-29-10)()~~

~~03. Remote Chemical Capture Restraint Drugs. Any Schedule III or Schedule IV narcotic or non-narcotic controlled substance as defined by the Controlled Substances Act, or other legend drugs that have been approved for use by CEAs or CETs. Such remote chemical capture restraint drugs shall be limited to those approved in writing by the CETF and the Board. A list of approved remote chemical capture restraint drugs is on file at the Board office. Use of remote chemical capture is limited to CEAs and CETs who are classified as law enforcement agencies or law enforcement personnel who have successfully completed a Board-approved course in remote chemical capture. ()~~

~~02. Carbon Monoxide Induced Euthanasia Chambers. Carbon monoxide induced euthanasia chambers are acceptable only when the equipment is properly designed and operated. (3-30-01)~~

(BREAK IN CONTINUITY OF SECTIONS)

205. CERTIFIED EUTHANASIA TECHNICIAN.

01. Training and Examinations. The CETF or the Board shall develop training sessions and materials that shall include, but not be limited to, the following topics: (3-30-01)

- a. Euthanasia: (3-30-01)
 - i. The theory and history of euthanasia methods; (3-30-01)
 - ii. Animal anatomy; (3-30-01)
 - iii. Proper animal handling to ease trauma and stress; (3-30-01)
 - iv. Dosages of chemical agents, record keeping and documentation of usage, storage, handling, and disposal of out-dated drugs and their containers, instruments and equipment used in their administration in accordance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations; (3-30-01)
 - v. Proper injection techniques; and (3-30-01)
 - vi. Proper use and handling of approved euthanasia drugs and equipment; (3-30-01)
 - vii. Examination. Following the euthanasia training, a written examination shall be given. Those passing the written examination will be eligible for the practical examination. (3-30-01)
- b. Remote Chemical Capture: (3-30-01)

- i. An overview of remote chemical capture; (3-30-01)
- ii. Description and basic mechanism of action of approved drugs; (3-30-01)
- iii. Laws, regulations and rules governing remote chemical capture; (3-30-01)
- iv. Post-injection care; (3-30-01)
- v. Proper use and handling of approved restraint drugs and equipment; (3-30-01)
- vi. Human safety; (3-30-01)
- vii. Tactics and strategy; and (3-30-01)
- viii. Delivery systems and equipment. (3-30-01)

02. Certification Standards. Applicants for certification as a CET shall be eighteen (18) years of age or older and demonstrate proficiency in compliance with the following standards: ~~(3-30-01)~~()

a. Demonstrate efficiency in ~~venous access~~ **euthanasia techniques** in the presence of a CETF or Board member, or a person approved by the Board: ~~(5-8-09)~~()

i. CETs are fully responsible for all actions that take place in the euthanasia area when an animal is brought to the area including, but not limited to, animal handling, use of the proper restraint technique, the proper drug dosage, and drug handling; (3-30-01)

~~ii. Each animal shall be handled with the least amount of restraint necessary, but human safety shall always be the primary concern;~~ ~~(3-30-01)~~

~~iii.~~ CETs shall be able to properly perform intravenous injections on dogs and intraperitoneal injections on both dogs and cats. Intravenous injections on cats shall not be required as part of the certification process, but when performed, shall meet the standards listed in Subparagraph 205.02.a.~~iii.~~(1) of these rules. Intracardiac injections on dogs and cats shall not be required as part of the certification process, but when performed, are restricted to the limitations listed in Subparagraph 205.02.a.~~iii.~~(3) of these rules. ~~(3-30-01)~~()

(1) Intravenous Injections: The CET shall be able to properly and efficiently insert the needle into an animal's vein in no more than two (2) attempts on ninety percent (90%) of the animals injected by this method. ~~IV injections in the cephalic vein shall be used on all dogs over the age of three (3) months unless the animal's physical condition or size makes this type of injection impossible, or the animal's behavior would make this type of injection a serious danger to the CET or handler.~~ A minimum of two (2) people shall be required for any IV injection. One (1) person shall be a CET and one (1) or more people shall be the handler. The handler does not need to be a CET, but the handler should be trained in human safety and animal handling techniques; ~~(3-30-01)~~()

(2) Intraperitoneal Injections: The CET shall be able to efficiently insert the needle into the proper injection site in no more than two (2) attempts on ninety-five percent (95%) of the animals injected by this method. It is recommended that animals injected by this method be ~~held or otherwise restrained by the handler until the animal is unconscious. If an animal cannot be held, it shall be~~ placed into a cage with no other animals. The front of the cage shall be covered with cloth or other material that can keep the cage isolated from the normal activities in the euthanasia area. ~~The animal shall be checked every five (5) minutes until death occurs.~~ Intraperitoneal injections may be administered by a CET without a handler. ~~(3-30-01)~~()

(3) Intracardiac Injections: Intracardiac injection shall be performed only on an anesthetized animal. CETs shall be able to efficiently insert the needle into the heart of an animal in no more than two (2) attempts on ninety percent (90%) of the animals injected by this method. Intracardiac injections may be administered by a CET without a handler. (3-30-01)

- ~~iv.~~ No other injection procedures are permitted in any type of animal; (3-30-01)
- ~~v. Injections:~~ (3-30-01)
- ~~(1) On all injections, the CET shall aspirate the syringe to determine if the needle is in the correct site;~~ (3-30-01)
- ~~(2) For human safety, the cap shall be kept on the needle until such time as the injection is ready to be made;~~ (3-30-01)
- ~~(3) The needle shall be of the size and length appropriate for the specific animal involved; and~~ (3-30-01)
- ~~(4) The dosage of any approved drug used shall be no less than the minimum dosage recommended by the drug's manufacturer.~~ (7-1-97)
- ~~v.~~ Oral administration of approved drugs is permitted for any animal that cannot be captured or restrained without serious danger to human safety; (3-30-01)
- ~~vii. Demonstrate an understanding of carbon monoxide induced euthanasia chambers.~~ (3-18-99)
- b.** Demonstrate proper record keeping. A record of all approved drugs received and used by the agency shall be kept. The record shall contain the following information: (3-30-01)
- i. A weekly verification of the drug stock on hand, signed by the CET; (3-30-01)
- ii. An entry of the date that a new bottle of any approved drug is opened and the volume of the bottle, signed by the CET; (3-30-01)
- iii. The species and approximate weight of each animal administered a drug; (3-30-01)
- iv. The amount of the drug that was administered; (3-30-01)
- v. The signature of the CET who administered the drug; (3-30-01)
- vi. A record of the amount of the drug wasted, if any, signed by the CET administering the drug; and (3-30-01)
- vii. A record of any disposal of expired or unwanted approved drugs, other chemical agent or the containers, instruments and equipment used in their administration, signed by the CET and disposed of in accordance with the Idaho Board of Pharmacy law and rules and the Code of Federal Regulations. (3-30-01)
- c.** Demonstrate understanding and concern for the needs and humane treatment of individual animals: (3-18-99)()
- ~~i. Once they have collapsed, injected animals shall be lowered to the surface on which they were being held at the time of injection. Injected animals shall not be permitted to drop or otherwise collapse without human support;~~ (3-30-01)
- ~~ii.~~ All animals shall be handled in a manner that minimizes stress to the animal and maximizes the personal safety of the CET and the handler. Each animal shall be handled with the least amount of restraint necessary, but human safety shall always be the primary concern. Handling includes all aspects of moving an animal from one (1) area to another; (3-30-01)()
- ~~iii.~~ The use of control sticks and other similar devices shall be limited to fractious or potentially dangerous animals; and (3-30-01)

i+ii. Animals shall not be placed in cages or kennels with other breeds or species that are incompatible with the animal in question. Animals shall not be overcrowded in a cage or kennel. (7-1-93)

d. Demonstrate ability to verify death. The animal should become unconscious and show terminal signs within ~~thirty (30) seconds after an IV or IC injection, within fifteen (15) minutes after an IP injection, or within sixty (60) minutes~~ after an oral of drug administration. If any animal does not show any of these signs within the designated time periods, the CET shall re-administer the drug. An animal that has received an approved drug orally may be injected with the same or another approved drug after it has become unconscious. Verification is the responsibility of the CET and shall be made by physical examination of the individual animal. One (1) of the following two (2) standards for death shall be met: (4-2-08)()

i. Rigor mortis; or (7-1-93)

ii. Complete lack of heartbeat (as checked with a stethoscope), complete lack of respiration, and complete lack of corneal and palpebral reflexes. (4-2-08)

e. Demonstrate ability to communicate with handlers during the euthanasia process. (3-18-99)

03. Certification. An individual shall not be certified as a CET until such time as he has demonstrated proficiency in the practical examination that shall be conducted following the successful passing of the written exam. Training courses and written and practical examinations will be given as needed. Certification and renewal training sessions and examinations will be conducted prior to July 1 of each year at a place selected by the CETF or the Board. (3-29-10)

a. An individual who has passed the written exam, but has not attended a training session and has not passed the practical examination, may serve as a probationary euthanasia technician under the direct supervision of a currently certified CET until such time as the next training course, practical exam and certification are conducted by a CETF or Board member. (3-30-07)

b. An individual who has not passed the written exam may not serve as a euthanasia technician ~~or assistant~~. (3-30-01)()

c. An individual who attends a training session and passes the written exam but fails the practical exam may serve on probation until the CETF member re-examines the individual. If the individual fails to pass the practical exam a second time and wishes to apply again, the individual shall attend the next regular training session and written exam. (3-30-01)

d. Upon termination from an agency as defined in Section 204 of these rules, a CET's certification immediately becomes invalid and the CET shall not perform animal euthanasia until employed by another certified euthanasia agency, ~~as defined by Section 54-2103(8), Idaho Code~~ at which time the certification may be reinstated. (3-30-01)()

e. The agency shall notify the Board office in writing within thirty (30) days from the date the CET's employment at that agency is terminated. (3-29-10)

f. If a CET is employed again by a CEA prior to the expiration of his certification, the ~~CET or CEA~~ employer, ~~or both~~, may request reinstatement of the CET's certification. If a CET has not attended a euthanasia training in the three (3)-year period preceding recertification, the CET may not be recertified and will need to reapply for certification, at CETF discretion. (3-29-10)()

g. All certifications expire on July 1 of each year and are effective for no longer than twelve (12) months from the date of certification. (3-30-01)

04. Certification Renewal. ()

a. Certifications may be renewed each year by payment of the annual renewal fee, provided that, every third year following the date of certification, the CET will need to attend a euthanasia training and pay the

current training and certification fee prescribed by Section 014 of these rules.

~~(3-30-01)~~()

b. In addition to the above euthanasia training recertification requirement, CETs classified as law enforcement personnel who use chemical capture must recertify in remote chemical capture every third year following their original remote chemical capture certification. ()

- 05. Duties.** The duties of a CET shall include, but are not limited to: (7-1-97)
- a.** Preparing animals for euthanasia; (7-1-97)
 - b.** Accurately recording the dosages for drugs that are administered and amounts for drugs wasted; (3-30-01)
 - c.** Ordering supplies; (7-1-93)
 - d.** Maintaining the security of all controlled substances and other approved drugs; (3-30-01)
 - e.** Directly supervising probationary CET; (7-1-97)
 - f.** Reporting to the Board violations or suspicions of a violation of these rules or any abuse of drugs; (3-30-01)
 - g.** Humanely euthanizing animals; and (3-30-01)
 - h.** Proper and lawful disposal of euthanized animals and expired or unwanted drugs, other chemical agent or the containers, instruments and equipment used in the administration of approved drugs. (3-30-01)

IDAPA 49 - CERTIFIED SHORTHAND REPORTERS BOARD

49.01.01 - RULES OF PROCEDURE OF THE IDAHO CERTIFIED SHORTHAND REPORTERS BOARD

DOCKET NO. 49-0101-1001

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 54-3107, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 20, 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:

The Board of Certified Shorthand Reporters is identifying the certificates issued by the National Court Reporters Association (NCRA) and clarifying the conditions under which a temporary permit may be renewed.

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

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

There is no fiscal impact on general or dedicated funds.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because discussions were held in a noticed, open meeting of the Board.

INCORPORATION BY REFERENCE: Pursuant to Section 67-5229(2)(a), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 27, 2010.

DATED this 18th day of August, 2010.

Tana Cory, Bureau Chief
Bureau of Occupational Licenses
700 W State, Boise, ID 83702
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE PROPOSED TEXT FOR DOCKET NO. 49-0101-1001

400. TEMPORARY PERMIT.

01. Eligibility. (7-1-93)

a. Any one (1) or more of the following shall be considered as minimum evidence that the applicant is qualified to hold a temporary certificate: (7-1-93)

i. Hold a Certificate of Merit Reporter (RMR) issued by the National Court Reporters Association (NCRA) merit certificate; ~~(7-1-93)~~()

ii. Hold a Certificate of Registered Professional Reporter (RPR) issued by the National Court Reporters Association (NCRA); ~~(7-1-93)~~()

iii. Hold a Certified Shorthand Reporter certificate in good standing from another state; (7-1-93)

iv. Hold a diploma or certificate of completion of all requirements to graduate from a National Court Reporter Association (NCRA) approved school; (7-1-93)

v. Has otherwise demonstrated his/her proficiency by a certificate from an agency from another state. (1-1-97)

b. The applicant shall in addition: (7-1-93)

i. Have graduated from an accredited high school, or have had an equivalent education. (7-1-93)

ii. Be of good moral character, and have filed a complete application with the Board, accompanied by the required fees, as set forth in these rules. (4-9-09)

02. Certificate. All temporary permits shall be issued for a period of one (1) year and may be renewable for a single additional year ~~upon payment of~~ if, before the permit expires, the permit holder:

a. Submits a written renewal request to the Board; ()

b. Establishes that they have passed at least one (1) skills portion of the Idaho Certified Shorthand Reporter Examination, the Registered Professional Reporter Examination (RPR), or the Registered Merit Reporter Examination (RMR) examination; and ()

c. Pays the required fees, as set forth in ~~the Act, and showing of just cause~~ this Chapter. ()

d. The renewal of the permit may be upon such conditions as the Board may require. The Board will not issue more than one (1) permit to any person. ~~(4-9-09)~~()

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-1001

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

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

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

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. For information regarding participation by telephone or scheduling of additional meetings, contact the undersigned. Requests to participate by telephone must be made by October 21, 2010.

OCTOBER 26, 2010 9:00 a.m. to Noon MDT
Department of Environmental Quality, Conference Room B 1410 N. Hilton, Boise, Idaho

PRELIMINARY DRAFT: A preliminary draft of the rule can be obtained at http://www.deq.idaho.gov/rules/wastewater_grants/58_0104_1001_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to revise the priority rating criteria for the wastewater planning grants to closely match the Clean Water State Revolving Fund (SRF) loan criteria, address the need to reduce the obligation to conduct an environmental study in those cases in which a grant recipient will not immediately pursue federal aid for construction, and update the cost eligibility criteria to achieve consistency. The change to make the environmental study optional will reduce costs for grant recipients in their preparation of facility planning studies by making the environmental study aspect of facility planning optional. Additionally, this rulemaking will bring the Wastewater Planning Grant Program into closer alignment with related DEQ programs (the Clean Water SRF Program and the Drinking Water Planning Grant Program).

The preliminary draft rule will include the following proposed revisions:

- 1) Priority rating criteria for the wastewater planning grants will be revised to closely match the Clean Water SRF loan criteria.
- 2) The requirement to produce an environmental study as part of a facility plan will be made optional.
- 3) Cost eligibility criteria will be updated to achieve consistency.
- 4) If necessary, this rulemaking may also include any corrections that are typographical and nonsubstantive in nature (e.g., making corrections for consistency with other sections in this rule chapter and other DEQ rules).

The text of the rule will be developed by DEQ in conjunction with a negotiating committee made up of persons having an interest in this rule. Prospective grant and loan recipients, consulting engineers, grant and loan administrators, and other funding agencies may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to present a rule to the Board of Environmental Quality in February 2011 for adoption as a temporary rule. If adopted by the Board, DEQ will then publish the temporary rule and initiate proposed rulemaking.

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

(208)373-0439.

For those who cannot participate by attending the scheduled meetings, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by November 4, 2010. For information regarding submission of written comments on subsequent drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 13th day of September, 2010.

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

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.12 - RULES FOR ADMINISTRATION OF WATER POLLUTION CONTROL LOANS

DOCKET NO. 58-0112-1001

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

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

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

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. For information regarding participation by telephone or scheduling of additional meetings, contact the undersigned. Requests to participate by telephone must be made by October 21, 2010.

<p>OCTOBER 28, 2010 9:00 a.m. to Noon MDT</p>
<p>Department of Environmental Quality, Conference Room B 1410 N. Hilton, Boise, Idaho</p>

PRELIMINARY DRAFT: A preliminary draft of the rule can be obtained at http://www.deq.idaho.gov/rules/wastewater_loans/58_0112_1001_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to make the necessary revisions for consistency with the recent changes to the Clean Water State Revolving Fund (SRF). Recent changes to the federal statutes (Pub. L. No. 111-88, 123 Stat. 2904 (2009)) governing the Clean Water SRF require that DEQ update and revise the state Rules for Administration of Water Pollution Control Loans. Federal law now requires that DEQ consider system sustainability practices as a measure of fitness for municipalities and districts to receive a loan. Federal law also requires that a certain amount of each year's federal Clean Water Act grant be provided in the form of a subsidy. In addition, this rulemaking will bring Idaho's Clean Water SRF Program into closer alignment with other related DEQ programs (the Drinking Water SRF Program and the Wastewater Planning Grant Program).

The preliminary draft rule will include the following proposed revisions:

- 1) Priority rating criteria will be revised to incorporate points for sustainability.
- 2) The step-by-step process to arrive at a loan subsidy will be revised so that interest rates and loan repayment periods will be used in a more flexible manner.
- 3) The priority list rating and cost eligibility criteria will be updated to achieve consistency with other DEQ rules.
- 4) If necessary, this rulemaking may also include any corrections that are typographical and nonsubstantive in nature (e.g., making corrections for consistency with other sections in this rule chapter and other DEQ rules).

The text of the rule will be developed by DEQ in conjunction with a negotiating committee made up of persons having an interest in this rule. Prospective loan recipients, consulting engineers, grant administrators, and other funding agencies may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the spring of 2011 and then present the final proposal to the Board of Environmental Quality for adoption of a pending rule in the fall of 2011. If adopted by the Board, the pending rule will be reviewed by the 2012 Idaho Legislature.

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

(208)373-0439.

For those who cannot participate by attending the scheduled meetings, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by November 4, 2010. For information regarding submission of written comments on subsequent drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 13th day of September, 2010.

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

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM

DOCKET NO. 58-0120-1001

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

AUTHORITY: In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Chapters 1 and 76, Title 39, Idaho Code.

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

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. For information regarding participation by telephone or scheduling of additional meetings, contact the undersigned. Requests to participate by telephone must be made by October 21, 2010.

OCTOBER 28, 2010 9:00 a.m. to Noon MDT
Department of Environmental Quality, Conference Room B 1410 N. Hilton, Boise, Idaho

PRELIMINARY DRAFT: A preliminary draft of the rule can be obtained at http://www.deq.idaho.gov/rules/drinking_water_loans/58_0120_1001_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to make the necessary revisions for consistency with the recent changes to the Drinking Water State Revolving Fund (SRF). Recent changes to the federal statutes (Pub. L. No. 111-88, 123 Stat. 2904 (2009)) governing the Drinking Water SRF require that DEQ update and revise the state Rules for the Administration of Drinking Water Loan Program. Federal law now requires that DEQ consider system sustainability practices as a measure of fitness for municipalities and districts to receive a loan. Federal law also requires that a certain amount of each year's federal Safe Drinking Water Act grant be provided in the form of a subsidy. In addition, this rulemaking will bring the Idaho's Drinking Water SRF Program into closer alignment with other related DEQ programs (the Clean Water SRF Program and the Drinking Water Planning Grant Program).

The preliminary draft rule will include the following revisions:

- 1) Priority rating criteria will be revised to incorporate points for sustainability.
- 2) The step-by-step process to arrive at a loan subsidy will be revised so that interest rates and loan repayment periods will be used in a more flexible manner.
- 3) The priority list rating and cost eligibility criteria will be updated to achieve consistency with other DEQ rules.
- 4) If necessary, this rulemaking may also include any corrections that are typographical and nonsubstantive in nature (e.g., making corrections for consistency with other sections in this rule chapter and other DEQ rules).

The text of the rule will be developed by DEQ in conjunction with a negotiating committee made up of persons having an interest in this rule. Prospective loan recipients, consulting engineers, grant administrators, and other funding agencies may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the spring of 2011 and then present the final proposal to the Board of Environmental Quality for adoption of a pending rule in the fall of 2011. If adopted by the Board, the pending rule will be reviewed by the 2012 Idaho Legislature.

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

(208)373-0439.

For those who cannot participate by attending the scheduled meetings, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by November 4, 2010. For information regarding submission of written comments on subsequent drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 13th day of September, 2010.

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

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.22 - RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR PUBLIC DRINKING WATER FACILITIES

DOCKET NO. 58-0122-1001

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

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

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

MEETING SCHEDULE: The negotiated rulemaking meeting will be held as follows. For information regarding participation by telephone or scheduling of additional meetings, contact the undersigned. Requests to participate by telephone must be made by October 21, 2010.

OCTOBER 26, 2010 9:00 a.m. to Noon MDT
Department of Environmental Quality, Conference Room B 1410 N. Hilton, Boise, Idaho

PRELIMINARY DRAFT: A preliminary draft of the rule can be obtained at http://www.deq.idaho.gov/rules/drinking_water_grants/58_0122_1001_negotiated.cfm or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking is to revise the priority rating criteria for the drinking water planning grants to closely match the Drinking Water State Revolving Fund (SRF) loan criteria, address the need to reduce the obligation to conduct an environmental study in those cases in which a grant recipient will not immediately pursue federal aid for construction, and update the cost eligibility criteria to achieve consistency. The change to make the environmental study optional will reduce costs for grant recipients in their preparation of facility planning studies by making the environmental study aspect of facility planning optional. Additionally, this rulemaking will bring the Drinking Water Planning Grant Program into closer alignment with related DEQ programs (the Drinking Water SRF Program and the Wastewater Planning Grant Program).

The preliminary draft rule will include the following proposed revisions:

- 1) Priority rating criteria for the drinking water planning grants will be revised to closely match the Drinking Water SRF loan criteria.
- 2) The requirement to produce an environmental study as part of a facility plan will be made optional.
- 3) Cost eligibility criteria will be updated to achieve consistency.
- 4) If necessary, this rulemaking may also include any corrections that are typographical and nonsubstantive in nature (e.g., making corrections for consistency with other sections in this rule chapter and other DEQ rules).

The text of the rule will be developed by DEQ in conjunction with a negotiating committee made up of persons having an interest in this rule. Prospective grant and loan recipients, consulting engineers, grant and loan administrators, and other funding agencies may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to present a rule to the Board of Environmental Quality in February 2011 for adoption as a temporary rule. If adopted by the Board, DEQ will then publish the temporary rule and initiate proposed rulemaking.

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

(208)373-0439.

For those who cannot participate by attending the scheduled meetings, written comments may be submitted by mail, fax or e-mail at the address below. Written comments on the preliminary draft rule must be received by November 4, 2010. For information regarding submission of written comments on subsequent drafts of the negotiated rule, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 13th day of September, 2010.

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

Sections Affected Index

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

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LEGAL NOTICE

Summary of Proposed Rulemakings

PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the latest publication of the state Administrative Bulletin.

*The written comment submission deadline is October 27, 2010 unless otherwise listed.
(Temp & Prop) indicates the rule is both temporary and proposed.
(*PH) indicates that a public hearing has been scheduled.*

IDAPA 02 - DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701-0790

02-0104-1001, Rules Governing the Idaho Preferred® Promotion Program. Makes non-food product qualifications consistent with processed food product qualifications and changes the qualifications for processed pork products to allow for ground pork or sausage to be produced from hogs over one year of age.

02-0419-1001, Rules Governing Domestic Cervidae. Clarifies the annual per head fee collection process on domestic cervidae; proposes ranch management plans as a method of administering the domestic cervidae program more efficiently.

02-0421-1002, Rules Governing the Importation of Animals. Lowers the age of virgin bulls for import into Idaho from 24 months or less to less than 12 months; clarifies exemption for testing of rodeo bulls; exempts bulls imported for exhibition purposes from testing; clarifies age of rodeo stock required to be tested for tuberculosis prior to import.

02-0429-1001, Rules Governing Trichomoniasis. Lowers the age of a virgin bull for import purposes from 24 months or less to less than 12 months; requires a hot iron T brand be applied to test positive animals rather than an orange paint T brand; removes allowance for rodeo producers to purchase non-tested bulls that were intended to be sold to slaughter only; and requires culture positive animals to be confirmed positive by Polymerase Chain Reaction.

02-0602-1001, Rules Pertaining to the Idaho Commercial Feed Law. Incorporates by reference the 2011 Official Publication of the Association of American Feed Control Officials; clarifies definition of "Primary Display Panel" to include front, back and side of packaging; clarifies proper method for listing feed ingredients on commercial feed labels; allows the use of a guaranteed analysis with an ingredient statement in the labeling of customer-formula feeds; and clarifies that a violation of a Stop Sale, Use, or Removal Order is a violation of state law and rule.

02-0612-1001, Rules Pertaining to the Idaho Fertilizer Law. Incorporates by reference the 2011 Official Publication of the Association of American Plant Food Control Officials; permits "net volume" guarantees on liquid fertilizer labels; corrects references to "Brand" registration as brands are no longer required to be registered; prohibits sliding-scale guarantees on fertilizer labels; and allows multi-use labeling of fertilizers.

02-0616-1001, Crop Residue Disposal Rules. Chapter repeal - program moved to DEQ.

02-0633-1001, Organic Food Product Rules. Incorporates by reference the June 25, 2010 version of the National Organic Program Regulations, 7 CFR Part 250; ISDA will no longer offer certification seal stickers for certified organic products to prevent the misuse of the certification seal; changes all references from "gross organic income" to "gross organic sales" to clarify the fee requirements.

02-0641-1001, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001. Incorporates by reference the 2011 Official Publication of the Association of American Plant Food Control Officials; allows a guaranteed analysis of plant nutrients on labels of potting soils, landscape and garden soils that contain only levels of fertilizer sufficient to initiate growth; and allows for multi-use labeling of soil amendment and plant amendment products.

IDAPA 03 - ATHLETIC COMMISSION
700 W. State St., Boise, ID 83702

03-0101-1001, Rules of the State Athletic Commission. (Temp & Prop) Complies with HB 684 to establish application, initial review, and annual review fees for amateur sanctioning organizations; addresses non-payment of amateurs; establishes and clarifies health insurance requirements for combatants; clarifies the requirement for a bond or other security.

IDAPA 07 - DIVISION OF BUILDING SAFETY
PO Box 83720, Boise, ID 83720-0048

07-0103-1001, Rules of Electrical Licensing and Registration - General. (Temp & Prop) Requires 5-year registration period for electrical apprentices who must provide evidence of completion of the required number of employment and instructional hours to be eligible to take the journeyman exam; allows an apprentice to take the journeyman exam upon completion of 3 years of work experience (6,000 hours) if schooling completed; clarifies what a qualified apprenticeship program is for the exemption to work experience categories.

07-0104-1001, Rules Governing Electrical Specialty Licensing. (Temp & Prop) Establishes a specialty license category for outside wiremen.

07-0107-1001, Rules Governing Continuing Education Requirements. Requires each journeyman and master electrician to receive a total of 24 hours of continuing education training every 3 years and specifies that 16 hours will be in NEC code updates and 8 hours in industry-related training.

07-0205-1001, Rules Governing Plumbing Safety Licensing. (Temp & Prop) Allows practical portion of the plumbing journeyman exam to be performed in either a laboratory setting or on a job in-progress and that exam will consist of work performed in either a residential or commercial application on plumbing installations as determined by the Division.

07.03.01 - Rules of Building Safety

07-0301-1001, Amends the 2009 International Residential Code by eliminating a provision addressing live/work units to clarify that they do not require fire sprinkling; and amends provisions relating to fences and prefabricated swimming pools; amends the International Energy Conservation Code by adding provisions to address the thermal envelope of log homes.

07-0301-1002, Fee rule allows plans to be submitted for review in an acceptable format, including electronic, if legible enough to determine conformity with applicable codes; amends the technical service and system submittal plan review fee to the cost of providing such services; provides a more specific fee schedule for construction work above \$1,000,000 and codifies the DBS permit fee refund policy; charges for plan review fee services will be at an hourly rate with a minimum required fee.

07-0311-1001, Rules Governing Manufactured/Mobile Home Industry Licensing. Requires 8 hours of initial education and 4 hours of continuing education for original and renewal licensure for manufactured/mobile homes installers.

07-0402-1001, Safety Rules For Elevators, Escalators, and Moving Walks. Clarifies that equipment, components, or systems installed on an elevator that are not expressly required by the currently adopted code must function properly or be removed.

07-0701-1001, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems. Adopts by reference the 2009 editions, with amendments, of the International Mechanical Code (IMC), International Fuel Gas Code (IFGC), and International Residential Code (IRC), and retains the previously adopted amendments thereto.

IDAPA 08 - BOARD OF EDUCATION/DEPARTMENT OF EDUCATION
PO Box 83720, Boise, ID 83720-0037

08-0111-1001, Registration of Postsecondary Educational Institutions and Proprietary Schools. Board will recognize regional and institutional accreditation organizations that are recognized by and in good standing with the US Dept. of Education and the Council for Higher Education Accreditation and eliminates the list of specific regional accrediting entities; no longer requires a new application if school wants to add courses during the registration period but a notification of additional courses; all advertising material for proprietary schools must accurately represent the school's purpose.

08.02.02 - Rules Governing Uniformity

08-0202-1002, Reorganizes the technology requirements within the rule; adds requirements for the Idaho Comprehensive Literacy assessment.

***08-0202-1003, (*PH)** Updates incorporation by reference of various content areas in the Idaho Standards for the Initial Certification of Professional School Personnel and pre-service teacher technology standards.

***08-0202-1004, (*PH)** (Temp & Prop) Allows the Mathematical Thinking for Instruction course to count towards the 3-credit recertification requirement regardless of whether the credits appear on an official college transcript.

08.02.03 - Rules Governing Thoroughness

***08-0203-1001, (*PH)** Updates incorporation by reference of the Limited English Proficiency standards; requires schools to increase graduation rate by at least 2% each year when they do not meet the target of 90%.

08-0203-1002, Requires school districts to notify all students who fail the 10th grade ISAT of the availability of an alternate route to graduation.

***08-0203-1003, (*PH)** Updates the incorporation by reference into the Idaho Content Standards the following standards: English language arts, mathematics, and information and communication technology; requires each school district to have a comprehensive district wide policy and procedure encompassing the use of restraint, seclusion and other aversive techniques.

***08-0203-1004, (*PH)** (Temp & Prop) Removes passing of the 10th grade Science ISAT from the states graduation requirements; allows more time for initial evaluation and determination of need for special education and related services and to develop and implement an individualized education program for a student; requires district to send assessment results and related communication to parents within 3 weeks of receiving the results from the state; establishes the pilot project permitting certain students in certain public schools to proceed through school curriculum at their own pace, defines program participants and assessments.

IDAPA 11 - IDAHO STATE POLICE
700 S. Stratford Dr., Meridian, ID 83642

11-0301-1001, Rules Governing Alcohol Testing. (Temp & Prop) Clarifies that ISP approves the breath alcohol testing solution provided by the manufacturer and not the individual vendors and that breath alcohol testing is administered on the site of the traffic stop or at a police agency, not in a lab.

11-1001-1001, Rules Governing Idaho Public Safety and Security Information System. Provides for proxy appointments for establishing a quorum at ILETS Board meetings and defines the allowable proxies.

11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council

11-1101-1001, Changes the title of the POST Executive Director position to POST Division Administrator and makes this position non-classified; changes the hiring process for the POST Division Administrator and provides clarity in the areas of hiring, supervision, accountability and administration.

11-1101-1002, Eliminates restriction on Hearing Board appointments; clarifies minimum standards and documentation requirements; changes hardship requirement for closed campus exemption; removes specific curricula; provides POST graduates same challenge opportunities as vo-tech graduates; removes grace period for canine team certification; updates instructor certification requirements; establishes suspension of certification for non-compliance with continuing training requirement.

11-1102-1001, Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers. Establishes timelines for the lapse of Juvenile Detention officer certification and the requirements for reactivating certification.

11-1103-1001, Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Probation Officers. Establishes minimum standards for training and certification of part-time Juvenile Probation Officers; establishes timelines for the lapse of Juvenile Probation officer certification and the requirements for reactivating certification.

11-1104-1001, Rules of the Idaho Peace Officer Standards and Training Council for Correction Officers and Adult Probation and Parole Officers. Clarifies minimum standards and documentation requirements; gives the POST Division Administrator additional authority to consider requests for hearing and vision waivers.

11-1105-1001, Rules of the Idaho Peace Officer Standards and Training Council for Idaho Department of Juvenile Corrections Direct Care Staff. Revises timelines for the lapse of Juvenile Corrections Direct Care Staff certification to align with other disciplines POST certifies.

11-1106-1001, Rules of the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers. New rule chapter establishes the minimum standards for employment, training, and certification for Misdemeanor Probation Officers.

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

PO Box 25, Boise, Idaho 83707

13-0116-1002, The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals. (Temp & Prop) Establishes rules for placement of traps and snares near public travel ways.

IDAPA 15 - OFFICE OF THE GOVERNOR

DIVISION OF HUMAN RESOURCES

PO Box 83720, Boise, ID 83720-0066

15-0401-1002, Rules of the Division of Human Resources and Personnel Commission. Removes definition of "traded time"; removes references to deleted rules/areas; clarifies or removes language that conflicts with other current rules and practices.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

PO Box 83720, Boise, ID 83720-0036

16-0301-1002, Eligibility for Health Care Assistance for Families and Children. (Temp & Prop) Allows any child eligible for SCHIP to be enrolled in Children's Access Card; allows verification of U.S. citizenship and identity of first-time applicants for Medicaid and SCHIP through a data match with the SSA when the SSA has previously verified citizenship and identity; updates eligibility time period for special immigrants; children eligible for coverage under Title XXI SCHIP must meet U.S. citizenship verification and identity requirements; a Medicaid eligible individual will receive services for 90 days while U.S. citizenship and identity are pending verification.

16.03.04 - Rules Governing the Food Stamp Program in Idaho

16-0304-1002, Reinstates the asset test with an increase in the amount allowed for all Food Stamp households whose assets cannot exceed \$5,000.

16-0304-1003, (Temp & Prop) Clarifies excluded income; states that special immigrants have refugee status; addresses when mail returned to Dept.; provides for an adjustment of benefits when a participant's death becomes known to the Department.

***16-0322-101, Residential Care or Assisted Living Facilities in Idaho.** (*PH) Amends the reporting requirements for incidents and accidents in residential care or assisted living facilities when allegations of abuse and neglect are reported.

16-0504-1001, Rules of the Idaho Council on Domestic Violence and Victim Assistance Grant Funding. Updates incorporation by reference of minimum standards of the Domestic Violence Batterer Treatment Program to provide an effective response to domestic violence.

***16-0612-1002, Rules Governing the Idaho Child Care Program (ICCP).** (*PH) Reorganizes chapter; removes obsolete language; clarifies how income and qualifying activity are calculated; clearly defines application time frames to streamline eligibility determinations.

16-0750-1001, Rules and Minimum Standards Governing Nonhospital, Medically-Monitored Detoxification/Mental Health Diversion Units. (Temp & Prop) Allows for a breath alcohol test to be performed on individuals being treated in addition to the blood draw alcohol test; amends the Tuberculin skin testing requirements for clients.

**IDAPA 17 - INDUSTRIAL COMMISSION
PO Box 83720, Boise, ID 83720-0041**

17-0203-1001, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation. Chapter repeal.

***17-0208-1001, Miscellaneous Provisions.** (*PH) Chapter repeal.

***17-0208-1002, Miscellaneous Provisions.** (*PH) Chapter rewrite moves the conversion factors used to calculate physician fees in workers' compensation cases to chapter 17.02.09; reinstates remainder of previous rule without substantive changes.

***17-0209-1001, Medical Fees.** (*PH) New chapter adjusts the conversion factors used to calculate physician fees in workers' compensation cases to reflect changes in current market conditions, pricing and other factors; provides new workers' compensation fee schedule for hospitals and ambulatory surgery centers.

17-0210-1001, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Insurance Carriers. New chapter clarifies terms and implements more comprehensive reporting requirements for insurance carriers.

17-0211-1001, Administrative Rules of the Industrial Commission Under the Workers' Compensation Law - Security for Compensation - Self-Insured Employers. New chapter clarifies terms, provides a more detailed application process and outlines continuing reporting and security deposit requirements necessary to maintain self-insured status.

**IDAPA 18 - DEPARTMENT OF INSURANCE
PO Box 83720, Boise, ID 83720-0043**

18-0104-1001, Rules Pertaining to Bail Agents. New chapter identifies grounds for immediate suspension of a license; clarifies duties and responsibilities of bail agents doing business in Idaho.

18-0150-1001, Adoption of the International Fire Code. Incorporates by reference the 2009 edition of the International Fire Code.

**IDAPA 19 - STATE BOARD OF DENTISTRY
PO Box 83720, Boise, ID 83720-0021**

***19-0101-1001, Rules of the State Board of Dentistry.** (*PH) Updates documents incorporated by reference; changes nomenclature and procedures for the following: anesthesia permits; administration of nitrous oxide/oxygen, general anesthesia and moderate and deep sedation; methods of anxiety and pain control, sedation terms, and incident reporting.

**IDAPA 20 - DEPARTMENT OF LANDS
3284 West Industrial Loop, Coeur d'Alene, ID 83815
PO Box 83720, Boise, Idaho 83720**

20-0211-1001, Timber Supply Stabilization Act of 1989 on State Forests. Chapter repeal.

20-0214-1001, Rules for Selling Forest Products on State Owned Endowment Lands. Authorizes IDL to sell state timber as delivered products; expands state timber auction to allow additional bidding methods; authorizes Director to set permit rates and values; and clarifies existing rules for state timber purchasers and IDL.

20-0304-1001, Rules Governing the Regulation of Beds, Waters, and Airspace over Navigable Lakes in the State of Idaho. Allows for the replacement of some single and two-family docks without a permitting process; per statute raises application fees for some encroachment types; and lowers application fee for small domestic waterlines.

**IDAPA 23 - BOARD OF NURSING
PO Box 83720, Boise, ID 83720-0061**

23-0101-1001, Rules of the Idaho Board of Nursing. Clarifies that persons specifically authorized by Board statute or rule may administer medications; states that Board only sends notices of renewal to licensees, not applications;

states how licensees can obtain license applications; defines “family member” in connection with the prescriptive authority of an advanced practice nurse; deletes outdated references to wallet certificates and duplicate licenses.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
700 W. State Street, Boise, ID 83702

24.02.01 - Rules of the Board of Barber Examiners

24-0201-1001, Changes eliminate the jurisprudence exam; applicants must now swear under oath that they have fully reviewed, understand, and will abide by the laws and rules.

24-0201-1002, (Temp & Prop) Changes the student/instructor ratio.

24-0301-1001, Rules of the State Board of Chiropractic Physicians. Establishes a code of ethics.

24-0601-1001, Rules for the Licensure of Occupational Therapists and Occupational Therapy Assistants. (Temp & Prop) Clarifies inactive status and requirements for reinstatement; clarifies level of supervision for students, graduates, and assistants, and supervision needed for certain treatment modalities.

24-0801-1001, Rules of the State Board of Morticians. Defines resident trainee; clarifies training requirements, qualifications and eligibility for licensure; outlines sponsoring mortician's responsibilities; and clarifies documentation of the completion of a resident trainee program.

24-0901-1001, Rules of the Board of Examiners of Nursing Home Administrators. Clarifies that full time is at least 32 hours per week which allows at least 8 hours per week for direct training between the preceptor and trainee; requires preceptor to be re-certified every 10 years.

24.13.01 - Rules of the Physical Therapy Licensure Board

24-1301-1001, (Temp & Prop) Requires foreign educated physical therapists to pass an English proficiency exam for licensure if English is not the applicant's native language.

24-1301-1002, Allows a successor entity to US Dept. of Education for curriculum accreditation; upon notification of applicant, terminates applications that have lacked activity for one year; allows 4 hours continuing education credit for the supervision of physical therapist students or assistant students.

24-1401-1001, Rules of the State Board of Social Work Examiners. Eliminates licensure based upon education in a related field; clarifies type of supervised experience required for licensure at the clinical level.

24-2201-1001, Rules of the Idaho State Liquefied Petroleum Gas Safety Board. Establishes a dealer-in-training license and license fee.

24-2501-1001, Rules of the Idaho Driving Businesses Licensure Board. New rule establishes fees and requirements for driving businesses; adds educational requirements for instructors including continuing education; clarifies ambiguities to insurance requirements; establishes deadline for the review of applications; clarifies on-line instruction.

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION
PO Box 87320, Boise ID 83720-0065

26-0134-1001, Rules Governing the Idaho Protection Against Invasive Species Sticker Rules. Provides for an alternative sticker purchasing and verification process for non-motorized watercraft operated by licensed outfitters and guides.

IDAPA 27 - IDAHO BOARD OF PHARMACY
PO Box 83720, Boise, ID 83720-0067

27.01.01 - Rules of the Idaho State Board of Pharmacy

27-0101-1001, Allows for electronic prescribing of controlled substances and eliminates requirements for handwritten and hard copy prescriptions and documents and certain prescriptions that must be promptly reduced to writing; allows for electronic prescribing and electronic prescription drug order records for controlled substances per federal law; defines term “emergency”; updates order and prescription labeling minimum requirements; and lists circumstances when a controlled substance inventory is to be taken.

27-0101-1002, Establishes qualifications for pharmacists to immunize and recordkeeping requirements.

27-0101-1003, Strikes Rule 358 because it conflicts with the Idaho Wholesale Drug Distribution Act.

27-0101-1004, Prescribers delivering controlled substances to end users must report certain data to the Board just as dispensing pharmacies currently do.

IDAPA 31 - PUBLIC UTILITIES COMMISSION

PO Box 83720, Boise, ID 83720-0074

31-1101-1001, Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission. Updates incorporation by reference to the 2010 edition of the federal pipeline safety regulations.

31-7103-1001, Railroad Safety and Accident Reporting Rules. Updates incorporation by reference to the 2010 edition of the federal regulations pertaining to the transportation of hazardous materials by railroads.

IDAPA 32 - ENDOWMENT FUND INVESTMENT BOARD

PO Box 83720, Boise, ID 83720-0046

32-0101-1001, Rules Governing the Credit Enhancement Program for School Districts. New chapter establishes the application procedure for school districts and specifies fees to offset cost of program; allows EFIB to continue offering guarantees to school districts.

IDAPA 34 - OFFICE OF THE SECRETARY OF STATE

PO Box 83720, Boise, ID 83720-0080

34-0101-1001, Fees for Automated Data Retrieval. Chapter repeal.

34-0102-1001, Rules Governing Facsimile Services and Fees. Chapter repeal.

34-0103-1001, Rules Governing the Public Access Information System (PAIS). Chapter repeal.

34-0401-1001, Rules Governing the Electronic Bulletin Board Service. Chapter repeal.

34-0504-1001, Rules Governing Public Access to UCC Files. Chapter repeal.

IDAPA 35 - STATE TAX COMMISSION

PO Box 36, Boise, ID 83722-0410

35.01.01 - Income Tax Administrative Rules

35-0101-1002, Exempts income earned from services performed in Idaho by qualifying spouses of servicemembers stationed in Idaho; adds the tax brackets for calendar year 2010; limits the amount added to taxable income for rollovers to other state's college savings accounts to the amount deducted in the current and prior tax years; includes gains treated as ordinary income and specifies items that don't qualify for the Idaho capital gains deduction; defines revenue-producing enterprise; addresses net operating losses in the case of corporate mergers; allows excess net passive income as income that also may be offset with a net operating loss carried over from years an S corporation was a C corporation; limits amount added to taxable income for rollovers to other state's college savings accounts to the amount deducted in the current and prior tax years; changes the sourcing of income from resident estates and trusts that a nonresident must include in income subject to Idaho tax; addresses taxation of pass-through entity income when an individual makes the election to have the pass-through entity pay his tax on such income and the withholding requirement, exceptions to withholding, the certification of residency, the requirements of payments and reporting of withholding, and the consequences of failing to file or remit the backup withholding; includes 2010 grocery credit amounts; due date for all information returns required to be filed is the last day of February, the same as the due date for W-2s; allows taxpayers to make a donation to the opportunity scholarship program on their tax returns; requires the Idaho withholding permit number on the copy of Forms W-2 and discusses the consequences of not submitting complete or correct forms; removes obsolete rules.

***35-0101-1003, (*PH)** Updates incorporation by reference and clarifies the computation of the apportionment factor for financial institutions.

35.01.02 - Idaho Sales and Use Tax Administrative Rules

35-0102-1001, Amends definition of "land leveling" to rock that is obtained on a building site, crushed, and then used as backfill on the same building site.

35-0102-1002, Adds a provision regarding residency and airplane purchases; purchases of food made with coupons or any other authorized form of payment under federal law qualify for the exemption; states that after a developer

meets expenditure and other requirements for development project, the Commission will start depositing 60% of the sales tax revenue from the center into the Demonstration Pilot Project Fund.

***35-0103-1003, Property Tax Administrative Rules.** (*PH) Updates incorporation by reference to current editions of guides and professional standards used for property value determination and assessment; provides procedures for conducting equalization ratio studies and allows a follow-up ratio study of secondary categories if needed; clarifies occupancy tax distribution to urban renewal; changes federal agency to Federal Housing Finance Agency and clarifies the index used to adjust the maximum homeowner's exemption; defines multidwelling or multipurpose building and related land and requires related land value be included when determining exemption amount; redefines "economic rent"; recognizes that the value of or the income attributed to exempt irrigation equipment should not be included or considered when valuing agricultural land; amends definition of "economic rent" to exclude exempt irrigation equipment; clarifies when crop share or cash rent analysis should be applied in determining the value of agricultural land; explains how to compute the amount of urban renewal increment value to be included on the new construction roll in the year in which a portion of a revenue allocation area is de-annexed; value and classification of a homesite adjacent to forest lands will be valued independently from the adjacent forest lands; provides instructions on how to compute the prorated portion of the funds when computing the levy upon which a QIE recapture is to be based.

35-0105-1001, Motor Fuels Tax Administrative Rules. Requires an instate pipeline terminal operator to file monthly reports on ethanol place in storage at its Idaho pipeline terminal; records for all types of motor fuels must be kept for 3 years; includes motor vehicles powered by gaseous fuels that display a gaseous fuel permit for collection of special fuels tax; defines ethanol and natural gasoline as petroleum and petroleum products for imposition of the transfer fee.

35-0201-1001, Tax Commission Administration and Enforcement Rules. Adopts IRS alternative methods allowed to tax preparers for signing income tax returns; addresses methods allowed for filing motor fuels tax returns electronically and the risks of disclosure when filing returns electronically; adds interest rate and applicable Revenue Ruling for calendar year 2011 to the table that identifies this information by year.

**IDAPA 38 - DEPARTMENT OF ADMINISTRATION
PO Box 83720, Boise, ID 83720-0303**

38-0501-1001, Rules of the Division of Purchasing. Requires federal contracting qualification of a vendor submitting a bid proposal; increases small purchase exemption limit and professional services exemption limit from \$75,000 to \$100,000; increases small purchase limit from \$5,000 to \$10,000; clarifies mandatory use of open contracts; establishes a mandatory pre-proposal conference for vendors.

**IDAPA 46 - BOARD OF VETERINARY MEDICINE
PO Box 7249, Boise, ID 83707**

46-0101-1001, Rules of the State of Idaho Board of Veterinary Medicine. Authorizes procedure for filing written communications and documents by facsimile; clarifies definition of a valid veterinarian/client/patient relationship; increases term of service for members of the Certified Euthanasia Task Force to 3 years; clarifies the 3 specific categories of approved euthanasia, pre-euthanasia sedation, and chemical capture drugs and their restrictions; removes use of carbon monoxide-induced euthanasia chambers as an approved method of euthanasia; clarifies certification invalidation and reinstatement procedures for CETs; adds a requirement that law enforcement CETs using chemical capture must attend recertification training every third year.

**IDAPA 49 - CERTIFIED SHORTHAND REPORTERS BOARD
700 W. State Street, Boise, ID 83702**

49-0101-1001, Rules of Procedure of the Idaho Certified Shorthand Reporters Board. Clarifies conditions for renewal of a temporary permit for holders of certificates issued by the National Court Reporters Association.

NOTICE OF PROCLAMATION OF RULEMAKING

Department of Correction

06-0101-1001, Rules of the Board of Correction

SCHEDULED PUBLIC HEARING NOTICE

Department of Health and Welfare

16-0305-1002, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD) (written comment period extended)

SCHEDULED NEGOTIATED RULEMAKING MEETINGS

Department of Environmental Quality

58-0104-1001, Rules for Administration of Wastewater Treatment Facility Grants

58-0112-1001, Rules for Administration of Water Pollution Control Loans

58-0120-1001, Rules for Administration of Drinking Water Loan Program

58-0122-1001, Rules for Administration of Planning Grants for Public Drinking Water Facilities

Please refer to the Idaho Administrative Bulletin, **October 6, 2010, Volume 10-10**, for notices and text of all rulemakings, public hearings and negotiated meeting schedules, Governor's executive orders, and agency contact information.

Issues of the Idaho Administrative Bulletin can be viewed at www.adm.idaho.gov/adminrules/.

Office of the Administrative Rules Coordinator, Dept. of Administration, PO Box 83720, Boise, ID 83720-0306
Phone: 208-332-1820; Fax: 332-1896; Email: rulescoordinator@adm.idaho.gov

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*Idaho Department of Administration
Office of the Administrative Rules Coordinator*

July 1, 1993 -- Present

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*This online index provides a history of all agency rulemakings from 1993 to the present.
It tracks all rulemaking activities on each chapter of rules and includes negotiated,
temporary, proposed, pending and final rules, public hearing notices,
vacated rulemaking notices, and executive orders of the Governor.*

ABRIDGED RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

*Idaho Department of Administration
Office of the Administrative Rules Coordinator*

March 29, 2010 -- October 6, 2010

*(eff. *PLR) - Final Rule Adoption Date Pending Legislative Review And Approval*

(eff. date)L - Denotes Adoption by Legislative Action

(eff. date)T - Temporary Rule Effective Date

SCR # - denotes the number of a Senate Concurrent Resolution (Legislative Action)

HCR # - denotes the number of a House Concurrent Resolution (Legislative Action)

*(This Abridged Index includes rules promulgated before March 29, 2010 that have not been
adopted as final rules and all rulemakings being promulgated after March 29, 2010 - Sine Die.)*

IDAPA 02 -- DEPARTMENT OF AGRICULTURE

(Rules of the Idaho State Soil and Water Conservation Commission have been moved from IDAPA 02 and re-indexed under IDAPA 60 pursuant to House Bill 576 - Session Law 279 - 2010 Legislative Session)

60-0000-1001 Notice of Legislative Action Creating the Idaho State Soil and Water Conservation Commission - House Bill 576, Session Law 279, Bulletin Vol. 10-9 (eff. 7-1-10)

02.01.04, Rules Governing the Idaho Preferred™ Promotion Program

02-0104-1001 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-7

02-0104-1001 Proposed Rulemaking, Bulletin Vol. 10-10

02.02.14, Rules for Weights and Measures

02-0214-1001 Proposed Rulemaking, Bulletin Vol. 10-8

02-0214-1001 Adoption of Pending Rule, Bulletin Vol. 10-10

02.04.08, Rules Governing Grade A Milk and Milk Products

02-0408-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 10-1-10)T

02.04.09, Rules Governing Methods of Making Sanitation Ratings of Milk Shippers

02-0409-1001 Temporary and Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-8 (eff. 10-1-10)T

02.04.10, Procedures Governing the Cooperative State-Public Health Service/Food and Drug Administration Program for Certification of Interstate Milk Shippers

02-0410-1001 Temporary and Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-8 (eff. 10-1-10)T

02.04.11, Rules Governing Evaluation of Milk Laboratories

02-0411-1001 Temporary and Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-8 (eff. 10-1-10)T

02.04.13, Rules Governing Raw Milk

02-0413-1001 Proposed Rulemaking, Bulletin Vol. 10-9

02.04.14, Rules Governing Dairy Waste

02-0414-0902 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 09-10

02.04.19, Rules Governing Domestic Cervidae

02-0419-1001 Proposed Rulemaking, Bulletin Vol. 10-10

02.04.21, Rules Governing the Importation of Animals

02-0421-1001 Notice of Temporary Rulemaking, Bulletin Vol. 10-6 (eff. 4-15-10)T

02-0421-1001 Proposed Rulemaking, Bulletin Vol. 10-10

02.04.29, Rules Governing Trichomoniasis

02-0429-1001 Proposed Rulemaking, Bulletin Vol. 10-10

02.06.02, Rules Pertaining to the Idaho Commercial Feed Law

02-0602-1001 Proposed Rulemaking, Bulletin Vol. 10-10

02.06.10, Rules Governing the Potato Cyst Nematode (Globodera pallida)

02-0610-0901 Temporary and Proposed Rule, Bulletin Vol. 09-12 (eff. 10-1-09)T

02-0610-0901 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5

02-0610-0901 Adoption of Pending Rule, Bulletin Vol. 10-10

02.06.12, Rules Pertaining to the Idaho Commercial Fertilizer Law

02-0612-1001 Proposed Rulemaking, Bulletin Vol. 10-10

02.06.13, Rules Relating to Rapeseed Production and Establishment of Rapeseed Districts in the State of Idaho

02-0613-0801 Notice of Intent to Promulgate Rules - Request for Written Comments, Bulletin Vol. 08-9

02-0613-0801 Notice of Intent to Promulgate Rules - Request for Written Comments, Bulletin Vol. 08-10

02-0613-0801 Notice of Intent to Promulgate Rules - Request for Written Comments, Bulletin Vol. 08-11

02.06.16, Crop Residue Disposal Rules

02-0616-1001 Proposed Rulemaking, Bulletin Vol. 10-10

02.06.33, Organic Food Products Rules

02-0633-1001 Proposed Rulemaking, Bulletin Vol. 10-10

02.06.41, Rules Pertaining to the Soil and Plant Amendment Act of 2001

02-0641-1001 Proposed Rulemaking, Bulletin Vol. 10-10

IDAPA 03 -- STATE ATHLETIC COMMISSION

03.01.01, Rules of the State Athletic Commission

03-0101-1001 Temporary and Proposed Rulemaking (Fee Rule), Bulletin Vol. 10-10

IDAPA 04 -- OFFICE OF THE ATTORNEY GENERAL

04.11.01, Idaho Rules of Administrative Procedure of the Attorney General

04-1101-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T

IDAPA 05 -- DEPARTMENT OF JUVENILE CORRECTIONS

05.01.01, Rules for Contract Providers

05-0101-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-5 (eff. 3-29-10)T

05-0101-1001 Adoption of Pending Rule, Bulletin Vol. 10-8 (eff. *PLR 2011)

IDAPA 06 -- STATE BOARD OF CORRECTION

06.01.01, Rules of the Board of Correction

06-0101-1001 Notice of Proclamation of Rulemaking, Bulletin Vol. 10-10 (eff. 11-5-10)

IDAPA 07 -- DIVISION OF BUILDING SAFETY

07.01.03, Rules of Electrical Licensing and Registration - General

07-0103-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 9-1-10)T

07.01.04, Rules Governing Electrical Specialty Licensing

07-0104-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 9-1-10)T

07.01.07, Rules Governing Continuing Education Requirements

07-0107-1001 Proposed Rulemaking, Bulletin Vol. 10-10

07.02.05, Rules Governing Plumbing Safety Licensing**07-0205-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 9-1-10)T***07.03.01, Rules of Building Safety*****07-0301-1001** Proposed Rulemaking, Bulletin Vol. 10-10**07-0301-1002** Proposed Rulemaking, Bulletin Vol. 10-10***07.03.11, Rules Governing Manufactured/Mobile Home Industry Licensing*****07-0311-1001** Proposed Rulemaking, Bulletin Vol. 10-10***07.04.02, Safety Rules for Elevators, Escalators, and Moving Walks*****07-0402-1001** Proposed Rulemaking, Bulletin Vol. 10-10***07.07.01, Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems*****07-0701-1001** Proposed Rulemaking, Bulletin Vol. 10-10***IDAPA 08 -- STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION******08.01.11, Registration of Postsecondary Educational Institutions and Proprietary Schools*****08-0111-1001** Proposed Rulemaking, Bulletin Vol. 10-10***08.02.02, Rules Governing Uniformity - State Board of Education Rules*****08-0202-1001** Proposed Rulemaking, Bulletin Vol. 10-6**08-0202-1002** Proposed Rulemaking, Bulletin Vol. 10-10**08-0202-1003** Proposed Rulemaking, Bulletin Vol. 10-10**08-0202-1004** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 7-1-10)T***08.02.03, Rules Governing Thoroughness - State Board of Education Rules*****08-0203-1001** Adoption of Temporary Rule, Bulletin Vol. 10-1 (eff. 11-9-09)T (Expires Sine Die 2011)**08-0203-1001** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5**08-0203-1001** Proposed Rulemaking, Bulletin Vol. 10-10**08-0203-1002** Proposed Rulemaking, Bulletin Vol. 10-10**08-0203-1003** Proposed Rulemaking, Bulletin Vol. 10-10**08-0203-1004** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 7-1-10)T***IDAPA 09 -- DEPARTMENT OF LABOR******09.01.04, Unemployment Insurance Benefit Fraud and Overpayment Rules*****09-0104-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T***09.01.06, Rules of the Appeals Bureau*****09-0106-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T***09.01.30, Unemployment Insurance Benefits Administrative Rules*****09-0130-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T***09.01.35, Unemployment Insurance Tax Administrative Rules*****09-0135-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T***IDAPA 10 -- IDAHO BOARD OF LICENSURE OF PROFESSIONAL ENGINEERS***

AND PROFESSIONAL LAND SURVEYORS

10.01.01, Rules of Procedure

- 10-0101-1001** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-6
- 10-0101-1001** Proposed Rulemaking, Bulletin Vol. 10-8

10.01.02, Rules of Professional Responsibility

- 10-0102-1001** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-6
- 10-0102-1001** Proposed Rulemaking, Bulletin Vol. 10-8

IDAPA 11 -- IDAHO STATE POLICE

11.03.01, Rules Governing Alcohol Testing, Idaho State Forensic Laboratory

- 11-0301-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 9-1-10)T

11.05.01, Rules Governing Alcohol Beverage Control

- 11-0501-0902** Temporary Rulemaking, Bulletin Vol. 09-11 (9-1-09)T
- 11-0501-0902** OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5

11.10.01, Rules Governing Idaho Public Safety and Security Information System

- 11-1001-1001** Proposed Rulemaking, Bulletin Vol. 10-10

11.11.01, Rules of the Idaho Peace Officer Standards and Training Council (POST)

- 11-1101-1001** Temporary Rulemaking, Bulletin Vol. 10-3 (eff. 1-12-10)T
- 11-1101-1001** Proposed Rulemaking, Bulletin Vol. 10-10
- 11-1101-1002** Proposed Rulemaking, Bulletin Vol. 10-10

11.11.02, Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers

- 11-1102-1001** Proposed Rulemaking, Bulletin Vol. 10-10

11.11.03, Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Probation Officers

- 11-1103-1001** Proposed Rulemaking, Bulletin Vol. 10-10

11.11.04, Rules of the Idaho Peace Officer Standards and Training Council for Correctional Officers and Adult Probation and Parole Officers

- 11-1104-1001** Proposed Rulemaking, Bulletin Vol. 10-10

11.11.05, Rules of the Idaho Peace Officer Standards and Training Council for Idaho Department of Juvenile Corrections Direct Care Staff

- 11-1105-1001** Proposed Rulemaking, Bulletin Vol. 10-10

11.11.06, Rules of the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers

- 11-1106-1001** Proposed Rulemaking, Bulletin Vol. 10-10

**IDAPA 13 -- IDAHO FISH AND GAME COMMISSION AND
THE IDAHO DEPARTMENT OF FISH AND GAME**

13.01.02, Public Safety - Idaho Fish and Game Commission

- 13-0102-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

13.01.04, Rules Governing Licensing

- 13-0104-1001** Proposed Rulemaking, Bulletin Vol. 10-9

13-0104-1002 Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

13.01.06, Classification and Protection of Wildlife

13-0106-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

13.01.08, Rules Governing the Taking of Big Game Animals in the State of Idaho

13-0108-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

13.01.09, Rules Governing the Taking of Game Birds in the State of Idaho

13-0109-1001 Proposed Rulemaking, Bulletin Vol. 10-9

13-0109-1002 Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

13.01.10, Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife

13-0110-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

13.01.16, The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals

13-0116-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

13-0116-1002 Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. 8-18-10)T

13.01.17, Rules Governing the Use of Bait for Taking Big Game Animals

13-0117-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-12-10)T

IDAPA 15 -- OFFICE OF THE GOVERNOR

Executive Orders of the Governor

Executive Order No. **2010-01** Bulletin Vol. 10-4

Executive Order No. **2010-03** Bulletin Vol. 10-6

Executive Order No. **2010-05** Bulletin Vol. 10-6

Executive Order No. **2010-07** Bulletin Vol. 10-6

Executive Order No. **2010-02** Bulletin Vol. 10-6

Executive Order No. **2010-04** Bulletin Vol. 10-6

Executive Order No. **2010-06** Bulletin Vol. 10-6

Executive Order No. **2010-08** Bulletin Vol. 10-6

Division of Human Resources and Personnel Commission

IDAPA 28.01.01, "Rules of the Idaho Personnel Commission" were transferred to the Division of Human Resources and Personnel Commission under the Office of the Governor effective July 1, 1999 and redesignated as IDAPA 15.04.01/

15.04.01, Rules of the Division of Human Resources and Personnel Commission

15-0401-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T

15-0401-1002 Proposed Rulemaking, Bulletin Vol. 10-10

IDAPA 16 -- DEPARTMENT OF HEALTH AND WELFARE

16.02.02, Rules of the Emergency Medical Services (EMS) Physician Commission

16-0202-1001 Proposed Rulemaking, Bulletin Vol. 10-7

16.02.03, Rules Governing Emergency Medical Services

16-0203-0901 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 09-5

16-0203-0901 Temporary and Proposed Rulemaking, Bulletin Vol. 09-10 (eff. 7-1-09)T

16-0203-0901 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5

16-0203-1001 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-9

16-0203-1002 Proposed Rulemaking, Bulletin Vol. 10-9

16-0203-1003 Proposed Rulemaking (Fee Rule), Bulletin Vol. 10-9

16.02.06, Rules Governing Quality Assurance for Idaho Clinical Laboratories

16-0206-1001 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-5

- 16-0206-1001 Proposed Rulemaking, Bulletin (Chapter Repeal) Vol. 10-8
16-0206-1002* Proposed Rulemaking, Bulletin (Chapter Rewrite) Vol. 10-8
**Changes chapter name from: "Rules Governing Quality Assurance for Idaho Clinical Laboratories"
to: "Quality Assurance for Idaho Clinical Laboratories"*

16.02.08, Vital Statistics Rules

- 16-0208-1001 Proposed Rulemaking (Fee Rule), Bulletin Vol. 10-9

16.02.11, Immunizations Requirements for Children Attending Licensed Day Care Facilities in Idaho

- 16-0211-1001 Proposed Rulemaking, Bulletin Vol. 10-9

16.02.13, Rules Governing Certification of Idaho Water Quality Laboratories

- 16-0213-1001 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-5
16-0213-1001 Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-9
16-0213-1002* Proposed Rulemaking (Chapter Rewrite - Fee Rule), Bulletin Vol. 10-9
**Changes chapter name from: "Rules Governing Certification of Idaho Water Quality Laboratories"
to: "State of Idaho Drinking Water Laboratory Certification Program"*

16.02.15, Immunization Requirements for Idaho School Children

- 16-0215-1001 Proposed Rulemaking, Bulletin Vol. 10-9

16.03.01, Eligibility for Health Care Assistance for Families and Children

- 16-0301-1001 Proposed Rulemaking, Bulletin Vol. 10-7
16-0301-1002 Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. (4-1-09)T - (12-19-09)T - (1-1-10)T - (9-1-10)T)

16.03.04, Rules Governing the Food Stamp Program in Idaho

- 16-0304-0902 Temporary Rulemaking, Bulletin Vol. 09-7 (eff. 6-1-09)T (Expires May 31, 2010)
16-0304-0902 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5 (Expires 5-31-10)
16-0304-1001 Temporary Rulemaking, Bulletin Vol. 10-7 (eff. 6-1-10)T (Expires May 31, 2011)
16-0304-1002 Proposed Rulemaking, Bulletin Vol. 10-10
16-0304-1003 Temporary and Proposed Rulemaking, Bulletin Vol. 10-10 (eff. (12-19-09)T - (1-1-10)T - (7-1-10)T - (10-1-10)T)

16.03.05, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD)

- 16-0305-0904 Temporary and Proposed Rulemaking, Bulletin Vol. 09-12 (eff. (1-1-10)T)
16-0305-0904 Adoption of Pending and Amendment to Temporary Rule, Bulletin Vol. 10-4 (eff. (1-1-10)T)
16-0305-0904 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5
16-0305-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-6 (eff. 7-1-10)T
16-0305-1001 Notice of Public Hearing and Extension of Written Comment Period, Bulletin Vol. 10-8
16-0305-1002 Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. (12-19-09)T - (1-1-10)T - (9-1-10)T)
16-0305-1002 Notice of Public Hearing and Extension of Written Comment Period, Bulletin Vol. 10-10

16.03.08, Rules Governing Temporary Assistance for Families in Idaho

- 16-0308-1001 Proposed Rulemaking, Bulletin Vol. 10-5

16.03.09, Medicaid Basic Plan Benefits

- 16-0309-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 7-1-10)T
16-0309-1002 Temporary and Proposed Rulemaking, Bulletin Vol. 10-8 (eff. 9-1-10)T
16-0309-1003 Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-1-10)T
16-0309-1004 Temporary Rulemaking, Bulletin Vol. 10-9 (eff. 7-1-10)T (Expires June 30, 2011)

16.03.10, Medicaid Enhanced Plan Benefits

- 16-0310-0902 Temporary and Proposed Rulemaking, Bulletin Vol. 09-1 (eff. 1-1-09)T
16-0310-0902 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 108, Bulletin Vol. 09-6
16-0310-0902 OAR Omnibus Rulemaking Notice - Extension of Temporary Rule by SCR 126, Bulletin Vol. 10-5
16-0310-1001 Temporary and Proposed Rulemaking, Bulletin Vol. 10-5 (eff. 1-1-10)T

- 16-0310-1001** Notice of Public Hearing and Extension of Written Comment Period, Bulletin Vol. 10-7
- 16-0310-1002** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-7
- 16-0310-1002** Proposed Rulemaking, Bulletin Vol. 10-9
- 16-0310-1003** Temporary and Proposed Rulemaking, Bulletin Vol. 10-9 (eff. 7-1-10)T
- 16-0309-1004** Temporary Rulemaking, Bulletin Vol. 10-9 (eff. 7-1-10)T (Expires June 30, 2011)

16.03.13, Consumer-Directed Services

- 16-0313-1001** Adoption of Temporary Rule, Bulletin Vol. 10-1 (eff. 1-1-10)T (Expires 3-29-10)
- 16-0313-1002** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-7
- 16-0313-1002** Proposed Rulemaking, Bulletin Vol. 10-9

16.03.19, Rules Governing Certified Family Homes

- 16-0319-1001** Proposed Rulemaking, Bulletin Vol. 10-9

16.03.21, Developmental Disabilities Agencies (DDA)

- 16-0321-1001** Proposed Rulemaking (New Chapter), Bulletin Vol. 10-9

16.03.22, Residential Care or Assisted Living Facilities in Idaho

- 16-0322-1001** Proposed Rulemaking, Bulletin Vol. 10-10

16.03.24, The Medically Indigent Program - Request for Medicaid Eligibility Determination

- 16-0324-1001** Temporary and Proposed Rulemaking (New Chapter), Bulletin Vol. 10-7 (eff. 7-1-10)T

16.04.11, Developmental Disabilities Agencies (DDA)

- 16-0411-1001** Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 10-7
- 16-0411-1001** Proposed Rulemaking (Chapter Repeal), Bulletin Vol. 10-9

16.05.04, Rules of the Idaho Council on Domestic Violence and Victim Assistance Grant Funding

- 16-0504-1001** Proposed Rulemaking, Bulletin Vol. 10-10

16.05.06, Criminal History and Background Checks

- 16-0506-1001** Temporary and Proposed Rulemaking, Bulletin Vol. 10-7 (eff. 5-1-10)T - (7-1-10)T
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(Rules of the Idaho State Soil and Water Conservation Commission have been moved from IDAPA 02 and re-indexed under IDAPA 60. This action is being done pursuant to the legislative intent of House Bill 576 - Session Law 279 - 2010 Legislative Session)

(These rules were formerly indexed under the Department of Lands (IDAPA 20) and the Department of Agriculture (IDAPA 02) and were governed by the Soil Conservation Commission

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