

IDAHO ADMINISTRATIVE BULLETIN

October 5, 2011 -- Volume 11-10

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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 that are statutorily required to be published in the Bulletin. All official rulemaking notices, official rule text, executive orders of the Governor, all legislative documents affecting rules, and other such documents an agency may want promulgated through the Bulletin.

State agencies are required to provide public notice of all proposed rulemaking actions and must invite public input once formal rulemaking procedures have been initiated. The public receives notice that an agency has initiated formal rulemaking procedures through the Idaho Administrative Bulletin and a Public Notice of Intent (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 whether any amendments have been made to the rule, the reader should refer to the **Cumulative Rulemaking Index** that can be accessed through the Administrative Rules homepage at adminrules.idaho.gov.

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 incorporate all five of these actions. 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 normally results in the formulation of a proposed and the initiation of formal rulemaking procedures but the result may also be that formal rulemaking is not initiated and no further action is taken by the agency. The rulemaking effectively stops before it gets started.

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.

Any proposed rulemaking that is 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: adminrules.idaho.gov

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: adminrules.idaho.gov

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 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 11, 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 13, 2011	June 1, 2011	June 22, 2011
11-7	July 2011	June 10, 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

BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2012

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
12-1	January 2012	*November 25, 2011	January 4, 2012	January 25, 2012
12-2	February 2012	January 13, 2012	February 1, 2012	February 22, 2012
12-3	March 2012	February 10, 2012	March 7, 2012	March 28, 2012
12-4	April 2012	March 9, 2012	April 4, 2012	April 25, 2012
12-5	May 2012	April 6, 2012	May 2, 2012	May 23, 2012
12-6	June 2012	May 4, 2012	June 6, 2012	June 27, 2012
12-7	July 2012	June 8, 2012	July 4, 2012	July 25, 2012
12-8	August 2012	July 6, 2012	August 1, 2012	August 22, 2012
12-9	September 2012	August 3, 2012	September 5, 2012	September 28, 2012
12-10	October 2012	**August 31, 2012	October 3, 2012	October 24, 2012
12-11	November 2012	October 5, 2012	November 7, 2012	November 28, 2012
12-12	December 2012	November 2, 2012	December 5, 2012	December 26, 2012

****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 38	Administration , Department of
IDAPA 44	Administrative Rules Coordinator , Office of the
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IDAPA 40	Arts , Idaho Commission on the
IDAPA 03	Athletic Commission
IDAPA 04	Attorney General , Office of the
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IDAPA 52	Lottery Commission, Idaho State
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THE OFFICE OF THE GOVERNOR

**EXECUTIVE DEPARTMENT
STATE OF IDAHO
BOISE**

EXECUTIVE ORDER NO. 2011-12

DESIGNATING THE IDAHO PUBLIC UTILITIES COMMISSION AS THE STATE AGENCY (CLEARINGHOUSE) TO RECEIVE NOTICES OF ENVIRONMENTAL AND ENERGY MATTERS UNDER THE SURFACE TRANSPORTATION BOARD'S IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT OF 1969; AND DESIGNATING THE IDAHO PUBLIC UTILITIES COMMISSION AS THE AGENCY TO REPRESENT THE STATE ON MATTERS PERTAINING TO RAILROADS BEFORE THE SURFACE TRANSPORTATION BOARD

WHEREAS, the issues of railroad abandonments, acquisitions, consolidations, and sales are significant to the State of Idaho and particularly its more sparsely populated areas; and

WHEREAS, it is the policy of the State of Idaho to promote the development and viability of railroad transportation within the State; and

WHEREAS, the State of Idaho has significant interest in maintaining and promoting rail access to Idaho communities for vital goods, services, and markets;

WHEREAS, the Surface Transportation Board (STB) under the National Environmental Policy Act of 1969 (NEPA) requires railroads operating within the State of Idaho to serve notice of certain required actions upon a designated State agency; and

WHEREAS; title 62, section 424 of the Idaho Code vests the Idaho Public Utilities Commission with the authority to make findings and represent the State of Idaho before the STB.

NOW, THEREFORE, I, C.L. "BUTCH" OTTER, Governor of the State of Idaho, by the authority vested in me under the Constitution and laws of the State of Idaho do hereby order as follows:

To designate the Idaho Public Utilities Commission to represent the State on matters pertaining to railroads before the Surface Transportation Board and to receive notices of environmental and energy matters from railroads operating within the State of Idaho, as provided under the applicable federal statutes and regulations.

I further direct all State agencies to notify the Public Utilities Commission of information received by them of potential railroad abandonments and to cooperate with the Public Utilities Commission on all matter pertaining to railroads. The Public Utilities Commission is designated as the lead agency for railroad matters and shall approve all State agency submissions to the STB prior to transmittal.



IN WITNESS WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the State of Idaho at the Capitol in Boise on this 14th day of September, in the year of our Lord two thousand and eleven, and of the independence of the United States of America the two hundred thirty-sixth and of the Statehood of Idaho the one hundred twenty-second.

C.L. "BUTCH" OTTER
GOVERNOR

BEN YSURSA
SECRETARY OF STATE

IDAPA 02 - IDAHO DEPARTMENT OF AGRICULTURE

02.01.04 - RULES GOVERNING THE IDAHO PREFERRED® PROMOTION PROGRAM

DOCKET NO. 02-0104-1101

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 19, 2011.

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:

There are currently no product qualifications in the Rules Governing the Idaho Preferred® program specific to forest products. This rule will create product definition and qualification criteria for lumber and further processed forest products at the request of industry.

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: NA

NEGOTIATED RULEMAKING: Informal negotiated rulemaking was conducted. Input was solicited from the forest products industry through the Idaho Forest Products Commission.

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: NA

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 26, 2011.

DATED this 16th day of August, 2011.

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 OF DOCKET NO. 02-0104-1101

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter. (3-16-04)

01. Agricultural Product. Any fresh or processed apicultural, aquacultural, avicultural, beverage, cervidae, dairy, horticultural, livestock, forestry, viticultural, or other farm or garden product. (3-16-04)

02. Apicultural Product. Products produced from or related to honey bees or honey. (3-16-04)

03. Aquacultural Product. Products produced from or related to fish, reptiles, or other aquatic animals. (3-16-04)

04. Avicultural Product. Products produced from or related to birds, including but not limited to, ratites or poultry. (3-16-04)

05. Beverage. Drinks including but not limited to wine, beer, distilled spirits, bottled water, or flavored drinks. (3-16-04)

06. Broker. A sales and marketing agent employed to make bargains and contracts for compensation. (3-16-04)

07. Cervidae Product. Products produced from or related to fallow deer, elk, or reindeer owned by a person. (3-16-04)

08. Dairy Product. Products produced from or related to milk from cattle, goats, or sheep. (3-16-04)

09. Department. The Idaho State Department of Agriculture. (3-16-04)

10. Director. The Director of the Idaho State Department of Agriculture or his designated agent. (3-16-04)

11. Florist Stock. All cut flowers, foliage and ferns, all potted plants or cuttings or bedding plants, and all flowering bulbs and rooted herbaceous plants used for ornamental or decorative purposes and all corms, whether grown in boxes, benches, pots, under glass or other artificial covering, or in the field or open ground or cuttings therefrom. (3-16-04)

12. Foodservice. A person engaged in or related to the practice of commercial food preparation and service. (3-16-04)

13. Forest Products. All products made of wood fiber such as timber, wood chips, sawdust or shavings, including but not limited to lumber, paper, particleboard, fence or corral posts or rails, shingles, shakes, firewood or pellets, logs used in the construction of log homes or any other product sold commercially. ()

134. Fresh Produce, Commodities, and Fresh Meat. Bulk or packaged agricultural products that have been cleaned, sorted, or otherwise prepared and are sold or distributed in an unprocessed or minimally processed condition. (3-16-04)

145. Horticultural Products. Plants, including but not limited to, fruits, vegetables, flowers, seeds, or ornamental plants. (3-16-04)

156. Livestock. Domestic animals including but not limited to cattle, sheep, pigs, goats, domestic cervidae, domestic bison, camelids, or horses. (3-16-04)

167. Livestock Product. Products produced from or related to livestock. (3-16-04)

178. Non-Food Agricultural Products. Products not intended for human consumption, including but not limited to, animal feed, compost, hides, or skins. (3-16-04)

189. Supporting Organization. Any commission, association, or incorporated group supporting the efforts of the Idaho Preferred® program. (3-30-07)

190. Nursery Stock. All botanically classified plants or any part thereof, such as aquatic or herbaceous plants, bulbs, sod, buds, corms, culms, roots, scions, grafts, cuttings, fruit pits, seeds of fruits, forest and ornamental trees, and shrubs, berry plants, and all trees, shrubs, vines, and plants collected in the wild that are grown or kept for propagation or sale. Nursery stock does not include field and forage crops, seeds of grasses, cereal grains, vegetable crops and flowers, bulbs and tubers of vegetable crops, vegetables or fruit used for food or feed, cut trees or cut flowers unless stems or other portions thereof are intended for propagation. (3-16-04)

201. Packer/Shipper. A person who packages and ships food or agricultural products to wholesalers, retailers, and other outlets. (3-16-04)

212. Participant. A person who has applied to the Department and been approved for participation in the Idaho Preferred® program. (3-30-07)

223. Person. An individual, firm, partnership, corporation, commission, association, cooperative, business, governmental subdivision or agency, or other business entity. (3-16-04)

234. Processed Food. Any food product which has been transformed from its natural state by methods including but not limited to freezing, cutting, heating, drying, treating, or adding ingredients. (3-16-04)

245. Processor. A person engaged in the manufacturing of processed food. (3-16-04)

256. Producer. A person engaged in the business of growing or raising food, fiber, feed, or other agricultural products. (3-16-04)

267. Retailer. A person engaged in making sales directly to consumers. (3-16-04)

278. Viticultural Products. Products produced from or related to grapes and wine. (3-16-04)

289. Wholesaler. A person who buys in comparatively large quantities and then resells, usually in smaller quantities, but never directly to the consumer. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

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 twenty percent (20%) agricultural content by weight that has been grown or raised in Idaho and processing must occur in Idaho. (4-7-11)

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. (4-7-11)

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. Forest Products.** Forest products shall contain a minimum of eighty percent (80%) of their wood fiber content from trees grown in Idaho and shall be manufactured in Idaho. ()
- 123. 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

02.04.09 - RULES GOVERNING MILK AND CREAM PROCUREMENT AND TESTING

DOCKET NO. 02-0409-1101 (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 37-516, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

House Bill 152, which amended Chapter 5, Title 37, Idaho Code, Inspection and Licensing of Dairy Product Dealers and Establishments Milk Components and Quality Testing, became effective July 1, 2011. The Idaho State Department of Agriculture is implementing a new rule under IDAPA 02.04.09, "Rules Governing Milk and Cream Procurement and Testing." This proposed rule establishes specific parameters and protocols for milk component testing.

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

All laboratories that test milk or cream components and quality parameters for a basis of payment must be licensed by the department as an official laboratory. The license fee is \$25 and is valid for a term of 3 years.

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government because the federal government does not regulate milk or cream component testing in determining the value for milk constituents in Idaho. However, the proposed rule is consistent with the legislative directive in House Bill No. 152 (codified at Sections 37-503 through -507, 37-509 through -510, 37-513 and 37-515, 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 is no fiscal impact involved with this proposed rule. ISDA estimates that the costs will be greater than ten thousand dollars (\$10,000) annually to implement and enforce this rule. This funding will be provided through dedicated fees from the butterfat assessment paid by the dairy industry as provided in Section 37-407, Idaho Code.

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 6, 2011 Idaho Administrative Bulletin, Volume 11-7, page 19](#). However, the Negotiated rulemaking was published under docket number 02-0433-1101. The chapter number of this rule has been changed to keep this rule numerically aligned with the Department's other milk rules. The new docket number, 02-0409-1101, reflects this chapter number change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Marv Patten, Bureau Chief, Dairy and CAFO Programs, 208-332-8550 or marv.patten@agri.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 26, 2011.

Signed this 31st Day of August, 2011.

Brian J. Oakey
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road, Boise, ID 83712
P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8500
Fax: (208) 332-4062

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0409-1101

IDAPA 02, TITLE 04, CHAPTER 09

02.04.09 - RULES GOVERNING MILK AND CREAM PROCUREMENT AND TESTING

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapter 5, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.09, "Rules Governing Milk and Cream Procurement and Testing." ()

02. Scope. These rules shall govern the standards, procedures, and equipment for the analysis of milk components when analysis of milk components and quality parameters is used as a basis of payment. The official citation of this Chapter is IDAPA 02.04.09.000 et seq. For example, this section's citation is IDAPA 02.04.09.001. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of this rule. ()

003. ADMINISTRATIVE APPEALS.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the Department of Agriculture under these rules. ()

004. INCORPORATION BY REFERENCE.

These rules do not incorporate any material by reference. ()

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

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. ()

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

03. Mailing Address. The mailing address for the central office is Idaho State Department of

Agriculture, P.O. Box 790, Boise, Idaho 83701. ()

04. Telephone Number. The telephone number of the central office is (208) 332-8500. ()

05. Fax Number. The fax number of the central office is (208) 334-2170. ()

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. ()

007. ABBREVIATIONS.

There are no abbreviations in this chapter. ()

008. DEFINITIONS.

The following definitions shall apply in the interpretation and the enforcement of this chapter: ()

01. Abnormal Test. A test result from a producer sample that is dissimilar from recent producer milk component or quality parameter testing results; an anomaly. ()

02. Accuracy Check. A test made at the beginning of each testing session and once per hour thereafter to determine the continued accuracy of the testing device. ()

03. Approved Testing Methods. Methods approved by the director for testing milk or cream components and quality parameters when those components and parameters are used as a basis of payment. ()

04. Calibration. The settings established on a testing device that will result in an average number of results that are within tolerance. ()

05. Control Samples. Milk samples used to determine or set the calibration of the testing device. ()

06. Component Testing. An analysis of milk or cream constituents including milkfat, protein, lactose or solids-nonfat, which is used as a basis of payment. ()

07. Department. The Idaho State Department of Agriculture. ()

08. Director. The Director of the Idaho State Department of Agriculture or his designee. ()

09. Detailed Pricing Description. The method used by the purchaser of milk or cream as the criteria for determining the price paid. ()

10. Milk Component or Component. A unique compound within milk whose relative mass within the milk may be used to determine the payment to producers. Component parts of milk include milkfat, protein, lactose, solids-nonfat, other solids, and total solids. ()

11. Official Laboratory. A facility, licensed by the department, that tests milk or cream components or quality parameters for the purpose of determining the value of the product when sold or purchased by producers or processors. ()

12. Outlier. A regulatory sample result that appears to deviate markedly from other members of the sample set in which it occurs. ()

13. Pay Records. Signed written or printed records, which itemize milk volume, milk component and quality parameters used as payment to a producer or other processor. ()

14. Performance Error. The difference between the known percentage content of each milk component in the control sample, as determined by the sample provider, and the percentage content as measured by

the testing device. ()

15. Person. An individual, association, partnership, firm, joint stock company, private company, or legal entity, which is recognized by law as the subject of rights and duties. ()

16. Producer. A dairy farm permitted by the department to sell milk for human consumption. ()

17. Processor. A creamery, milk plant, shipping or cream buying station, milk condensing plant, cheese factory, mix making plant, ice cream factory, reprocessing plant, casein plant, powdered milk plant, or factory of milk products, or other person receiving or purchasing milk or cream in bulk other than a retail vendor of milk on the basis of volume, milk components, or milk quality. ()

18. Quality Parameter. The quality of milk or cream as determined by the bacteria/plate count method, somatic cell count, temperature, drug residues or other parameters as approved by the department. ()

19. Testing Device. The equipment used to determine the percentage of milk or cream components. ()

20. Tolerance. The allowable plus and allowable minus variances from zero (0) when conducting component testing. For purposes of this rule, the variances shall be within plus or minus forty-four one-thousandths percent (.044%) for milkfat or protein and within plus or minus eighty-four one-thousandths percent (.084%) for total solids or solids-nonfat, except that regulatory sample tolerances are those set forth in Section 302 of this rule. ()

009. -- 049. (RESERVED)

050. REGULATORY COMPLIANCE.

All milk and cream produced, purchased or sold in the state of Idaho at a price based upon or determined by the milkfat, protein, lactose, solids-nonfat, somatic cell counts, or other quality parameters, shall comply with the requirements in these rules. ()

051. LABORATORY LICENSING REQUIREMENTS.

01. License Required. All laboratories that test milk or cream components and quality parameters for a basis of payment must be licensed by the department as an official laboratory. ()

02. License Application. A laboratory must apply for a license on a form prescribed by the department. The laboratory must identify (on the application form) the names of all persons who will test milk or cream components and quality parameters. ()

03. License Fee. The license fee is twenty-five dollars (\$25). ()

04. License Term. The official laboratory license is valid for three (3) calendar years after issuance by the department, unless otherwise suspended or revoked in accordance with these rules. The license expires on December 31 of the third year. ()

052. -- 099. (RESERVED)

100. OFFICIAL LABORATORIES - RESPONSIBILITIES AND OPERATING PROCEDURES.

01. Competency in Testing. Official laboratories are responsible for ensuring that employees who operate testing devices are competent to operate the devices, and for conducting testing according to these rules. ()

02. Facility Requirements. The areas in official laboratories where component or quality parameter testing is conducted shall be well lighted, kept clean, appropriately ventilated and sufficient in size to provide for accurate testing. Laboratories that are certified under the Grade A program set forth in IDAPA 02.04.08.000 et seq., "Rules Governing Grade A Milk and Milk Products," are deemed to satisfy the facility requirements for an official

laboratory. ()

03. Operating Procedures. An official laboratory shall establish and follow written standard operating procedures consistent with the recommended procedures for operation and maintenance set forth by the manufacturer of the testing device. ()

101. THIRD PARTY LABORATORIES.

Procurers of milk who use official laboratories other than one owned or operated by the procurer are not responsible for that laboratory's failure to comply with these rules. ()

102. - 109. (RESERVED)

110. MILK COMPONENT TESTING DEVICES.

If an automated testing device is used to perform a milk component test for any milk component, that device must be calibrated and regularly checked to ensure that it accurately tests for that milk component. ()

01. Calibration and Checks. Calibration and checks must include the utilization of calibration samples, performance checks and accuracy checks. ()

02. Calibration Standards. Calibration may be done either in accordance with the standards set forth by the manufacturer of the testing device, or as set forth in Sections 110, 111 and 130 of this rule. ()

03. Calibration Record Keeping. In either case, the official laboratory must be able to demonstrate, through records kept in accordance with Section 350, that calibration and checks have been performed in accordance with these rules, and that the testing device produces test results within the tolerances established in these rules. ()

111. CALIBRATION OF MILK COMPONENT TESTING DEVICES.

All testing devices shall be calibrated according to the protocols set by the testing device manufacturer, or as set forth in this Section. ()

01. Calibration Frequency. A milk component testing device shall be calibrated whenever the mean difference on a daily performance check under Section 121 herein exceeds plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. ()

02. Calibration Samples. A set of calibration samples may consist of commercially available samples or samples made by the official laboratory. A set of calibration samples must consist of at least nine (9) individual samples, each of which: ()

a. Cannot be more than twenty-one (21) days old; ()

b. Must be a fresh milk sample preserved with bronopol (2-bromo-2-nitro-1, 3-propanediol) or another approved preservative. Preservative methods, formulations and concentrations must be approved by the department. ()

c. Must have a known percentage content of each relevant milk component, determined by the sample provider. ()

d. Must meet the requirements of Section 120 of this rule. ()

03. Calibration Procedure. To calibrate a testing device, the official laboratory must use the device to test a set of calibration samples. The testing device shall be adjusted, as necessary, to satisfy each of the following requirements: ()

a. The performance error on each calibration sample shall be as near as practicable to zero (0). ()

b. The mean difference for the entire set of calibration samples shall be as near as practicable to zero (0), and shall not exceed plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. The mean difference is the sum of the performance errors for the individual calibration samples, divided by the number of samples in the set. ()

c. The standard deviation of test results, calculated for the set of calibration samples shall not exceed forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat. ()

112 - 119. (RESERVED)

120. SAMPLE INTEGRITY.

Milk or cream samples must be handled, stored, and shipped in a manner that maintains the integrity of the samples. Samples must be maintained in a temperature range of thirty-three degrees (33°) to forty-five degrees (45°) Fahrenheit. ()

121. DAILY PERFORMANCE CHECKS.

All testing devices must be subjected to a daily performance check before each day's testing, in accordance with the standards set by the testing device manufacturer, or as set forth in this Section. ()

01. Daily Performance Check Samples. ()

a. Source. A set of daily performance check samples must be obtained from a sample provider approved by the department, or may be made by the official laboratory. ()

b. Number. Unless otherwise specified by the manufacturer of the testing device, a minimum of two (2) control milk samples must be analyzed before daily component testing begins. ()

c. Requirements. The control samples must comply with the requirements set forth in Sections 103 and 104 of this rule and fall within the component ranges typically found in the samples to be tested. ()

02. Procedure. To conduct a daily performance check, the official laboratory must test a set of daily performance check samples. Based on the daily performance check, the official laboratory must do the following: ()

a. Determine the performance error of the testing device with respect to each daily performance check sample. The performance error is the difference between the known percentage content of each milk component in that sample, as determined by the sample provider, and the percentage content as measured by the testing device; and ()

b. Calculate the mean difference for the set of daily performance check samples. The mean difference is the sum of the performance errors for the individual samples, divided by the number of samples in the set. ()

03. Calibration Based On Daily Performance Check. If the mean difference calculated on a daily performance check exceeds plus or minus forty-four thousandths percent (.044%) for milkfat or protein, or eighty-four thousandths percent (.084%) for total solids or solids-nonfat, the testing device shall not be used until it is recalibrated in accordance with Section 111. ()

122. -- 129. (RESERVED)

130. ACCURACY CHECKS.

All testing devices shall be subjected to daily and hourly accuracy checks in accordance with the protocols set by the testing device manufacturer, or as set forth in this Section. ()

01. Daily Accuracy Check. A daily accuracy check must be conducted for each relevant milk component before each day's testing at the same time that the daily performance check is conducted. The official laboratory must perform ten (10) tests on a reference sample. The reference sample may be a homogenized milk

sample prepared by the official laboratory, or it may be a daily performance check sample obtained from an approved sample provider. The ten (10) test results must be averaged, and the average result will be used as a comparison value for the hourly accuracy checks required in Subsection 130.02. ()

02. Hourly Accuracy Check. An hourly accuracy check must be conducted for each milk component before each hour's testing for that component. ()

a. To conduct an hourly accuracy check, the official laboratory must test the same reference sample used for the daily accuracy check. ()

b. For each relevant milk component, the hourly accuracy check result must be compared to the average result obtained on the daily reference check under Subsection 130.01. If an hourly accuracy check result differs from the average result on the daily accuracy check by more than thirty-four thousandths percent (.034%) for milkfat or protein, or sixty-four thousandths percent (.064%) for total solids or solids-nonfat, the testing device shall not be used until the condition causing the difference is found and corrected. ()

c. Test results obtained before the device is corrected, and subsequent to the last previous conforming accuracy check, must not be used in determining the amount paid to milk producers. ()

131. -- 139. (RESERVED)

140. ABNORMAL TESTS.

Whenever an abnormal test occurs on a producer's sample, that result may not be used as a basis of payment. ()

01. Alternate Tests. In the case of an abnormal test, the official laboratory will use an average of the previous three (3) tests from that producer or another department approved method. ()

02. Accidents and Sampling Errors. Laboratory accidents or sampling errors on milk or cream to be tested will not be used as official results and the criteria in Subsection 140.01 will be instituted. ()

03. Documentation. All abnormal tests must be documented by the person conducting the test. ()

141. -- 199. (RESERVED)

200. DETAILED PRICING DESCRIPTION.

On each pay record to the seller, purchasers or procurers of milk or cream must provide the seller with all pricing detail needed to determine the net payment for the product sold. At a minimum, the detail must include the following: ()

01. Pricing Method and Pounds Purchased. If more than one (1) pricing method is used, the detail must include the pounds purchased at each method. The pricing method may include: ()

a. The value of each component per pound; ()

b. The total value of total component pounds; ()

c. The yield formula type and value of the end product(s); or ()

d. Fixed pricing type. ()

02. Total Weight or Volume. If weight is used, it must be expressed by pounds. If volume is used, it must be expressed in U.S. gallons. ()

03. Component Information. All relevant component testing averages or pounds of solids for each component. ()

04. Bonuses and Deductions. All quality bonuses or deductions and the applicable quality parameters

used to calculate the bonuses or deductions. ()

05. Hauling Charges. All hauling charges and any applicable surcharges. ()

06. Other Deductions. All other payment deductions including check-offs, administrative fees, and laboratory fees. ()

07. Other Factors. All other factors affecting net payment. ()

08. Availability. Pay records must be made available to the department upon request, and be maintained by the procurer or processor for at least one (1) year. ()

201. -- 299. (RESERVED)

301. REGULATORY COMPLIANCE - INSPECTIONS AND RECORDS REVIEW.

The department shall have access at any time to official laboratories to review testing procedures, records, or to conduct other inspections or tests to determine compliance with these rules and Title 37, Chapter 5, Idaho Code. Any time a testing device is being operated to test for milk components or other quality parameters, the department may provide samples to an official laboratory, and require the official laboratory to immediately process those samples in order to ensure compliance with these rules. ()

302. REGULATORY SAMPLES.

01. Samples. ()

a. The department will provide a minimum of nine (9) samples to an official laboratory, on a bi-weekly basis or at a frequency determined by the department to be necessary to ensure accurate component testing results. ()

b. The samples will be obtained from the company or entity that provides calibration samples to the official laboratory, if available. The department may provide regulatory samples from other sources if necessary. ()

c. The official laboratory must immediately process the samples, while being observed by a department employee or agent, for those components used by the processor or procurer as a basis of payment. ()

d. If the official laboratory is unable to process the samples due to maintenance or mechanical issues, the department employee or agent who is delivering the samples may wait for the testing device to become operable. If the integrity of the regulatory samples is compromised due to the delay, the department may obtain and deliver an additional set of regulatory samples. ()

02. Regulatory Sample Results. The regulatory sample results will be compiled by the department and evaluated by the department in rolling groups of thirteen (13) test results. ()

03. Outliers. Sample results that have been identified as outliers will not be used in the calculation of tolerance for regulatory test results. ()

04. Regulatory Sample Tolerances. Each group of thirteen (13) test results shall be within the following tolerances for those components used as a basis of payment by the processor or procurer: ()

a. Plus or minus thirty-three thousandths percent (.033%) for milkfat. ()

b. Plus or minus thirty-one thousandths percent (.031%) for protein. ()

c. Plus or minus sixty-five thousandths percent (.065%) for solids, other than milkfat or protein. ()

303. LICENSE SUSPENSION AND REVOCATION BASED ON REGULATORY SAMPLES.

01. Regulatory Sample Test Result Averages. Whenever two (2) of the last four (4) regulatory sample results exceed the tolerance for milkfat, protein or solids as set forth in Subsection 302.04 of this rule, the department may suspend the official laboratory's license. ()

02. Cumulative Regulatory Sample Results. When the department has accumulated a minimum of one thousand (1,000) regulatory sample results from an official laboratory, and the average of those regulatory sample results exceeds zero (0) by more than plus or minus two hundredths percent (.02%) for milkfat or protein, the department may suspend the official laboratory's license. ()

03. Review of Records Prior to License Suspension. If an official laboratory's regulatory sample results are out of tolerance pursuant to Section 302.04 of this rule, the department may review the records kept by the official laboratory pursuant to Section 350 of this rule. If the official laboratory is able to demonstrate through those records that it has performed all calibration and checks required under these rules, and that the results of those calibrations and checks show that the testing device is operating within the tolerances set forth in Sections 110, 111 and 130, the official laboratory may, at the department's discretion, be placed on probation for a period of two (2) weeks. The department will review the most recent thirteen (13) week average following the next regulatory samples, and if that average remains out of tolerance pursuant to Subsection 302.04 of this rule, the department may suspend the official laboratory's license. ()

04. License Reinstatement. An official laboratory may seek reinstatement of a suspended license when the official laboratory provides the department written documentation detailing the procedural corrections that have been made to the testing device. The documentation must include a minimum of two (2) weeks of component testing results demonstrating that the testing device has been and will remain in tolerance. Upon receipt of that information, the department may reinstate the official laboratory's license. ()

05. License Revocation for Repeated Out of Tolerance Test Results. If the regulatory sample results are repeatedly out of tolerance, the department may initiate steps to revoke the official laboratory's license to conduct component testing for three (3) months or more. ()

304. – 349. (RESERVED)

350. RECORD KEEPING.

Records must be maintained by the official laboratory in accordance with this section, and must be made available for examination by the department, upon the department's request. ()

01. General Provisions. ()

a. No record may be altered except that errors may be corrected by striking through the original entry and inserting the correct entry immediately adjacent to the original. A corrected entry shall be initialed by the person who made the corrected entry. ()

b. Records may be maintained in paper or electronic format. In either case, the records must: ()

i. Be effectively secured against loss or tampering. ()

ii. Be readily retrievable for inspection by the dairy plant operator and the department. ()

iii. If corrected, have the correction identified so that the reader may easily compare the corrected version to the original. ()

02. Calibration Check Equipment Records. All calibration check and equipment maintenance records must be documented and provided during an inspection by the department. The documentation must include the following: ()

a. Instrument identification. ()

b. Name of the laboratory technician or maintenance person who performed the calibration or maintenance. ()

c. Time and date of the calibration check or maintenance. ()

d. Type of analytical test or maintenance performed. ()

e. Results of the analytical test or maintenance. ()

f. Details of action taken to correct calibration tolerances or mechanical problems. ()

03. Records Retention - Time Limit. The dairy plant operator or the official laboratory must maintain the records required under this section for at least one (1) year. ()

351. -- 399. (RESERVED)

400. ENFORCEMENT.

01. Penalties. Penalties for violations of this rule are provided in Title 37, Chapter 5, Idaho Code. ()

02. License Suspension. The director may suspend official laboratory component testing from any laboratory not meeting these rules until the official laboratory has satisfactorily demonstrated compliance with these rules. ()

03. Effect of License Suspension. If an official laboratory's license is suspended, the official laboratory cannot conduct component testing for use as a basis of payment and must use a licensed third-party laboratory. Procurers of milk who must use a licensed third-party laboratory must pay any associated component testing fees. ()

401. -- 999. (RESERVED)

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.18 - RULES GOVERNING THE CAFO SITE ADVISORY TEAM
DOCKET NO. 02-0418-1101
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 67-6529F(4), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

House Bill No. 150aa was passed and effective April 5, 2011, upon Governor Otter's signature amending Title 67, Chapter 65, Idaho Code. The ISDA has undertaken negotiated rulemaking to carry out the intent of the statutory amendments. The rule amendments center on incorporating new county CAFO definitions, establishing the application fees for the CAFO Site Advisory Team, eliminating the references to animal units, and providing consistency in definition among rules.

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

No fee is associated with this proposed rule.

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government, because the federal government does not regulate CAFO siting. However, the proposed rule is consistent with the legislative directive in House Bill No. 150aa (codified at Sections 67-6529C and 67-6529E, 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 is no fiscal impact involved with this proposed rule. ISDA estimates that the costs will be less than \$10,000 annually to implement and enforce this rule.

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 6, 2011 Idaho Administrative Bulletin, Volume 11-7, page 16](#).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Bilderback, Section Manager, Dairy and CAFO Programs, 208-332-8550 or john.bilderback@agri.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 26, 2011.

Signed this 16th Day of August, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road, Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8500
Fax: (208) 332-4062

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NUMBER 02-0418-1101

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference, and copies of the documents may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712 or accessed online. ()

01. Nutrient Management Standard (NMS). ()

a. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service, (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590, ~~is incorporated by reference and a copy may be obtained from the Idaho State Department of Agriculture, 2270 Old Penitentiary Road, PO Box 790, Boise, Idaho 83701 or accessed~~ This document can be viewed online at http://www.agri.idaho.gov/Categories/Animals/Documents/nutrient_Management_code_590.PDF. (3-15-02)()

b. The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at http://www.agri.idaho.gov/Categories/Environment/nmp/nmpPDF/june_2007_NRCS_590.pdf. ()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter. (3-15-02)

~~**01. Animal Unit.** A unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle multiplied by one (1), plus the number of young slaughter or feeder cattle, less than twelve (12) months of age multiplied by six tenths (0.6), plus the number of mature dairy cattle multiplied by one and four tenths (1.4), plus the number of young dairy cattle less than one (1) year of age, multiplied by six tenths (0.6), plus the number of swine weighing over twenty five (25) kilograms, approximately fifty five (55) pounds, multiplied by four tenths (0.4), plus the number of weaned swine weighing less than twenty five (25) kilograms multiplied by one tenth (0.1), plus the number of sheep multiplied by one tenth (0.1), plus the number of horses multiplied by two (2), plus the number of chickens multiplied by one hundredth (0.01).~~ (3-15-02)

021. Best Management Practices. Practices, techniques, or measures that are determined by the Department to be a cost-effective and practicable means of preventing or reducing pollutants from point or non-point sources from entering waters of the state and managing odor generated on an agriculture operation to a level associated with accepted agriculture practices. (3-15-02)()

032. CAFO Site Advisory Team. Representatives of the Idaho State Department of Agriculture, Idaho Department of Environmental Quality, and Idaho Department of Water Resources, with the Idaho State Department of Agriculture as the team lead, who review a site proposed for a CAFO, determine environmental risks, and submit a site suitability determination to the county that has requested the determination. (3-15-02)

043. Concentrated Animal Feeding Operation (CAFO). For those counties that have requested a site suitability determination, a CAFO is as defined in the applicable ordinance of the county where the CAFO is located. If the requesting county has not defined CAFO in its ordinances, CAFO means A lot or facility where the following conditions are met: (3-15-02)()

a. Animals have been, are, or will be stabled or confined and fed or maintained for a total of ninety

(90) consecutive days or more in any twelve (12) month period; (3-15-02)

b. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility; (3-15-02)

c. The lot or facility is designed to confine or actually does confine ~~an equivalent of one thousand (1,000) animal units or more; and as many as or more than the numbers of animals specified in any of the following categories:~~ (3-15-02)()

i. Seven hundred (700) mature dairy cows, whether milked or dry; ()

ii. One thousand (1,000) veal calves; ()

iii. One thousand (1,000) cattle other than mature dairy cows or veal calves; ()

iv. Two thousand five hundred (2,500) swine each weighing fifty-five (55) pounds or more; ()

v. Ten thousand (10,000) swine each weighing less than fifty-five (55) pounds; ()

vi. Five hundred (500) horses; ()

vii. Ten thousand (10,000) sheep or lambs; or ()

viii. Eighty-two thousand (82,000) chickens; and ()

d. Two (2) or more concentrated animal feeding operations under common ownership are considered, for the purposes of this definition, to be a single animal feeding operation if they adjoin each other or if they use a common area or system for the disposal of wastes. (3-15-02)

~~054.~~ **Department.** The Idaho State Department of Agriculture. (3-15-02)

~~065.~~ **Director.** The Director of the Idaho State Department of Agriculture or his designee. (3-15-02)()

~~076.~~ **Environmental Risk.** That risk to the environment deemed posed by a proposed CAFO site, as determined and categorized by the CAFO site advisory team and set forth in the site advisory team's suitability determination report. (3-15-02)

~~087.~~ **Land Application.** The spreading on, or incorporation into the soil of agricultural by-products such as manure, process wastewater, compost, cull potatoes, cull onions, or crop residues into the soil primarily for beneficial purposes. (3-15-02)()

~~098.~~ **Nutrient Management Plan.** A plan prepared in conformance with the nutrient management standard. (3-15-02)

~~409.~~ **Nutrient Management Standard.** For dairies and beef cattle animal feeding operations, the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service, Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. For poultry concentrated animal feeding operations, the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Practice Standard, Nutrient Management Code 590, or other equally protective standard approved by the Director. (3-15-02)()

~~140.~~ **Odor Management Plan.** A site-specific plan approved by the Director to manage odor from a CAFO to a level associated with accepted agricultural practices by utilizing best management practices. (3-15-02)

~~121.~~ **Person.** Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, private corporation, or any legal entity, which is recognized by law as the subject of

rights and duties. (3-15-02)

132. Suitability Determination. The document created and submitted by the CAFO site advisory team, after review and analysis of a proposed CAFO site and information provided subsequent to Section 300 of these rules, that identifies the environmental risk categories related to a proposed CAFO site, describes the factors that contribute to the environmental risks, and sets forth any possible mitigation of risk. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

100. APPLICABILITY.

01. Site for a Proposed CAFO. A CAFO site advisory team shall review and make a site suitability determination for all proposed CAFO sites, as defined in these rules, submitted by a board of county commissioners pursuant to these rules. (3-15-02)

02. Sites That Do not Meet the Definition of a CAFO. The Director may form a CAFO site advisory team, as requested by a board of county commissioners, for a site that does not meet the animal ~~###~~ numbers in the definition of a CAFO provided that: (3-15-02)()

a. The county demonstrates that the site is in an environmentally sensitive area or is in close proximity to streams, lakes, or other bodies of surface water; or (3-15-02)

b. The state agencies have personnel and other resources available to conduct the site suitability determination. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

300. CONTENTS OF A REQUEST TO FORM A SITE ADVISORY TEAM.

The information contained in a request shall include, but not be limited to, the following: (3-15-02)

01. County Definition of CAFO. The county's definition of "CAFO" as set forth in any applicable county ordinance. ()

042. Legal Description and Address. Legal description and address of the proposed CAFO. (3-15-02)

023. One-Time Unit Capacity. The one-time animal ~~###~~ capacity of the proposed CAFO. (3-15-02)()

034. Type of Animals. The type of animals to be confined at the proposed CAFO. (3-15-02)

045. Water Right Information. All requests shall include one (1) of the following: (3-15-02)

a. Evidence that a valid water right exists to supply adequate water for the operation of the proposed CAFO; or (3-15-02)

b. A copy of an application for a permit to appropriate water that has been filed with IDWR, which if approved, will supply adequate water for operation of the proposed CAFO; or (3-15-02)

c. A copy of an application to change the point of diversion, place, period, and nature of use of an existing water right that has been filed with IDWR, which if approved, will supply adequate water for the operation of the proposed CAFO. (3-15-02)

056. Vicinity Map with Site Location. A detailed sketch of the proposed CAFO site location, on an aerial photograph if available, which includes the following: (3-15-02)

- a. Building locations; (3-15-02)
- b. Waste storage facilities and general areas for any land application including a narrative description of the waste system; (3-15-02)
- c. FEMA flood zones or other appropriate flood data for the proposed CAFO site and land application sites owned or leased by the applicant; (3-15-02)
- d. Private and community domestic water wells, irrigation wells, existing monitoring wells, and existing injection wells as documented by IDWR or other sources, including the associated well logs if available, which are within a one (1) mile radius of the proposed CAFO; (~~3-15-02~~)()
- e. Irrigation canals, irrigation laterals, rivers, streams, springs, lakes, reservoirs, and designated wetlands, which are within a one (1) mile radius of the proposed CAFO. (3-15-02)

067. Site Characterization. A characterization of the proposed CAFO site and any land application sites owned or leased by the applicant, which includes the following information, if available: (3-15-02)

- a. Annual precipitation and prevailing wind direction as contained in the Idaho Waste Management Guidelines, 1997; (3-15-02)
- b. Soil characteristics from NRCS; (3-15-02)
- c. Hydrologic characteristics from IDWR and USGS including: (3-15-02)
 - i. Depth to first water yielding zone and first encountered water; (3-15-02)
 - ii. Direction of ground water movement and gradient; (3-15-02)
 - iii. Sources and estimates of recharge; (3-15-02)
 - iv. Seasonal variations in water level and recharge characteristics; (3-15-02)
 - v. Susceptibility to contamination; and (3-15-02)
 - vi. Relation of ground water to surface water. (3-15-02)
- d. Water quality data from DEQ, the Department, ~~and~~ IDWR, or USGS, including: (~~3-15-02~~)()
 - i. Microorganisms; (3-15-02)
 - ii. Nutrients; and (3-15-02)
 - iii. Pharmaceuticals and organic compounds. (3-15-02)

078. Required OMPs or NMPs. Any OMPs or NMPs that are required by the county to be submitted by the applicant at the time of application. (3-15-02)

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.26 - RULES GOVERNING LIVESTOCK MARKETING
DOCKET NO. 02-0426-1101 (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 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 19, 2011.

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 Public Livestock Market Development Act Title 25, Chapter 17, Idaho Code, requires an annual charter fee "established by rules," Section 25-1728(1), Idaho Code. Although all Livestock Markets in Idaho are currently paying the annual renewal fee, IDAPA 02.04.26, "Rules Governing Livestock Marketing," does not provide for an annual charter fee. This proposed rule change will update the rule consistent with the statutory requirement. Section 100 of the Rules will be changed to provide that an annual market charter fee of one hundred dollars (\$100) with a renewal form prescribed by the department be submitted on or before May 1 of each year.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate livestock market charters. However, this change to the Rules Governing Livestock Marketing is being proposed to ensure that the Rules are consistent with Title 25, Chapter 17, Idaho Code.

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

Section 25-1728(1), Idaho Code, requires the collection of an annual market charter fee not to exceed two hundred dollars (\$200) from all livestock markets. The Department currently collects one hundred dollars (\$100). The fee will remain one hundred dollars (\$100).

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because proposed changes to the Rule were discussed with members of the Idaho Livestock Market Association and individual market owners.

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: NA

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 26, 2011.

DATED this 16th day of August, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road, Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8500
Fax: (208) 332-4062

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NUMBER 02-0426-1101

100. PUBLIC LIVESTOCK MARKET CHARTER.

No person shall conduct or operate a public livestock market without first securing a charter from the Department. Charters shall expire on April 30 of each year. It shall be the responsibility of the public livestock market operator to apply each year for charter renewal on a form prescribed by the Department. The charter renewal form must be accompanied by an annual market charter fee of one hundred dollars (\$100). The charter renewal form and annual market charter fee must be received by the Department on or before May 1 of each year. ~~(4-6-05)~~()

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.30 - RULES GOVERNING NUTRIENT MANAGEMENT
DOCKET NO. 02-0430-1101
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 25-4012, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

House Bill No. 206 was passed and effective April 6, 2011, upon Governor Otter's signature establishing the Poultry Environmental Act, Title 25, Chapter 40, Idaho Code. IDAPA 02.04.30, Rules Governing Nutrient Management, were amended by rule negotiation to coincide with the Poultry Environmental Act. Specific changes include adding the definition of poultry concentrated animal feeding operations and revising the rule to incorporate the most current publication (June 2007) by the United States Department of Agriculture Idaho Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590.

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

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government, because the federal government does not regulate nutrient management outside of the NPDES permit program. However, the proposed rule is consistent with the legislative directive in House Bill No. 206 (codified at Title 25, Chapter 40, 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 is no fiscal impact involved with this proposed rule. ISDA estimates that the costs will be less than \$10,000 annually to implement and enforce this rule.

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 6, 2011 Idaho Administrative Bulletin, Volume 11-7, page 17](#).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Bilderback, Section Manager, Dairy and CAFO Programs, 208-332-8550 or john.bilderback@agri.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 26, 2011.

Signed this 16th Day of August, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road, Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8500
Fax: (208) 332-4062

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NUMBER 02-0430-1101

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 37, Chapter 4, ~~and~~ Title 22, Chapters 1 and 49, and Title 25, Chapter 40, Idaho Code. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference, and copies of the documents may be obtained from the Idaho State Department of Agriculture central office at 2270 Old Penitentiary Road, Boise, Idaho, 83712 or accessed online. ()

01. ~~The~~ August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised), ~~is hereby incorporated by reference and~~ This document can be viewed online at <http://www.cals.uidaho.edu/edComm/pdf/EXT/EXT0704.pdf>. (4-2-08)()

02. Nutrient Management Standard (NMS). ()

a. The 1999 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at [http://www.agri.idaho.gov/Categories/Animals/Documents/nutrient Management code 590.PDF](http://www.agri.idaho.gov/Categories/Animals/Documents/nutrient%20Management%20code%20590.PDF). ()

b. The 2007 publication by the United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at [http://www.agri.idaho.gov/Categories/Environment/nmp/nmpPDF/june 2007 NRCS 590.pdf](http://www.agri.idaho.gov/Categories/Environment/nmp/nmpPDF/june%202007%20NRCS%20590.pdf). ()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

The following definitions shall apply in the interpretation and enforcement of this chapter: (4-2-08)

01. Certified Soil Sampler. A person who has completed a Department approved soil sampler certification program and has received written certification from the Department. (4-2-08)

02. Department. The Idaho State Department of Agriculture. (4-2-08)

03. Director. The Director of the Idaho State Department of Agriculture or his designee. (4-2-08)()

04. Nutrient Management Plan. A plan prepared in conformance with the Nutrient Management Standard for managing the amount, source, placement, form, and timing of the land application of nutrients and soil amendments for plant production. (4-2-08)

05. Nutrient Management Standard. For dairies and beef cattle animal feeding operations, the Nutrient Management Standard is ~~the~~ the 1999 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 available online at

<http://www.idahoag.us/Categories/Environment/nmp/nmpPDF/NRCS%20Standards%206-99.pdf> or other standard approved by the Department director. For poultry concentrated animal feeding operations, the Nutrient Management Standard is the 2007 publication by the United States Department of Agriculture Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 or other standard approved by the director. (4-2-08)()

06. Person. Any individual, partnership, association, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, ~~or any organized group of persons whether incorporated or not~~ state or federal governmental department, agency, or instrumentality, or any legal entity, that is recognized by law as the subject of rights and duties. (4-2-08)()

07. Operation(s). Animal feeding operation(s). ()

078. Representative Soil Sample. A representative soil sample is a soil sample obtained as outlined by the August 1997 University of Idaho, Soil Sampling Bulletin 704 (revised) or other equivalent method as approved by the Department. (4-2-08)

089. Resource Concerns. Surface water runoff that leaves the operation from normal storm events, rain or snow, frozen ground or irrigation; and ground water concerns on the operation from a high water table, fractured bedrock, cobbles, gravel, coarse textured soils or other environmental considerations such as tile drains or shallow soils that are conducive for the downward movement of water and associated nutrients. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

020. APPLICABILITY.

These rules apply to nutrient management on the following cattle operations: (4-2-08)()

01. Dairies. All Manufactured Grade and Grade A dairies located in Idaho licensed to sell milk for human consumption. (4-2-08)()

02. Beef Cattle Animal Feeding Operations. All beef cattle animal feeding operations in Idaho required to implement a NMP pursuant to IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations." (4-2-08)

03. Poultry Concentrated Animal Feeding Operations. All poultry operations required to implement an NMP pursuant to Title 25, Chapter 40, Idaho Code. ()

021. -- 099. (RESERVED)

100. NUTRIENT MANAGEMENT PLANS.

All NMPs required by IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste," ~~and~~ IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," must be written by nutrient management planners who have been certified by the Department. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

200. SOIL SAMPLES.

The owners or operators of all dairies, ~~and~~ beef cattle operations, and poultry operations required to implement nutrient management plans pursuant to IDAPA 02.04.14, "Rules of the Department of Agriculture Governing Dairy Waste," ~~and~~ IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations," must have soil samples collected each year from all fields owned or operated

by the dairy, ~~or~~ beef, or poultry operation to which livestock waste, manure, or process wastewater from the operation was land applied. In addition, a poultry operation must have soil samples collected each year from all fields owned or operated by the poultry operation to which soil amendments from the operation were land applied. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

300. APPROVED LABORATORIES.

Only laboratories that hold a current valid certification from the North American Laboratory Proficiency Testing Program or equivalent method approved by the Department are approved laboratories for the purposes of this chapter. (4-2-08)()

301. -- 399. (RESERVED)

400. RECORDS OF NUTRIENT ANALYSIS.

Owners or operators of facilities who are required to implement NMPs pursuant to IDAPA 02.04.14, "Rules *of the Department of Agriculture* Governing Dairy Waste," *and* IDAPA 02.04.15, "Rules Governing Beef Cattle Animal Feeding Operations," and IDAPA 02.04.32, "Rules Governing Poultry Operations." must retain records of nutrient analysis for a minimum of five (5) years. (4-2-08)()

01. Complete Records. Records must be complete, readily available, and identified to the fields listed in the facility's NMP. (4-2-08)

02. Available to the Director. Records must be made available to the director for inspection and copying upon request. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

990. PENALTIES.

Any person violating any of the provisions of this Chapter may be subject to the penalty provisions of Title 22, Chapter 1 and 49, ~~and~~ Title 37, Chapter 4, and Title 25, Chapter 40, Idaho Code. (4-2-08)()

01. Monetary Penalties. The imposition or computation of monetary penalties shall take into account the seriousness of the violation, good faith efforts to comply with the law, the economic impact of the penalty on the violator and such other matters as justice requires. (4-2-08)

02. Minor Violations. The Director may issue suitable warnings or other administrative actions for minor violations. (4-2-08)

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.04.32 - RULES GOVERNING POULTRY OPERATIONS
DOCKET NO. 02-0432-1101 (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 25-4012, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

House Bill No. 206 was passed and became effective April 6, 2011 upon Governor Otter's signature, establishing the Poultry Environmental Act, Title 25, Chapter 40, Idaho Code. IDAPA 02.04.32, "Rules Governing Poultry Operations," is being proposed after rule negotiation during July and August 2011 and to coincide with the Poultry Environmental Act.

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

A fee is being charged. Section 25-4010, Idaho Code, authorizes the Department to collect a fee up to three cents (\$0.03) per square foot of confinement area to financially support this regulatory oversight program.

IDAHO CODE SECTION 22-101A STATEMENT: The proposed rule is consistent with the legislative directive in House Bill No. 206 (codified at Title 25, Chapter 40, Idaho Code). However, parts of this proposed rule regulate an activity not regulated by the federal government and therefore, Section 22-101A applies.

Section 22-101A(3), Idaho Code, provides that any rule subject to Section 22-101A that proposes a standard necessary to protect human health and the environment must also include additional information in the rulemaking record and in the notice of rulemaking. This additional information includes any estimates of risk accomplished, identification of populations or receptors addressed by any estimates, and other information related to an estimation of risk. The Rules Governing Poultry Operations include facility and design standards which are intended to protect human health and the environment. The standards, however, are for the design and construction of wastewater systems. The rules are not based upon any express estimate or analysis of risk to public health or the environment. Instead, the facility and design standards are based upon guidelines set forth in documents, such as the Natural Resources Conservation Service publications on Nutrient Management Standards and Design and Construction Guidelines for Waste Impoundments (Appendix 10D), and Manure Storage specifications from the American Society of Agricultural and Biological Engineers (ASAE EP393.3). Those documents are generally accepted and used throughout the United States by engineers and state regulators. Additionally, production wells on each permitted poultry facility will be monitored annually and analyzed for nitrogen (e.g., nitrate and/or ammonia) concentration to help the Department identify any negative environmental impacts as soon as possible.

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 expected; a fiscal impact would only be incurred if the dedicated dollars from the fees collected would not be great enough to cover the program costs.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted during July 2011 and August 2011. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [July 6, 2011 Idaho Administrative Bulletin, Volume 11-7, page 18](#).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact John Bilderback, Section Manager, Dairy and CAFO Programs, 208-332-8550 or john.bilderback@agri.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 26, 2011.

Signed this 31st Day of August, 2011.

Brian J. Oakey
Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road, Boise, ID 83712
P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8500
Fax: (208) 332-4062

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 02-0432-1101

IDAPA 02, TITLE 04, CHAPTER 32

02.04.32 - RULES GOVERNING POULTRY OPERATIONS

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 25, Chapter 40, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.04.32, "Rules Governing Poultry Operations." ()

02. Scope. These rules govern the design, function and management practices of waste systems on poultry concentrated animal feeding operations. These rules also establish the procedures and requirements for issuance of a permit to construct, operate, or expand poultry concentrated animal feeding operations. The official citation of this Chapter is IDAPA 02.04.32.000 et seq. For example, this section's citation is IDAPA 02.04.32.001. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. ()

003. ADMINISTRATIVE APPEAL.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. There is no provision for administrative appeal before the department of Agriculture under these rules. ()

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. ()

01. The 2004 Code of Federal Regulations (CFR) Title 40 Part 122 Section 122.23 (b). This document can be viewed online at http://www.access.gpo.gov/nara/cfr/waisidx_04/40cfrv20_04.html. ()

02. Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS). This document can be viewed online at http://www.idahoag.us/Categories/Environment/Documents/2008_Appendix_10D.PDF. ()

03. Nutrient Management Standard (NMS). The June 2007 publication by the United States Department of Agriculture (USDA) Idaho Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard, Nutrient Management Code 590. This document can be viewed online at http://www.idahoag.us/Categories/Environment/nmp/nmpPDF/june_2007_NRCS_590.pdf. ()

04. Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004. This document can be viewed online at http://www.idahoag.us/Categories/Environment/Documents/nrcs_313_Dec_2004.pdf. ()

05. American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. This document can be viewed online at http://www.agri.idaho.gov/Categories/Environment/Documents/asae_EP393.3_Feb_04.pdf. ()

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

01. Physical Address. The central office of the Idaho State Department of Agriculture is located at 2270 Old Penitentiary Road, Boise, Idaho 83712-0790. ()

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

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

04. Telephone Number. The telephone number of the central office is (208) 332-8500. ()

05. Fax Number. The fax number of the central office is (208) 334-2170. ()

006. IDAHO PUBLIC RECORDS ACT.

These rules are public records and are available for inspection and copying at the Idaho State Department of Agriculture central office. ()

007. -- 009. (RESERVED)

010. DEFINITIONS.

The definitions set forth in Section 25-4002, Idaho Code, must apply in the interpretation and the enforcement of this chapter. ()

01. Administrator. The administrator, or his designee, for the animal industries division of the Idaho Department of Agriculture. ()

02. Animal Feeding Operation. A lot or facility where the following conditions are met: ()

a. Poultry have been, are, or will be confined and fed or maintained for a total of forty-five (45) days or more in any twelve-month period; and ()

b. Crops, vegetation, forage growth or post-harvest residues are not sustained in the normal growing

season over any portion of the lot or facility. ()

03. Best Management Practices. Practices, techniques or measures which are determined to be reasonable precautions, are a cost-effective and practicable means of preventing or reducing pollutants from point sources or nonpoint sources to a level compatible with environmental goals, including water quality goals and standards for waters of the state. ()

04. Concentrated Animal Feeding Operation. An AFO that is defined as a large poultry CAFO under Subsection 010.10 or as a medium poultry CAFO under Subsection 010.12, or that is designated as a CAFO in accordance with Section 25-4011, Idaho Code. Two (2) or more AFOs under common ownership are considered to be a single AFO for the purposes of determining the number of animals at an operation, if they adjoin each other or if they use a common area or system for the disposal of wastes. ()

05. Department. The Idaho State Department of Agriculture. ()

06. Director. The Director of the Idaho State Department of Agriculture. ()

07. Discharge. Release of process wastewater or manure from a poultry animal feeding operation, including its land application area, to waters of the state or beyond the poultry facility's property boundaries or beyond the property boundary of any facility. Contract manure haulers, producers and other persons who haul manure beyond the operator's property boundaries are responsible for releases of manure between the property boundaries of the operator and the property boundaries at the point of application. A discharge does not include aerosolized matter, or manure that has been reasonably incorporated on the land application area. ()

08. Land Application. The spreading on, or incorporation of, animal waste into the soil mantle primarily for beneficial purposes. ()

09. Land Application Area. Land under the control of an AFO owner or operator, whether it is owned, rented or leased, to which manure, litter or process wastewater from the production area is or may be applied. ()

10. Large Poultry CAFO. A poultry AFO that confines as many or more than the number of poultry specified in the following categories: ()

a. Fifty-five thousand (55,000) turkeys; ()

b. Thirty thousand (30,000) laying hens or broilers, if the AFO uses a liquid manure handling system; ()

c. One hundred twenty-five thousand (125,000) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system; ()

d. Eighty-two thousand (82,000) laying hens, if the AFO uses other than a liquid manure handling system; ()

e. Thirty thousand (30,000) ducks, if the AFO uses other than a liquid manure handling system; or ()

f. Five thousand (5,000) ducks, if the AFO uses a liquid manure handling system. ()

11. Manure. Animal excrement generated on a poultry animal feeding operation that may also contain bedding, spilled feed, water, or soil. ()

12. Medium Poultry CAFO. A poultry AFO that confines as many or more than the number of poultry specified in the following categories: ()

a. Sixteen thousand five hundred (16,500) to fifty-four thousand nine hundred ninety-nine (54,999) turkeys; ()

b. Nine thousand (9,000) to twenty-nine thousand nine hundred ninety-nine (29,999) laying hens or broilers, if the AFO uses a liquid manure handling system; ()

c. Thirty-seven thousand five hundred (37,500) to one hundred twenty-four thousand nine hundred ninety-nine (124,999) chickens, other than laying hens, if the AFO uses other than a liquid manure handling system. ()

d. Twenty-five thousand (25,000) to eighty-one thousand nine hundred ninety-nine (81,999) laying hens, if the AFO uses other than a liquid manure handling system; ()

e. Ten thousand (10,000) to twenty-nine thousand nine hundred ninety-nine (29,999) ducks, if the AFO uses other than a liquid manure handling system; ()

f. One thousand five hundred (1,500) to four thousand nine hundred ninety-nine (4,999) ducks, if the AFO uses a liquid manure handling system; ()

13. Modification or Modified. Structural changes and alterations to the wastewater storage containment facility, which would require increased storage or containment capacity or such changes which would alter the function of the wastewater storage containment facility. ()

14. Noncompliance. A practice or condition that causes an unauthorized discharge, or a practice or condition, that if left uncorrected will cause an unauthorized discharge, or a condition on the poultry CAFO that does not meet the requirements of the nutrient management standard, nutrient management plan, and 2004 American Society of Agricultural and Biological Engineers (ASABE) construction standard for waste containment systems. ()

15. Nutrient Management Plan. A plan prepared in conformance with the nutrient management standard, provisions required by 40 CFR 122.42(e)(1), or other equally protective standard for managing the amount, source, placement, form and timing of the land application of nutrients and soil amendments. ()

16. Operator. The person who has power or authority to manage, or direct, or has financial control of a poultry animal feeding operation. ()

17. Person. Any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state, or federal governmental department, agency or instrumentality, or any legal entity, which is recognized by law as the subject of rights and duties. ()

18. Poultry. Chickens, turkeys, ducks, geese, and any other bird raised in captivity. ()

19. Process Wastewater. ()

a. Water directly or indirectly used in the operation of the AFO for any or all of the following: ()

i. Spillage or overflow from animal or poultry watering systems; ()

ii. Washing, cleaning or flushing pens, barns, manure pits or other AFO facilities; ()

iii. Direct contact swimming, washing, or spray cooling of animals; or ()

iv. Dust control. ()

b. Process wastewater also includes any water which comes into contact with any raw materials, products or byproducts including manure, litter, feed, milk, eggs or bedding. ()

20. Production Area. The part of an AFO that includes the animal confinement area, the manure storage area, the raw materials storage area, and the waste containment area. ()

a. The animal confinement area includes, but is not limited to, open lots, housed lots, feedlots, confinement houses, barnyards and animal walkways. ()

b. The manure storage area includes, but is not limited to, lagoons, runoff pond, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles and composting piles. ()

c. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers and bedding materials. ()

d. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. ()

e. Also included in the definition of production area is any egg washing or egg processing facility, and any area used in the storage, handling, treatment or disposal of mortalities. ()

21. Runoff. Any precipitation that comes into contact with manure, compost, bedding, or feed on a poultry feeding operation and flows off the production area or flows off land application areas where the manure, compost, bedding, or feed has not been reasonably incorporated into the soil. ()

22. Unauthorized Discharge. A discharge of process wastewater or manure to state surface waters that is not authorized by an NPDES permit, or the release of process wastewater or manure to waters of the state that does not meet the requirements of the Title 25, Chapter 40, Idaho Code, or these rules. ()

23. Wastewater Storage and Containment Facility. That portion of an AFO where manure or process wastewater is stored or collected. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds. ()

24. Waters of the State. All accumulations of water, surface and underground, natural and artificial, public and private, or parts thereof which are wholly or partially within, which flow through or border upon the state. ()

011. ABBREVIATIONS.

01. AFO. Animal Feeding Operation. ()

02. ASABE. American Society of Agricultural and Biological Engineers. ()

03. CAFO. Concentrated Animal Feeding Operation. ()

04. DEQ. Department of Environmental Quality. ()

05. FEMA. Federal Emergency Management Agency. ()

06. NMP. Nutrient Management Plan. ()

07. NMS. Nutrient Management Standard. ()

08. NPDES. National Pollutant Discharge Elimination System. ()

09. NRCS. United States Department of Agriculture, Natural Resources Conservation Service. ()

10. USGS. United States Geological Survey. ()

012. -- 099. (RESERVED)

100. PERMIT REQUIRED.

No person may construct, operate, or expand a poultry CAFO after April 6, 2011, without first obtaining a permit issued by the director as provided in these rules. ()

01. Common Control. Two (2) or more poultry CAFOs under common control of the same person may be considered, for purposes of permitting, to be a single facility, even though separately their capacity is less than a large or medium poultry CAFO, if they use a common animal waste system or land application site. ()

02. Existing Poultry Facilities. Poultry operations that existed on or before April 6, 2011, are not required to obtain a permit unless the facility is expanding to the extent that it will meet the definition of a poultry CAFO. Existing poultry facilities must register and submit an NMP in accordance with Section 170 of these rules, and must otherwise comply with these rules. ()

101. -- 109. (RESERVED)

110. PERMIT APPLICATION.

01. Permit Application. Every person required by these rules to obtain a permit must submit a permit application to the department. The permit application will be used to determine if the construction and operation of the poultry CAFO will be in conformance with these rules. ()

02. Contents of Application. Each application must include, in the format set forth by the director and when determined applicable by the director, the information set forth in Section 110 in sufficient detail to allow the director to make necessary application review decisions concerning design and environmental protection. ()

03. Relevant Information. ()

a. Name, mailing address and phone number of the facility owner. ()

b. Name, mailing address and phone number of the facility operator. ()

c. Name and mailing address of the facility. ()

d. Legal description of the facility location. ()

e. The one-time animal capacity, by head, of the facility. ()

f. The type of animals to be confined at the facility. ()

g. The facility's biosecurity and sanitary standards. ()

04. Construction Plans. Plans and specifications for the facility's animal waste management system that include the following information: ()

a. Vicinity map(s) prepared on one (1) or more seven and one-half minute (7.5') USGS topographic quadrangle maps or a high quality reproduction(s) that includes the following: ()

i. Layout of the facility, including buildings and animal waste management system; ()

ii. The one hundred (100) year FEMA flood zones or other appropriate flood data for the facility site and land application sites owned or leased by the applicant; and ()

iii. Private and community domestic water wells, irrigation wells, monitoring wells, and injection wells, irrigation conveyance and drainage structures, wetlands, streams, springs, and reservoirs that are within a one (1) mile radius of the facility. ()

b. A site plan showing: ()

- i. Building locations; ()
- ii. Waste facilities; ()
- iii. All waste conveyance systems; and ()
- iv. All irrigation systems used for land application, including details of approved water supply protection devices. ()
- c. Building plans showing: ()
 - i. All wastewater collection systems in housed units; ()
 - ii. All freshwater supply systems, including details of approved water supply protection devices; ()
 - iii. Detailed drawings of wastewater collection and conveyance systems and containment construction. ()
- d. If a CAFO Site Advisory Team suitability determination was not conducted for the facility, the following additional information must be provided: ()
 - i. Idaho DEQ delineated source water assessment areas within a one (1) mile radius of the facility and land application area; ()
 - ii. Idaho DEQ delineated nitrate priority areas that intersect the facility or land application area; ()
 - iii. Soil characteristics from NRCS; and ()
 - iv. Well logs associated with wells listed in Subsection 110.04.a.iii. ()
- e. All construction plans will specify how the facility will meet the engineering standards outlined in the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS), Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004, or American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004. ()

05. Nutrient Management Plan. NMPs must be prepared in conformance with the Nutrient Management Standard or other equally protective standard for managing the amount, source, placement, form and timing of the land application of nutrients or soil amendments. ()

06. Other Information. An applicant must provide any other information required by Section 110 as deemed necessary by the director to assess whether the facility poses or will pose a threat to the state's water resources. ()

111. -- 119. (RESERVED)

120. APPLICATION PROCESSING PROCEDURE.

01. Application Completeness. Within thirty (30) days of receipt of an application, the department will provide written notice to the applicant as to whether the application contains all of the information required in Section 110. If the application is incomplete, the department will provide a specific list of the missing information. The application will not be processed until it is deemed complete by the department. ()

02. Application Processing. Within sixty (60) days of receiving a complete application, the department will review the application materials and determine whether the design of the facility is in accordance

with the engineering standards and specifications provided by the NRCS or ASABE. The department will notify the applicant of the results of that review. ()

121. -- 129. (RESERVED)

130. PERMIT CONDITIONS.

The following conditions will apply to all permittees: ()

01. Compliance Required. The permittee must comply with all conditions of the permit. The permit must not relieve the permittee of the responsibility of complying with all applicable local, state, and federal laws. ()

02. Construction, Operation, and Maintenance of the Facility. The permittee must ensure that construction, operation, and maintenance of the facility proceed according to the construction plans and specifications and the approved nutrient management plans, and comply with the following: ()

a. Within thirty (30) days of construction completion, submit as-built construction plans. ()

b. Apply best management practices as approved by the director. ()

c. The facility or operations associated with the facility must not adversely affect waters of the state or create nuisance conditions including odor. ()

d. The removal of animal waste from an impoundment or storage structure must be performed in a manner not to damage the integrity of the liner. ()

e. Dead animals must be handled in accordance with IDAPA 02.04.17, "Rules Governing Dead Animal Movement and Disposal." ()

f. Nutrient management plans must be amended in accordance with IDAPA 02.04.30.000 et seq. "Rules Governing Nutrient Management." ()

g. Soil tests must be conducted annually on all land application sites owned or leased by the permittee to determine compliance with the NMP and NMS. The director may require more frequent soil tests if he deems it necessary. ()

03. Information to be Provided. The permittee must furnish to the director, within a reasonable time, any information which the director may reasonably require to determine whether causes exists to modify or revoke the permit, or to determine compliance with the permit or applicable rules. ()

04. Entry and Access. The permittee must allow the director entry and access in accordance with Section 25-4008, Idaho Code. ()

05. Reporting. Permittees must report discharges or noncompliance issues within the following time frames: ()

a. Within twenty-four (24) hours of the time the permittee knows or should have known of a discharge or unauthorized discharge, the permittee must verbally report the discharge. ()

b. Within five (5) working days from the time a permittee knows or reasonably should have known of any event which has resulted or which may result in noncompliance with these rules, the permittee must file a written report with the director. The report must contain: ()

i. A description of the event and its cause or if the cause is not known, steps taken to investigate and determine the cause; ()

ii. The period of the event including, to the extent possible, times and dates; ()

iii. Measures taken to mitigate or eliminate the event; and ()

iv. Steps taken to prevent recurrence of the event. ()

c. Immediately, whenever the permittee knows or learns or should reasonably know of material relevant acts not submitted or incorrect information submitted in a permit application or any report or notice to the director. ()

06. Construction Commencement. If a permittee fails to begin construction or expansion of a facility within five (5) years of the effective date of the permit, the director may void the permit and require a new permit application. ()

07. Permit Renewal. If a permittee intends to continue operation of the permitted facility after expiration of an existing permit, the permittee must apply for a new permit at least one hundred eighty (180) days prior to the expiration of the permit. ()

08. Specific Permit Conditions. The director may establish specific permit conditions on a case by case basis. Specific conditions will be established in consideration of facility's specific characteristics and will be designed to protect the state's water resources. ()

131. -- 139. (RESERVED)

140. FEES AND ASSESSMENTS.

01. Annual Fees or Assessments. The director may establish annual fees or assessments for each permittee of no more than three cents (\$0.03) per square foot of containment area. ()

02. Payment of Annual Fees or Assessments. The director must notify each permittee with a fee or assessment invoice by December 20th of each calendar year. Annual fees or assessments are due annually by January 20th of the next calendar year. ()

03. Adjustment in Fees or Assessments. The director will provide at least thirty (30) days written notice to each permittee before fees or assessments are increased or decreased. ()

141. -- 149. (RESERVED)

150. PERMIT MODIFICATION.

01. Minor Modifications. Minor permit modifications are those which do not have a potential effect on the state's water resources. Such modifications will be made by the director, and are generally limited to: ()

a. The correction of typographical or clerical errors; ()

b. Transfer of ownership or operational control in accordance with Section 160; or ()

c. Certain minor changes in monitoring or operational conditions. ()

02. Major Modifications. All permit modifications not considered minor will be deemed major. The procedure for making major modifications is the same as that used for a new permit under these rules. ()

151. -- 159. (RESERVED)

160. TRANSFER OF PERMITS.

01. Transfer Application. A new owner or operator of a facility must submit a transfer application to the director that includes at least the following: ()

a. The relevant information required by Subsection 110.03; and ()

b. Any change of conditions at the facility resulting from the ownership or operation transfer. ()

02. Transfer Application Review. The director will review the transfer application and either approve or deny the application within sixty (60) days of its receipt. ()

a. An approved transfer will be considered a minor modification pursuant to Subsection 150.01 as long as there are no major changes of conditions at the facility. Major changes of conditions at the facility are subject to Subsection 150.02. ()

b. If the director denies the transfer application, he will set forth the specific reasons for the denial, the steps necessary to meet the requirements for a permit transfer, and the opportunity to request a hearing. ()

161. -- 169. (RESERVED)

170. REGISTRATION OF EXISTING POULTRY CAFOS.

All large and medium poultry CAFOs in existence on or before April 6, 2011, must register with the department no later than January 1, 2012, upon forms furnished by the department. ()

01. Information Required. The following information must be provided to the department in order to register an existing medium or large poultry CAFO. ()

a. Name, mailing address, phone number and email address (if applicable) of the facility owner; ()

b. Name, mailing address, phone number and email address (if applicable) of the facility operator; ()

c. Physical address of the facility; ()

d. Facility site map; ()

e. Facility capacity; and ()

f. Average poultry population over the twelve (12) months preceding the date the registration information is provided by the operator. ()

02. Nutrient Management Plan. No later than April 6, 2012, existing medium and large poultry CAFOs must submit an NMP, prepared in conformance with the NMS or other equally protective standard for managing the amount, source, placement, form and timing of the land application of nutrients or soil amendments. The NMP must accurately reflect the operation of the facility. ()

03. Permit Allowed. An existing medium or large CAFO may, in the alternative, seek a permit pursuant to Section 110. ()

04. Permit Required. An existing facility must obtain a permit in accordance with Section 110, prior to increasing the one-time animal capacity of the facility by ten percent (10%) or more. ()

05. Ownership Transfer. If an existing poultry CAFO has registered with the department and ownership is subsequently transferred to a new owner, the new owners must apply for and obtain a new permit in accordance with Section 110. ()

171. -- 199. (RESERVED)

200. WASTE STORAGE AND CONTAINMENT FACILITIES.

01. Wastewater Storage and Containment Facilities. All poultry AFOs where process wastewater leaves the confinement area and has the potential to impact water of the state or be in violation of state water quality standards or ground water quality standards must have wastewater storage and containment facilities designed, constructed, operated, and maintained sufficient to contain: ()

a. All process wastewater generated on the facility during the non-land application season; ()

b. The runoff from a twenty-five (25) year, twenty-four (24) hour rainfall event; and ()

c. Either three (3) inches of runoff from the accumulation of winter precipitation or the amount of runoff from the accumulation of precipitation from a one-in-five (1 in 5) year winter. ()

02. All Substances Entering Wastewater Storage and Containment Facilities. All substances entering wastewater storage and containment facilities must be composed of manure and process wastewater from the operation of the poultry AFO. The disposal of any other materials into a wastewater storage and containment facility, including, but not limited to, human waste, is prohibited. ()

03. Waste Storage. Storage areas for poultry waste including compost and solid manure storage areas must be located on approved soils and appropriately protected to prevent run on and run off. ()

04. Waste and Wastewater System Maintenance. Waste and wastewater storage and containment systems must be maintained in a condition that allows the producer to regularly inspect the integrity of the systems. ()

05. Additional Ground Water Protection Requirements. The permittee must construct and maintain all waste containment structures within the parameters of this rule, including the Natural Resources Conservation Service Agricultural Waste Management Field Handbook Appendix 10D (Appendix 10D) (March 2008 Edition) (USDA, NRCS), Natural Resources Conservation Service (NRCS) Idaho Conservation Practice Standard Waste Storage Facility Code 313 December 2004, or American Society of Agricultural and Biological Engineers Specification ASAE EP393.3 Manure Storages February 2004 (see Section 004, Incorporation by Reference). After inspection, if the Department has information that the waste containment structure(s) has been compromised severely enough to no longer meet the requirements of this rule, the Department may require an evaluation to be conducted by a licensed professional engineer. The engineer will make recommendations on steps needed to bring the facility into compliance with this rule. The permittee is responsible for engineering and reconstruction costs. If the permittee has a repeat waste containment compromise, as determined by the department, the Director may require ground water monitoring by the permittee. ()

201. -- 249. (RESERVED)

250. NUTRIENT MANAGEMENT.

Each poultry CAFO must submit an NMP for land owned or controlled by the operator to the director for approval. The NMP must conform to the NMS and address odors generated in excess of odors normally associated with raising poultry in Idaho. ()

01. Existing Poultry CAFOs. Poultry CAFOs that are operating on or before April 6, 2011, must submit an NMP to the director for approval no later than April 6, 2012. ()

02. New Poultry CAFOs. Any poultry CAFO which commences operations after April 6, 2011, must not operate prior to the director's approval of the NMP. ()

03. Designated Poultry CAFOs. Any poultry AFO which is designated as a CAFO by the department in accordance with Section 400 must submit an NMP within forty-five (45) days of designation. ()

04. NMP Approval. The director will respond to or approve an NMP in writing within forty-five (45) days of submission. ()

05. NMP Updates or Amendments. Nutrient management plans must be updated as needed to accurately reflect the facility and its nutrient management system. ()

251. NUTRIENT MANAGEMENT PLAN RETENTION.

All NMPs which have been approved by the department and returned to the CAFO must be maintained on site at the CAFO and available to the department upon request. The department will retain a copy of the NMP. ()

252. NUTRIENT MANAGEMENT RECORDS.

01. Required Nutrient Management Records. The CAFO operator must keep complete and accurate records of: ()

a. Land application records, consisting of, at a minimum: ()

i. The dates, methods and approximate amounts of any manure or process wastewater applied on land owned or controlled by the operator. ()

ii. Weather conditions and soil moisture at the time of application. ()

iii. The lapsed time to manure incorporation, rainfall or irrigation event. ()

iv. Documentation of the actual rate at which nutrients were applied. When the actual rate used differs from the recommended and planned rates, nutrient management records must indicate the rationale for the difference. ()

b. The name and address of any third party receiving manure or process wastewater from the facility, including the dates of the transfer and the amount of manure or process wastewater transferred. ()

c. Nutrient Application. The quantities, analyses and sources of nutrients applied. ()

d. Soil Analysis. Complete soil analysis to create nutrient budget. ()

e. Crops. Crops planted, planting and harvest dates, yields and crop residues removed. ()

f. Record Review. Dates of annual review, person performing the review, and recommendations determined from the review. ()

02. Records Retention. All nutrient management records must be maintained for a period of five (5) years and provided to the department upon request. ()

253. NMP VIOLATIONS.

The failure to implement an approved NMP, failure to retain and maintain an NMP at the CAFO, or failure to retain nutrient management records is a violation of these rules. ()

254. -- 259. (RESERVED)

260. GROUND WATER QUALITY MONITORING.

At least annually, the department will sample and test the facility's production well water for nitrogen. ()

261. -- 299. (RESERVED)

300. PROHIBITED DISCHARGES.

Discharges or unauthorized discharges of manure or process wastewater from poultry CAFO or land application sites owned or controlled by a poultry CAFO are prohibited. ()

301. -- 309. (RESERVED)

310. NOTIFICATION OF DISCHARGE.

Within twenty-four (24) hours of learning of a discharge or unauthorized discharge, the operator of a poultry CAFO must verbally notify the department of the discharge or unauthorized discharge. ()

311. -- 399. (RESERVED)

400. DESIGNATION OF POULTRY CONCENTRATED ANIMAL FEEDING OPERATIONS.

01. Designation of Animal Feeding Operations. The director may designate any poultry AFO as a CAFO if, after inspection, the director determines that the AFO is a significant contributor of pollution to waters of the state. The director will consider the following factors when making a designation: ()

a. The size of the AFO and the amount of manure, process wastewater and runoff reaching waters of the state; ()

b. Location of the AFO relative to waters of the state; ()

c. Means of conveyance of manure, process wastewater, and runoff into waters of the state; ()

d. Slope, vegetation, precipitation and other factors that affect the likelihood or frequency of discharge of manure, process wastewater and runoff into waters of the state; ()

e. Unauthorized discharges into waters of the state through a man-made ditch, flushing system, or other similar man-made device; ()

f. Unauthorized discharges directly into waters of the state that originate outside of and pass over, across or through the facility or otherwise come into contact with the animals confined in the AFO; and ()

g. Repeated instances of noncompliance. ()

02. Effect of Designation. Upon designation, a poultry facility will be required to follow all permit requirements for a medium poultry CAFO. ()

03. Redesignation of a Poultry CAFO. The operator may request that the director redesignate a facility previously designated under Subsection 400.01. The director will redesignate the CAFO only if the facility is no longer a significant contributor of pollution to waters of the state. If granted, the redesignation will be provided to the operator in writing. No fees or assessments paid by the facility after designation will be refunded. ()

401. -- 499. (RESERVED)

500. INSPECTIONS.

Pursuant to Title 25, Chapter 40, Idaho Code, the director or his designee is authorized to inspect any poultry AFO, and to have access to and copy any facility records deemed necessary to ensure compliance with Title 25, Chapter 40, Idaho Code, and these rules. ()

01. Frequency. All poultry CAFOs will be inspected at least annually, or at intervals sufficient to determine that waste has been managed to prevent an unauthorized discharge or contamination of waters of the state. ()

02. Inspection Methods. Inspections may include, but are not limited to, evaluating effectiveness of best management practices, collecting samples, taking photographs, video recording or collecting other information as necessary. ()

03. Inspection Report Forms. An official inspection report form will be completed at the time of the inspection and provided to the operator. ()

501. -- 549. (RESERVED)

550. VIOLATIONS.

01. Failure to Comply. Failure by a permittee to comply with the provisions of these rules or with any permit condition is a violation of these rules. ()

02. Falsification of Statements and Records. It is a violation of these rules for any person to knowingly make a false statement, representation, or certification in any application, report, document, or record developed, maintained, or submitted pursuant to these rules or the conditions of a permit. ()

03. Discharge. Any discharge or unauthorized discharge from a facility is a violation of these rules. ()

551. PENALTIES.

Any person violating any provision of these rules or any permit or order issued thereunder must be liable for a civil penalty in accordance with Section 25-4014, Idaho Code, or a permit revocation in accordance with Section 25-4013, Idaho Code, and Section 552 of these rules. ()

552. PERMIT REVOCATION.

Prior to revoking a permit, the director will issue a notice of intent to revoke, which will become final unless the permittee timely requests, in writing, an administrative hearing. The administrative hearing will be conducted in accordance with Title 67, Chapter 52, Idaho Code. ()

01. Material Violation. The director may revoke a permit for a material violation of any condition of a permit. ()

02. Misrepresentation of Failure to Disclose. If the permit was obtained by misrepresentation or a knowing failure to disclose all relevant facts, the director may revoke a permit. ()

553. -- 999. (RESERVED)

IDAPA 02 - DEPARTMENT OF AGRICULTURE

02.06.02 - RULES PERTAINING TO THE IDAHO COMMERCIAL FEED LAW

DOCKET NO. 02-0602-1101

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 19, 2011.

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 update a date specific document adopted by reference.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate commercial feeds. The rule is, however, consistent with national standards by the Association of American Feed Control Officials.

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 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 26, 2011.

DATED this 16th day of August, 2011.

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 OF DOCKET NO. 02-0602-1101

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 “201~~7~~² 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. (~~4-7-11~~) ()

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>.. (4-7-11)

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.12 - RULES PERTAINING TO THE IDAHO FERTILIZER LAW
DOCKET NO. 02-0612-1101
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 19, 2011.

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 2012 Official Publication of the Association of American Plant Food Control Officials; add an incorporation by reference of the "2005 Official Methods of Analysis (OMA) of the AOAC," 18th Edition, published by the Association of Official Agricultural Chemists (AOAC) International; and Change the Enforcement Guidelines to Civil Penalties to be more consistent with IDAPA 02.06.02, "Rules Pertaining to the Idaho Feed Law."

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate commercial fertilizers. The rule is, however, consistent with national standards by the Association of American Plant Food Control Officials.

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 and the Official Methods of Analysis (OMA) published by the Association of Official Agricultural Chemists (AOAC) International are the recognized and primary reference books 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 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 26, 2011.

DATED this 16th day of August, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road, Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8500
Fax: (208) 332-4062

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0612-1101

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 02.06.12 incorporates by reference: (4-7-11)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The Terms, Ingredient Definitions, and Policies, as published in the “2014~~2~~ 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. 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: http://www.aapfco.org/publication_order_form.pdf. ~~(4-7-11)~~()

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>. (4-7-11)

03. The Association of Official Agricultural Chemists (AOAC) International. The “2005 Official Methods of Analysis (OMA) of the AOAC.” 18th Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: www.EOMA.AOAC.org. A copy may be purchased online from AOAC International. ()

(BREAK IN CONTINUITY OF SECTIONS)

090. ~~ENFORCEMENT GUIDELINES~~ CIVIL PENALTIES.

01. ~~Civil Penalties.~~ In addition to any other penalty provided by law, the Director may assess civil penalties for violations of Title 22, Chapter 6, Idaho Code. Civil penalties will be issued in accordance ~~to the magnitude of the violation~~ with a penalty matrix established by a department guidance document. The department is not precluded from utilizing other enforcement alternatives. Enforcement alternatives may include, but are not limited to, letter of advisement, notice of violation, stop sale, use or removal order, and registration revocation, suspension or denial. ~~Prohibited acts are categorized as to the magnitude of violation as follows:~~ (4-6-05)()

a. ~~Category I (Major).~~ ~~The Director may issue a civil penalty for initial Category I violations in addition to any alternative enforcement action deemed necessary to protect the public interests. Category I violations include but are not limited to the following:~~ (4-6-05)

i. ~~Register or attempt to register any fertilizer using fraudulent or deceptive practices to evade or attempt to evade the requirements set forth under Title 22, Chapter 6, Idaho Code, or rules adopted thereunder;~~ (4-6-05)

ii. ~~Submit false or fraudulent registration applications, records, invoices or reports;~~ (4-6-05)

iii. ~~Sell, use or remove any fertilizer subject to a Stop Sale, Use or Removal Order until the fertilizer has been released in accordance with the provisions of Title 22, Chapter 6, Idaho Code.~~ (4-6-05)

iv. ~~Impede, obstruct, hinder or otherwise prevent or attempt to prevent the department from the performance of its duties under Title 22, Chapter 6, Idaho Code.~~ (4-6-05)

b. ~~Category II (Moderate).~~ ~~The Director may take initial alternative enforcement action and may~~

~~allow a specified amount of time to take corrective action prior to issuance of a civil penalty for a Category II violation. Failure to complete the required corrective action within the specified time period, or repeat violations, will result in the issuance of a civil penalty. Category II violations include but are not limited to the following:~~

~~(4-6-05)~~

~~i. Sell, offer for sale, or distribute adulterated fertilizers; (4-6-05)~~

~~ii. Fail, refuse, or neglect to keep or maintain records as required under Title 22, Chapter 6, Idaho Code, or refuse to make available such records upon request by the department; (4-6-05)~~

~~iii. Knowingly or intentionally make any false or misleading representations in connection with the sale, offer for sale, or distribution of fertilizer. (4-6-05)~~

~~e. Category III (Minor). The Director may take initial alternative enforcement action in writing and may allow a specified amount of time to take corrective action prior to the issuance of a civil penalty for a Category III violation, except in the case of a deficiency as listed in Subsection 090.01.c.i.(1), in which case a civil penalty will be issued. Failure to complete the corrective action within the specified time period, or repeat violations, may result in the issuance of a civil penalty. Category III violations include but are not limited to the following: (4-6-05)~~

~~i. Sell, offer for sale, or distribute mislabeled fertilizers, including, but not limited to, when the fertilizer is: (4-6-05)~~

~~(1) A specialty fertilizer deemed deficient as defined in Section 22-603 (7), Idaho Code; (4-6-05)~~

~~(2) Labeled in violation of Section 22-607, Idaho Code. (4-6-05)~~

~~ii. Fail, refuse, or neglect to deliver to a purchaser of a bulk fertilizer a printed label that complies with Section 22-603 (2) and (3), Idaho Code; (4-6-05)~~

~~iii. Sell, offer for sale, or distribute a fertilizer that is not registered pursuant to Section 22-605, Idaho Code; (4-6-05)~~

~~iv. Fail, refuse, or neglect to file a semi-annual tonnage report pursuant to Sections 22-608 and 22-609, Idaho Code; (4-6-05)~~

~~v. Fail, refuse, or neglect to pay inspection fees required under Section 22-608, Idaho Code. (4-6-05)~~

~~02. **Maximum Civil Penalties.** Penalties for Category II and III violations will accrue during one (1) calendar year; Violations for Category I will accrue during periods of three (3) calendar years beginning these intervals with the year 2004.~~

Category	1st Violation	2nd Violation	3rd+ Violation
Category I (Major)	\$500	\$1500	\$10,000
Category II (Moderate)	\$250	\$750	\$5000
Category III (Minor)	\$125	\$250	\$500

~~(4-6-05)~~

~~03. **Payment of Penalties.** As authorized under Section 22-619, Idaho Code, a civil penalty imposed may be remitted or reduced upon such terms and conditions as the Director considers proper and consistent with the public health and safety; (4-6-05)~~

~~04. **Substantial Harm.** Any violation that results in substantial harm to human health or the environment, may be subject to a civil penalty of not more than ten thousand dollars (\$10,000) for the initial violation or any subsequent violation. (4-6-05)~~

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.20 - RULES GOVERNING GRAPE PLANTING STOCK
DOCKET NO. 02-0620-1101
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 22-2013, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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

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

This rule updates and clarifies the requirements for shipping grapevines into Idaho for planting. It outlines regulated pests, certifications needed, treatment requirements and penalties.

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

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government, because the federal government does not regulate the interstate movement of grapevines for any of the regulated pests listed in the rule.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, informal negotiated rulemaking was conducted. A committee consisting of stakeholders, including the Idaho Grape Growers and Wine Producers Commission, Idaho Nursery and Landscape Association, and the Snake River Table Grape Association, met on May 27th, 2010 and December 13, 2010.

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 Michael E. Cooper, Bureau Chief, (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 26, 2011.

DATED this 24th day of August, 2011.

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 OF DOCKET NO. 02-0620-1101

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.20, "Rules Governing Grape Planting Stock." (5-3-03)

02. Scope. This chapter has the following scope: These rules are to prevent the introduction of certain grape plant pests and plant diseases into the state of Idaho. To declare that a quarantine be established at the boundaries of the state of Idaho. To define the area regulated under the quarantine, regulated commodities, regulations governing shipments, disposition of commodities in violation of quarantine rules, authority to enter, inspect, and control and penalties. The official citation for this chapter is IDAPA 02.06.20.000 et seq. For example, this section's citation is IDAPA 02.06.20.001. (~~5-3-03~~)()

(BREAK IN CONTINUITY OF SECTIONS)

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

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. (5-3-03)

02. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. (5-3-03)

03. Street Address. The central office is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. (5-3-03)

04. Shipment Notifications. Shipment notifications may be faxed to (208) 334-2283 or emailed to Nsy.Idaho@agri.idaho.gov. ()

(BREAK IN CONTINUITY OF SECTIONS)

050. REGULATED AREAS ~~UNDER QUARANTINE.~~
All areas outside of the territorial borders of the state of Idaho. (2-21-72)

051. -- 099. (RESERVED)

100. REGULATED COMMODITIES.
Plants and all parts thereof (except fruits) Planting stock of grape (Vitis species) including live plants, hardwood cuttings, softwood cuttings, rootstocks, and any other parts of the grape plant, except fruit, capable of propagation (except fruit). (~~2-21-72~~)()

101. REGULATED PESTS.
Regulated pests include, but are not limited to: ()

01. Grapevine Fanleaf Virus.: ()

02. Grapevine Leaf Roll - Associated Viruses.: ()

- 03. Grapevine Corky Bark Disease. Which include but may not be limited to: ()**
- a. Grapevine virus A; and ()**
- b. Grapevine virus B and synonym rugose wood complex; ()**
- 04. Grape Phylloxera. (*Daktulosphaira vitifoliae*); ()**
- 05. Pierce's Disease. As caused by the bacterium *Xylella fastidiosa*; ()**
- 06. Vine Mealybug. (*Planococcus ficus*); and ()**
- 07. Glassy-Winged Sharpshooter. (*Homalodisca vitripennis*, formerly known as *H. coagulata*); ()**

~~104~~2. -- 149. (RESERVED)

150. RULES GOVERNING SHIPMENTS.

01. Admittance into Idaho. ~~Plants and parts thereof of grapes will be admitted into the state of Idaho provided the following provisions are complied with. Each shipment of a regulated article from a regulated area must be accompanied by a certificate issued by the state or country of origin's plant protection organization, stating that the grape planting stock to be imported has been certified in accordance with the regulations of an official grapevine certification program of the state or country of origin's plant protection organization, that includes annual inspections at all certification levels and testing at the foundation level for regulated pests and;~~ (2-21-72)()

~~**a.** European or wine grape (*Vitis vinifera*) plants or parts thereof will be admitted when accompanied by phytosanitary certificate, issued by a legal certifying agency of the state of origin, certifying the regulated commodities to be free from known virus diseases and plant pests detrimental to grapes. Phytosanitary certificates are to reach the office of the Division of Plant Industries, Boise, Idaho, ten (10) days prior to shipment. (2-21-72)~~

~~**b.** All other grape (*Vitis* species) and all hybrid grape plants or parts thereof will be admitted when evidence is given that the regulated commodities were treated, heat or fumigation, for plant pests detrimental to grapes. Type of treatment must meet with the approval of the Director of the Idaho Department of Agriculture. (2-21-72)~~

~~**c.** All rooted grape plants (not rooted in sterile media) of (*Vitis vinifera* and/or *Vitis* species) will be admitted when evidence is given that the regulated commodities were treated, heat or fumigation, for plant pests detrimental to grapes, and which type of treatment must meet with the approval of the Director of the Idaho Department of Agriculture. (2-21-72)~~

a. The grapevines, rootstock and/or softwood cuttings were grown in and shipped from an area known to be free from regulated pests; or ()

b. For small shipments (five hundred (500) or less) of un-rooted softwood cuttings, were individually inspected by an authorized inspector and were found to be free from regulated pests; or ()

c. The grapevines, rootstock or softwood cuttings were grown under a sterile soil-less media and treated with a soil or systemic insecticide and a hot water dip treatment, as outlined in Section 155 of this rule, proven to be effective against vine mealybug and any other pests that may be present on the roots; or ()

d. The grapevines, rootstock, and/or softwood cuttings were subject to one (1) of the two (2) treatments outlined in Section 155 of this rule, or such additional methods as may be determined to be effective and are approved by the director and were stored in a manner after treatment that would prevent re-infestation. ()

02. Marking Contents and Treatment. All shipments of grape ~~plants or parts thereof shall be~~ planting stock must be plainly marked with the contents ~~and treatment applied~~ on the outside of the package or container.

(2-21-72)()

03. ~~Shipment Inspection Provisions. Any and all shipments of commodities under the foregoing provisions must be held by the person who ordered such grape plants or parts thereof. Such person shall immediately notify the Department at the time the grape plants or parts thereof are received. The person shipping or moving the grape plants or parts thereof into Idaho shall immediately notify the Department at the time of shipment. The grape plants or parts thereof shall be held as required by this Subsection until they have been inspected and passed by the Director of the Idaho Department of Agriculture, his deputy, or by a state plant quarantine officer.~~ **Shipment Notification.** Persons shipping or transporting grape planting stock into this state from areas under regulation shall notify the department by electronic mail, regular mail or fax prior to shipment at the address, electronic mail address or fax number set forth in Section 005 for specific notification information. The notification must include the nature of the grape planting stock (such as live plants, hardwood cuttings, softwood cuttings, rootstocks, or other similar categories), the quantity in each shipment, the expected date of arrival, the name of the intended receiver and the destination. Notification shall also include an official certificate issued by the plant protection organization of the state of origin certifying that the grapevines meet the requirements of this chapter must accompany the grape planting stock into the state. All treatments and inspections must have been witnessed or performed by an official of the state of origin's plant protection organization. (2-21-72)()

151. -- 19954. (RESERVED)

155. ACCEPTABLE TREATMENTS.

01. **Hot Water Treatment.** Dormant, rooted grapevines or rootstock shall be washed to remove all soil or other propagative media. Dormant rooted plants or rootstock shall be immersed in a hot water bath for a period of not less than three (3) minutes, nor more than five (5) minutes, at a temperature of not less than one hundred twenty-five degrees Fahrenheit (125° F.) or fifty-two degrees Celsius (52° C.), nor more than one hundred thirty degrees Fahrenheit (130° F.) or fifty-five degrees Celsius (55° C.) at any time during immersion; or ()

02. **Methyl Bromide Fumigation.** Grapevines, rootstock or softwood cuttings may be treated by methyl bromide fumigation. Fumigation shall be in an approved gastight fumigation chamber, equipped with a heating unit, a fan for dispersal of gas and clearing the chamber of gas after fumigation, and an interior thermometer readable from the outside. Fumigation shall be with a dosage of two (2) pounds (nine-hundred eight thousandths of a kilogram (0.908 kg.)) of methyl bromide per one thousand (1,000) cubic feet (twenty-eight (28) cubic meters) for a period of three (3) hours at a temperature of between sixty-five degrees Fahrenheit (65° F.) or eighteen point three degrees Celsius (18.3° C.) and seventy degrees Fahrenheit (70° F.) or twenty-one point one degrees Celsius (21.1° C.). The fan shall be operated for a period of ten (10) minutes after the injection of the gas. ()

03. **Other Methods.** Upon written application to the Director, variations to the above mentioned acceptable treatments or additional treatment methods may be considered. ()

156. -- 199. (RESERVED)

200. DISPOSITION OF COMMODITIES IN VIOLATION OF QUARANTINE RULES.

Any commodity set forth in Section 150 of ~~this quarantine~~ **these rules**, or any grape plants or parts thereof, not meeting the requirements of ~~this quarantine~~ **these rules** shall immediately be sent out of the state of Idaho or destroyed at the option and expense of the owner or owners, his or their responsible agents and under the direction of the Director ~~of the Idaho Department of Agriculture or his deputies.~~ (2-21-72)()

IDAPA 02 - DEPARTMENT OF AGRICULTURE
02.06.30 - RULES UNDER THE IDAHO BEE INSPECTION LAW
DOCKET NO. 02-0630-1101
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 22-2511, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Updates to the rule reflect the re-numbering of the Bee Inspection Law Title 22, Chapter 25, Idaho Code. In addition, sections required by the Office of the Administrative Rules Coordinator have been added to the rule. The emphasis on which diseases will be inspected for has shifted and will be reflected 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 resulting from this rulemaking: N/A

IDAHO CODE SECTION 22-101A STATEMENT: This proposed rule does regulate an activity not regulated by the federal government, because the federal government does not regulate the interstate movement of honeybees or the keeping of honeybees. However, the existing rule has been in effect since 1991. The proposed rule updates references to Idaho Code sections, updates information regarding bee diseases, removes a rule for which there is no longer statutory authority, and adds rule provisions that are now standard in Idaho's administrative rules.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes are housekeeping changes to the rule and do not require anything of the affected public.

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 Michael E. Cooper, Bureau Chief, (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 26, 2011.

DATED this 16th day of August, 2011.

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 OF DOCKET NO. 02-0630-1101

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of Title 22, Chapter 25, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 02.06.30, "Rules Under the Idaho Bee Inspection Law." ()

02. Scope. This chapter has the following scope: These rules are to prevent the introduction or further dissemination of certain bee diseases into the state of Idaho. To provide authority to enter, inspect, and control bee pests and levy penalties. The official citation for this chapter is IDAPA 02.06.20.000 et seq. For example, this section's citation is IDAPA 02.06.20.001. ()

002. WRITTEN INTERPRETATIONS.

There are no written interpretations of these rules. ()

003. ADMINISTRATIVE APPEAL.

Hearing and appeal rights are set forth in Title 67, Chapter 52, Idaho Code. ()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. ()

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

01. Office Hours. Office hours are 8 a.m. to 5 p.m. Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. ()

02. Mailing Address. The mailing address for the central office is Idaho State Department of Agriculture, P.O. Box 790, Boise, Idaho 83701. ()

03. Street Address. The central office is located at 2270 Old Penitentiary Road, Boise, Idaho 83712. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are public records available for inspection and copying at the Department and the State Law Library. ()

~~007.~~ -- 009. (RESERVED)

Codified Section 010 has been moved and renumbered to proposed Section 015.

010. DEFINITIONS.

The Department adopts the definitions set forth in Section 22-2502, Idaho Code. ()

011. -- 014. (RESERVED)

015. REGULATED BEE DISEASES.

~~Certain diseases of bees,~~ Specifically, American foulbrood, European foulbrood, sac brood and bee paralysis, Varroa mite, tracheal mite, or any other disease or abnormal condition of egg, larval, pupal, or adult stages of honey bees, hereinafter is referred to as bee diseases. (H-21-91)()

~~0146~~ -- 049. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

150. INSPECTION PROCEDURES.

01. Request for Inspection. All beekeepers requiring an apiary inspection shall complete the "Request for Inspection" form provided by the Department of Agriculture. Information shall include name, address, telephone number of the applicant, number of colonies to be inspected and the state(s) to which entry is desired. The applicant agrees to pay the costs of the inspection according to the fee schedule in Section 300. The request for inspection must be returned to the Department of Agriculture no later than August 15 of each year. Late requests will be accepted through August 31, after which no requests for inspection will be accepted. No inspections will be conducted after ~~October~~ November 15 of each year. Apiaries found free of disease will be entitled to receive a health certificate valid for one (1) year from date of issuance permitting access to those states which require and recognize Idaho certification. (11-21-91)()

02. Disease Inspection. The apiary inspector shall inspect for all diseases and pests cited in Section 0105, specifically for American foulbrood and Varroa mite or other bee diseases as specified by the importing state regulatory agency. (11-21-91)()

03. Posting of Registration. All apiaries located within the state of Idaho shall be conspicuously posted with the name, address and telephone number and state registration number of the owner. (11-21-91)

04. Necessary Precautions. The apiary inspector shall take all necessary precautions to properly disinfect all tools and any other thing which may have come into contact with diseased bees or equipment to prevent spread of the disease. (11-21-91)

(BREAK IN CONTINUITY OF SECTIONS)

~~201. -- 249.~~ (RESERVED)

~~250. HEALTH CERTIFICATE FOR IMPORT PERMIT.~~

~~The certificate of health from the state of origin required for an importation permit as provided by Idaho Code, Section 22-2526 shall specifically state that the apiary was inspected and found free of American foulbrood and Varroa mite.~~ (11-21-91)

~~251. — 299.~~ (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

350. VIOLATION.

Violation of any of the provisions of the Idaho Bee Inspection Law, Title 22, Chapter 25, Idaho Code, or rules promulgated thereunder is a misdemeanor. A civil penalty may also be assessed pursuant to Idaho Code, Section 22-2539(2)12. (11-21-91)()

IDAPA 02 - DEPARTMENT OF AGRICULTURE

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

DOCKET NO. 02-0641-1101

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 19, 2011.

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 2012 Official Publication of the Association of American Plant Food Control Officials; add an incorporation by reference of the "2005 Official Methods of Analysis (OMA) of the AOAC," 18th Edition, published by the Association of Official Agricultural Chemists (AOAC) International; Remove the sub-section regarding PAM products, and amend the labeling requirements to include Guaranteed Analysis and directions for use.

IDAHO CODE SECTION 22-101A STATEMENT: This rule does regulate an activity not already regulated by the federal government, because the federal government does not regulate Soil and Plant Amendments. The rule is, however, consistent with national standards by the Association of American Plant Food Control Officials.

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 and the Official Methods of Analysis (OMA) published by the Association of Official Agricultural Chemists (AOAC) International are the recognized and primary reference books of approved fertilizer terms, ingredient definitions and policies used by the fertilizer and soil and plant amendment industry and all state and Federal fertilizer and soil and plant amendment control officials and regulators.

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 26, 2011.

DATED this 16th day of August, 2011.

Brian J. Oakey, Deputy Director
Idaho State Department of Agriculture
2270 Old Penitentiary Road, Boise, ID 83712

P.O. Box 790, Boise, ID 83701-0790
Phone: (208) 332-8500
Fax: (208) 332-4062

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 02-0641-1101

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 02.06.41 incorporates by reference: (4-7-11)

01. The Association of American Plant Food Control Officials (AAPFCO) Official Publication. The terms, ingredient definitions and policies as published in the “201~~4~~2 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: http://www.aapfco.org/publication_order_form.pdf. (~~4-7-11~~)()

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>. (4-7-11)

03. The Association of Official Agricultural Chemists (AOAC) International. The “2005 Official Methods of Analysis (OMA) of the AOAC.” 18th Edition, a copyrighted publication, is maintained and published by the AOAC International. The AOAC OMA is available in electronic format at: www.EOMA.AOAC.org. A copy may be purchased online from AOAC International. ()

(BREAK IN CONTINUITY OF SECTIONS)

008. ABBREVIATIONS.

- 01. AAPFCO.** Association of American Plant Food Control Officials. (3-15-02)
- 02. AOAC.** Association of Official Analytical Chemists, International. (3-15-02)
- 03. ISDA.** Idaho State Department of Agriculture. (3-15-02)
- ~~**04. PAM.** Polyacrylamide. (3-15-02)~~

(BREAK IN CONTINUITY OF SECTIONS)

010. SOIL AMENDMENT AND PLANT AMENDMENT REGISTRATION.

Each separately identifiable soil amendment or plant amendment product shall be registered pursuant to Section 22-2205, Idaho Code. (3-15-02)

01. Product Registration. All soil amendment and plant amendment companies, including companies engaged in custom-formula mixing of dry or liquid soil amendments or plant amendments, shall comply with the product registration requirements of the Idaho Soil and Plant Amendment Act of 2001, Section 22-2205, Idaho Code, subject to the provisions of this chapter. (3-15-02)

02. Exemptions from Registration. (3-15-02)

a. Dried animal manure without nutrient claims and not commercially packaged or labeled. (3-15-02)

- b. Horticultural growing media containing live plant material. (3-15-02)

03. Alteration from Original State. When a soil amendment or plant amendment that has been registered is mixed, added to, or in any way changed from its original content, it is a different product, and must be registered as provided under Section 22-2205, Idaho Code. (3-15-02)

04. Sale of Soil Amendment or Plant Amendment. When a commercial soil amendment or plant amendment is removed from the package or container 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 22-2205, Idaho Code, except that it shall not be subject to an additional inspection fee as provided under Section 22-2208, Idaho Code, provided that said fee was paid on the product by the original or prior registrant. (3-15-02)

~~05. **PAM Products.** PAM polymers must have residual acrylamide monomer limits of no greater than five hundredths percent (0.05%). The following information must be submitted to register PAM products:~~ (3-15-02)

- ~~a. Percent of residual acrylamide monomer; (3-15-02)~~
~~b. Charge of polymer (cationic, anionic, nonionic); (3-15-02)~~
~~c. Branching characteristic of polymer (linear, cross-linked); and (3-15-02)~~
~~d. Molecular weight of polymer. (3-15-02)~~

011. -- 029. (RESERVED)

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)

~~021. **Declaration of Ingredient Percentage** **Content or Guaranteed Analysis Exemptions.** ()~~

~~a.~~ The labeling requirements of the Idaho Soil and Plant Amendments Act of 2001, Section 22-2207(1)(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~~ single ingredient soil amendments, when clearly and conspicuously identified as such on the label, are exempt from the content or guaranteed analysis: (3-15-02)()

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

~~i. Mulch; ()~~

~~ii. Peat; ()~~

~~iii. Perlite; ()~~

~~iv. Vermiculite; and ()~~

~~v. Vermicompost. ()~~

~~b.~~ In lieu of a content or guaranteed analysis as required in 22-2207(1)(c), Idaho Code, the label of the following soil amendments when clearly and conspicuously identified as such on the label may include an ingredient statement: ()

~~bi. Compost; (3-15-02)()~~

ii. Garden Soil: ()

iii. Landscape Soil: ()

iv. Mulch: ()

v. Planting Mix; and ()

vi. Potting Mix. ()

c. In lieu of a content or guaranteed analysis as required in Section 22-2207(1)(c), Idaho Code, a product that claims the presence of a microbe(s), other than naturally occurring microbes, shall guarantee the microbe(s) as follows: ()

i. Minimum number of each claimed viable organism at the genus and species level in colony forming units (CFU), spores or propagules per gram or milliliter (cm3): ()

ii. Expiration date; and ()

iii. Storage & handling instructions. ()

032. 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. (4-7-11)

043. 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)

054. 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)

065. 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)

07.6. **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)

07. **Precautionary Statements.** ISDA may require precautionary statements when needed for safe and effective use of the soil amendment or plant amendment. ()

IDAPA 03 - STATE ATHLETIC COMMISSION

03.01.01 - RULES OF THE STATE ATHLETIC COMMISSION

DOCKET NO. 03-0101-1101 (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 54-416, 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 19, 2011.

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 State Athletic Commission's fund balance was (\$140,883) at the end of FY2011. This change will help provide additional revenue.

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

The application fee for a promoter is being increased from five hundred (\$500) to one thousand (\$1000) dollars. The application fee for a sanction permit is being increased from twenty-five (\$25) to two hundred (\$200) dollars. The application fees for combatants and non-combatants is being increased from thirty dollars (\$30) to one hundred fifty dollars (\$150). The application fee for a matchmaker is being increased from one hundred dollars (\$100) to two hundred fifty dollars (\$250). The application fee for a ring official is being increased from thirty dollars (\$30) to one hundred fifty dollars (\$150). Finally, the renewal fees are being increased as follows: a promoter renewal is being increased from one hundred (\$100) to seven hundred fifty (\$750) dollars; a combatant and noncombatant renewal is being increased from thirty dollars (\$30) to one hundred fifty dollars (\$150); a matchmaker renewal is being increased from one hundred (\$100) to two hundred fifty dollars (\$250); and the ring official renewal is being increased from thirty dollars (\$30) to one hundred fifty dollars (\$150). The anticipated impact is a total positive impact of \$43,880 to the dedicated fund based on the number of licensees and the number of sanction permits issued in the last fiscal year.

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 State Athletic Commission continues to have a negative balance. This change will help provide additional revenue estimated at \$43,880 based on the number of licensees at the end of FY2011. The Board's fund balance at the end of fiscal year 2011 was (\$140,883). The Commission's expenses have exceeded its revenues by \$49,116 in FY 2011, \$35,482 in FY 2010, and \$62,678 in FY 2009.

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 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 26, 2011.

DATED this 31st day of August, 2011.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State St.
Boise, ID 83720-0063
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 03-0101-1101

104. FEES (RULE 104).

- 01. Application.** Application fee: (3-26-08)
- a. Combatant - ~~thirty~~ **one hundred fifty** dollars (~~\$3150~~ **\$3150**). (~~3-26-08~~)()
 - b. Non-combatant - ~~thirty~~ **one hundred fifty** dollars (~~\$3150~~ **\$3150**). (~~3-26-08~~)()
 - c. Matchmaker - ~~one~~ **two** hundred ~~fifty~~ dollars (~~\$10250~~ **\$10250**). (~~3-26-08~~)()
 - d. Promoter - ~~five hundred~~ **one thousand** dollars (~~\$51000~~ **\$51000**). (~~3-26-08~~)()
 - e. Sanction permit - ~~twenty five~~ **two hundred** dollars (~~\$2500~~ **\$2500**). (~~3-26-08~~)()
 - f. Ring official - ~~thirty~~ **one hundred fifty** dollars (~~\$3150~~ **\$3150**). (~~3-29-10~~)()
- 02. Renewal of License/Permit.** Annual renewal fee: (3-26-08)
- a. Combatant - ~~thirty~~ **one hundred fifty** dollars (~~\$3150~~ **\$3150**). (~~3-26-08~~)()
 - b. Non-combatant - ~~thirty~~ **one hundred fifty** dollars (~~\$3150~~ **\$3150**). (~~3-26-08~~)()
 - c. Matchmaker - ~~one~~ **two** hundred ~~fifty~~ dollars (~~\$10250~~ **\$10250**). (~~3-26-08~~)()
 - d. Promoter - ~~one~~ **seven** hundred ~~fifty~~ dollars (~~\$10750~~ **\$10750**). (~~3-26-08~~)()
 - e. Ring official - ~~thirty~~ **one hundred fifty** dollars (~~\$3150~~ **\$3150**). (~~3-29-10~~)()

IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS

05.01.02 - RULES AND STANDARDS FOR SECURE JUVENILE DETENTION CENTERS

DOCKET NO. 05-0102-1101

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 20-504(2), and 20-504(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 19, 2011.

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 changes reflect current practices, language clean-up, and address the Prison Rape Elimination Act (PREA).

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:

The fiscal impact for the implementation of the Prison Rape Elimination Act (PREA) is still being determined by the federal government; there will be no other fiscal impact with these changes.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was not published. However, the Detention Standards Committee met regularly and consulted with all Detention Administrators to determine appropriate changes. All Administrators have expressed their support for 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 Sharon Harrigfeld, Director, Idaho Department of Juvenile Corrections at 334-5100 x 404.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

Sharon Harrigfeld, Director
Idaho Department of Juvenile Corrections
954 W. Jefferson St.
Boise ID 83702-0285
Phone: (208) 334-5100 ext. 404
Fax: (208) 334-5120

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 05-0102-1101

010. DEFINITIONS.

As used in this chapter: (4-5-00)

- 01. Adult.** A person eighteen (18) years of age or older. (4-5-00)
- 02. Body Cavity Search.** The examination and possible intrusion into the rectal or vaginal cavities to detect contraband. It is performed only by the medical authority. (4-5-00)
- 03. Chemical Agent.** An active substance, such as oleoresin capsicum, used to deter disturbances that might cause personal injury or property damage. (4-5-00)
- 04. Classification.** A process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to housing units and/or programs according to their needs and existing resources. (4-5-00)
- 05. Commit.** Commit means to transfer legal custody to the Idaho Department of Juvenile Corrections. (3-30-07)
- 06. Community-Based Program.** An in-home detention program or a nonsecure or staff secure residential or nonresidential program operated to supervise and provide competency development to juvenile offenders in the least restrictive setting, consistent with public safety, operated by the state or under contract with the state or by the county. (3-30-07)
- 07. Contact Visiting.** A program that permits juvenile offenders to visit with designated person(s). The area is free of obstacles or barriers that prohibit physical contact. (3-30-07)
- 08. Contraband.** Any item not issued or authorized by the detention center. (3-30-07)
- 09. Corporal Punishment.** Any act of inflicting punishment directly on the body, causing pain or injury. (4-5-00)
- 10. Court.** Idaho district court or magistrate's division thereof. (3-30-07)
- 11. Day Room/Multi-Purpose Room.** That portion of the housing unit used for varied juvenile offender activities which is separate and distinct from the sleeping rooms. (3-30-07)
- 12. Department.** The Idaho Department of Juvenile Corrections. (3-30-07)
- 13. Detention.** Detention means the temporary placement of juvenile offenders who require secure custody for their own or the community's protection in physically restricting facilities. (3-30-07)
- 14. Detention Center.** A facility established pursuant to Title 20, Chapter 5, Sections 20-517 and 20-518, Idaho Code, for the temporary placement of juvenile offenders who require secure confinement. (3-30-07)
- 15. Detention Records.** Information regarding the maintenance and operation of the detention center including but not limited to correspondence, memorandums, complaints regarding the detention center, daily activity logs, security and fire safety checks, head counts, health inspection records, and safety inspection records, use of physical force records and use of restraints records, incident reports, employee training and certification for use of security equipment. (3-30-07)
- 16. Direct Care Staff.** Any care staff member charged with day-to-day supervision of juvenile offenders housed in a juvenile detention center. (3-30-07)

17. **Director.** The Director of the Idaho Department of Juvenile Corrections. (3-30-07)
- ~~18.~~ **Electroshock Weapons.** Weapons used for subduing a person by administering an electric shock which disrupts muscle function. ()
- ~~189.~~ **Emergency Care.** Care for an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call. Emergency care shall be provided to the juvenile offender population by the medical staff, physician, other appropriately trained staff, local ambulance services or outside hospital emergency rooms. (3-30-07)
- ~~1920.~~ **Emergency Plans.** Written documents that address specific actions to be taken in an institutional emergency or catastrophe such as a medical emergency, fire, flood, riot or other major disruption. (4-5-00)
- ~~201.~~ **Health Appraisal.** An evaluation of a patient's current physical and mental condition and medical histories conducted by the health authority or medical employee. (3-30-07)
- ~~212.~~ **Health Authority.** The physician, health administrator, or agency responsible for the provision of health care services at the detention center. (3-30-07)
- ~~223.~~ **Health-Trained Employee.** A person who operates within the limits of any license or certification to provide assistance to a physician, nurse, physician's assistant, or other professional medical staff. Duties may include preparing and reviewing screening forms for needed follow-up; preparing juvenile offenders and their records for sick call; and assisting in the implementation of medical orders regarding diets, housing, and work assignments. (3-30-07) ()
- ~~234.~~ **Housing Unit.** The total living area available to a group or classification of juvenile offenders in a detention center. This area may consist of a dormitory or a combination of the space in each sleeping room and day room/ multi-purpose room. (3-30-07)
- ~~245.~~ **Incident Report.** A written document reporting any occurrence or event, or any other incident which threatens the safety and security of direct care staff, juvenile offenders or others, or which threatens the security of the program and which requires a staff response. (3-30-07)
- ~~256.~~ **Judge.** A district judge or a magistrate. (4-5-00)
- ~~267.~~ **Juvenile.** A person less than eighteen (18) years of age. (3-30-07)
- ~~278.~~ **Juvenile Detention Records.** Information maintained in hard copy or electronic format concerning the individual's delinquent or criminal, personal, and medical history and behavior and activities while in detention. (3-30-07)
- ~~289.~~ **Juvenile Offender.** A person who was under the age of eighteen (18) at the time of any act, omission or status bringing the person within the purview of the Juvenile Corrections Act. (3-30-07)
- ~~2930.~~ **Legal Custody.** The relationship created by the court's decree which imposes upon the custodian responsibilities of physical possession of the juvenile offender, the duty to protect, train and discipline him and to provide him with food, shelter, education and ordinary medical care. (3-30-07)
- ~~301.~~ **Legal Guardian.** A person appointed as guardian of a minor under the laws of Idaho. For the purposes of this chapter, legal guardian does not include and shall not be construed to include the owner, operator or the agent of an owner or operator of a detention center, observation and assessment center, secure facility, residential facility or other facility having temporary or long-term physical custody of the juvenile offender. (4-5-00)
- ~~312.~~ **Mechanical Restraints.** Devices used to restrict physical activity. (3-30-07)
- ~~323.~~ **Medical Employee.** A certified or licensed person such as a physician, nurse, physician's assistant,

or emergency medical technician who works under the supervision and authority of the health authority consistent with their respective levels of licensure, certification, training, education and experience. (3-30-07)()

334. Medical Records. Separate records of medical examinations and diagnoses maintained by the health authority. (4-5-00)

345. Intake Medical Screening. A system of structured observation/initial health assessment of newly arrived juvenile offenders. Medical screenings may be performed by a medical employee or ~~by a~~ health-trained employee, or by a juvenile detention officer using a checklist approved by the Health Authority. (3-30-07)()

356. Observation and Assessment Program. A residential or nonresidential program designed to complete assessments of juvenile offenders. (3-30-07)

367. Pat Search. The touching or feeling of a subject's clothed body to detect contraband. (4-5-00)

378. Perimeter Security. A system that controls ingress and egress to the interior of a detention center or institution. The system may include electronic devices, walls, fence, patrols or towers. (3-30-07)

389. Perimeter Security Check. Physical inspection of the perimeter of the detention center performed for the purpose of discovering or preventing security breach. May include the inspection of the perimeter of the detention center and adjacent containment fence or areas as designated by detention center policy and procedures. (3-30-07)

3940. Petition for Exemption. A formal written document addressed to the Director of the Idaho Department of Juvenile Corrections requesting exception from a detention center standard. The petition for exemption must contain written justification why the petitioner should be relieved from enforcement of specific detention standard(s). (3-30-07)

401. Physical Intervention. Appropriate physical control used in instances of justifiable self-defense, protection of others, protection of property, or prevention of escapes. (3-30-07)

412. Policy and Procedures. Standard operating strategies and processes developed by the administrative authority governing detention center operations. (3-30-07)

a. Policy is a course of action that guides and determines present and future decisions and actions. Policies indicate the general course or direction of an organization within which the activities of the direct care staff must operate. (3-30-07)

b. Procedure is the detailed and sequential action which must be executed to ensure that policy is implemented. It is the method of performing an operation or a manner of proceeding on a course of action. It differs from a policy in that it directs actions required to perform a specific task within the guidelines of the policy. (4-5-00)

423. Rated Capacity. The maximum number of juvenile offenders which may be housed in a particular room, housing unit, or detention center based upon available square footage, sanitation fixtures, and other physical plant features specified in these rules. (3-30-07)

434. Renovation. The alteration of the structure of any existing juvenile detention center, or portion thereof, for the purposes of changing or improving its function. This may include, but not be limited to, altering the physical layout of essential areas within the detention center or reconstruction of the existing structure, areas, or interior features. (3-30-07)

445. Rule Infraction. A violation of detention center rules of conduct or policy and procedures as governed by detention center policy and procedures. (3-30-07)

456. Safety Equipment. Devices primarily used for safety purposes such as but not limited to firefighting equipment, for example, chemical extinguishers, hoses, nozzles, water supplies, alarm systems, sprinkler systems, portable breathing devices, gas masks, fans, first aid kits, stretchers, and emergency alarms. (4-5-00)

~~467~~. **Secure Perimeter.** The outer portions of a detention center that provide for secure confinement of juvenile offenders. (3-30-07)

~~478~~. **Security Devices.** Equipment used primarily to confine and control detained persons and may include but is not limited to locks, gates, doors, bars, fences, screens, ceilings, floors, walls, and barriers, electronic monitoring equipment, security alarm systems, security light units, auxiliary power supplies, and other equipment used to maintain detention center security. (3-30-07)

~~489~~. **Staffing Plan.** A documented schedule which includes staffing of direct care staff, staffing ratios, resident activities, and the certification level of staff. (3-30-07)

~~4950~~. **Standards.** Rules for Secure Juvenile Detention Centers, IDAPA 05, Title 01, Chapter 02. (3-30-07)

~~501~~. **Strip Search.** A visual examination of a juvenile offender's naked body for weapons, contraband, injuries, or vermin infestations. This also includes a thorough search of the juvenile offender's clothing while such is not being worn. (~~3-30-07~~)()

~~512~~. **Volunteer.** A person who freely chooses to provide services to juvenile offenders or staff at a juvenile detention center, and is not compensated for the services or time. Volunteers are supervised by direct care staff. Volunteers shall not be unsupervised with juvenile offenders and will be supervised by direct care staff at the detention center. (~~3-30-07~~)()

011. -- 199. (RESERVED)

200. INSPECTION PROVISIONS.

The Idaho Department of Juvenile Corrections or its designee shall have the authority to visit and inspect all juvenile detention facilities to assess such facilities' compliance with these rules and any other standards outlined in Title 20, Chapter 5, Section 20-518, Idaho Code. (~~3-30-07~~)()

01. Annual Visits. Each juvenile detention center shall be subject to announced or unannounced visits by department representatives on at least an annual basis. (3-30-07)

02. Review of Logs, Records, Policy and Procedure Manuals, Memorandums and Reports. All logs, records, policy and procedures manuals, memorandums, training records, and incident and other reports shall be available for review excluding medical records, personnel records and personnel action reports. Idaho Department of Juvenile Corrections' representatives shall be allowed to observe and interview juvenile offenders and staff concerning any matter pertaining to these rules. Department representatives shall further have access to all parts of the detention center for the purpose of inspecting the physical plant. (~~3-30-07~~)()

201. DEPARTMENT PREPARED WRITTEN REPORT OR THEIR AGENTS.

Department representatives shall prepare a written report of each inspection within ~~thirty~~ ninety (~~30~~) days following such inspection and provide copies to the appropriate detention center administrator with copies to the governing body and the county attorney. The report will additionally be submitted to the Director of the Idaho Department of Juvenile Corrections for consideration and review of the issuance or renewal of a certificate. (~~4-2-08~~)()

(BREAK IN CONTINUITY OF SECTIONS)

210. DETENTION CENTER ADMINISTRATION.

01. Legal Entity. The public or private agency operating a detention center is a legal entity, part of a legal entity, or a political subdivision. (3-30-07)

02. Governing Body. Governing body shall mean any public or private entity established or delegated as a source of legislative or administrative authority to provide the fiscal needs of the detention center administrator so that he may carry out the provisions of these rules. (3-30-07)

03. Detention Center Administrator. The detention center shall have a designated administrator who shall be responsible for all detention center operations. (3-30-07)

04. Mission Statement. The detention center shall have a written mission statement which describes its philosophy and goals. (3-30-07)

05. Policy and Procedures. The detention center administrator shall develop and maintain written policy and procedures which shall safeguard the basic rights of juvenile offenders and shall safeguard the juvenile offenders' freedom from discrimination based upon sex, race, creed, religion, national origin, disability, or political belief and establish practices that are consistent with fundamental legal principles, sound correctional practices, and humane treatment. These written policy and procedures shall be reviewed on a regular basis, updated as needed and made available to all detention center employees ~~and the governing body~~. The policy and procedures manual shall submitted to the prosecuting attorney or other legal authority for review ~~as mandated by each detention center~~ and approved by county commissioners or other governing authority on an ~~regular~~ **annual** basis. **After such approval, a copy of the policy and procedures manual shall be submitted to the Department of Juvenile Corrections.** (3-30-07)()

211. FISCAL MANAGEMENT.

The annual budget request shall provide for an allocation of resources for detention center operations and programming. The methods used for collecting, safeguarding, and disbursing monies, including juvenile offenders' personal funds held by the ~~facility~~ **detention center**, shall comply with accepted accounting procedures and the laws of the state of Idaho. (3-30-07)()

212. STAFF REQUIREMENTS AND STAFF DEVELOPMENT.

01. Twenty-Four Hour Supervision. The detention center shall be staffed by detention center employees on a twenty-four (24) hour basis when juvenile offenders are being housed. (3-30-07)

02. Staffing. The detention center shall have staff to perform all functions relating to security, supervision, services and programs as needed to operate the detention center. The detention center shall have policy and procedures in place governing staffing and shall submit a staffing plan to the department prior to licensing and renewal. The following staffing plan is a recommendation only, and is not mandatory. It is recommended that the staffing plan have at least two (2) staff awake and on duty through sleeping hours and the following staff during waking hours as governed by the one (1) direct care staff to eight (8) juvenile offenders, plus one (1) staff rule: (3-30-07)

a. If the detention center houses eight (8) or fewer juvenile offenders, there should be at least one (1) direct care staff and one (1) other staff awake at all times. (3-30-07)

b. If the detention center houses more than eight (8) juvenile ~~s~~ **offenders**, there should be one (1) direct care staff for each eight (8) juvenile ~~s~~ **offenders** plus one (1) additional staff awake at all times. Example: if the detention center houses thirty-two (32) juvenile offenders, four (4) direct care staff would be recommended (one (1) staff to eight (8) juvenile offenders), plus one (1) additional staff for a total of five (5) staff. (3-30-07)()

03. Gender of Employees. At least one (1) of the detention center employees on duty should be female when females are housed in the detention center and at least one (1) should be male when males are housed in the detention center. An employee of the same gender as the juvenile offender being detained shall be on duty at the time of intake. (3-30-07)

04. Minimum Qualifications. (3-30-07)

a. Direct care staff, at the time of employment, shall meet the minimum criminal history background and certification requirements as provided in IDAPA 11.11.02, "Rules of the Idaho Peace Officer Standards and

Training Council for Juvenile Detention Officers.” (3-30-07)

b. Direct care volunteers, before starting volunteer services, shall meet the minimum criminal history background requirements as provided in IDAPA 11.11.02, “Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers.” (3-30-07)

05. Training and Staff Development Plan. Each juvenile detention center shall develop a staff training and development plan based on the policy and procedures of the detention center. The plan shall also ensure that all juvenile detention officers earn the juvenile detention officer certificate as mandated in IDAPA 11.11.02, “Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers.” (3-30-07)

a. All new direct care staff, ~~paid or unpaid~~, shall be provided orientation training. The orientation and training plan shall address areas including, but not limited to: ~~(3-30-07)~~()

- i. First aid/CPR; (3-30-07)
- ii. Security procedures; (3-30-07)
- iii. Supervision of juvenile offenders; (3-30-07)
- iv. Signs of suicide risks; (3-30-07)
- v. Suicide precautions; (3-30-07)
- vi. Fire and emergency procedures; (3-30-07)
- vii. Safety procedures; (3-30-07)
- viii. Appropriate use of physical intervention; (3-30-07)
- ix. Report writing; (3-30-07)
- x. Juvenile offender rules of conduct; (3-30-07)
- xi. Rights and responsibilities of juvenile offenders; (3-30-07)
- xii. Fire and emergency procedures; (3-30-07)
- xiii. Safety procedures; (3-30-07)
- xiv. Key control; (3-30-07)
- xv. Interpersonal relations; (3-30-07)
- xvi. Social/cultural life styles of the juvenile population; (3-30-07)
- xvii. Communication skills; ~~and~~ ~~(3-30-07)~~()
- xviii. Counseling techniques; ~~and~~ ~~(3-30-07)~~()
- ~~xix. Inappropriate sexual contact. ()~~

b. Ongoing training shall be provided at the minimum rate of twenty (20) hours for each subsequent year of employment. (3-30-07)

c. Volunteers and contractors shall be trained commensurate to their level of contact with juvenile offenders. ()

213. -- 214. (RESERVED)

215. DETENTION CENTER INFORMATION SYSTEMS.

01. Written Policy and Procedures. The detention center shall have written policy and procedures to govern the collection, management, and retention of information pertaining to juvenile offenders and the operation of the detention center. Written policy and procedures shall address, at a minimum, the following: (3-30-07)

- a. Accuracy of information, including procedures for verification; (4-5-00)
- b. Security of information, including access and protection from unauthorized disclosure; (4-5-00)
- c. Content of records; (4-5-00)
- d. Maintenance of records; (4-5-00)
- e. Length of retention; and (4-5-00)
- f. Method of storage or disposal of inactive records. (4-5-00)

02. Release of Information. Prior to release of information to agencies other than criminal justice authorities or other agencies with court orders for access, a written release of information shall be obtained from the juvenile offender's parent, legal guardian or through a court order with a copy of that release placed in the juvenile offender's file folder. (3-30-07)

03. Access to Records. Parents, legal guardians, legal representatives, and staff shall be permitted access to information in the juvenile offender's files and records as authorized by law. ~~Juvenile offender's shall be permitted reasonable access under appropriate supervision to information in their own files and records.~~ Absent a court order to the contrary, the detention center administrator may restrict ~~the juvenile offender's~~ access to certain information, or provide a summary of the information when its disclosure ~~to the juvenile offender~~ presents a threat to the safety and security of the detention center or may be detrimental to the best interests of the juvenile offender. If ~~a juvenile offender's~~ access to records is denied or restricted, documentation that states the reason for the denial or restriction shall be maintained by the detention center administrator. (3-30-07)()

216. DOCUMENTATION.

01. Shift Log. The detention center shall maintain documentation including time notations on each shift which includes the following information, at a minimum: (3-30-07)

- a. Direct care staff on duty; (3-30-07)
- b. Time and results of security or well-being checks and head counts; (4-5-00)
- c. Names of juvenile offenders received or discharged with times recorded; (3-30-07)
- d. Names of juvenile offenders temporarily released or returned for such purposes as court appearances, work/education releases, furloughs, or other authorized absences from the detention center with times recorded; (3-30-07)
- e. Time of meals served; (4-5-00)
- f. Times and shift activities, including any action taken on the handling of any ~~unusual or~~ routine incidents; (4-5-00)()
- g. Notation and times of entry and exit of all visitors, including physicians, attorneys, volunteers, and others; (4-5-00)

- h.** Notations and times of unusual incidents, problems, disturbances, escapes; ~~(4-5-00)~~()
- i.** Notations and times of any use of emergency or restraint equipment; and (4-5-00)
- j.** Notation and times of perimeter security checks. (4-5-00)
- 02. Housing Assignment Roster.** The detention center shall maintain a master file or roster board indicating the current housing assignment and status of all juvenile offenders detained. (3-30-07)
- 03. Visitor's Register.** The detention center shall maintain a visitor's register in which the following will be recorded: (3-30-07)
- a.** Name of each visitor; (4-5-00)
- b.** Time and date of visit; (4-5-00)
- c.** Juvenile offender to be visited; and (3-30-07)
- d.** Relationship of visitor to juvenile offender and other pertinent information. (3-30-07)
- 04. Juvenile Detention Records.** The detention center shall classify, retain and maintain an accurate and current record for each juvenile offender detained in accordance with the provisions of Title 31, Chapter 8, Section 31-871, Idaho Code. The record shall contain, at a minimum, the following: (3-30-07)
- a.** Booking and intake records; (4-5-00)
- b.** Record of court appearances; (4-5-00)
- c.** Documentation of authority to hold; (4-5-00)
- d.** Probation officer or caseworker, if assigned; (4-5-00)
- e.** Itemized inventory forms for all clothing, property, money, and valuables taken from the juvenile offender; (3-30-07)
- f.** Record of deposits/withdrawals from the juvenile offender's account; (3-30-07)
- g.** Classification records, if any; (4-5-00)
- h.** Records of participation in programs and services; (4-5-00)
- i.** Rule infraction reports; (4-5-00)
- j.** Records of disciplinary actions; (4-5-00)
- k.** Grievances filed and their dispositions; (4-5-00)
- l.** Release records; (4-5-00)
- m.** Personal information and emergency contact information; (4-5-00)
- n.** ~~Medical history and a~~ Documentation of a completed ~~admission~~ intake medical screening; ~~(3-30-07)~~()
- o.** Visitor records; (4-5-00)

- p. Incident reports; (4-5-00)
- q. Photographs. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

220. PROHIBITED CONTACT AND PRISON RAPE ELIMINATION ACT (PREA) COMPLIANCE.

~~01. **Sexual Contact.** The detention center shall have written policies prohibiting the sexual contact, by any employee, with a juvenile offender, as defined in Title 18, Chapter 61, Section 18-6110, Idaho Code. These policies shall contain at a minimum the following provisions:~~ (3-30-07)

~~a. The detention center shall make every effort to inform juvenile offenders of the means available to safely report rape and sexual activity;~~ (3-30-07)

~~b. The detention center shall provide two (2) or more avenues for a juvenile offender to report rape and sexual activity;~~ (3-30-07)

~~c. The detention center shall have a process, which requires reporting of any instance of solicitation of staff by juvenile offenders;~~ (3-30-07)

~~d. The detention center staff shall treat all information regarding sexual assault and sexual activity with confidentiality;~~ (3-30-07)

~~e. The detention center shall have a process in place for an initial internal investigation when a complaint is reported and a subsequent external investigation when rape or sexual activity is suspected;~~ (3-30-07)

~~f. The detention center shall make every attempt to house the juvenile offender who was allegedly sexually assaulted away from the accused offender until the investigation is complete; and~~ (3-30-07)

~~g. The detention center will provide at a minimum one (1) hour of annual training for staff concerning the statutory prohibition of sexual contact with a juvenile offender, including criminal prosecution.~~ (3-30-07)

021. Sexual Assault Abuse of Juvenile Offenders. The detention center, in accordance with Public Law 108-79, also known as the Prison Rape Elimination Act of 2003 (PREA), shall have written policy and procedures that promote zero tolerance toward the sexual assault abuse of juvenile offenders by staff or by other juvenile offenders. The policy and procedures shall contain, at a minimum, the following provisions:~~(3-30-07)~~()

a. The prohibition of any sexual abuse as defined by PREA or as defined in Title 18, Chapter 61, Section 18-6110, Idaho Code; ()

b. The appointment of a PREA Coordinator, as required to be determined by the detention center administrator; ()

c. The restrictions for cross-gender viewing and searches; ()

~~a~~d. The ~~detention center staff shall make every effort~~ process that will be in place to inform juvenile offenders of their right to be safe from sexual abuse and the means available to safely report ~~rape and~~ sexual activity abuse; (3-30-07)()

~~b~~e. The ~~detention center staff shall provide~~ provision of two (2) or more avenues for a juvenile offender to report ~~rape and~~ sexual activity abuse; (3-30-07)()

f. The process for gathering information to make classification and housing decisions to reduce the

risk of sexual victimization: ()

~~eg.~~ The ~~detention center staff shall treat~~ handling of all information regarding sexual ~~assault and sexual activity~~ abuse with confidentiality; (3-30-07)()

~~dh.~~ The ~~detention center shall have a~~ process which will be in place for an initial internal investigation when a complaint is reported and a subsequent external investigation when ~~rape or~~ sexual activity abuse is suspected; (3-30-07)()

~~ei.~~ ~~The detention center shall make every attempt to house the juvenile offender who was allegedly sexually assaulted away from the accused offender until the investigation is complete~~ The process to employ multiple protection measures, including housing changes or transfers for resident victims or abusers, removal of alleged staff or resident abusers from contact with victims; (3-30-07)()

j. The provision of timely and unimpeded access to crisis intervention services and medical and mental health care to victims; ()

~~gk.~~ The ~~detention center shall provide~~ provision and documentation of at ~~a minimum~~ least one (1) hour of annual training ~~on mandatory reporting procedures as outlined in Title 16, Chapter 16, Section 16-1605, Idaho Code.~~ for staff concerning the statutory prohibition of sexual abuse or sexual contact with a juvenile offender, including criminal prosecution; (3-30-07)()

l. The provision and documentation of training for all volunteers and contractors who have contact with residents on the agency's zero-tolerance policy regarding sexual abuse, sexual harassment, and reporting duties, based on the level of contact that they have with juveniles; ()

~~fm.~~ ~~If~~ The detention center ~~'s is selected to receive~~ participation in the yearly "Survey on Sexual Violence" from the Bureau of Justice Statistics, ~~the detention center shall complete and submit the survey;~~ and (3-30-07)()

n. The detention center's compliance with the promulgated Rules and Standards of the Prison Rape Elimination Act of 2003. ()

(BREAK IN CONTINUITY OF SECTIONS)

224. DETENTION CENTER SECURITY.

01. Security and Control Policy. The detention center's policy and procedures manual shall contain all procedures for detention center security and control, with detailed instructions for implementing these procedures, and are reviewed at least annually and updated as needed. The manual shall be made available to all staff. (3-30-07)

02. Personal Observation. The detention center shall have written policy and procedures which detention center policy and procedures shall govern the observation of all juvenile offenders and shall, at a minimum, require direct care staff to personally observe all juvenile offenders every thirty (30) minutes on an irregular schedule and the time of such checks shall be logged. More frequent checks should be made of juvenile offenders who are violent, suicidal, mentally ill, or who have other special problems or needs warranting closer observation. (3-30-07)

03. Cross Gender Supervision. The detention center shall have written policy and procedures governing supervision of female juvenile offenders by male employees and male juvenile offenders by female employees which shall be based on privacy needs and legal standards. Except in emergencies, detention center employees shall not observe juvenile offenders of the opposite sex in shower areas. Reasonable accommodation of privacy needs shall be observed. (4-2-08)

04. Head Counts. The detention center shall have written policy and procedures which shall outline a

system to physically count or account for all juvenile offenders, including juvenile offenders on work release, educational release, or other temporary leave status who may be absent from the detention center for certain periods of the day. At least three (3) documented counts shall be conducted every twenty-four (24) hours. At least one (1) count shall be conducted each shift and there shall be at least four (4) hours between each count. (3-30-07)

05. Camera Surveillance. Camera surveillance equipment ~~should~~ **shall** not be used in place of the personal observation of juvenile offenders. ~~(3-30-07)~~()

225. PHYSICAL INTERVENTION.

01. Appropriate Use of Physical Intervention. The detention center shall have written policy and procedures which govern the use of physical intervention. The use of physical intervention shall be restricted to instances of justifiable self-protection, the protection of others or property, the prevention of escapes, or the suppression of disorder and then only to the degree necessary to restore order. (3-30-07)

a. Physical intervention shall not be used as punishment. (3-30-07)

b. A written report shall be made following any use of physical intervention. The report will be reviewed by the detention center administrator and will be maintained as part of the detention center records. (3-30-07)

02. Use of Chemical Agents. The detention center shall have written policy and procedures which govern the use of chemical agents, if approved for use in the detention center. The use of chemical agents shall be restricted to instances of justifiable self-protection, or the protection of others and then only to the degree necessary to restore order. ()

a. Chemical agents shall not be administered by any individual who has not successfully completed a P.O.S.T. certified training course taught by a P.O.S.T. certified trainer. ()

b. Oleoresin Capsicum shall be the only chemical agent approved for use in juvenile detention centers. ()

03. Use of Electroshock Weapons. The use of electroshock weapons is prohibited in juvenile detention centers unless used by law enforcement officers responding to a call for assistance initiated by detention staff. ()

024. Use of Mechanical Restraints. The detention center shall have written policy and procedures which govern the use of mechanical restraints, including notification of medical or mental health professionals. The use of restraints shall be restricted to justifiable instances, during transfer, and for medical reasons under the direction of medical staff. Justifiable instances shall be specifically defined in each detention center's policy and procedures. Written policy and procedures shall provide that instruments of restraint are never applied as punishment and are applied only with the approval of the detention center administrator or designee, and that juvenile offenders in mechanical restraints are not left unattended. ~~(3-30-07)~~()

a. Restraints shall not be used as punishment or for the convenience of staff. (4-5-00)

b. A written report shall be made following any use of restraints except for transfer. The report will be reviewed by the detention center administrator and will be maintained as part of the detention records. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

227. SEARCH AND SEIZURE.

01. Detention Center Search Plan. The detention center shall have written policy and procedures

which outline a detention center search plan for the control of contraband and weapons and provides for unannounced and irregularly timed searches of juvenile offenders' rooms, day rooms, and activity, work or other areas accessible to juvenile offenders and searches of all materials and supplies coming into the detention center. (3-30-07)

02. Personal Searches. The detention center shall have written policy and procedures governing the searching of juvenile offenders for the control of contraband and weapons which includes, at a minimum, the following provisions: (3-30-07)

a. Search of juvenile offenders upon entering the security perimeter; (3-30-07)

b. Search of newly admitted juvenile offenders; (3-30-07)

c. Periodic unannounced and irregularly timed searches of juvenile offenders; (3-30-07)

d. Provision for strip searches and body cavity searches at such times when there exists reasonable belief that the juvenile offender is in the possession of contraband or weapons or other prohibited material and shall only be conducted as described in Subsections 227.02.f. and 227.02.g.; (3-30-07)

e. Pat searches. Except in cases of emergency, pat searches ~~should~~ **shall** be conducted by direct care personnel of the same sex; ~~(4-5-00)~~()

f. Strip searches. All strip searches shall be conducted in private and in a manner which preserves the dignity of the juvenile offender to the greatest extent possible and under sanitary conditions. All strip searches shall be conducted by direct care personnel of the same sex as the juvenile offender or by the health authority or medical employee. No persons of the opposite sex of the juvenile offender, other than the health authority or medical employee, shall observe the juvenile offender during the strip search; and (3-30-07)

g. Body cavity searches. All body cavity searches shall be conducted in private and in a manner which preserves the dignity of the juvenile offender to the greatest extent possible and under sanitary conditions. Body cavity searches shall be conducted only by the health authority or by a medical employee. No persons of the opposite sex of the juvenile offender, other than the health authority or medical employee, shall observe the juvenile offender during body cavity searches. (3-30-07)

03. All Body Cavity Searches Shall Be Documented. Documentation of body cavity searches shall be maintained in detention center records and in the juvenile offender's record. (3-30-07)

04. Seizure and Disposition of Contraband. The detention center shall have written policy and procedures to govern the handling of contraband. All contraband found during ~~facility~~ **detention center** or juvenile offender searches shall be seized and processed according to detention center policy, including involvement of law enforcement, if appropriate. The seizure and disposition of the contraband shall be documented. When a crime is suspected to have been committed within the detention center, all evidence shall be maintained and made available to the proper authorities. ~~(3-30-07)~~()

(BREAK IN CONTINUITY OF SECTIONS)

234. MEALS.

01. Providing Meals. The detention center shall have written policy and procedures which govern the providing of meals. Three (3) meals, ~~and pursuant to Section 20-518, Idaho Code,~~ at least two (2) of which includes a hot entree, shall be served daily. ~~(3-30-07)~~()

a. Meals must be served at approximately the same time every day. No more than fourteen (14) hours shall elapse between the evening meal and breakfast the next day unless an evening snack is served. If snacks are provided, up to sixteen (16) hours may elapse between the evening meal and breakfast. (4-5-00)

b. Juvenile offenders out of the detention center attending court hearings or other approved functions when meals are served shall have a meal provided upon their return if they have not already eaten. (3-30-07)

c. If meals are provided to staff, the menu should be the same as provided to juvenile offenders. (3-30-07)

d. The health authority or a medical employee shall be notified when a juvenile offender does not eat three (3) consecutive meals. (3-30-07)

02. Use of Food as Disciplinary Sanction Prohibited. The detention center shall have written policy and procedures which dictate that food shall not be withheld from juvenile offenders, nor the menu varied as a disciplinary sanction. (3-30-07)

03. Control of Utensils. The detention center shall have a control system for the issuance and return of all food preparation and eating utensils. (3-30-07)

235. FOOD SERVICE SANITATION.

01. Written Policy and Procedures. The detention center shall have written policy and procedures to govern food service sanitation, and shall at a minimum include, but not be limited to, the following items: (3-30-07)

a. Food service and related sanitation practices shall comply with the requirements of the state health department or other appropriate regulatory body. The detention center's food service operation shall be inspected in the manner and frequency mandated by local health authorities. The detention center administrator shall solicit at least an annual sanitation inspection by a qualified entity. The results of such inspections shall be documented and the detention center administrator shall take prompt action to correct any identified problems; ~~(3-30-07)~~()

b. All persons assigned to food service work, including juvenile offenders, shall be in good health and free from any communicable or infectious disease, vermin, or open, infected wounds; (3-30-07)

c. All persons assigned to food service work shall be familiar with and adhere to appropriate food service sanitation practices and requirements; (3-30-07)

d. All dishes, utensils, pots, pans, trays, and food carts used in the preparation, serving, or consumption of food shall be washed and rinsed promptly after every meal. Disposable utensils and dishes shall not be reused; and (3-30-07)

e. Food service area ventilation systems shall not be altered from engineering or architectural specifications, except when repair or upgrade is needed. (3-30-07)

02. Food Service Inspections. A weekly inspection of all food service areas and equipment shall be conducted by the detention center administrator or designee. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

250. HEALTH SERVICES.

01. Written Policy and Procedures. The detention center shall have written policy and procedures to govern the delivery of reasonable medical, dental, and mental health services. These written policy and procedures must at a minimum address, but are not limited to the following: (3-30-07)

a. Admission Intake medical screening must be documented and performed on all juvenile offenders upon admission to the detention center. ()

i. The medical screening should include inquiry of current illness and health problems, dental problems, sexually transmitted and other infectious diseases, medication taken and special health requirements, if any, the use of alcohol or drugs, mental illness and/or suicidal behavior. ()

ii. The screening should also include observations of unusual behavior, including state of consciousness, mental status, appearance, conduct, tremor, sweating, body deformities, physical injuries, trauma markings, bruises, jaundice, rashes, evidence of body vermin, and ease of movement; (3-30-07)()

- b.** Handling of juvenile offenders' requests for medical treatment; (3-30-07)
- c.** Non-emergency medical services; (4-5-00)
- d.** Emergency medical and dental services; (4-5-00)
- e.** Emergency evacuation plan of juvenile offenders from the detention center; (3-30-07)
- f.** Use of an emergency vehicle; (4-5-00)
- g.** Use of one (1) or more hospital emergency rooms or other appropriate health care facility; (4-5-00)
- h.** Emergency on-call physician and dental services when the emergency health care facility is not located nearby; (4-5-00)
- i.** First-aid and CPR instructions and training, including the availability of first-aid supplies; (4-5-00)
- j.** Screening, referral, and care of juvenile offenders who may be suicide-prone, or experience physical, mental or emotional disabilities; (3-30-07)
- k.** Arrangements for providing close medical supervision of juvenile offenders with special medical or psychiatric problems; (3-30-07)
- l.** Delousing procedures; (4-5-00)()
- m.** Infectious disease control and medical isolation; (4-5-00)
- n.** Temporary, immediate isolation, and proper examination by the medical employee of juvenile offenders suspected of having contagious or infectious diseases; (3-30-07)
- o.** Management of pharmaceuticals, including storage in a secure location; and (3-30-07)
- p.** Notification of next of kin or appropriate authorities in case of serious illness, injury or death. (3-30-07)

02. Medical Judgements. Except for regulations necessary to ensure the safety and order of the detention center, all matters of medical, mental health, and dental judgement shall be the sole province of the health authority, who shall have final responsibility for decisions related to medical judgements. (3-30-07)

03. Informed Consent. Permission to perform medical, surgical, dental or other remedial treatment shall be obtained from parents, spouse, guardian, court or other competent person as stated in Title 16, Chapter 16, Section 16-1627, Idaho Code. (3-30-07)

04. Health Appraisal. A health appraisal for each juvenile offender shall be provided by the health authority or medical employee within fourteen (14) days of admission. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

256. MAIL, VISITING, TELEPHONE.

01. Written Policy and Procedures. The detention center shall have written policy and procedures which shall govern the practices of handling mail, visitation, use of the telephone, and any limitations or restriction on these privileges. Juvenile offenders shall have the opportunity to receive visits and to communicate and correspond with persons, representatives of the media or organizations, subject to the limitations necessary to maintain detention center security and order. (3-30-07)

02. Mail Service. Mail, other than sent to or received from public officials, judges, attorneys, courts, government officials and officials of the confining authority, may be opened and inspected for contraband. (4-5-00)

03. Telephone Service. All juvenile offenders, except those restricted as a result of disciplinary action, shall be provided the opportunity to complete at least two (2) telephone calls weekly to maintain family and community ties. (3-30-07)

a. Telephone calls shall not be monitored, except where legitimate reason exists in order to maintain security and order in the detention center. Notification that the juvenile offender's phone calls may be monitored should be posted in the detention center. (3-30-07)

b. The detention center may require that any costs for telephone calls be borne by the juvenile offender or the party called. (3-30-07)

c. Written policy and procedures shall grant all juvenile offenders the right to make at least one (1) local or collect long distance telephone call to family members, attorneys, or other approved individuals during the admissions process. (3-30-07)

d. Juvenile offenders shall be allowed to make a reasonable number of telephone calls to their attorneys. (3-30-07)

i. Telephone calls to attorneys shall be of reasonable duration. (4-5-00)

ii. Telephone calls to attorneys shall not be monitored. (4-5-00)

iii. Telephone calls to attorneys shall not be revoked as a disciplinary measure. (4-5-00)

04. Visitation Restrictions. The parents or legal guardians, probation officer, parole officer, detention center administrator or the court of jurisdiction may impose restrictions on who may visit a juvenile offender. (3-30-07)

05. Search of Visitors. Written policy and procedures shall specify that visitors register upon entry into the detention center and the circumstances under which visitors are searched and supervised during the visit. (3-30-07)

06. Confidential Visits. The detention center shall provide juvenile offenders adequate opportunities for confidential access to courts, attorneys and their authorized representatives, probation and parole officers, counselors, caseworkers and the clergy. (3-30-07)

07. Visitation. Attorneys, probation and parole officers, counselors, caseworkers and clergy shall be permitted to visit juvenile offenders at reasonable hours other than during regularly scheduled visiting hours. (3-30-07)

a. Visits with attorneys, probation and parole officers, counselors, caseworkers and clergy shall not be monitored, except that detention center employees may visually observe the visitation as necessary to maintain appropriate levels of security. (3-30-07)

b. Visits with attorneys, probation and parole officers, counselors, caseworkers or clergy ~~shall~~ **should**

be of the contact type unless otherwise indicated by the juvenile offender or visitor, or the detention center administrator determines there is a substantial security justification to restrict the visit to a non-contact type. *When a contact visit is not allowed, the reasons for the restriction shall be documented in the juvenile offender's record.*

(3-30-07)()

257. -- 260. (RESERVED)

261. ADMISSION.

01. Orientation Materials. Written policy and procedures shall provide that new juvenile offenders receive orientation materials, including conduct rules. If, at any time, a literacy or language barrier is recognized, the detention center shall make good faith efforts to assure that the juvenile offender understands the material. (3-30-07)

02. Written Procedures for Admission. The detention center shall have written policy and procedures for admission of juvenile offenders which shall address, but are not limited to, the following: (3-30-07)

- a. Determination that the juvenile offender is lawfully *committed to* **detained in** the detention center; (3-30-07)()
- b. The classification of juvenile offenders in regard to sleeping, housing arrangements, and programming; (3-30-07)
- c. If the juvenile offender shows signs of illness, injury, is incoherent, or unconscious, he shall not be admitted to the detention center until the *committing* **detaining** officer has *been* provided written documentation from **medical personnel** or a physician of examination, treatment, and fitness for confinement; (3-30-07)()
- d. A complete search of the juvenile offender and possessions; (3-30-07)
- e. The disposition of personal property; (3-30-07)
- f. Provision of shower and the issuance of detention clothing and personal hygiene articles; (3-30-07)
- g. The provision of medical, dental and mental health screening; (3-30-07)
- h. Male and female juvenile offenders shall not occupy the same sleeping room; (3-30-07)
- i. The recording of basic personal data and information; (3-30-07)
- j. Providing assistance to juvenile offenders in notifying their families of their admission and the discussion of procedures for mailing and visiting; *and* (3-30-07)()
- k. The fingerprinting and photographing in accordance with Title 20, Chapter 5, Section 20-516(8), Idaho Code; *and* (3-30-07)()
- l. The administration of the MAYSI or other approved risk tool.** ()

03. Court Appearance Within Twenty-Four Hours. According to Title 20, Chapter 5, Section 20-516(4), Idaho Code, written policy and procedures shall ensure that any juvenile offender placed in detention or shelter care be brought to court within twenty-four (24) hours, excluding Saturdays, Sundays and holidays for a detention hearing to determine where the juvenile offender will be placed until the next hearing. Status offenders shall not be placed in any jail or detention center, but instead may be placed in juvenile shelter care facilities. (3-30-07)

04. Limitations of Detention. Written policy and procedures shall limit the use of detention in accordance with Title 20, Chapter 5, Section 20-516, Idaho Code. (3-30-07)

262. RELEASE.

01. Release. Written policy and procedures shall govern the release of any juvenile offender and the release process including, but not limited to, verification of juvenile offender's identity, verification of release papers, completion of release arrangements, including the person or agency to whom the juvenile offender is being released, return of personal effects, completion of any pending action, and instructions on forwarding mail. (3-30-07)

02. Community Leaves. Written policy and procedures shall govern escorted and unsecured day leaves into the community. (3-30-07)

03. Personal Property Complaints. Written policy and procedures shall govern a procedure for handling complaints about personal property. (4-5-00)

04. Disposal of Property. Property not claimed within four (4) months of a juvenile offender's discharge may be disposed of by the detention center in accordance with Title 55, Chapter 14, Section 55-1402, Idaho Code. (3-30-07)()

263. -- 264. (RESERVED)

265. PROGRAMS AND SERVICES AVAILABLE.

01. Written Policies and Procedures Governing Available Programs and Services. The detention center shall have written policy and procedures which govern what programs and services will be available to juvenile offenders, ~~subject to the limitations necessary to maintain detention center security and order.~~ These programs and services shall include, at a minimum, the following: ()

a. ~~A~~Access or referral to counseling; ()

b. ~~R~~Religious services on a voluntary basis; ()

c. ~~O~~One (1) hour per day, ~~and~~ five (5) days per week of large muscle exercise; ~~and~~ ()

d. ~~P~~Passive recreational activities; ()

e. ~~R~~Regular and systematic access to reading material; ()

f. ~~juvenile w~~Work assignments; and ()

g. ~~E~~Educational programs according to the promulgated rules of the Idaho State Department of Education, ~~except where there is justification for restricting a juvenile offender's participation.~~ ()

02. Limitations and Denial of Services. Access to services and programs will be afforded to all juvenile offenders, ~~subject to the limitations necessary to maintain detention center security and order.~~ Any denial of services must be documented. (3-30-07)()

266. -- 274. (RESERVED)

275. DETENTION CENTER DESIGN, RENOVATION, AND CONSTRUCTION.

01. Applicability. All standards in this section, except where exceptions are stated, shall apply to new juvenile detention centers, renovation of existing juvenile detention centers, and renovation of any existing building for use as a juvenile detention center ~~for which construction was initiated after October 1, 1998.~~ In the case of a partial renovation of an existing detention center, it is intended that these rules should apply only to the part of the detention center being added or renovated. (3-30-07)()

02. Code Compliance. In addition to these rules, all new construction and renovation shall comply with the applicable ADA, building, safety, and health codes of the local authority and the applicable requirements of the State Fire Marshal, and state law. Standards herein which exceed those of the local authority shall take precedence. (4-5-00)

03. Site Selection. Juvenile detention centers should be located to facilitate access to community resources and juvenile justice agencies. If the detention center is located on the grounds or in a building with any other correctional facility, it shall be constructed as a separate, self-contained unit in compliance with Title 20, Chapter 5, Section 20-518, Idaho Code. (3-30-07)

04. General Conditions. All newly constructed or renovated juvenile detention centers shall conform to the following general conditions: (3-30-07)

a. Light levels in all housing areas shall be appropriate for the use and type of activities which occur. Night lighting shall permit adequate illumination for supervision; (3-30-07)

b. All living areas shall provide visual access to natural light; (3-30-07)

c. HVAC systems shall be designed to provide that temperatures in indoor living and work areas are appropriate to the summer and winter comfort zones, and healthful and comfortable living and working conditions exist in the detention center; (3-30-07)

d. All locks, detention hardware, fixtures, furnishings, and equipment shall have the proper security value for the areas in which they are used. The use of padlocks in place of security locks on sleeping room or housing unit doors is prohibited; (3-30-07)

e. Juvenile offenders' rights to privacy from unauthorized or degrading observation shall be protected without compromising the security and control of the detention center. Privacy screening for all toilet and shower areas which still allows adequate supervision of those areas should be incorporated into the design; (3-30-07)

f. The detention center shall have a perimeter which is secured in such a way that juvenile offenders remain within the perimeter and that access by the general public is denied without proper authorization; (3-30-07)

g. The security area of the detention center shall have an audio communication system equipped with monitors in each sleeping room and temporary holding room designed to allow monitoring of activities and to allow juvenile offenders to communicate emergency needs to detention center employees. Closed circuit television should primarily be used to verify the identity of persons where direct vision is not possible. Closed circuit television shall not be used to routinely monitor the interior of sleeping rooms; and (3-30-07)

h. All newly constructed or renovated detention centers shall provide an emergency source of power to supply electricity for entrance lighting, exit signs, circulation corridors, fire alarm, electrically operated locks and the heating and ventilation system. (3-30-07)

05. Admission and Release Area. The detention center shall have an intake and release area which should be located within the security perimeter, but apart from other living and activity areas. (3-30-07)

a. Adequate space shall be allocated for, at least but not limited to; (3-30-07)

i. Reception; (3-30-07)

ii. Booking; (3-30-07)

iii. Search; (3-30-07)

iv. Shower and clothing exchange; (3-30-07)

v. Medical screening; (3-30-07)

vi. Storage of juvenile offender's personal property and detention center clothing; (3-30-07)

vii. Telephone calls; (3-30-07)

- viii. Interviews; and (3-30-07)
- ix. Release screening and processing. (3-30-07)
- b.** If a detention center has temporary holding rooms, the rooms may be designed to detain juvenile offenders for up to eight (8) hours pending booking, court appearance, housing assignment, transfer, or release. Temporary holding rooms may be designed for multiple occupancy and shall provide thirty-five (35) square feet of unencumbered floor space for each juvenile offender at capacity (3-30-07)
- c.** Temporary holding rooms shall have access to a toilet and wash basin with hot and cold water. (3-30-07)
- 06. Single Occupancy Rooms.** Single occupancy sleeping rooms or cells shall have a minimum of thirty-five (35) square feet of unencumbered space and shall be equipped with at least a bed above the floor. (4-5-00)
- 07. Multiple Occupancy Rooms.** Multiple occupancy sleeping rooms or cells shall have at least thirty-five (35) square feet of unencumbered floor space per juvenile offender at the room's rated capacity and shall be equipped with at least a bed off the floor for each juvenile offender. (3-30-07)
- 08. Sanitation and Seating.** All single or multiple occupancy sleeping rooms shall be equipped with, or have twenty-four (24) hours per day access without detention center staff assistance to toilets, wash basins with hot and cold running water, and drinking water at the following ratios: (3-30-07)
- a.** One (1) shower and one (1) toilet for every eight (8) juvenile offenders or fraction thereof; (3-30-07)
- b.** One (1) wash basin with hot and cold water for every twelve (12) juvenile offenders or a fraction thereof; and (3-30-07)
- c.** Tables and seating sufficient for the maximum number expected to use the room at one (1) time. (3-30-07)
- 09. Day Room and Multi-Purpose Room.** The detention center shall have at least one (1) day room and multi-purpose room which provides a minimum of thirty-five (35) square feet of floor space per juvenile offender for the maximum number expected to use the room at one (1) time. (3-30-07)
- 10. Program Space.** Adequate space shall be allocated for, but not limited to: (3-30-07)
- a.** Educational programs; (3-30-07)
- b.** Individual and group activities; (3-30-07)
- c.** Exercise and recreation, indoor and outdoor; (3-30-07)
- d.** Visitation; (3-30-07)
- e.** Confidential attorney and clergy interviews; and (3-30-07)
- f.** Counseling. (3-30-07)
- 11. Interview Space.** A sufficient number of confidential interview areas to accommodate the projected demand of visits by attorneys, counselors, clergy, or other officials shall be provided. At least one (1) confidential interview area is required. (4-5-00)
- 12. Medical Service Space.** Space shall be provided for routine medical examinations, emergency first-aid, emergency equipment storage, and secure medicine storage. (4-5-00)

13. Food Service. The kitchen or food service area shall have sufficient space for food preparation, serving, disposal, and clean-up to serve the detention center at its projected capacity. The kitchen or food service area shall be properly equipped and have adequate storage space for the quantity of food prepared and served. (3-30-07)

14. Laundry. Where laundry services are provided in-house, there shall be sufficient space available for heavy duty or commercial type washers, dryers, soiled laundry storage, clean laundry storage, and laundry supply storage. (4-5-00)

15. Janitor's Closet. At least one (1) secure janitor's closet containing a mop sink and sufficient space for storage of cleaning supplies and equipment shall be provided within the security perimeter of the detention center. (3-30-07)

16. Security Equipment Storage. A secure storage area shall be provided for all chemical agents, weapons, and security equipment. (4-5-00)

17. Administration Space. Adequate space shall be provided which includes but is not limited to, administrative, security, professional and clerical staff, offices, conference rooms, storage rooms, a public lobby, and toilet facilities. (4-5-00)

18. Public Lobby. A public lobby or waiting area shall be provided which includes sufficient seating and toilets. Public access to security and administrative work areas shall be restricted. All parts of the detention center that are accessible to the public shall be accessible to, and usable by, persons with disabilities in compliance with ADA standards. (3-30-07)

IDAPA 06 - BOARD OF CORRECTION

06.01.01 - RULES OF THE BOARD OF CORRECTION

DOCKET NO. 06-0101-1101

NOTICE OF PROCLAMATION OF RULEMAKING

EFFECTIVE DATE: The final effective date of this rule is November 4, 2011.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated 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. In accordance with Section 20-212(1) of the Idaho Code, this rule shall become final and effective thirty (30) days after the date of publication in the Idaho Administrative Bulletin.

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 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:

005. Office-Office Hours-Mailing Address and Street Address - To re-add missing information to subsection 06.

135. Executions - To add a subsection that serves notice that the Department will not disclose the names of injection team members, escorts, or any information that could jeopardize the Department's ability to carry out an execution. To clarify execution unit configuration and occupants. To allow one additional member of the offender's family and one additional member of the victim's family to witness the execution if they so choose to do so.

143. Advisory Boards - This new section was previously section 706. Renumbering is required to better align with Idaho Department of Correction (IDOC) policy numbering. The section is also being revised to reflect current IDOC standard operating procedure.

706. Community Work Center Advisory Board - This section requires renumbering to section 143 and a change in section title 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 31st day of August, 2011.

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 PROCLAIMED TEXT FOR DOCKET NO. 06-0101-1101

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

01. Street Address. The Board of Corrections' administrative office and the Idaho Department of Correction are located at 1299 N. Orchard St., Suite 110, Boise, Idaho 83706-2266. Business hours are typically 8 a.m. to 5 p.m., Monday through Friday, excluding holidays. (10-5-07)

02. Mailing Address (Board of Correction). Mail regarding the Board of Corrections' rules shall be directed to the Board of Correction, attn: management assistant, office of the director, 1299 N. Orchard St., Suite 110, Boise, Idaho 83706-2266. (10-5-07)

03. Mailing Address (Dept. of Correction). Mail regarding the Idaho Department of Correction shall be sent to 1299 N. Orchard St., Suite 110, Boise, Idaho 83706-2266. (10-5-07)

04. Telephone Number. The telephone number of both the Board and Department is (208) 658-2000. (10-5-07)

05. Facsimile Number. Faxes shall be sent directly to the person, division, bureau, or unit as requested. If the fax number is not provided by the person, division, bureau, or unit, contact the Department's main reception at (208) 658-2000 to obtain the fax number. (10-5-07)

06. Internet Website. The Department's Internet website can be found at <http://www.idoc.idaho.gov/>. ~~(10-5-07)~~ (11-4-11)

(BREAK IN CONTINUITY OF SECTIONS)

135. EXECUTIONS.

01. Personnel Assigned to Execution. Idaho Maximum Security Institution personnel will carry out the execution warrant. The facility head of the Idaho Maximum Security Institution shall be the official executioner. (11-5-99)

02. Method of Execution. Execution of the sentence of death shall be by lethal injection. If the director determines that a competent lethal injection team cannot be assembled, execution shall take place by firing squad. (11-5-99)

03. Media Coordination. Department personnel will coordinate media activity and provide logistics and communications support. A media center shall be established. The pre-execution briefing will be delivered in the media center. Media witnesses will be chosen pursuant to Department procedure. The selection of media witnesses will occur in the media center. The post-execution briefing will occur in the media center. (11-5-99)

04. Public Information Officer to Handle Media Requests. The director will designate a public information officer to deal with execution-related media requests and releases of information. (11-5-99)

05. Parking and Demonstration Areas Provided. Areas for public and media parking will be provided and maintained in a secure manner. Areas for public gathering and demonstration of support or opposition to the death penalty will be provided and maintained in a secure manner. (11-5-99)

06. Non-disclosure. The Department will not disclose (under any circumstance) the identity of staff, contractors, consultants, or volunteers serving on escort or injection teams, nor will the Department disclose any other information wherein the disclosure of such information could jeopardize the Department's ability to carry out

an execution. (11-4-11)

067. ~~Individuals Present at~~ **Persons Allowed in the Execution Unit.** A total of ~~twenty-one~~ **thirty** ~~(2130) occupants~~ **persons, inclusive of the condemned offender,** is the limit **allowed** in the execution **facility unit** at ~~one (1)~~ **any** time. The configuration of the execution unit and the occupants of each room will be in accordance with Department standard operating procedure. Persons allowed in the execution ~~viewing area~~ **unit** are:

~~(10-31-08)~~(11-4-11)

- a. Idaho Department of Correction (IDOC) and or contract, consultant, or volunteer ~~S~~staff: ~~(10-31-08)~~(11-4-11)
 - i. The injection team as identified by the facility head (or designee) of the Idaho Maximum Security Institution (IMSI); ~~(10-31-08)~~(11-4-11)
 - ii. The director (or designee); ~~(10-31-08)~~(11-4-11)
 - iii. A representative from the Idaho Board of Correction; (10-31-08)
 - iv. The chief of the Operations Division ~~of Prisons~~ (or designee); and ~~(10-31-08)~~(11-4-11)
 - v. IMSI facility head (or designee); and ~~(10-31-08)~~(11-4-11)
 - vi. Six (6) escort staff; (11-4-11)
- b. Witnesses: (10-31-08)
 - i. The coroner; (11-5-99)
 - ii. The sheriff from the county of conviction; (11-5-99)
 - iii. The prosecuting attorney from the county of conviction; (11-5-99)
 - iv. A spiritual advisor of the inmate's choosing; (11-5-99)
 - v. The sentencing judge; (11-5-99)
 - vi. A representative from the Governor's office; (11-5-99)
 - vii. The Attorney General or his representative; (11-5-99)
 - viii. A Two (2) members of the victim's family; ~~(10-31-08)~~(11-4-11)
 - ix. A Two (2) friends or members of the offender's family; and ~~(10-31-08)~~(11-4-11)
 - x. A maximum of four (4) news media pursuant to Subsection 135.03. (10-31-08)

(BREAK IN CONTINUITY OF SECTIONS)

137. -- ~~144~~2. (RESERVED)

Section 706 is being moved and renumbered to Section 143.

~~706~~**143. COMMUNITY WORK CENTER ADVISORY BOARDS.**

01. Advisory Board Members' Responsibility. Advisory board members shall be responsible for

advising Department community work centers on the philosophies and wishes of the community so that those philosophies and wishes may be considered for incorporation into the community work center's established processes. (11-4-11)

012. **Advisory Boards Established.** ~~The~~ Each Department community work center shall establish an community work center advisory board in ~~each~~ the community ~~of the state~~ where ~~a~~ the community work center is located. The advisory board shall consist of not less than four (4) ~~and~~ no more than seven (7) members. (11-5-99)(11-4-11)

023. **Advisory Board Member Selection.** ~~Initial selection of advisory board members should be from prominent civic and community leaders. Subsequent selection of advisory board members should be by recruitment by existing advisory board members from among members of the community.~~ The Department shall identify the needs of the community work center and the offender population, and take into consideration the type of community representatives and partners best suited to meet those needs. The Department shall make the final selection of advisory board members to serve on the advisory board. Advisory board members should represent segments of the community that are important to the successful operation of the community work center such as the following representatives and partners: (11-5-99)(11-4-11)

- a.** Law enforcement; (11-4-11)
- b.** Businesses; (11-4-11)
- c.** Faith-based communities; and (11-4-11)
- d.** Employment. (11-4-11)

034. **Duties of the Advisory Board Meetings.** ~~The advisory board shall meet from time to time as they may determine. The advisory board shall provide advisory input into the establishment of guidelines and procedures for the operation of the community work center.~~ Advisory board meeting dates and times shall be set by the Department and the existing advisory board. The Department shall not be bound to follow any advisory board recommendations but shall be free to decide which philosophies and community wishes recommended by the advisory board best suits the needs of the community work center and the offender population. (11-5-99)(11-4-11)

144. **(RESERVED)**

(BREAK IN CONTINUITY OF SECTIONS)

~~702. -- 705.~~ **(RESERVED)**

Section 706 is being moved and renumbered to Section 143.

~~707. — 999.~~ **(RESERVED)**

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.03 - RULES OF ELECTRICAL LICENSING AND REGISTRATION - GENERAL

DOCKET NO. 07-0103-1101

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), 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 19, 2011.

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:

Current apprentice registration requirements do not facilitate apprentices in advancing in educational and work training requirements, and ultimately into a journeyman status. This potentially results in apprentices having to complete continuation training in order to take the journeyman examination and potentially creating life-time apprentices. The industry has expressed to the Electrical Board that life-time apprentices are not situations advantageous to the individual apprentice or the contractors who employ them. Currently, electrical apprentice registrations are issued for a period of five years and there is no limitation on how many times an apprentice may renew such. The proposed rule would allow an initial renewal of an apprentice registration upon a demonstration that the applicant has made at least some progress toward the requirements for a journeyman license in the form of two years of approved schooling and two years (4,000 hours) of work experience. It also would limit renewals of apprentice registrations to no more than one without a recommendation from the Board to do so. Finally, it requires the Division and Board to consider any extenuating circumstances which may prevent an applicant from completing the schooling and/or work 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, negotiated rulemaking was not conducted because of the simple nature of the rulemaking and the benefit to electrical apprentices.

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 26, 2011.

DATED this 29th day of August, 2011.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety

1090 E. Watertower St., Ste. 150
P. O. Box 83720, Meridian, ID 83542
Phone: (208) 332-8986; Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0103-1101

011. LICENSE APPLICATION FORMS/APPRENTICE REGISTRATION FORMS.

Application forms for Electrical Contractor, Master Electrician, Journeyman Electrician Licenses, Specialty Electrical Licenses, and registration forms for Apprentice Electricians and Specialty Electrical Trainees shall be printed and made available by the ~~Electrical Bureau of the~~ Division of Building Safety, state of Idaho. ~~(4-5-00)~~()

01. Application Forms. All applications for licenses and all registrations shall be properly completed, giving all pertinent information, and all signatures shall be notarized. (4-5-00)

02. Application Fee. All applications for electrical licenses shall be accompanied by the fifteen dollar (\$15) application fee; apprentice and specialty trainee registration forms shall be accompanied by the ten dollar (\$10) registration fee as provided by Section 54-1014, Idaho Code. (4-5-00)

03. Application Submission. An application for license shall be submitted to the ~~Electrical Bureau~~ Division of Building Safety and shall be approved by an authorized representative of the ~~Bureau~~ Division before any examination is given and before any license is issued. ~~(4-5-00)~~()

04. Examination. An applicant for licensure must take the required examination within ninety (90) days of the date of application, or the application shall be considered to be null and void. (4-5-00)

05. License. Following the approval by an authorized representative and the successful completion of the required examination, the applicant must purchase a license prior to engaging in business within the state of Idaho. Applicants who fail to purchase a license within ninety (90) days of the date of successful examination shall be required to reapply for licensure, again obtain the approval of an authorized representative, and re-examine. (4-5-00)

06. License Period. All original licenses and registrations shall be issued by the Division immediately upon receipt of the licensure fee and other necessary documentation from the applicant which date shall be designated as the original license anniversary date and signify the commencement of the licensing period. All license and registration renewals shall be effective in the year renewed as of the original license anniversary date. All license and registration periods shall end at midnight on the last day of the final month of the licensing or registration period. Licenses and registrations not renewed by this date shall have expired. Any expired license revived within the twelve (12) month period following the expiration date will continue to have the original license anniversary date for purposes of subsequent renewal. (3-29-10)

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 register 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 until a certificate of achievement is earned from the vocational institution attended. Each apprentice shall obtain work experience during the period of registration as described in Paragraph 012.01.b. of these rules and provide the Division with notarized letters from each employer evidencing such work to be maintained in the apprentice's file with the Division. 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. (4-7-11)

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

three (3) years, defined as a minimum of six thousand (6,000) hours of work experience, under the constant on-the-job supervision of a journeyman electrician. Such work experience shall include three (3) categories: (4-7-11)

- 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. (4-7-11)

d. 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 apprentice registered in an apprenticeship program approved by the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship. (4-7-11)

e. An apprentice registration shall only be renewed by the Division upon receipt of sufficient evidence demonstrating that the apprentice has successfully completed at least two (2) years of an approved sequence of instruction and worked 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 journeyman electrician in the categories described in Paragraph 012.01.b. of these rules; provided however, that in no case shall an apprentice registration be renewed more than one (1) time by the Division without a recommendation from the Idaho Electrical Board to do so. An apprentice may only petition the Electrical Board for registration renewals subsequent to the first renewal. If application to the Division or petition to the Board is made pursuant to this paragraph, the Division and the Board, as applicable, shall consider whether extenuating circumstances exist which prevent the completion of the instruction or work experience requirements for renewal. ()

ef. 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~~ be eligible to take the journeyman exam. 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)()

f. ~~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~~ Division of Building Safety 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)()

013. JOURNEYMAN ELECTRICIAN.

- 01. Experience and Education Required.** (5-3-03)

a. An applicant for a journeyman electrician license must have worked as an apprentice electrician making electrical installations for four (4) years, defined as a minimum of eight thousand (8,000) hours under the constant on-the-job supervision of a qualified journeyman electrician and meet the minimum vocational educational requirements of the Idaho Electrical Board and the Idaho State Board for Professional and Technical Education as provided by Section 54-1007, Idaho Code, and Paragraph 012.01.a. of these rules. That work shall include three (3) categories: (5-3-03)

- i. Residential; (5-3-03)
- ii. Commercial; and (5-3-03)
- iii. Industrial installations. (5-3-03)

b. Experience shall not exceed seventy-five percent (75%) of the work time in any one (1) category. The requirements of Paragraph 013.01.a. of these rules shall not apply to a registered apprentice enrolled in an apprenticeship program accredited by the ~~Electrical Bureau~~ Division of Building Safety. (~~5-3-03~~)()

c. An applicant with out-of-state experience from a state that does not have a current reciprocal agreement with Idaho must meet the experience and vocational education requirements as set forth in Paragraph 013.01.a. of these rules or if the applicant has not completed the vocational education requirement, the applicant may alternately submit verification of twice the amount of experience (eight (8) years defined as a minimum of sixteen thousand (16,000) hours)). That work shall include three (3) categories: (5-3-03)

- i. Residential; (5-3-03)
- ii. Commercial; and (5-3-03)
- iii. Industrial installations. (5-3-03)

d. Experience shall not exceed seventy-five percent (75%) of the work time in any one (1) category and must have been legally obtained in the state in which the applicant received his experience. (5-3-03)

e. An applicant from a state that has a current reciprocal agreement with the state of Idaho may be issued a journeyman electrician license without testing in accordance with Section 54-1007, Idaho Code, upon verification that: (5-3-03)

- i. The license is current and active and in good standing; (5-3-03)
- ii. The license was obtained by testing from the issuing state; (5-3-03)
- iii. The license has been in effect for a minimum of one (1) year; and (5-3-03)
- iv. The applicant has not previously taken and failed the Idaho state journeyman electrical examination. (5-3-03)

f. Experience in appliance repairing, motor winding, and communications will not be accepted towards qualification for a journeyman electrician license. (5-3-03)

02. Application and Examination. A qualified journeyman electrician not holding an Idaho state license shall make application for a journeyman electrician license with the ~~Electrical Bureau~~ Division of Building Safety prior to going to work in the state of Idaho as provided by Section 54-1002(2), Idaho Code. An applicant will be permitted a maximum of thirty (30) days in which to take the examination after making application unless mutual agreements have been made between the applicant and the ~~Electrical Bureau~~ Division of Building Safety. (~~1-14-87~~)()

014. MASTER ELECTRICIAN.

An applicant for a master electrician license must have at least four (4) years experience as a licensed journeyman electrician as provided in Section 54-1007, Idaho Code. Any person having these qualifications may make application at any time by remitting to the ~~Electrical Bureau~~ Division of Building Safety the application fee. Upon approval, the applicant will be notified and may apply to take the next examination. Upon notification of passing the examination, the applicant must remit the required fee for the issuance of a master license. A person holding a current master license shall not be required to hold a journeyman license. ~~(4-6-05)~~()

015. ELECTRICAL CONTRACTOR.

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

a. On and after July 1, 2008, except as hereinafter provided, any person, partnership, company, firm, association, or corporation shall be eligible to apply for an electrical contractor license upon the following requirements: (4-2-08)

i. Applicant shall have at least one (1) full-time employee who holds a valid master electrician license issued by the ~~Electrical Bureau~~ Division of Building Safety. Licensed electrical contractors who are current and active prior to July 1, 2008, shall not be required to have a master electrician as the supervising electrician until a new supervising electrician is designated. A master electrician license will be required for a new supervising electrician designated after July 1, 2008. ~~(4-2-08)~~()

ii. The master electrician shall be designated the supervising electrician and shall be available during working hours to carry out the duties of supervising, as set forth herein, and who will be responsible for supervision of electrical installations made by said company, firm, association, or corporation as provided by Section 54-1010, Idaho Code. (4-2-08)

iii. An individual electrical contractor may act as his own supervising master electrician upon the condition that he holds a valid master electrician license. (4-2-08)

iv. Applicant must pass a contractor examination administered by the ~~Bureau~~ Division or its designee. Any applicant which purports to be a non-individual (such as, corporation, partnership, company, firm, or association), must designate in writing an individual to represent the partnership, company, etc., for examination purposes. Any such designee shall be a full-time supervisory employee and may not represent any other applicant for an electrical contractor's license. ~~(4-2-08)~~()

v. Applicant shall provide proof of liability insurance to the ~~Bureau~~ Division in the amount of three hundred thousand dollars (\$300,000) from an insurance company licensed to do business in the state of Idaho. The liability insurance shall be in effect for the duration of the applicant's contractor licensing period. ~~(4-2-08)~~()

vi. Applicant shall provide to the ~~Bureau~~ Division proof of Idaho's worker's compensation insurance unless specifically exempt from Idaho law. ~~Bureau~~ The Division will provide written confirmation of exemption status. ~~(4-2-08)~~()

b. Any person designated under Paragraph 015.01.a. of these rules, and the contractor he represents, shall each notify the ~~Bureau~~ Division in writing if the supervising master's working relationship with the contractor has been terminated. Each notice must be filed with the ~~Bureau~~ Division within ten (10) days of the date of termination. If the supervising master's relationship with the contractor is terminated, the contractor's license is void within ninety (90) days unless another supervising master is qualified by the ~~Bureau~~ Division. ~~(4-2-08)~~()

02. Required Signatures on Application. An application for an electrical contractor license shall be signed by the applicant or by the official representative of the partnership, company, firm, association, or corporation making the application. The application shall be countersigned by the supervising master electrician. (4-2-08)

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

a. Electrical contracting work includes electrical maintenance or repair work, in addition to new

electrical installations, unless such work is expressly exempted by Section 54-1016, Idaho Code. (4-5-00)

b. Any person or entity performing or offering to perform electrical contracting services, including, but not limited to, advertising or submitting a bid shall be considered as acting or attempting to act as an electrical contractor and shall be required to be licensed. For the purposes of Section 015, advertising shall include, but not be limited to: newspaper, telephone directory, community flier ads or notices, telephone, television, radio, internet, business card, or door-to-door solicitations. (5-8-09)

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

d. Registered general contractors who submit a bid on a multi-trade construction project that includes a licensed electrical contractor's pricing shall not be considered to be acting or attempting to act as an electrical contractor. (5-8-09)

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

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

06. Qualification and Duties for Supervising Journeyman or Master. (4-2-08)

a. A master electrician shall not be considered as qualified to countersign an electrical contractor license application as the supervising master, nor shall said application be approved if he does countersign said application as the supervising master, if said master has had his Idaho electrical contractor license revoked for cause under Section 54-1009, Idaho Code. (4-2-08)

b. A supervising master shall not countersign for more than one (1) contractor. (4-2-08)

c. A journeyman who is a full time employee of a company, corporation, firm or association with an industrial account may sign as supervising journeyman for that industrial account in addition to signing as supervising journeyman for his own contractor's license so long as the journeyman is listed as the owner and complies with the provisions of Paragraphs 015.01.a. and 015.01.b. of these rules (7-1-97)

d. Duties include: assuring that all electrical work substantially complies with the National Electrical Code and other electrical installation laws and rules of the state, and that proper electrical safety procedures are followed; assuring that all electrical labels, permits, and licenses required to perform electrical work are used; assuring compliance with correction notices issued by the Bureau Division. (4-2-08)()

07. Failure to Correct Defects in Electrical Installations. If a master countersigns an electrical contractor license application pursuant to Subsection 015.03 of these rules and thereafter willfully fails to correct defects in electrical installations he made or supervised, and such defects are within his power to correct and are not the fault of the contractor, then the Electrical Bureau Division of Building Safety shall have the power to suspend or revoke said master's license pursuant to Section 54-1009, Idaho Code. (4-2-08)()

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

09. Termination of Supervising Master or Contractor Designee. (4-2-08)

a. Any person designated under Paragraph 015.01.a. of these rules, and the contractor he represents, shall each notify the ~~Bureau~~ Division in writing if the supervising master's working relationship with the contractor has been terminated. Each notice must be filed with the ~~Bureau~~ Division within ten (10) days of the date of termination. If the supervising master's relationship with the contractor is terminated, the contractor's license is void within ninety (90) days unless another supervising journeyman is qualified by the ~~Bureau~~ Division. ~~(4-2-08)~~()

b. Any person designated under Paragraph 015.01.a. of these rules, and the contractor he represents, shall each notify the ~~Bureau~~ Division in writing if the designee's working relationship with the contractor has been terminated. Each notice must be filed with the ~~Bureau~~ Division within ten (10) days of the date of termination. If the designee's relationship with the contractor is terminated, the contractor's license is void within ninety (90) days unless another duly qualified designee passes the electrical contractor's examination on behalf of the contractor. ~~(9-1-94)~~()

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING
DOCKET NO. 07-0104-1101
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), 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 19, 2011.

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:

Current Specialty Electrical Trainee registration requirements do not facilitate trainees in advancing in educational and work training requirements, and ultimately into a specialty journeyman status. This potentially results in creating life-time specialty trainees. The industry has expressed to the Electrical Board that life-time specialty trainees are not situations advantageous to the individual trainees or the contractors who employ them. Currently, electrical specialty trainee registrations are issued for a period of three years and there is no limitation on how many times a trainee may renew such. The proposed rule would allow an initial renewal of a specialty electrical trainee registration upon a demonstration that the applicant has made at least some progress toward the requirements for a specialty journeyman license in the form of one year (2,000 hours) of work experience. It also would limit renewals of specialty trainee registrations to no more than one without a recommendation from the Board to do so. Finally, it requires the Division and Board to consider any extenuating circumstances which may prevent an applicant from completing the schooling and/or work 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, negotiated rulemaking was not conducted because of the simple nature of the rulemaking and the benefit to specialty electrical trainees.

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 26, 2011.

DATED this 29th day of August 2011.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety

1090 E. Watertower St., Ste. 150
P. O. Box 83720, Meridian, ID 83542
Phone: (208) 332-8986; Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0104-1101

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. (4-7-11)

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 for a period of three (3) years and pay the applicable fee 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. A specialty electrical trainee registration shall only be renewed by the Division upon receipt of sufficient evidence demonstrating that the trainee has worked at least one (1) year defined as a minimum of two thousand (2,000) hours of work experience under the constant on-the-job supervision of a specialty journeyman electrician; provided however, that in no case shall a specialty electrical trainee registration be renewed more than one (1) time by the Division without a recommendation from the Idaho Electrical Board to do so. A specialty electrical trainee may only petition the Electrical Board for registration renewals subsequent to the first renewal. If application to the Division or petition to the Board is made pursuant to this subsection, the Division and the Board, as applicable, shall consider whether extenuating circumstances exist which prevent the completion of the instruction or work experience requirements for renewal.~~ Time shall not be credited while the trainee is inactive or not registered. (4-7-11)()

(BREAK IN CONTINUITY OF SECTIONS)

015. APPLICATIONS FOR SPECIALTY LICENSES.

Applications for any of the above specialty licenses may be obtained from the ~~Electrical Bureau~~, Division of Building Safety. The forms shall be returned with the application fee, as provided by Section 54-1014, Idaho Code, with proof of the required two (2) years of experience in the field of specialty, and all applications shall be signed and notarized. Upon receiving a passing grade, the applicant may remit the license fee for issuance of the license. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

017. SPECIALTY CONTRACTOR LICENSE.

01. Qualifications for Specialty Electrical Contractor. Except as herein provided, any person, partnership, company, firm, association, or corporation shall be eligible to apply for a specialty electrical contractor license upon the condition that such applicant will be responsible for supervision of electrical installations made by said company, firm, association, or corporation as provided by Section 54-1010, Idaho Code. The supervising specialty journeyman electrician shall be available during working hours to carry out the duties of supervising

specialty journeyman, as set forth herein. In addition, the applicant shall meet or have at least one (1) full-time employee who meets one (1) of the following criteria: (3-30-01)

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

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

02. Modification to Qualifications. Applicants for specialty contractor licenses, or individuals countersigning such applications, shall be subject to the same requirements, restrictions, and fees applicable to other electrical contractors and countersigning master, as set forth in the current Electrical Laws and Rules with the exception that an electrical contractor requires a master electrician to countersign as a supervising master whereas a supervising specialty journeyman for a specialty electrical contractor must meet the requirements of Subsection 017.01 of these rules. (4-2-08)

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.01.04 - RULES GOVERNING ELECTRICAL SPECIALTY LICENSING
DOCKET NO. 07-0104-1102
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 54-1003(1) and 54-1006(5), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 PV electrical specialty license is brought forward to legally recognize established PV contractors who have established and operated specialized businesses over the course of the past 20+ years. While the existing regulatory framework clearly requires all installers of electrical wiring and equipment to be licensed, these businesses have operated and developed a level of expertise and experience that is vital in assuring photovoltaic systems are designed and installed safely, and that they operate efficiently. This proposal allows these companies and installers to become licensed and sets the bar for future practitioners in this fast-growing industry. It also facilitates the permitting and inspections of photovoltaic installations to assure those installations safely comply with the provisions of the National Electrical Code. Failure to establish this license would leave electrical contractors and electricians as the only providers of solar installations, and likely would result in higher costs to consumers due to decreased competition. The proposed rule would establish an electrical specialty license category for the installation, maintenance, and repair of photovoltaic electrical DC systems and micro-inverter/AC systems to include all electrical equipment, wires, and accessories.

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:

The fiscal impact is expected to be revenue neutral to DBS, in that it is expected that any revenues will offset the costs to the dedicated fund associated with administering the license.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of 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 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 26, 2011.

DATED this 29th day of August, 2011.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0104-1102

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: (4-7-11)

a. Overhead distribution and transmission lines in excess of six hundred (600) volts. (4-7-11)

b. Underground distribution and transmission lines in excess of six hundred (600) volts. (4-7-11)

c. Substation and switchyard construction in excess of six hundred (600) volts. (4-7-11)

09. Solar Photovoltaic. 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 license holder 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 application as a supervising specialty journeyman except for work in his specialty. Applicants for this license class shall provide proof of photovoltaic installer certification by the North American Board of Certified Energy Practitioners (NABCEP) or equivalent. Any person licensed in this category may perform the following types of installations: ()

a. Solar Photovoltaic DC Systems: Install, maintain, repair, and replace all electrical equipment, wires, and accessories up to and including the inverter. ()

b. Solar Photovoltaic micro-inverter/AC Systems: Install, maintain, repair, and replace all electrical equipment, wires, and accessories up to and including the AC combiner box. ()

015. APPLICATIONS FOR SPECIALTY LICENSES.

Applications for any of the above specialty licenses may be obtained from the ~~Electrical Bureau~~, Division of Building Safety. The forms shall be returned with the application fee, as provided by Section 54-1014, Idaho Code, with proof of the required two (2) years of experience in the field of specialty, and all applications shall be signed and notarized. Upon receiving a passing grade, the applicant may remit the license fee for issuance of the license. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

017. SPECIALTY CONTRACTOR LICENSE.

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

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

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

02. Modification to Qualifications. Applicants for specialty contractor licenses, or individuals countersigning such applications, shall be subject to the same requirements, restrictions, and fees applicable to other electrical contractors and countersigning master, as set forth in the current Electrical Laws and Rules with the exception that an electrical contractor requires a master electrician to countersign as a supervising master whereas a supervising specialty journeyman for a specialty electrical contractor must meet the requirements of Subsection 017.01 of these rules. (4-2-08)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.05 - RULES GOVERNING EXAMINATIONS

DOCKET NO. 07-0105-1101

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 54-1005(1) and 54-1006(5), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

When this original rule was written, examinations were only administered on a monthly or bi-monthly basis. However, the electrical journeyman examination is now offered on a continuous basis in the state throughout the year and there is no longer a need to impose a 30-day waiting period after a first or second failed journeyman examination attempt. The proposed rule would eliminate the 30-day waiting period after a first or second failed journeyman examination attempt.

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 rulemaking and the benefit to applicants for the electrical journeyman examination.

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 26, 2011.

DATED this 29th day of August, 2011.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0105-1101

011. EXAMINATIONS.

The Electrical Board shall review and approve all versions of examinations prior to administration. (4-5-00)

01. Frequency of Conducting of Examinations. Examinations for all classifications under the Electrical Laws and Rules will be given a minimum of four (4) times each year in at least three (3) locations: One (1) to be in northern Idaho, one (1) to be in central Idaho, and one (1) to be in southern Idaho. The applicant will be notified in writing of the date, time, and location at which the examination will be given, following approval of the application. (4-5-00)

02. Professional Testing Services. In lieu of the administration by the Electrical Board of the examination for licenses pursuant to this rule, the Electrical Board may contract with a professional testing service to administer the examination and require license applicants to pay to the testing service the fee that they have set for the examination and to take such examination at the time set by such service. After taking such examination, an official copy of the test score shall be provided by the applicant to the Electrical Board before the license will be granted. If the examination is conducted in this fashion, the Electrical Board may charge and retain the application fee provided for by Section 54-1014, Idaho Code, to cover the cost of reviewing the applicant's application. (4-5-00)

03. Required Scores. The following scores are considered minimum for passing and are required to be achieved by the applicant prior to issuance of the appropriate license or certification.

Journeyman Electrician	- 70%
Specialty Journeyman Electrician	- 70%
Electrical Contractor	- 75%
Specialty Electrical Contractor	- 70%
Electrical Inspector	- 70%
Master Electrician	- 75%

(5-8-09)

04. Failed Examinations. (4-6-05)

a. An applicant receiving less than a passing score on a first or second examination attempt may be reexamined ~~at the expiration of thirty (30) days after the date of the failed examination.~~ (4-6-05)()

b. Before being reexamined after failing an examination the third time, an applicant must: (4-6-05)

i. Wait until the expiration of one (1) year from the date of the failed third examination; or (4-6-05)

ii. Provide proof, satisfactory to the Electrical Board, of completion of a minimum of twenty-four (24) hours of Board-approved, related electrical training or continuing education since the date of the failed third examination. (4-6-05)

c. Before being reexamined after any further failures, an applicant for reexamination must: (4-6-05)

i. Wait until the expiration of an additional one (1) year from the date of the failed examination; or (4-6-05)

ii. Provide proof, satisfactory to the Electrical Board, of completion of thirty-two (32) hours of Board-approved, related electrical training or continuing education since the date of the failed examination. (4-6-05)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.06 - RULES GOVERNING THE USE OF NATIONAL ELECTRICAL CODE

DOCKET NO. 07-0106-1101

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 54-1001 and 54-1006(5), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 code to which all electrical installations must comply has been updated as of 2011. Currently, the state is using the 2008 edition of the National Electrical Code (NEC), and this rulemaking would adopt the 2011 NEC. The last several NEC code editions have also provided for arc fault circuit interrupter (AFCI) breakers to be installed for all circuits supplying outlets in dwelling unit family rooms, dining rooms, living rooms, parlors, dens, bedrooms, recreation rooms, closets, hallways, or similar rooms or areas. However since 2008, the Board has only required AFCI circuit breakers to be utilized for circuits supplying dwelling unit bedrooms as reflected in this administrative rule which amended the NEC. At numerous Board meetings conducted over the course of the last year, the Board considered the input of contractors, manufacturers, consumers, and other affected industry participants before determining to eliminate the rule. The elimination of this rule would result in the provision of the NEC addressing AFCI to exist without amendment, which would result in the requirement that such circuit breakers be utilized in all the living spaces identified above. The proposed rule would adopt the 2011 edition of the National Electric Code (NEC). The proposed rule would also eliminate the amendment to the NEC which only requires arc fault circuit interrupter (AFCI) breakers to be used in dwelling unit bedrooms.

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:

The adoption of the 2011 National Electrical Code is expected to cost DBS approximately \$5,000. This cost includes the cost of new code books and training associated with the implementation of the new code. Local jurisdictions will encounter similar costs. The adoption of the 2011 NEC is expected to add approximately \$500 to the wiring cost of the typical new house. The bases of these increased costs are driven primarily by the expanded application of Arc Fault Circuit Interrupters (AFCI's) required on 120 volt circuits in the house.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of 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 National Electrical Code (NEC), 2011 Edition is adopted and incorporated by reference due to updates in the NEC.

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 26, 2011.

DATED this 29th day of August, 2011.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0106-1101

011. ADOPTION AND INCORPORATION BY REFERENCE OF THE NATIONAL ELECTRICAL CODE, ~~2008 EDITION.~~

01. Documents. Under the provisions of Section 54-1001, Idaho Code, the National Electrical Code, 2008~~11~~ Edition, (herein NEC) is hereby adopted and incorporated by reference for the state of Idaho and shall be in full force and effect on and after July 1, 2008~~12~~, with the exception of the following: (4-2-08)()

a. Where the height of a crawl space does not exceed one point four (1.4) meters or four point five (4.5) feet it shall be permissible to secure NM cables, that run at angles with joist, to the bottom edge of joist. NM cables that run within two point one (2.1) meters or seven (7) feet of crawl space access shall comply with Article 320.23. (3-29-10)

b. Compliance with Article 675.8(B) will include the additional requirement that a disconnecting means always be provided at the point of service from the utility no matter where the disconnecting means for the machine is located. (5-3-03)

c. Compliance with Article 550.32(B) shall limit installation of a service on a manufactured home to those homes manufactured after January 1, 1992. (5-3-03)

d. Poles used as lighting standards that are forty (40) feet or less in nominal height and that support no more than four (4) luminaires operating at a nominal voltage of three hundred (300) volts or less, shall not be considered to constitute a structure as that term is defined by the National Electrical Code (NEC). The disconnecting means shall not be mounted to the pole. The disconnecting means may be permitted elsewhere in accordance with NEC, Article 225.32, exception 3. SEC special purpose fuseable connectors (model SEC 1791-DF or model SEC 1791-SF) or equivalent shall be installed in a listed handhole (underground) enclosure. The enclosure shall be appropriately grounded and bonded per the requirements of the NEC applicable to Article 230-Services. Overcurrent protection shall be provided by a (fast-acting – minimum - 100K RMS Amps 600 VAC) rated fuse. Wiring within the pole for the luminaires shall be protected by supplementary overcurrent device (time-delay – minimum - 10K RMS Amps 600 VAC) in break-a-away fuse holder accessible from the hand hole. Any poles supporting or incorporating utilization equipment or exceeding the prescribed number of luminaires, or in excess of forty (40) feet, shall be considered structures, and an appropriate service disconnecting means shall be required per the NEC. All luminaire-supporting poles shall be appropriately grounded and bonded per the NEC. (4-6-05)

- ~~e. Compliance with Article 210.12 Arc-Fault-Circuit-Interrupter Protection. (4-2-08)~~
- ~~i. Definition. Arc-Fault-Circuit-Interrupter is a device intended to provide protection from the effects of arc faults by recognizing characteristics unique to arcing and by functioning to de-energize the circuit when an arc fault is detected. (4-2-08)~~
- ~~ii. Dwelling Unit Bedrooms. All one hundred twenty (120)-volt, single phase, fifteen (15)-ampere and twenty (20)-ampere branch circuits supplying outlets installed in dwelling unit bedrooms shall be protected by a listed arc-fault circuit interrupter, combination type installed to provide protection of the branch circuit. (4-2-08)~~
- f. Compliance with Article 680.26 Bonding. (4-2-08)**
- i. Performance. The bonding required by this section shall be installed to eliminate voltage gradients in the pool area as prescribed. FPN: This section does not require that the eight (8) AWG or larger solid copper bonding conductor be extended or attached to any remote panelboard, service equipment, or any electrode. (4-2-08)
- ii. Bonded Parts. The parts specified in 680.26(B)(1) through (B)(5) shall be bonded together. (4-2-08)
- (1) Metallic Structural Components. All metallic parts of the pool structure, including the reinforcing metal of the pool shell, coping stones, and deck, shall be bonded. The usual steel tie wires shall be considered suitable for bonding the reinforcing steel together, and welding or special clamping shall not be required. These tie wires shall be made tight. If reinforcing steel is effectively insulated by an encapsulating nonconductive compound at the time of manufacture and installation, it shall not be required to be bonded. Where reinforcing steel is encapsulated with a nonconductive compound, provisions shall be made for an alternate means to eliminate voltage gradients that would otherwise be provided by unencapsulated, bonded reinforcing steel. (4-2-08)
- (2) Underwater Lighting. All forming shells and mounting brackets of no-niche luminaries (fixtures) shall be bonded unless a listed low-voltage lighting system with nonmetallic forming shells not requiring bonding is used. (4-2-08)
- (3) Metal Fittings. All metal fittings within or attached to the pool structure shall be bonded. Isolated parts that are not over one hundred (100) mm (four (4) inches) in any dimension and do not penetrate into the pool structure more than twenty-five (25) mm (one (1) inch) shall not require bonding. (4-2-08)
- (4) Electrical Equipment. Metal parts of electrical equipment associated with the pool water circulating system, including pump motors and metal parts of equipment associated with pool covers, including electric motors, shall be bonded. Metal parts of listed equipment incorporating an approved system of double insulation and providing a means for grounding internal nonaccessible, non-current-carrying metal parts shall not be bonded. Where a double-insulated water-pump motor is installed under the provisions of this rule, a solid eight (8) AWG copper conductor that is of sufficient length to make a bonding connection to a replacement motor shall be extended from the bonding grid to an accessible point in the motor vicinity. Where there is no connection between the swimming pool bonding grid and the equipment grounding system for the premises, this bonding conductor shall be connected to the equipment grounding conductor of the motor circuit. (4-2-08)
- (5) Metal Wiring Methods and Equipment. Metal-sheathed cables and raceways, metal piping, and all fixed metal parts except those separated from the pool by a permanent barrier shall be bonded that are within the following distances of the pool: (4-2-08)
- (a) Within one and five tenths (1.5) meters (five (5) feet) horizontally of the inside walls of the pool. (4-2-08)
- (b) Within three and seven tenths (3.7) meters (twelve (12) feet) measured vertically above the maximum water level of the pool, or any observation stands, towers, or platforms, or any diving structures. (4-2-08)
- iii. Common Bonding Grid. The parts specified in 680.26(B) shall be connected to a common bonding grid with a solid copper conductor, insulated, covered, or bare, not smaller than eight (8) AWG. Connection shall be

made by exothermic welding or by pressure connectors or clamps that are labeled as being suitable for the purpose and are of stainless steel, brass, copper, or copper alloy. The common bonding grid shall be permitted to be any of the following: (4-2-08)()

- (1) The structural reinforcing steel of a concrete pool where the reinforcing rods are bonded together by the usual steel tie wires or the equivalent. (4-2-08)
 - (2) The wall of a bolted or welded metal pool. (4-2-08)
 - (3) A solid copper conductor, insulated, covered, or bare, not smaller than eight (8) AWG. (4-2-08)
 - (4) Rigid metal conduit or intermediate metal conduit of brass or other identified corrosion-resistant metal conduit. (4-2-08)
- iv. Connections. Where structural reinforcing steel or the walls of bolted or welded metal pool structures are used as a common bonding grid for nonelectrical parts, the connections shall be made in accordance with 250.8. (4-2-08)
- v. Pool Water Heaters. For pool water heaters rated at more than fifty (50) amperes that have specific instructions regarding bonding and grounding, only those parts designated to be bonded shall be bonded, and only those parts designated to be grounded shall be grounded. (4-2-08)

02. Availability. This document is available at the offices of the Division of Building Safety at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642, 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and 2055 Garrett Way, Suite 7, Pocatello, Idaho 83201. (4-2-08)()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.01.07 - RULES GOVERNING CONTINUING EDUCATION REQUIREMENTS

DOCKET NO. 07-0107-1101 (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 54-1006(5), 54-1013 and 67-2601A(4)(e), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 addition of a fee is necessary to cover the expense to the Division for reviewing continuing education provider applications.

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

The proposed rule would add a requirement that continuing education providers, who apply to have their programs and instructors approved by the Division, pay a fifty dollar (\$50) fee to the Division.

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:

Fees will cover the expenses incurred by the Division of Building Safety for reviewing and approving courses of instruction and instructors.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the need to establish a fee to cover expenses incurred by the Division of Building Safety.

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 26, 2011.

DATED this 29th day of August, 2011.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 07-0107-1101

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 shall consist 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~~ Division of Building Safety. Proof of completion of these continuing education requirements must be submitted to the ~~Bureau~~ Division 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. (4-7-11)()

012. COURSE APPROVAL REQUIREMENTS.

Continuing education courses for electricians must cover technical aspects of the electrical trade. Courses related to management, supervision, business practices, personal computer skills, or first aid will not be approved. Courses will be approved as either code update or industry related based on the criteria as defined in this section. (4-2-08)

01. General Course Requirements. (4-2-08)

a. Courses must be at least four (4) hours in length. (4-2-08)

b. Courses must be taught by an instructor approved by the ~~Electrical Bureau~~ Division of Building Safety. (4-2-08)()

c. The presentation should be delivered orally with the assistance of power point or other means of visual media. Pre-taped video or audio shall be held to a minimum. (4-2-08)

d. A course evaluation card shall be provided to all participants to evaluate course and presentation. The completed evaluation cards must be submitted to the ~~Electrical Bureau~~ Division of Building Safety. (4-2-08)()

e. All programs are subject to audit by representatives of the Division of Building Safety or Idaho Electrical Board for content and quality without notice and at no charge. Course and instructor approval are subject to revocation if the minimum requirements of course content or instructor qualifications are not met. (4-2-08)

f. Credit will not be given to a licensee who attended a course prior to that course being approved by the Division of Building Safety. (4-2-08)

02. Code Update Programs. Code update programs must cover changes to the National Electrical Code utilizing pre-approved materials such as the NFPA-IAEI Analysis of Changes. (4-2-08)

03. Industry Related Programs. Industry related programs shall be technical in nature and directly related to the electrical industry. Electrical theory, application of the National Electrical Code, grounding, photovoltaic systems, programmable controllers, and residential wiring methods are examples of industry related programs. (4-2-08)

04. Program Approval Procedures. (4-2-08)

a. Program approvals shall be effective for one (1) code cycle. Subsequent applications for the same program may incorporate by reference all or part of the original application. (4-2-08)

b. An application for course approval may be obtained from the ~~Electrical Bureau~~ Division of Building Safety, 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642, or from the Division of Building Safety's website at <http://dbs.idaho.gov>. The application shall include: (4-2-08)()

- i. The title and general description of the program; (4-2-08)
- ii. The name of the sponsor as it will appear on the completion certificate; (4-2-08)
- iii. The address and contact person for the sponsor; (4-2-08)
- iv. The names of the instructors and dates of approval by the Division of Building Safety or completed applications for the instructors; (4-2-08)
- v. The hours of instruction to be presented – correspondence or on-line computer based courses must provide a minimum of twenty (20) questions to be answered by the student for each hour of credit requested for approval. For example four (4) hours of credit would require eighty (80) questions, eight (8) hours of credit would require one hundred and sixty (160) questions; (4-2-08)
- vi. An outline of the program; (4-2-08)
- vii. The cost of the program to the participant; (4-2-08)
- viii. A schedule of classes, including locations, dates, and times; (4-2-08)
- ix. A list or sample of materials to be used in the program; (4-2-08)
- x. A copy of the quiz to be given to the participants, if applicable; (4-2-08)
- xi. A copy or sample of the completion certificate; *and* ~~(4-2-08)~~()
- xii. A copy of the evaluation card; *and* ~~(4-2-08)~~()
- xiii. Payment of a fee of fifty dollars (\$50). ()
- c.** Certificates of Completion. Certificates of completion must contain the following: (4-2-08)
 - i. The date of the program; (4-2-08)
 - ii. The title of the program; (4-2-08)
 - iii. The location of the program; (4-2-08)
 - iv. The name of the sponsor; (4-2-08)
 - v. The number of hours of credit completed; (4-2-08)
 - vi. The name of the attendee; (4-2-08)
 - vii. The license number of the attendee; (4-2-08)
 - viii. The name of the instructor; and (4-2-08)
 - ix. The Idaho course approval number. (4-2-08)
- d.** Evaluation Cards. Evaluation cards or forms must be pre-addressed to the Division of Building Safety and must include the following: (4-2-08)
 - i. The date of the program; (4-2-08)
 - ii. The title of the program; (4-2-08)

- iii. The location of the program; (4-2-08)
- iv. The instructor's name; (4-2-08)
- v. An evaluation of the course (for example: poor, fair, good, very good, excellent); and (4-2-08)
- vi. An evaluation of the instructor's presentation skills. (4-2-08)

05. Appeals. Appeals for courses that have been denied approval shall be submitted in writing and shall be presented to the Idaho Electrical Board within thirty (30) days for review. Decision by the Idaho Electrical Board on the appeal shall be final. Any further appeal shall be to the district court as provided by the Idaho Administrative Procedure Act (Title 67, Chapter 52, Idaho Code) as an appeal from a final agency action in a contested case proceeding. (4-2-08)

06. Instructor Approval Procedures. (4-2-08)

a. Instructor approvals shall be effective for one (1) code cycle. (4-2-08)

b. An application for instructor approval may be obtained from the ~~Electrical Bureau~~ Division of Building Safety, 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642, or from the Division of Building Safety's website at <http://dbs.idaho.gov>. Documentation of the instructor qualifications along with payment of a fee of fifty dollars (\$50) must be included with the instructor application. The minimum qualification for an instructor shall be established by providing proof of one (1) of the following: (4-2-08)()

- i. Current and active master or journeyman electrician license; (4-2-08)
- ii. An appropriate degree related to the electrical field; or (4-2-08)
- iii. Other recognized experience or certification in the subject matter to be presented. (4-2-08)

c. Any person denied instructor approval may appeal to the Idaho Electrical Board within thirty (30) days. Decision by the Idaho Electrical Board on the appeal shall be final. Any further appeal shall be to the district court as provided by the Idaho Administrative Procedure Act (Title 67, Chapter 52, Idaho Code) as an appeal from a final agency action in a contested case proceeding. (4-2-08)

07. Revocation of Approval. (4-2-08)

a. The Idaho Electrical Board may revoke, suspend, or cancel the approval of any continuing education program or instructor if the Idaho Electrical Board determines that the program or instruction does not meet the intent of furthering the education of electricians. Grounds for revocation of approval shall include, but not be limited to: (4-2-08)

- i. Failure of the instructor to substantially follow the approved course materials; (4-2-08)
- ii. Failure to deliver instruction for the full amount of time approved for the course; or (4-2-08)
- iii. Substantial dissatisfaction with the instructor's presentation or the content of the course or materials by the class attendees or representatives of the Division of Building Safety or Idaho Electrical Board. (4-2-08)

b. Decision by the Idaho Electrical Board on the appeal shall be final. Any further appeal shall be to the district court as provided by the Idaho Administrative Procedure Act (Title 67, Chapter 52, Idaho Code), as an appeal from a final agency action in a contested case proceeding. (4-2-08)

08. Requirements for Credit. In order for a licensee to receive credit for attending a class, the following requirements must be met: (4-2-08)

a. The class must have prior approval by the ~~Electrical Bureau~~ Division of Building Safety or a state that is reciprocal with Idaho for continuing education; (4-2-08)()

b. The instructors must be approved instructors for the program; (4-2-08)

c. The licensee must submit a copy of the certificate of completion to the ~~Electrical Bureau~~ Division of Building Safety; and (4-2-08)()

d. The course provider must provide a roster of attendees to include the name, license number, and the number of hours to be credited. (4-2-08)

09. Schedule of Approved Classes. The ~~Electrical Bureau~~ Division of Building Safety shall publish a list of approved classes at a minimum of once a year. This list shall be forwarded to all states that are members of the continuing education reciprocal agreement and shall be made available to any licensee via the Division of Building Safety's website or by mail. (4-2-08)()

IDAPA 07 - DIVISION OF BUILDING SAFETY
07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING
DOCKET NO. 07-0205-1101 (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 54-2605(1), 54-2606 and 67-2601A(4)(e), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 2010, a continuing education requirement for plumbing contractors and journeymen was established with the declaration within the rule (IDAPA 07.02.05.016.02.c.) that the Plumbing Board would establish criteria for approval of instructors and courses of instruction by the Division. Substantially similar criteria have already been established for the provision of continuing education to electrical licensees, and effectively serve to ensure the reputability and effectiveness of instructors and courses offered. The proposed rule establishes the requirements for courses of instruction, the Division's procedures for approval of programs and providers, the fees associated with applications for approval, and requirements for credit.

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

The proposed rule establishes a fee of fifty dollars (\$50) for review of an application for approval of a continuing education plumbing course.

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:

Fees will cover the expenses incurred by the Division of Building Safety for reviewing and approving courses of instruction and instructors.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature 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 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 26, 2011.

DATED this 29th day of August 2011.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety

1090 E. Watertower St., Ste. 150
P. O. Box 83720, Meridian, ID 83542
Phone: (208) 332-8986; Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 07-0205-1101

016. CERTIFICATES OF COMPETENCY -- ISSUANCE, RENEWAL, EXPIRATION, REVIVAL -- FEES.

01. Issuance. Certificates of competency shall be issued in such a manner as to create a renewal date that coincides with the birthdate of the individual to whom the certificate is issued and allows for renewals every three (3) years. (4-6-05)

a. Certificates of competency shall be issued for a period of no less than one (1) year and no more than three (3) years. For example: a qualified applicant who applies for a certificate of competency in August of year one (1) but whose birthday will not occur until March of year two (2) shall be issued a certificate of competency renewable on the anniversary of the applicant's birthdate. (4-6-05)

b. The fee for issuance of certificates of competency shall be prorated based on the number of months for which it is issued. (4-6-05)

02. Renewal. Certificates of competency shall be renewed in such a manner as will achieve a staggered system of certificate renewal using the birthdate of the individual to whom the certificate is issued as the expiration date. (4-6-05)

a. Certificates of competency shall be renewed for a period of no less than one (1) year and no more than three (3) years. (4-6-05)

b. The fee for renewal of certificates of competency shall be prorated based on the number of months for which it is issued. (4-6-05)

~~**e.** Continuing Education. The Idaho Plumbing Board will establish criteria for approval of instruction and instructors and courses and instructors will be approved by the Plumbing Bureau. Proof of completion of the following continuing education requirements must be submitted to the Plumbing Bureau prior to, or with the application for, licensure renewal by any licensee in order to renew a journeyman or contractors plumbing license. (3-29-10)~~

~~**i.** Journeymen must complete eight (8) hours of continuing education for every three-year license cycle, or complete an exam administered by the Division. Of the required eight (8) hours, four (4) hours must be plumbing code update related and the other four (4) hours may be industry related training. (3-29-10)~~

~~**ii.** Contractors must complete sixteen (16) hours of continuing education for every three-year license cycle. Hours accrued obtaining journeyman education may be applied toward this requirement whenever applicable. (3-29-10)~~

03. Expiration - Revival. (4-6-05)

a. Certificates that are not timely renewed will expire. (4-6-05)

b. A certificate that has expired may be revived within twelve (12) months of its expiration by submitting a completed application and paying the same fee as for an initial certificate and meeting all other certification requirements. (4-6-05)

c. Revived certificates shall be issued in such a manner as to create a renewal date that coincides with the birthdate of the applicant to achieve a staggered system of renewal. (4-6-05)

Codified Section 017 has been moved and renumbered to proposed Section 018

017. CONTINUING EDUCATION REQUIREMENTS.

01. Proof of Completion. Proof of completion of the following continuing education requirements must be submitted to the Division of Building Safety prior to, or with the application for, licensure renewal by any licensee in order to renew a journeyman or contractors plumbing license. ()

a. Journeymen must complete eight (8) hours of continuing education for every three-year license cycle, or complete an exam administered by the Division. Of the required eight (8) hours, four (4) hours must be plumbing code update related and the other four (4) hours may be industry related training. ()

b. Contractors must complete sixteen (16) hours of continuing education for every three-year license cycle. Hours accrued obtaining journeyman education may be applied toward this requirement whenever applicable. ()

02. Course Approval Requirements. Continuing education courses for plumbers must cover technical aspects of the plumbing trade. Courses related to management, supervision, business practices, personal computer skills or first aid will not be approved. Courses will be approved as either code update or industry related based on the criteria as defined in Section 017 of these rules. The criteria for the approval of instruction and instructors is established as provided in Section 017 of these rules. Courses and instructors shall be approved by the Division. ()

03. General Course Requirements. ()

a. Courses must be at least four (4) hours in length. ()

b. Courses must be taught by an instructor approved by the Division. ()

c. The presentation should be delivered orally and supplemented with appropriate visual media. Pre-taped video or audio shall be held to a minimum. ()

d. A course evaluation card shall be provided to all participants to evaluate the course and presentation. ()

e. All programs are subject to audit by representatives of the Division or the Idaho Plumbing Board for content and quality without notice and at no charge. Course and instructor approval are subject to revocation if the minimum requirements of course content or instructor qualification are not maintained. ()

f. Credit will not be given to a licensee who attended a course prior to that course being approved by the Division. ()

04. Code Update Programs. Code update programs must cover changes to the Idaho State Plumbing Code or the Uniform Plumbing Code. ()

05. Industry Related Programs. Industry related programs shall be technical in nature and directly related to the plumbing industry. ()

06. Program Approval Procedures. ()

a. Program approvals shall be effective for one (1) code cycle. Subsequent applications for the same program may incorporate by reference all or part of the original application. ()

b. An application for course approval may be obtained from the Division of Building Safety offices at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642; 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814; and 2055 Garrett Way, Suite 7, Pocatello, Idaho 83201; or from the Division's website at <http://dbs.idaho.gov>. The application shall include: ()

- i. The title and general description of the program; ()
- ii. The name of the sponsor as it will appear on the completion certificate; ()
- iii. The address and contact person for the sponsor; ()
- iv. The names of the instructors and dates of approval by the Division of Building Safety or completed applications for the instructors; ()
- v. The hours of instruction to be presented - correspondence or on-line computer-based courses must provide a minimum of twenty (20) questions to be answered by the student for each hour of credit requested for approval. For example, four (4) hours of credit would require eighty (80) questions, eight (8) hours of credit would require one hundred sixty (160) questions; ()
- vi. An outline of the program; ()
- vii. The cost of the program to the participant; ()
- viii. A schedule of classes, including locations, dates and times; ()
- ix. A list or sample of materials to be used in the program; ()
- x. A copy of the quiz to be given to participants, if applicable; ()
- xi. A copy of the completion certificate; ()
- xii. A copy of the evaluation card; and ()
- xiii. Fifty dollar (\$50) fee for review of the application. ()
- c. Certificates of Completion. Certificates of completion must include the following: ()
 - i. The title of the program; ()
 - ii. The location of the program; ()
 - iii. The name of the sponsor; ()
 - iv. The number of hours of credit completed; ()
 - v. The name of the attendee; ()
 - vi. The license number of the attendee; ()
 - vii. The name of the instructor; and ()
 - viii. The Idaho course approval number. ()
- d. Evaluation Cards. Evaluation cards or forms must be pre-addressed to the Division of Building Safety and must include the following: ()
 - i. The date of the program; ()
 - ii. The title of the program; ()
 - iii. The location of the program; ()

- iv. The instructor's name: ()
- v. An evaluation of the course (e.g., poor, fair, good, very good, excellent); and ()
- vi. An evaluation of the instructor's presentation skills. ()

07. Instructor Approval Procedures. Instructor approvals shall be effective for one (1) code cycle. Applications for instructor approval may be obtained from the Division of Building Safety offices at 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642; 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814; and 2055 Garrett Way, Suite 7, Pocatello, Idaho 83201; or from the Division's website at <http://dbs.idaho.gov>. The minimum qualification for an instructor shall be established by providing proof of one (1) of the following, which shall be documented and submitted with the instructor's application and the fifty dollar (\$50) application fee: ()

- a. Current and active Idaho contractor or journeyman plumber license; ()
- b. An appropriate degree related to the plumbing profession; or ()
- c. Other recognized experience or certification in the subject matter to be presented. ()

08. Revocation of Approval. The Division may revoke, suspend, or cancel the approval of any instructor if the Division determines that the instructor does not meet the intent of furthering the education of plumbers. Grounds for revocation of approval shall include, but not be limited to: ()

- a. Failure of the instructor to substantially follow the approved course materials; ()
- b. Failure to deliver instruction for the full amount of time approved for the course; or ()
- c. Substantial dissatisfaction with the instructor's presentation by class attendees or representatives of the Division or the Idaho Plumbing Board. ()

09. Appeals. Appeals for courses or instructors denied approval or where approval has been revoked for cause shall be in writing and shall be presented to the Idaho Plumbing Board within thirty (30) days of the denial of the application. Decision of the Board on the appeal shall be final. Any further appeal shall be to the district court as provided by the Idaho Administrative Procedures Act as an appeal from a final agency action in a contested case proceeding. ()

10. Requirements for Credit. In order for a licensee to receive credit for attending a class, the following requirements must be met: ()

- a. The class must have prior approval by the Division or a state that is reciprocal with Idaho for continuing education; ()
- b. The instructors must be approved as instructors for the specific program; ()
- c. The licensee must submit a copy of the certificate of completion to the Division; and ()
- d. The course provider must provide a roster of attendees to include the name, license number, and the number of hours to be credited. ()

11. Schedule of Approved Classes. The Division of Building Safety shall publish a list of approved classes at least once a year. The list shall be forwarded to all states that are members of a continuing education reciprocal agreement and shall be made available to any licensee on the Division's website. ()

0178. SPECIALTY PLUMBING LICENSES.

The purpose of this section is to set out the special types of plumbing installations for which a specialty license is required; to set out the minimum experience requirements for such licenses; and to describe the procedure for securing such licenses. (8-25-88)

01. Qualified Journeyman Plumbers. Qualified journeyman plumbers as defined in Section 54-2611(b), Idaho Code, shall be permitted to make installations as subsequently described herein without securing an additional license for said installation. (11-14-85)

02. Minimum Experience Requirements. (8-3-83)

a. Experience gained by an individual while engaged in the practice of mobile home hook-ups shall not be considered towards the satisfaction of the minimum experience requirements for licensing as a journeyman plumber. (8-3-83)

b. All installers shall be licensed and be in the employ of a licensed plumbing contractor or specialty contractor limited to this category. (8-3-83)

03. Mobile Home Set-Up or Installers. (8-25-88)

a. Any person qualifying for and having in his possession a current license in this category may make the proper connections of sewer and water to existing facilities on site. All material and workmanship shall comply with the requirements of the Uniform Plumbing Code. (8-3-83)

b. All installers shall be licensed and be in the employ of a licensed plumbing contractor or specialty contractor limited to this category. This specialty license does not permit any extension, alteration, or addition to the plumbing system within the mobile home or the installation of any underground plumbing outside the mobile home. (8-3-83)

04. Applications for Specialty Licenses. Applications for the above specialty licenses may be obtained from the Plumbing Bureau, Idaho Division of Building Safety. The forms shall be returned with the examination fee provided by Section 54-2614, Idaho Code, with proof of the required two (2) years experience in the field of this specialty. (8-25-88)

05. Examinations for Specialty Licenses. Written examinations for specialty plumbing licenses shall be formulated from the practical application of the sections of the Uniform Plumbing Code as adopted by the Idaho Plumbing Board under Section 54-2601, Idaho Code. (11-14-85)

06. Fees. Fees for certificates shall be required in accordance with Section 54-2616, Idaho Code. (11-14-85)

0189. APPLIANCE PLUMBING SPECIALTY LICENSE.

The purpose of this section is to set out the special types of plumbing installations for which an appliance plumbing specialty license is required; to set out the minimum experience requirements for such licenses; and to describe the procedure for securing such licenses. (7-1-99)

01. Qualified Journeyman Plumbers. Qualified journeyman plumbers as defined in Section 54-2611(b), Idaho Code, shall be permitted to make installations as subsequently described herein without securing an additional license for said installation. (7-1-99)

02. Qualified Apprentice Plumbers. Qualified apprentice plumbers as defined in Section 54-2611(c), Idaho Code, shall be permitted to make installations as subsequently described herein without securing an additional license for said installation. (7-1-99)

03. Minimum Experience Requirements. (7-1-99)

a. Experience gained by an individual while engaged in the practice of appliance plumbing specialty shall not be considered towards the satisfaction of the minimum experience requirements for licensing as a journeyman plumber. (7-1-99)

b. All qualified appliance plumbing specialty journeymen shall be licensed and be in the employ of a

licensed plumbing contractor or specialty contractor limited to this category. (7-1-99)

c. Appliance plumbing specialty contractors must have a two thousand dollar (\$2,000) surety bond, thirty (30) months minimum journeyman experience, and successful completion of appliance plumbing specialty contractor's test. (7-1-99)

d. Appliance plumbing specialty journeymen must have eighteen (18) months apprentice on-the-job experience, satisfactory completion of seventy-two (72) hours of Idaho Plumbing Board-approved, related training classes and successful completion of the appliance plumbing specialty journeyman's test. (7-1-99)

e. Appliance plumbing specialty apprentices must be employed by a licensed contractor, under the supervision of a journeyman, be enrolled in or have completed Idaho Plumbing Board-approved related training classes and maintain state registration. (7-1-99)

04. Special Grandfathering Provision. (7-1-99)

a. Contractor: In lieu of the thirty (30) months minimum journeyman experience requirement, an individual may use five (5) years experience of owning and operating a business where this specialty applies AND satisfactory completion of seventy-two (72) hours of Idaho Plumbing Board-approved related training classes. For this purpose, a business is defined as an activity in which tax returns were required to be and have been filed for at least five (5) years. (7-1-99)

b. Journeyman: In lieu of the eighteen (18) months apprentice on-the-job experience requirement, an individual may use five (5) years experience working for a business where this specialty applies. For this purpose, working for a business is defined as being issued a W-2 earning form from a related business or businesses for at least five (5) years. (7-1-99)

05. Applications for Specialty Licenses. Applications for the above specialty licenses may be obtained from the Plumbing Bureau, Division of Building Safety. The forms shall be returned with the examination fee provided by Section 54-2614, Idaho Code, with proof of the required experience in the field of this specialty. (7-1-99)

06. Examinations for Specialty Licenses. Written examinations for specialty plumbing licenses shall be formulated from the practical application of the sections of the Uniform Plumbing Code as adopted by the Idaho Plumbing Board under Section 54-2601, Idaho Code. (7-1-99)

07. Fees. Fees for certificates shall be required in accordance with Section 54-2616, Idaho Code. (7-1-99)

08. Scope of Work Permitted. Permitted to disconnect, cap, remove, and reinstall within sixty (60) inches of original location: water heating appliance, water treating or filtering devices; air or space temperature modifying equipment which involves potable water; humidifier; temperature and pressure relief valves; condensate drains and indirect drains in one (1)-family and two (2)-family residences only. Does not include installation, testing, or certifying of backflow prevention devices. Does NOT include any modification to the drain, waste or vent systems. Must comply with all Idaho plumbing laws and rules and the requirements of the Uniform Plumbing Code. (7-1-99)

~~019~~20. WATER PUMP PLUMBING SPECIALTY LICENSE.

The purpose of this section is to set out the special types of plumbing installations for which a water pump plumbing specialty license is required; to set out the minimum experience requirements for such licenses; and to describe the procedure for securing such licenses. (7-1-99)

01. Qualified Journeyman Plumbers. Qualified journeyman plumbers as defined in Section 54-2611(b), Idaho Code, shall be permitted to make installations as subsequently described herein without securing an additional license for said installation. (7-1-99)

02. Qualified Apprentice Plumbers. Qualified apprentice plumbers as defined in Section 54-2611(c), Idaho Code, shall be permitted to make installations as subsequently described herein without securing an additional

license for said installation. (7-1-99)

03. Minimum Experience Requirements. (7-1-99)

a. Experience gained by an individual while engaged in the practice of water pump plumbing specialty shall not be considered towards the satisfaction of the minimum experience requirements for licensing as a journeyman plumber. (7-1-99)

b. All qualified water pump plumbing specialty journeymen shall be licensed and be in the employ of a licensed plumbing contractor or specialty contractor limited to this category. (7-1-99)

c. Water pump plumbing specialty contractors must have a two thousand dollars (\$2,000) surety bond, thirty (30) months minimum journeyman experience, and successful completion of water pump plumbing specialty contractor's test. (7-1-99)

d. Water pump specialty journeymen must have eighteen (18) months apprentice on-the-job experience, satisfactory completion of twelve (12) hours of Idaho Plumbing Board-approved, related training classes and successful completion of the water pump plumbing specialty journeyman's test. (7-1-99)

e. Water pump plumbing specialty apprentices must be employed by a licensed contractor, under the supervision of a journeyman, be enrolled in or have completed Idaho Plumbing Board-approved related training classes and maintain state registration. (7-1-99)

04. Special Grandfathering Provision. (7-1-99)

a. Contractor: In lieu of the thirty (30) month minimum journeyman experience requirement, an individual may use three (3) years experience of owning and operating a business where this specialty applies and satisfactory completion of twenty-four (24) hours of Idaho Plumbing Board-approved related training classes. For this purpose, a business is defined as an activity in which tax returns were required to be and have been filed for at least three (3) years. (7-1-99)

b. Journeyman: In lieu of the eighteen (18) months apprentice on-the-job experience requirement, an individual may use three (3) years experience working for a business where this specialty applies. For this purpose, working for a business is defined as being issued a W-2 earning form from a related business or businesses for at least three (3) years. (7-1-99)

05. Applications for Specialty Licenses. Applications for the above specialty licenses may be obtained from the Plumbing Bureau, Division of Building Safety. The forms shall be returned with the examination fee provided by Section 54-2614, Idaho Code, with proof of the required experience in the field of this specialty. (7-1-99)

06. Examinations for Specialty Licenses. Written examinations for specialty plumbing licenses shall be formulated from the practical application of the sections of the Uniform Plumbing Code as adopted by the Idaho Plumbing Board under Section 54-2601, Idaho Code. (7-1-99)

07. Fees. Fees for certificates shall be required in accordance with Section 54-2616, Idaho Code. (7-1-99)

08. Scope of Work Permitted. Permitted to install and connect water service piping from pump to storage expansion pressure tank in one (1) and two (2) family residences only. Does not include installation, testing or certifying of backflow prevention devices. Must comply with all Idaho plumbing laws and rules and the requirements of the Uniform Plumbing Code. (7-1-99)

0201. -- 999. (RESERVED)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING

DOCKET NO. 07-0205-1102

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 54-2605(1) and 54-2606, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 and Plumbing Board have determined, based on numerous complaints by the industry in recent years, that an increasing number of individuals already licensed in other jurisdictions as master and journeyman plumbers enter Idaho and obtain apprentice registrations from the Division for the purpose of working on particular jobs and leaving the state upon completion of such. Such out-of-state individuals have evidenced no intent of attending school or working the established number of hours as required of all apprentice registrants, nor ultimately testing for an Idaho journeyman license. And recent changes to apprentice registration requirements no longer require such apprentices to show proof of enrollment in a course of instruction. This registration practice circumvents the Idaho licensing requirements because those individuals in effect perform as journeymen on the jobs until they are completed. This rule would require anyone who has previously been licensed in any jurisdiction as a journeyman or master plumber to disclose such licensure history to the Division upon application. It also prevents any such individual so previously licensed from obtaining an apprentice registration.

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 rulemaking and the need to require disclosure of previous licensure history in other jurisdictions.

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 26, 2011.

DATED this 29th day of August, 2011.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety

1090 E. Watertower St., Ste. 150
P. O. Box 83720, Meridian, ID 83542
Phone: (208) 332-8986; Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0205-1102

004. -- ~~0109.~~ (RESERVED)

010. LICENSURE HISTORY.

An applicant for any plumbing registration or certificate of competency who has been previously licensed as a journeyman or master plumber in any recognized jurisdiction is required upon application to the Division of Building Safety to disclose such licensure history and provide sufficient proof thereof. An applicant for any plumbing registration or certificate of competency who has been previously licensed as a journeyman or master plumber in any recognized jurisdiction shall not be issued a plumbing apprentice registration. ()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.05 - RULES GOVERNING PLUMBING SAFETY LICENSING

DOCKET NO. 07-0205-1103

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 54-2605(1), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Current economic conditions have made it difficult for many apprentices to achieve the required 8,000 hours of work experience as quickly as was previously possible in order to take the plumbing journeyman examination. Industry participants have reported to the Board that upon completion of schooling, apprentices now often have to wait considerable time (sometimes years) before they may test for their journeyman license. This results in a potentially large gap of time between their completion of schooling and the exam date which reduces the likelihood of passing the exam and requires additional time and expense in the form of continuation instruction. The industry has urged the Plumbing Board to allow for examination immediately upon completion of schooling. This rule change would allow an apprentice to take the written portion of the journeyman exam upon completion of a four (4) year board approved course of instruction regardless of the amount of hours of work experience the apprentice may have accrued to that point. However, no journeyman license would be issued to the apprentice, despite successful completion of the written exam, until the apprentice actually achieves 8,000 hours of work experience, and then successfully completes the practical portion of the journeyman examination.

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 rulemaking and the benefit to plumbing apprentices and/or applicants for journeyman plumbing certificates of competency.

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 26, 2011.

DATED this 29th day of August, 2011.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety

1090 E. Watertower St., Ste. 150
P. O. Box 83720, Meridian, ID 83542
Phone: (208) 332-8986; Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0205-1103

011. APPRENTICE REGISTRATION.

A person wishing to become a plumbing apprentice shall register with the Division of Building Safety prior to going to work. All apprentices shall pay the registration fee as prescribed by Section 54-2614, Idaho Code. The minimum age for any apprentice shall be sixteen (16) years. ~~All apprentices shall be registered with the Division and shall pay the registration fee as prescribed by Section 54-2614, Idaho Code.~~ No examination is required for such registration. In order to maintain registration, the apprentice shall renew his registration in accordance with Sections 54-2614 and 54-2614A, Idaho Code. ()

01. Work Requirements. An individual plumbing apprentice must be working at the trade under the constant on-the-job supervision of a journeyman and in the employ of a contractor. ~~Any apprentice who desires to sit for the journeyman exam must complete an Idaho Plumbing Board approved related course of instruction for four (4) years, and work~~ for a total of four (4) years, defined as a minimum of eight thousand (8,000) hours work experience prior to the date of the exam in order to be eligible for a journeyman certificate of competency. ()

02. Schooling Requirements. A plumbing apprentice must complete an Idaho Plumbing Board approved related course of instruction for four (4) years in order to be eligible for a journeyman certificate of competency. Unless prior approval has been granted by the ~~Plumbing Bureau~~ Division of Building Safety, the apprentice must complete the required course work sequentially: year one (1) must be completed prior to beginning year two (2); year two (2) must be completed prior to beginning year three (3); and year three (3) must be completed prior to beginning year four (4). A minimum of one hundred forty-four (144) hours of classroom or other Idaho Plumbing Board-approved instruction time per school year is required. A grade average of seventy percent (70%) must be ~~maintained~~ attained in these courses. Upon completion of apprenticeship ~~training~~ schooling, the apprentice must obtain a certificate of completion, or a letter signed by the chairman of his apprenticeship committee, and attach the certificate or letter to his application for a journeyman license. ~~In order to maintain registration, the apprentice shall renew his registration in accordance with Sections 54-2614 and 54-2614A, Idaho Code.~~ (3-29-10)()

03. Journeyman Examination. ()

a. Any plumbing apprentice who desires to take the written portion of the journeyman examination must complete an Idaho Plumbing Board approved related course of instruction for four (4) years as described in Paragraph 011.03.b. of these rules prior to the date of the exam and provide a certificate of completion with the application for examination. There is no minimum work requirement in order to be eligible to take the written portion of the plumbing journeyman examination. ()

b. Successful completion of the journeyman written 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 plumber or the practical portion of the examination in order to be issued a journeyman license. Successful completion of the written plumbing journeyman examination notwithstanding, no journeyman license shall be issued until an apprentice successfully completes the practical portion for the examination and furnishes to the Division proof of satisfaction of the work requirements contained in Paragraph 011.03.a. of these rules. Satisfaction of the work requirements contained in Paragraph 011.03.a. of these rules is required before any individual is eligible to take the practical portion of the journeyman examination. ()

012. JOURNEYMAN.

01. Qualifications for Journeyman Plumber. An applicant for a journeyman plumber's ~~license~~ certificate of competency 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 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 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. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

015. EXAMINATIONS.

01. Examinations for Journeyman Plumber. Written examinations for any journeyman plumber's license shall be formulated and approved by the Idaho Plumbing Board. Examination questions shall be based on the practical application of the Uniform Plumbing Code. No ~~license certificate of competency~~ shall be issued unless the applicant receives a final grade of seventy-five percent (75%) or higher on the written examination and passes the practical portion with no violations, as well as completes the work requirements described in Paragraph 011.03.a. of these rules. An applicant receiving a grade of less than seventy-five percent (75%) may apply for reexamination upon payment of the examination fee. An applicant has six (6) months to achieve a passing score. If an applicant does not achieve a passing score in six (6) months, the applicant must enroll in year four (4) in a, Idaho Plumbing Board-approved related training course, complete year four (4), be registered with the ~~Plumbing Bureau~~ **Division** as an apprentice, and maintain registration as per Section 011 of these rules before the applicant will be eligible to apply for examination. A completion certificate for year four (4) and the proper application fee must accompany a new application for a journeyman examination. ~~(3-15-02)~~()

02. Frequency of Conducting of Examinations. Examinations for all classifications under the Plumbing Laws and rules will be given a minimum of four (4) times each year in three (3) locations: One (1) to be in northern Idaho, one (1) to be in central Idaho, and one (1) to be in southern Idaho. (8-25-88)

03. Professional Testing Services. In lieu of the administration by the Idaho Plumbing Board of the examination for licenses pursuant to this rule, the Idaho Plumbing Board may contract with a professional testing service to administer the examination, and require license applicants to pay to the testing service the fee that they have set for the examination and to take such examination at the time set by such service. If the examination is conducted in this fashion, the Idaho Plumbing Board may charge and retain the application fee provided for by Section 54-2616, Idaho Code, to cover the cost of reviewing the applicant's application. (8-25-88)

016. CERTIFICATES OF COMPETENCY -- ISSUANCE, RENEWAL, EXPIRATION, REVIVAL -- FEES.

01. Issuance. Certificates of competency shall be issued in such a manner as to create a renewal date that coincides with the birthdate of the individual to whom the certificate is issued and allows for renewals every three (3) years. (4-6-05)

a. Certificates of competency shall be issued for a period of no less than one (1) year and no more than three (3) years. For example: a qualified applicant who applies for a certificate of competency in August of year one (1) but whose birthday will not occur until March of year two (2) shall be issued a certificate of competency renewable on the anniversary of the applicant's birthdate. (4-6-05)

b. The fee for issuance of certificates of competency shall be prorated based on the number of months for which it is issued. (4-6-05)

02. Renewal. Certificates of competency shall be renewed in such a manner as will achieve a staggered

system of certificate renewal using the birthdate of the individual to whom the certificate is issued as the expiration date. (4-6-05)

a. Certificates of competency shall be renewed for a period of no less than one (1) year and no more than three (3) years. (4-6-05)

b. The fee for renewal of certificates of competency shall be prorated based on the number of months for which it is issued. (4-6-05)

c. Continuing Education. The Idaho Plumbing Board will establish criteria for approval of instruction and instructors and courses and instructors will be approved by the ~~Plumbing Bureau~~ Division of Building Safety. Proof of completion of the following continuing education requirements must be submitted to the ~~Plumbing Bureau~~ Division prior to, or with the application for, licensure renewal by any licensee in order to renew a journeyman or contractors plumbing license. (3-29-10)Q

i. Journeymen must complete eight (8) hours of continuing education for every three-year license cycle, or complete an exam administered by the Division. Of the required eight (8) hours, four (4) hours must be plumbing code update related and the other four (4) hours may be industry related training. (3-29-10)

ii. Contractors must complete sixteen (16) hours of continuing education for every three-year license cycle. Hours accrued obtaining journeyman education may be applied toward this requirement whenever applicable. (3-29-10)

03. Expiration - Revival. (4-6-05)

a. Certificates that are not timely renewed will expire. (4-6-05)

b. A certificate that has expired may be revived within twelve (12) months of its expiration by submitting a completed application and paying the same fee as for an initial certificate and meeting all other certification requirements. (4-6-05)

c. Revived certificates shall be issued in such a manner as to create a renewal date that coincides with the birthdate of the applicant to achieve a staggered system of renewal. (4-6-05)

017. SPECIALTY PLUMBING LICENSES.

The purpose of this section is to set out the special types of plumbing installations for which a specialty license is required; to set out the minimum experience requirements for such licenses; and to describe the procedure for securing such licenses. (8-25-88)

01. Qualified Journeyman Plumbers. Qualified journeyman plumbers as defined in Section 54-2611(b), Idaho Code, shall be permitted to make installations as subsequently described herein without securing an additional license for said installation. (11-14-85)

02. Minimum Experience Requirements. (8-3-83)

a. Experience gained by an individual while engaged in the practice of mobile home hook-ups shall not be considered towards the satisfaction of the minimum experience requirements for licensing as a journeyman plumber. (8-3-83)

b. All installers shall be licensed and be in the employ of a licensed plumbing contractor or specialty contractor limited to this category. (8-3-83)

03. Mobile Home Set-Up or Installers. (8-25-88)

a. Any person qualifying for and having in his possession a current license in this category may make the proper connections of sewer and water to existing facilities on site. All material and workmanship shall comply with the requirements of the Uniform Plumbing Code. (8-3-83)

b. All installers shall be licensed and be in the employ of a licensed plumbing contractor or specialty contractor limited to this category. This specialty license does not permit any extension, alteration, or addition to the plumbing system within the mobile home or the installation of any underground plumbing outside the mobile home. (8-3-83)

04. Applications for Specialty Licenses. Applications for the above specialty licenses may be obtained from the ~~Plumbing Bureau, Idaho~~ Division of Building Safety. The forms shall be returned with the examination fee provided by Section 54-2614, Idaho Code, with proof of the required two (2) years experience in the field of this specialty. (~~8-25-88~~) ()

05. Examinations for Specialty Licenses. Written examinations for specialty plumbing licenses shall be formulated from the practical application of the sections of the Uniform Plumbing Code as adopted by the Idaho Plumbing Board under Section 54-2601, Idaho Code. (11-14-85)

06. Fees. Fees for certificates shall be required in accordance with Section 54-2616, Idaho Code. (11-14-85)

018. APPLIANCE PLUMBING SPECIALTY LICENSE.

The purpose of this section is to set out the special types of plumbing installations for which an appliance plumbing specialty license is required; to set out the minimum experience requirements for such licenses; and to describe the procedure for securing such licenses. (7-1-99)

01. Qualified Journeyman Plumbers. Qualified journeyman plumbers as defined in Section 54-2611(b), Idaho Code, shall be permitted to make installations as subsequently described herein without securing an additional license for said installation. (7-1-99)

02. Qualified Apprentice Plumbers. Qualified apprentice plumbers as defined in Section 54-2611(c), Idaho Code, shall be permitted to make installations as subsequently described herein without securing an additional license for said installation. (7-1-99)

03. Minimum Experience Requirements. (7-1-99)

a. Experience gained by an individual while engaged in the practice of appliance plumbing specialty shall not be considered towards the satisfaction of the minimum experience requirements for licensing as a journeyman plumber. (7-1-99)

b. All qualified appliance plumbing specialty journeymen shall be licensed and be in the employ of a licensed plumbing contractor or specialty contractor limited to this category. (7-1-99)

c. Appliance plumbing specialty contractors must have a two thousand dollar (\$2,000) surety bond, thirty (30) months minimum journeyman experience, and successful completion of appliance plumbing specialty contractor's test. (7-1-99)

d. Appliance plumbing specialty journeymen must have eighteen (18) months apprentice on-the-job experience, satisfactory completion of seventy-two (72) hours of Idaho Plumbing Board-approved, related training classes and successful completion of the appliance plumbing specialty journeyman's test. (7-1-99)

e. Appliance plumbing specialty apprentices must be employed by a licensed contractor, under the supervision of a journeyman, be enrolled in or have completed Idaho Plumbing Board-approved related training classes and maintain state registration. (7-1-99)

04. Special Grandfathering Provision. (7-1-99)

a. Contractor: In lieu of the thirty (30) months minimum journeyman experience requirement, an individual may use five (5) years experience of owning and operating a business where this specialty applies AND satisfactory completion of seventy-two (72) hours of Idaho Plumbing Board-approved related training classes. For

this purpose, a business is defined as an activity in which tax returns were required to be and have been filed for at least five (5) years. (7-1-99)

b. Journeyman: In lieu of the eighteen (18) months apprentice on-the-job experience requirement, an individual may use five (5) years experience working for a business where this specialty applies. For this purpose, working for a business is defined as being issued a W-2 earning form from a related business or businesses for at least five (5) years. (7-1-99)

05. Applications for Specialty Licenses. Applications for the above specialty licenses may be obtained from the Plumbing Bureau, Division of Building Safety. The forms shall be returned with the examination fee provided by Section 54-2614, Idaho Code, with proof of the required experience in the field of this specialty. (7-1-99)

06. Examinations for Specialty Licenses. Written examinations for specialty plumbing licenses shall be formulated from the practical application of the sections of the Uniform Plumbing Code as adopted by the Idaho Plumbing Board under Section 54-2601, Idaho Code. (7-1-99)

07. Fees. Fees for certificates shall be required in accordance with Section 54-2616, Idaho Code. (7-1-99)

08. Scope of Work Permitted. Permitted to disconnect, cap, remove, and reinstall within sixty (60) inches of original location: water heating appliance, water treating or filtering devices; air or space temperature modifying equipment which involves potable water; humidifier; temperature and pressure relief valves; condensate drains and indirect drains in one (1)-family and two (2)-family residences only. Does not include installation, testing, or certifying of backflow prevention devices. Does NOT include any modification to the drain, waste or vent systems. Must comply with all Idaho plumbing laws and rules and the requirements of the Uniform Plumbing Code. (7-1-99)

019. WATER PUMP PLUMBING SPECIALTY LICENSE.

The purpose of this section is to set out the special types of plumbing installations for which a water pump plumbing specialty license is required; to set out the minimum experience requirements for such licenses; and to describe the procedure for securing such licenses. (7-1-99)

01. Qualified Journeyman Plumbers. Qualified journeyman plumbers as defined in Section 54-2611(b), Idaho Code, shall be permitted to make installations as subsequently described herein without securing an additional license for said installation. (7-1-99)

02. Qualified Apprentice Plumbers. Qualified apprentice plumbers as defined in Section 54-2611(c), Idaho Code, shall be permitted to make installations as subsequently described herein without securing an additional license for said installation. (7-1-99)

03. Minimum Experience Requirements. (7-1-99)

a. Experience gained by an individual while engaged in the practice of water pump plumbing specialty shall not be considered towards the satisfaction of the minimum experience requirements for licensing as a journeyman plumber. (7-1-99)

b. All qualified water pump plumbing specialty journeymen shall be licensed and be in the employ of a licensed plumbing contractor or specialty contractor limited to this category. (7-1-99)

c. Water pump plumbing specialty contractors must have a two thousand dollars (\$2,000) surety bond, thirty (30) months minimum journeyman experience, and successful completion of water pump plumbing specialty contractor's test. (7-1-99)

d. Water pump specialty journeymen must have eighteen (18) months apprentice on-the-job experience, satisfactory completion of twelve (12) hours of Idaho Plumbing Board-approved, related training classes and successful completion of the water pump plumbing specialty journeyman's test. (7-1-99)

e. Water pump plumbing specialty apprentices must be employed by a licensed contractor, under the supervision of a journeyman, be enrolled in or have completed Idaho Plumbing Board-approved related training classes and maintain state registration. (7-1-99)

04. Special Grandfathering Provision. (7-1-99)

a. Contractor: In lieu of the thirty (30) month minimum journeyman experience requirement, an individual may use three (3) years experience of owning and operating a business where this specialty applies and satisfactory completion of twenty-four (24) hours of Idaho Plumbing Board-approved related training classes. For this purpose, a business is defined as an activity in which tax returns were required to be and have been filed for at least three (3) years. (7-1-99)

b. Journeyman: In lieu of the eighteen (18) months apprentice on-the-job experience requirement, an individual may use three (3) years experience working for a business where this specialty applies. For this purpose, working for a business is defined as being issued a W-2 earning form from a related business or businesses for at least three (3) years. (7-1-99)

05. Applications for Specialty Licenses. Applications for the above specialty licenses may be obtained from the ~~Plumbing Bureau~~, Division of Building Safety. The forms shall be returned with the examination fee provided by Section 54-2614, Idaho Code, with proof of the required experience in the field of this specialty. (7-1-99)()

06. Examinations for Specialty Licenses. Written examinations for specialty plumbing licenses shall be formulated from the practical application of the sections of the Uniform Plumbing Code as adopted by the Idaho Plumbing Board under Section 54-2601, Idaho Code. (7-1-99)

07. Fees. Fees for certificates shall be required in accordance with Section 54-2616, Idaho Code. (7-1-99)

08. Scope of Work Permitted. Permitted to install and connect water service piping from pump to storage expansion pressure tank in one (1) and two (2) family residences only. Does not include installation, testing or certifying of backflow prevention devices. Must comply with all Idaho plumbing laws and rules and the requirements of the Uniform Plumbing Code. (7-1-99)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.02.07 - RULES GOVERNING CIVIL PENALTIES

DOCKET NO. 07-0207-1101

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 54-2605(1) and 54-2606(3)(f), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

No specific provision exists in rule to impose a civil penalty for failure to disclose the required information on an application for registration or certificate of competency. Requiring such disclosure will help prevent applicants, particularly those already licensed in other jurisdictions, from circumventing the journeyman licensure requirements in Idaho. The proposed rule would establish a civil penalty for applicants who fail to disclose the required information on any Division of Building Safety plumbing application, to specifically include their licensure history and any licenses previously held.

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 rulemaking and the need to establish a civil penalty for an applicant's failure to disclose licensure history.

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 26, 2011.

DATED this 29th day of August, 2011.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0207-1101

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

The principal place of business of the Division of Building Safety, Plumbing ~~Bureau~~ Program is ~~in~~ at ~~Meridian, Idaho.~~ The Division office is located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho. The Plumbing Program may also be contacted at 1250 Ironwood Drive, Suite 220, Coeur d'Alene, Idaho 83814, and is at 2055 Garrett Way, Suite 7, Pocatello, Idaho 83201. All locations are open from 8:00 a.m. to 5:00 p.m., except Saturday, Sunday and legal holidays. The central mailing address is: Division of Building Safety, 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. (3-24-05)()

006. -- 010. (RESERVED)

011. CIVIL PENALTIES.

The following acts shall subject the violator to penalties based on the following schedule. (3-24-05)

01. Plumbing Contractor. Except as provided by Section 54-2602, Idaho Code, any person who acts, or purports to act as a plumbing contractor, as defined by Section 54-2611(a), Idaho Code, without a valid Idaho state certificate of competency authorizing him to do so shall be subject to a civil penalty of not more than five hundred dollars (\$500) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-24-05)

02. Certification or Registration. Except as provided by Section 54-2602, Idaho Code, any person performing plumbing as defined in Section 54-2603, Idaho Code, without an appropriate certificate of competency or registration shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-24-05)

03. Failure to Disclose. Any applicant for a plumbing registration or certificate of competency who upon request fails to disclose any required information including, but not limited to, their complete licensure history or the fact that they have been previously licensed as a journeyman or master plumber in any recognized jurisdiction shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. ()

034. Performance Outside Scope of Certificate. Any specialty contractor or specialty journeyman performing plumbing installations, alterations or maintenance outside the scope of the specialty certificate of competency shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (3-24-05)

045. Fees, Permits and Inspections. Any person, other than a person who holds a valid Idaho state plumbing contractor's certificate of competency, failing to pay applicable fees, or properly post a plumbing permit, or to request an inspection of all pipes, fittings, valves, vents, fixtures, appliances, appurtenances, and water treatment installations and repairs shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand (\$1,000) for each offense thereafter. (4-2-08)

056. Corrections. Any person, other than a person who holds a valid Idaho state plumbing contractor's certificate of competency, who fails to make corrections in the time allotted in the notice on any plumbing installation as set forth in Section 54-2625, Idaho Code, shall be subject to a civil penalty of not more than two hundred dollars (\$200) for the first offense and a civil penalty of not more than one thousand dollars (\$1,000) for each offense thereafter. (4-2-08)

067. Gross Violation. In the case of continued, repeated or gross violation of Title 54, Chapter 26, Idaho Code, or IDAPA 07.02.07, disciplinary action shall be initiated against certificate holders under this chapter or the matter shall be referred for prosecution. (3-24-05)

078. Judicial Review. Any party aggrieved by the final action of the Idaho Plumbing Board shall be entitled to a judicial review thereof in accordance with the provisions of Title 67, Chapter 52, Idaho Code. (3-24-05)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.04.02 - SAFETY RULES FOR ELEVATORS, ESCALATORS, AND MOVING WALKS

DOCKET NO. 07-0402-1101

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 19, 2011.

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 adopt the 2010 edition of A17.1 allowing installation of elevators to the current code, including utilization of the latest manufacturing practices, technologies, and systems. Adoption of the elevator suspension standard A17.6 is necessary because this information was previously located in A17.1 but now has its own independent standard. A17.7 provides for alternative systems to be evaluated per this standard with equivalent "performance based safety guidelines." Previously, it has been the responsibility of DBS to evaluate these alternative systems or methods for installation approval in Idaho. Without the benefit of an engineering department or testing laboratory, it is an extremely difficult decision. This standard provides a basis for approved organizations (such as UL) to evaluate the system and provides documentation of their results to the authority having jurisdiction. The proposed rule would adopt the most recent (2010) edition of the Safety Code for Elevators and Escalators with several amendments thereto. It would also adopt several other more specific installation standards in the form of the Standard for Elevator Suspension and Governor Systems Performance-based Safety Code for Elevators and Escalators. The rule would also require an accredited Elevator/Escalator certification organization (AECO) approval in accordance with ANSI standard A17.7 in any request for alternate technology or construction from the Division.

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 rulemaking and the need to adopt the most recent safety code and installation standards.

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 incorporated materials consist of the latest editions of the respective codes which will allow elevators and escalators to be installed utilizing the safest and most current manufacturing practices and products, technologies, and systems. Additionally, the incorporated materials contain one code previously located as a section within the larger elevator code that has been newly created as its own independent standard, and another provides flexibility to the industry by allowing for alternate systems to be installed and evaluated based on performance.

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 26, 2011.

DATED this 29th day of August, 2011.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety

1090 E. Watertower St., Ste. 150
P. O. Box 83720, Meridian, ID 83542
Phone: (208) 332-8986; Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0402-1101

004. ADOPTION AND INCORPORATION BY REFERENCE.

01. Documents. The following codes, amendments, and updates are hereby adopted and incorporated by reference into these rules for all conveyances subject to this chapter. (4-2-08)

a. ANSI/ASME A17.1 ~~2007~~10, Safety Code for Elevators and Escalators with ~~2008 Addenda with~~ the following exceptions: ~~(3-29-10)~~()

i. Compliance with section 2.8.3.3.2 shall require that the means for disconnecting the main power as required by this section to be within sight of controller. (3-29-10)

ii. Compliance with section ~~8.11.2.3.3, Category 5 Periodic Testing of oil buffers~~ 8.11.2.1.5(c) Car and Counterweight Buffer testing shall be conducted at slow speed in accordance with Item 5.9.2.1(a) in ANSI/ASME A17.2 2007. ~~(3-29-10)~~()

iii. Compliance with Section 2.2.2.5, which requires a sump pump or drain in the elevator pit, shall be optional. If a sump pump or drain is installed, it shall meet the requirements of this section. A sump with a cover shall be provided in each elevator pit. ()

b. ANSI/ASME A17.2 2007 Guide for Inspection of Elevators, Escalators, and Moving Walks. (3-29-10)

c. ANSI/ASME A17.3 2008 Safety Code for Existing Elevators and Escalators. (3-29-10)

d. ANSI/ASME A17.4 1999 Guide for Emergency Personnel. (4-2-08)

e. ANSI/ASME A17.5 2004 Elevator and Escalator Electrical Equipment. (5-8-09)

f. ANSI/ASME A17.6 2010 Standard for Elevator Suspension, and Governor Systems. ()

g. ANSI/ASME A17.7 2007 Performance-based Safety Code for Elevators and Escalators. ()

h. ICC/ANSI A117.1 2003 Accessible and Usable Buildings and Facilities. (4-2-08)

i. ANSI/ASME A18.1 2008 Safety Standards for Platform Lifts and Chairlifts. (3-29-10)

h.j. ASME QE-1 ~~2007~~10 Standard for the Qualification of Elevator Inspectors. ~~(3-29-10)~~()

02. Copies. Copies of the codes, amendments, and updates listed in Subsection 004.01 of these rules are available for review at the Division of Building Safety offices located at 1090 E. Watertower St., Suite 150,

Meridian, Idaho 83642-~~and~~ 1250 Ironwood Dr., ~~Suite-~~ 220, Coeur d'Alene, Idaho 83814; and 2055 Garrett Way, Suite 7, Pocatello, Idaho 83201. ~~(4-2-08)()~~

005. DIVISION OFFICE INFORMATION.

- 01. Office Hours.** The office is open from 8 a.m. until 5 p.m. daily, except Saturday, Sunday, and legal holidays. (4-6-05)
- 02. Street Address.** The office is located at 1090 E. Watertower Street, Suite 150, Meridian, Idaho. ~~(4-6-05)()~~
- 03. Mailing Address.** The office mailing address is Division of Building Safety, 1090 E. Watertower Street, Suite 150, Meridian, Idaho 83642. ~~(4-6-05)()~~
- 04. Telephone Number.** The office telephone number is ~~(208) 334-3950~~ (800) 955-3044. ~~(4-6-05)()~~
- 05. Facsimile Number.** The office facsimile number is ~~(208) 855-9494~~ (877) 810-2840. ~~(4-6-05)()~~
- 06. Internet Address.** The Division's Internet website at <http://dbs.idaho.gov/>. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

012. APPROVAL OF NEW OR ALTERNATIVE TECHNOLOGY.

- 01. Administrator Approval Required.** If, due to construction or technological impediments, an elevator or conveyance cannot comply with applicable code requirements, approval of new or alternative construction or technology may be requested from the administrator. (4-6-05)
- 02. Approval Required Prior to Construction.** Approval of new or alternative technology must be obtained from the administrator before construction is commenced. (4-6-05)
- 03. Submission Deadline.** Details of the proposed construction or technology, including design, material specifications and calculations, and such other information as may be requested, shall be submitted to the administrator at least thirty (30) days in advance of the anticipated construction start date. (4-6-05)
- a.** The manufacturer of the new product or system shall provide the administrator with an Accredited Elevator/Escalator Certification Organization (AECO) approval and certification in accordance with ANSI/ASME A17.7 Performance-based Safety Code for Elevators and Escalators or engineering and test data demonstrating that the proposed technology is safe for the intended purpose. ~~(4-6-05)()~~
- b.** The owner of the new product or system shall provide the administrator with a document in which the owner acknowledges that the proposed technology is not governed by the applicable safety code and assures the administrator that, at such time as the code is revised to include the product or system, the owner shall modify the product or system to bring it into compliance. The owner shall assure the administrator that if the product or system cannot be modified or altered to bring it into compliance with the applicable code it will be removed and replaced with code-compliant equipment. (4-6-05)
- c.** The manufacturer of the new product or system shall provide Division personnel with training about the proposed technology and any related products or systems at no cost to the Division. (4-6-05)
- 04. Engineer Approval.** The information provided in compliance with the foregoing requirements shall be approved by an Accredited Elevator/Escalator Certification Organization (AECO) or a registered professional engineer experienced in elevator or conveyance design prior to submission to the administrator. ~~(4-6-05)()~~

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.05.01 - RULES OF THE PUBLIC WORKS CONTRACTORS LICENSE BOARD

DOCKET NO. 07-0501-1101 (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 54-1907, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Applicants for public works contractor licenses often request an extension of time from the Division to submit an application for renewal of their license. Existing administrative rule already provides for the procedures for such a request; however the current procedure locks the applicant into an annual recurring request usually coinciding with the fiscal year and lag in receiving the accountant's report. By initiating a separate fee and moving the renewal date of the license it is hoped that the bulk of the annual recurring requests will be eliminated. Applicants also often request that their application for licensure be expedited, and the Division facilitates such requests when resources are available. By instituting a separate surcharge for this service, DBS assures that all license applicants are treated fairly, and that no applicant's application is negatively impacted by moving another applicant's application ahead. The extra fee will allow the Division to pay existing staff on an overtime basis to handle requests for expediting. The proposed rule would provide for an additional fee for those public works contractor license applicants who make request to the Division for an extension of time in which to submit an application, as well as a provision to expedite a public works contractor license application along with a commensurate fee for providing such service.

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

The proposed rule establishes a fee for a petition filed for an extension of time in which to renew a license in the amount of the prorated portion of the annual license fee for the class of license applied for, with a minimum fee of at least fifty dollars (\$50). The proposed rule also establishes a fee for a request to the Division to expedite its review and determination of a license application in the amount of one hundred dollars (\$100).

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

Negligible impact to the Public Works Contractor Licensing Board fund, as the total licensing receipts will be unchanged except for those limited cases where an applicant needs to expedite the licensing process. Anticipated increase in revenue due to expediting fees is five thousand dollars (\$5,000).

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the proposed 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 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 26, 2011.

DATED this 29th day of August, 2011.

Steve Keys, Deputy Administrator - Operations
Division of Building Safety
1090 E. Watertower St., Ste. 150
P. O. Box 83720
Meridian, ID 83542
Phone: (208) 332-8986
Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 07-0501-1101

105. LICENSE RENEWAL -- FILING DEADLINES; PETITIONS FOR EXTENSION OF TIME TO FILE; LAPSED LICENSES.

01. Filing Deadline. Applications for renewal of a license shall be filed by the last working day of the month in which the license expires. (3-20-04)

02. Extension of Time. A petition for an extension of time in which to renew shall be filed by the last working day of the month in which the license expires. The petition shall be accompanied by ~~the required a fees in~~ the amount of the prorated portion of the annual license fee for the class of license applied for, with a minimum fee of at least fifty dollars (\$50). The fee for this service is required in addition to the licensing and renewal fees provided for in Section 201 of these rules and shall be paid to the Division at the time of application for licensure. Petitions not accompanied by the required fees or filed after the license has expired will not be honored. ~~(3-20-04)~~()

- i. The petition shall specify the number of days for which the extension is being requested. (3-20-04)
- ii. Under no circumstances shall an extension exceed sixty (60) days. Petitions for more than sixty (60) days will not be honored. (3-20-04)

03. Approval of Petition. Approval of a petition for an extension of time shall authorize operation as a contractor until actual issuance of such renewal license for the ensuing licensing period, provided the application for renewal is filed with the Board within the extended time specified. (3-19-99)

04. Failure to File. If the licensee fails to file a timely application for renewal or petition for extension, the license shall lapse and expire on the last day of the license period. Licenses not renewed in a timely manner shall be considered delinquent for a period of one (1) year from the last day of the license period and may be renewed at any time during that year. Licenses delinquent for more than a period of one (1) year must be reinstated and the applicant for reinstatement must apply as if for a new license. (3-20-04)

05. Expedited Licensure. Upon an applicant's request and payment of a fee of one hundred dollars (\$100), the Division shall expedite its review and determination of a license application. The fee for this service is required in addition to the licensing and renewal fees provided for in Section 201 of these rules and shall be paid to the Division at the time of application for licensure. ()

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS

DOCKET NO. 07-0701-1101

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 54-5005(2), 54-5007 and 54-5019, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

HVAC contractors and specialty contractors are required to secure a compliance bond as a condition of obtaining an HVAC contractor and specialty contractor license from DBS. The compliance bond may be utilized by the Division for the protection of the public to ensure that HVAC installations the contractor may make are done so in compliance with the adopted HVAC codes. The bond is required to be active for the entire duration of the licensing period (3 years). DBS has learned that often a bond is purchased by a contractor only for the purpose of obtaining the license from the Division and is not effective for the full licensure period. DBS is also required to provide a notice in the form of an inspection tag on each HVAC installation that is unacceptable as not installed to code, and that corrections are required. The proposed rule would clarify that HVAC contractors and specialty contractors must obtain a compliance bond in lieu of a performance bond, and that the bond must be effective for the entire duration of the licensing period. The rulemaking would also eliminate the need to have different colored inspection tags and clarify that unacceptable HVAC installations will receive a Notice of Correction tag.

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 rulemaking in clarifying the requirements for compliance bonds and notification of required corrections to HVAC installations.

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 26, 2011.

DATED this 29th day of August 2011.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety

1090 E. Watertower St., Ste. 150
P. O. Box 83720, Meridian, ID 83542
Phone: (208) 332-8986; Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0701-1101

021. HVAC CONTRACTOR CERTIFICATE OF COMPETENCY - REQUIREMENTS.

01. Bond. Applicants shall provide a *performance compliance* bond in the amount of two thousand dollars (\$2,000). *Any such bond is required to be effective for the duration of the contractor licensing period.* (3-16-04)()

02. Qualification. Applicants shall provide proof, satisfactory to the board, of having legally acted as an HVAC journeyman for a period of not less than twenty-four (24) months. (3-16-04)

03. Examination. Applicants for certification as HVAC contractors must successfully complete the examination designated by the board. (3-16-04)

022. HVAC SPECIALTY CONTRACTOR CERTIFICATE OF COMPETENCY - REQUIREMENTS.

01. Bond. Applicants shall provide a *performance compliance* bond in the amount of two thousand dollars (\$2,000). *Any such bond is required to be effective for the duration of the contractor licensing period.* (3-16-04)()

02. Qualification. Applicants shall provide proof, satisfactory to the board, of having legally acted as an HVAC specialty journeyman for a period of not less than twenty four (24) months. (3-16-04)

03. Examination. Applicants for certification as HVAC specialty contractors must successfully complete the examination designated by the board. (3-16-04)

(BREAK IN CONTINUITY OF SECTIONS)

060. REQUIRED INSPECTIONS.

All work performed under a HVAC permit shall be inspected by a designated, qualified, properly identified agent of the authority having jurisdiction to ensure compliance with Title 54, Chapter 50, Idaho Code, and IDAPA 07.07.01. (3-16-04)

01. Request for Division of Building Safety Inspection. (3-16-04)

a. Inspection. Each permit holder shall notify the Division at least one (1) day prior to the desired inspection, Sundays and holidays excluded, that the project is ready for inspection. (3-16-04)

b. Reinspection. If a reinspection is required after the final inspection, due to a failure to meet requirements of Title 54, Chapter 50, Idaho Code, and/or these rules, the permit holder will be charged a fee not to exceed the actual cost of each reinspection. (3-16-04)

02. Inspection Tags. Inspectors certify to the permit holder that an inspection has been done by securely attaching the inspection tag in a prominent location. (5-8-09)

a. Final Inspection Tags. An inspection tag indicating that a final inspection has been performed is attached when the HVAC installation as specified on the permit is complete and conforms to the requirements of the code and rules. (5-8-09)

b. Inspection Tags for Unacceptable HVAC Installations. *Red-colored "unacceptable" "Notice of Correction"* inspection tags are attached to indicate that the HVAC installation is not acceptable and that corrections

are required.

~~(3-16-04)~~()

c. Work-in-Progress Tag. An inspection tag indicating that a work-in-progress inspection has been performed is attached following inspection of ground work, rough-in work, or any portion of the installation that is to be covered or otherwise concealed before completion of the entire HVAC installation as specified on the permit.

(5-8-09)

IDAPA 07 - DIVISION OF BUILDING SAFETY

07.07.01 - RULES GOVERNING INSTALLATION OF HEATING, VENTILATION, AND AIR CONDITIONING SYSTEMS

DOCKET NO. 07-0701-1102

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 19, 2011.

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 location and protection of the gas regulator, meter, and associated gas piping are the responsibility of the utility company and not within the jurisdiction of the Division of Building Safety. There are no provisions in either the Fuel Gas Code or the Mechanical Code which address the protection of these installations; however, it is addressed in the LP Gas Code Handbook. Additionally, enforcement of these requirements is difficult given the ambiguity of what is considered to be adequate protection of this equipment, as well as the lack of clarity as to where the termination point is of the piping installed inside the structure which connects out to this equipment – the Division's authority terminates at such point. The proposed rule would eliminate the requirements related to the location and protection of the gas piping, regulators, and meters.

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 rulemaking in eliminating certain requirements related to gas stub outs which are not within the jurisdiction of the Division of Building Safety.

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 26, 2011.

DATED this 29th day of August, 2011.

Steve Keys
Deputy Administrator - Operations
Division of Building Safety

1090 E. Watertower St., Ste. 150
P. O. Box 83720, Meridian, ID 83542
Phone: (208) 332-8986; Fax: (877) 810-2840

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 07-0701-1102

005. ADOPTION AND INCORPORATION BY REFERENCE OF THE INTERNATIONAL FUEL GAS CODE, 2009 EDITION.

01. International Fuel Gas Code. The 2009 Edition, including appendixes “A, B, C, and D,” (herein IFGC) is adopted and incorporated by reference with the following amendments: (4-7-11)

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 109. Delete. (7-1-10)

~~**e.** 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)~~

~~**f.** 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)~~

~~**g.** 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)~~

~~**h.** 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)~~

~~**i.** Section 406.4.2. The test duration shall not be less than twenty (20) minutes. (4-11-06)~~

~~**j.** 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. (4-7-11)~~

~~**k.** 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)~~

02. Availability of the International Fuel Gas Code. 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. (4-7-11)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.01.04 - RESIDENCY CLASSIFICATION

DOCKET NO. 08-0104-1101

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 33-3717B, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 eliminate the language delegating certification of determination of residency for the special graduate and professional programs administered by the Board. Current language results in a duplication of effort for those instances where an applicant may apply to more than one program. Striking this language will allow the Board to determine which institution should make the certification based on the program.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because changes were of an administrative and non controversial 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tracie Bent, Chief Planning and Policy Officer at (208)332-1582 or tracie.bent@osbe.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

Tracie Bent
Chief Planning and Policy Officer
Office of the State Board of Education
650 W. State St
PO Box 83720
Boise, ID 83720-0037
Phone: (208)332-1582
Fax: (208)334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0104-1101

105. RESIDENCY REQUIREMENTS FOR SPECIAL GRADUATE OR PROFESSIONAL PROGRAMS.

01. Residency Requirement. As provided in Section 33-3717B, Idaho Code, a residency requirement of at least one (1) calendar year is in effect for certain special graduate and professional programs. ()

a. Those programs include, but are not limited to, the WAMI Regional Medical Program, the WICHE Professional Student Exchange Program, the Idaho Dental Education Program, the Creighton Dental Education Program, the WOI Regional Veterinary Program, and the University of Utah Medical Program. ()

b. For purposes of this section, the requirement of “at least one (1) calendar year” means a period of twelve (12) consecutive months of continuous residency consistent with the requirements of Section 33-3717B, Idaho Code, immediately prior to the date of application. (5-8-09)()

~~**01. Delegation of Certification Administration.** The following office or institutions are delegated the responsibility for the evaluation of applicants and determination of residency for the special graduate and professional programs for purposes of certification. (7-1-93)~~

~~**a.** The University of Idaho—WAMI Regional Medical Program, WOI Regional Veterinary Program. (7-1-93)~~

~~**b.** Idaho State University—Idaho Dental Education Program and the University of Utah Medical Program. (6-30-95)~~

~~**c.** Office of the State Board of Education—WICHE Professional Student Exchange Program. (6-30-95)~~

02. Appeal to the State Board of Education. Applicants for the special graduate and professional programs, upon institutional denial of residency status, may petition the Board for a hearing on the denial. The decision to grant such a hearing is discretionary with the Board and will be granted for errors in determination of residency pursuant to Section 33-3717B, Idaho Code. (5-8-09)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.01.09 - RULES GOVERNING THE GEAR UP IDAHO SCHOLARSHIP PROGRAM

DOCKET NO. 08-0109-1101 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 24, 2011.

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(s) 33-105, and 33-107.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

IDAPA 08.01.09 is a new rule that outlines the eligibility requirement and application process for students who have participated in the GEAR UP Idaho program to apply for the GEAR UP Idaho Scholarship. The language has been patterned after the process currently used in applying for the existing Idaho Opportunity Scholarship.

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 first cohort of students will be eligible to apply for the GEARUP Idaho Scholarship in the fall. The Proposed rules is a new sections of rule and sets out the eligibility criteria and application process for those 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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a non controversial 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tracie Bent, Chief Planning and Policy Officer at (208)332-1582 or tracie.bent@osbe.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

Tracie Bent
Chief Planning and Policy Officer
Office of the State Board of Education

650 W. State St., Boise, ID
PO Box 83720, Boise, ID 83720-0037
Phone: (208)332-1582 / Fax: (208)3342632

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 08-0109-1101

IDAPA 08, TITLE 01, CHAPTER 09

08.01.09 - RULES GOVERNING THE GEAR UP IDAHO SCHOLARSHIP PROGRAM

000. LEGAL AUTHORITY.

These rules are promulgated pursuant to the authority of the State Board of Education (Board) under Section 33-105, Idaho Code. (6-24-11)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 08.01.09, "Rules Governing the GEAR UP Idaho Scholarship Program." (6-24-11)T

02. Scope. These rules constitute the requirements for the GEAR UP Idaho Scholarship Program. (6-24-11)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, written interpretations, if any, of the rules of this chapter are available at the Board. (6-24-11)T

003. ADMINISTRATIVE APPEALS.

Unless otherwise provided for in the rules of the Board or in the Board Governing Policies and Procedures, all administrative appeals allowed by law shall be conducted as provided herein. (6-24-11)T

004. INCORPORATION BY REFERENCE.

There are no documents that have been incorporated by reference into these rules. (6-24-11)T

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

The principal place of business of the State Board of Education is in Boise, Idaho. (6-24-11)T

01. Mailing Address. The mailing address is PO Box 83720, Boise, Idaho 83720-0037. (6-24-11)T

02. Street Address. The State Board of Education's street address is 650 West State Street, Room 307, Boise, Idaho 83702. (6-24-11)T

03. Office Hours. The office hours are from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. (6-24-11)T

006. PUBLIC RECORDS ACT COMPLIANCE.

These rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (6-24-11)T

007. -- 009. (RESERVED)

010. DEFINITIONS.

01. Dependable Strengths Report. A tool available on the Idaho Career Information System that assists students in assessing skills and abilities as they relate to career choices and options. Dependable Strengths is accessed via My CIS Portfolio. (6-24-11)T

02. Educational Costs. Student costs for tuition, fees, room and board, or expenses related to reasonable commuting, books and other expenses reasonably related to attendance a postsecondary educational institution. This cost is determined by the postsecondary institution the student attends. (6-24-11)T

03. Eligible Institution. (6-24-11)T

a. A public postsecondary educational institution governed or supervised by the Board, or a board of trustees of a community college established pursuant to the provisions of Chapter 21, Title 33, Idaho Code; or (6-24-11)T

b. Any educational organization located in Idaho that is: (6-24-11)T

i. Operated privately; (6-24-11)T

ii. Classified as not-for-profit under the Idaho Code; (6-24-11)T

iii. Under the control of an independent board and not directly controlled or administered by a public or political subdivision; and (6-24-11)T

iv. Accredited by an organization recognized by the Board, as provided in section 33-2402, Idaho Code. (6-24-11)T

v. Eligible for receipt of federal financial aid funding. (6-24-11)T

04. Eligible Student. A student who: (6-24-11)T

a. Is an Idaho resident and who has participated in the early intervention component (7th through 10th grade) of the GEAR UP Idaho program and who has or will graduate from an accredited high school or equivalent in Idaho as determined by the Board in 2012, 2013, or 2014; (6-24-11)T

b. Has enrolled or applied as a full-time student in an eligible institution for a minimum of twenty-four (24) credit hours in an academic year. (6-24-11)T

05. Administration. The Executive Director of the Idaho State Board of Education or his designee. (6-24-11)T

011. -- 099. (RESERVED)

100. OBJECTIVES OF THE GEAR UP IDAHO SCHOLARSHIP PROGRAM.
The objectives of the GEAR UP Idaho scholarship program are as follows: (6-24-11)T

01. Continuation of Education. To support the continuation of education at the postsecondary level by providing qualified students with a scholarship; and (6-24-11)T

02. Successful Completion of Program Activities. To recognize the successful completion of GEAR UP program activities by student participants. (6-24-11)T

101. ELIGIBILITY.

01. Eligible Student. An applicant must be an eligible student and less than twenty-two (22) years of age at the time the student first receives a scholarship award. (6-24-11)T

02. Undergraduate Student. An eligible student must be enrolled full-time in an undergraduate program at an eligible institution. A student enrolled in an undergraduate program is eligible for consideration for a scholarship award, even if some of the student's courses are at the graduate level. (6-24-11)T

102. -- 199. (RESERVED)

200. APPLICATION PROCESS.

01. Initial Applications. (6-24-11)T

a. An eligible student who has not yet graduated from an accredited high school or its equivalent in the state of Idaho must complete and submit the GEAR UP Idaho Scholarship Application to the Board electronically on or before the date specified in the application, but not later than January 15th. An applicant without electronic capabilities may receive assistance in completing the electronic application from your high school counselor or from State Board of Education scholarship staff. Gear Up Idaho Scholarship Administrator through the United States Postal Service, which must be postmarked not later than January 15th. (6-24-11)T

b. An applicant must complete and submit the Free Application for Federal Student Aid (FAFSA) on or before February 15th of the year student will graduate from secondary school or its equivalent. (6-24-11)T

c. An applicant must submit with his or her application a copy of the applicant's Dependable Strengths Report or in lieu of submitting the applicant's Dependable Strengths Report an applicant may submit a one-page essay on the topic "My Unique Dependable Strengths." (6-24-11)T

02. Announcement of Award. Announcement of the award of initial scholarships for the 2012 - 2013 academic years will be made no later than May 15, 2012, with awards to be effective at the beginning of that academic year. The announcement of award recipients in future academic years will be made no later than May 1. (6-24-11)T

03. Communication with State Officials. Applicants for initial scholarships must respond by the date specified to any communication from officials of the GEAR UP Idaho Program. Failure to respond within the time period specified will result in cancellation of the application or forfeiture of the scholarship unless extenuating circumstances are involved. (6-24-11)T

201. -- 299. (RESERVED)

300. SELECTION OF SCHOLARSHIP RECIPIENTS.

Applications will be reviewed and awards selected based on financial need, hours of participation in the GEAR UP program and academic preparation based on a combination of the ACT score and cumulative HS GPA. Priority will be given to applicants who are eligible to receive Pell grant funding, as determined by the Free Application for Federal Student Aid. (6-24-11)T

01. Academic Eligibility. (6-24-11)T

a. Applicants for the GEAR UP Idaho scholarship are selected as recipients, in part, on the basis of their academic performance. The student applicant's high school grade point average (GPA) and ACT composite score are weighed equally to determine an applicant's academic rank. (6-24-11)T

b. The academic ranking constitutes twenty percent (20%) of the selection ranking. (6-24-11)T

c. Grade point average (GPA). An eligible student's unweighted GPA will be used to determine the GPA value. (6-24-11)T

d. ACT Composite Score. Academic applicants must take the ACT exam. The highest composite score from any single test administration taken prior to the application deadline of January 15 will be considered. Applicants will be ranked against other applicants based upon the ACT composite score. (6-24-11)T

02. Financial Eligibility. (6-24-11)T

a. Applicants for GEAR UP Idaho scholarship are selected as recipients, in part, on the basis of demonstrated financial need. The primary tool that will be used by the GEAR UP Scholarship Program officials to determine financial need will be the federal Free Application for Federal Student Aid (FAFSA), used by the United

States Department of Education to determine eligibility for financial aid and a expected family's contribution (EFC) to a student's postsecondary education. The financial need of an applicant for a GEAR UP scholarship will be based up the validated expected family contribution, as identified by the FAFSA report. (6-24-11)T

b. The financial need factor, as determined by FAFSA, will constitute sixty percent (60%) of the weighting for the selection of recipients of GEAR UP scholarships. (6-24-11)T

03. Participation Eligibility. (6-24-11)T

a. Applicants for GEAR UP Idaho scholarships are selected in part on the basis of their participation in GEAR UP activities. (6-24-11)T

b. The participation factor will constitute twenty percent (20%) of the selection ranking. (6-24-11)T

c. Participation is reported in hours. Participation is determined based upon the hours a GEAR UP applicant participated in available GEAR UP activities offered at their school. Applicants will be compared to other applicants from the same school. (6-24-11)T

301. -- 399. (RESERVED)

400. GEAR UP IDAHO SCHOLARSHIP AWARD.

01. Distribution. GEAR UP Idaho scholarships will be awarded at each GEAR UP school with distribution based on school population in relation to the over-all state GEAR UP population. (6-24-11)T

02. Monetary Value of the Gear Up Idaho Scholarship. (6-24-11)T

a. The monetary value of the GEAR UP Idaho scholarship award to a student is set at the maximum amount of the Federal Pell Grant as established by the Federal government for the given year. (6-24-11)T

b. The total amount of financial aid from all sources shall not exceed the student's total educational costs. (6-24-11)T

03. Payment. Payment of scholarship awards will be made in the name of the recipient and will be sent to a designated official at the eligible institution in which the recipient is enrolled. The official must transmit the payment to the recipient within a reasonable time following receipt of the payment. (6-24-11)T

04. Duration. Scholarships will be awarded on an annual basis and payments will correspond to academic terms, semesters, quarters, or equivalent units. In no instance will the entire amount of a scholarship be paid in advance to, or on behalf of, a scholarship recipient. The scholarship covers up to one (1) educational year or equivalent for attendance at an eligible institution. Request for part-time study must have prior authorization by the GEAR UP Idaho administrator, and if granted, scholarship awards will be reduced proportionally. (6-24-11)T

05. Eligibility. If a student receives a scholarship payment and it is later determined that the student did not meet all of the eligibility requirements, then the student is considered in overpayment status, and must return program funds in accordance with the eligible institution's refund policy. (6-24-11)T

401. -- 499. (RESERVED)

500. CONTINUING ELIGIBILITY.

To remain eligible for renewal of a GEAR UP Idaho scholarship, the recipient must comply with all of the provisions of the GEAR UP Idaho Program and these rules, in addition to the following requirements: (6-24-11)T

01. Renewal Application. A scholarship recipient must complete and submit a renewal application in order to be considered for a continuing scholarship for each succeeding year. A completed application for the renewal of an GEAR UP Idaho scholarship must be submitted to the Board electronically by the date established on the application, but not later than January 30. An applicant without electronic capabilities may submit an application on

the form established by the GEAR UP Idaho Program administrator through the United States Postal Service, which must be postmarked no later than January 30. In addition, a scholarship recipient must update and submit the FAFSA on or prior to February 15. (6-24-11)T

02. Credit Hours. To remain eligible for renewal of a scholarship award, the scholarship recipient must have completed a minimum of twenty-four (24) credit hours or its equivalent for the academic year in which the student received a scholarship award. A student must be enrolled in full-time study each term unless prior approval is granted to attend part-time. If a student does not receive a minimum of twelve (12) credit hours in a term, they may not receive the second semester award without seeking approval from the scholarship administrator. (6-24-11)T

03. Satisfactory Academic Progress. To remain eligible for renewal of a scholarship, the scholarship recipient must have maintained a minimum grade point average of two point zero (2.0) on a scale of four point zero (4.0) during the time that the recipient received an award, and must be maintaining satisfactory academic progress, consistent within federal financial regulations as implemented at the eligible Idaho postsecondary educational institution at which the scholarship recipient was enrolled. (6-24-11)T

04. Transfer Students. Scholarship recipients who transfer to another eligible institution remain eligible for scholarship renewal. (6-24-11)T

05. Maximum Scholarship Award. The award of a GEAR UP Idaho scholarship shall not exceed the equivalent of eight (8) continuous semesters or the equivalent of four (4) continuous academic years. (6-24-11)T

501.-- 599. (RESERVED)

600. MISCELLANEOUS PROVISIONS.

01. Interruption of Enrollment. A scholarship recipient who requests to take leave from and interrupt enrollment at an eligible institution must submit a letter of intent to interrupt continuous enrollment to the GEAR UP Idaho administrator no later than sixty (60) days prior to the first day of the academic term of the discontinued attendance. Requests can only be made only after the completion of one (1) full academic year. Failure to do so may result in forfeiture of any continuing scholarship eligibility. The administrator will review each request for interruption and notify the individual of approval or denial of the request. In addition, the individual must file a statement with the administrator declaring his intent to re-enroll as a full-time undergraduate student at an eligible institution for the succeeding academic year no later than thirty (30) days prior to the first day of the academic term in which the individual intends to re-enroll. If a leave request is granted, the total time that the scholarship will be available to the student shall not exceed the four (4) academic years immediately following the student's graduation from secondary school or its equivalent. (6-24-11)T

02. Reassignment of Scholarships in Case of Discontinuance or Termination. If a scholarship recipient enrolled in an eligible institution permanently withdraws or is dismissed prior to completion of his or her four (4) academic year scholarship eligibility term, then the GEAR UP Idaho administrator may award the scholarship to another eligible GEAR UP applicant (an alternate recipient) in the same application year. If there are no other alternates from that year, then the administrator may award the scholarship to another qualifying GEAR UP applicant. In the event that an award is made to an alternate recipient, then this new student shall assume the vacant scholarship of the Idaho GEAR UP student who has withdrawn or was dismissed. However, such student shall only receive the benefits of this scholarship for the remaining years of eligibility for the GEAR UP scholarship recipient who withdrew or was dismissed prior to completion of the scholarship eligibility term. (6-24-11)T

03. Reassignment in Case of Leave of Absence. If a GEAR UP scholarship recipient enrolled in an eligible institution requests and is granted a leave of absence during his or her four (4) academic year scholarship eligibility term, then the GEAR UP Idaho administrator may award the scholarship to another eligible GEAR UP applicant (an alternate recipient) from the same application year for the duration of the leave period. If there are no other alternates from that year, then the administrator may award the scholarship to another qualifying GEAR UP applicant. In the event that an award is made to an alternate recipient, then this new student shall assume the vacant scholarship of the Idaho GEAR UP student who is on an approved leave. However, such student shall only receive the benefits of this scholarship for the term of the leave. (6-24-11)T

601. -- 699. (RESERVED)

700. RESPONSIBILITIES OF ELIGIBLE IDAHO POSTSECONDARY EDUCATIONAL INSTITUTIONS.

01. Statements of Continuing Eligibility. An eligible institution participating in this GEAR UP Idaho Scholarship Program must submit statements of continuing student eligibility to the GEAR UP Idaho administrator by the 30th day of each academic term. Such statements must include verification that the scholarship recipient is still enrolled, attending full time, maintaining satisfactory academic progress, and has not exceeded the award eligibility terms. (6-24-11)T

02. Other Requirements. An eligible institution must: (6-24-11)T

a. Be eligible to participate in Federal Title IV financial aid programs, and must provide prompt notification regarding any changes in this status to the State Board of Education; (6-24-11)T

b. Provide data on student enrollment and federal, state, and private financial aid for students to the GEAR UP Idaho administrator; and (6-24-11)T

c. Agree to permit periodic GEAR UP Idaho Scholarship Program audits to verify compliance with these rules. (6-24-11)T

701. ADMINISTRATION.

The GEAR UP Idaho administrator is responsible for: (6-24-11)T

01. Information. Releasing any public information regarding the GEAR UP Idaho Scholarship Program; (6-24-11)T

02. Recipient Determination. Determination of scholarship recipients; (6-24-11)T

03. Payment Procedures. Determination of procedures for payment of scholarships to recipients; (6-24-11)T

04. Accounting. Maintaining fiscal controls and accounting procedures; (6-24-11)T

05. Program Management. Authorizing release of all forms, affidavits, and certification necessary for the operation of the program. (6-24-11)T

703. -- 799. (RESERVED)

800. APPEALS.

Any scholarship applicant or recipient adversely affected by a decision made under provisions of these rules may appeal such adverse decision as follows. The opportunity scholarship applicant or recipient must appeal no later than thirty (30) days following notice of the decision, and the written statement must include a statement of the reason the scholarship applicant or recipient believes the decision should be changed. The appeal must be submitted to the GEAR UP Idaho administrator, who must acknowledge receipt of the appeal within seven (7) days. The GEAR UP Idaho administrator shall forward the appeal to the he President of the Board. The Board may or may not agree to review the action, or may appoint a subcommittee of three (3) persons, including at least one (1) financial aid administrator at an eligible postsecondary educational institution in Idaho. (6-24-11)T

01. Transmittal to Subcommittee. If the appeal is transmitted to the subcommittee, the subcommittee will review the appeal and submit a written recommendation to the President of the Board within fifteen (15) days from the time the subcommittee receives the appeal document. The opportunity scholarship applicant or recipient initiating the appeal will be notified by the chairperson of the subcommittee of the time and place when the subcommittee will consider the appeal and will be allowed to appear before the subcommittee to discuss the appeal. (6-24-11)T

02. Subcommittee Recommendations. Following the subcommittee's decision, the President of the Board will present the subcommittee's recommendation to the full Board at the next regularly scheduled meeting of the Board. The opportunity scholarship applicant or recipient initiating the appeal may, at the discretion of the President of the Board, be permitted to make a presentation to the Board. (6-24-11)T

03. Board Decision. The decision of the Board is final, binding, and ends all administrative remedies, unless otherwise specifically provided by the Board. The Board will inform the opportunity scholarship applicant or recipient in writing of the decision of the Board. (6-24-11)T

801. -- 999. (RESERVED)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

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

DOCKET NO. 08-0111-1101

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 24, 2011.

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 33-105, 33-107, 33-2402, and 33-2403, Idaho Code.

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

The temporary changes to IDAPA 08.01.11 adds language referencing the new enforcement section in Section 33-2400, Idaho Code, and adds a student complaint process.

Changes to the Federal regulations regarding student federal aid require private postsecondary institutions to be authorized by each state they serve students in and that the authorizing state have a student complaint process. If the state were to not have a complaint process then the institution could be in jeopardy of their students not being eligible for federal student aid.

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

To be in compliance with deadlines in amendments to governing law and federal programs. New federal regulations require authorizing state agencies have a student complaint process for those institutions authorized by them to be eligible for federal student aid.

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.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary rule, contact Tracie Bent at tracie.bent@osbe.idaho.gov or (208)332-1582.

DATED this 15th day of August, 2011.

Tracie Bent
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THE FOLLOWING IS THE TEMPORARY RULE TEXT OF DOCKET NO. 08-0111-1101

303. -- ~~43~~99. (RESERVED)

400. ENFORCEMENT.

The Board, acting by and through its Executive Director, or his designee, may initiate on its own initiative any investigation relating to a violation of the state laws or rules relating to the requirement that an institution or school register with the Board pursuant to Title 33, Chapter 24, Idaho Code. (6-24-11)T

401. -- 499. (RESERVED)

500. COMPLAINTS.

A complaint concerning an institution or school operating in the state of Idaho (maintaining an Idaho presence) that pertains to a matter described herein shall be reviewed and acted upon as appropriate in accordance with the specific procedures described below: (6-24-11)T

01. Violations of State Consumer Protection Laws. A complaint alleging a violation of Idaho consumer protection laws shall be instituted, reviewed, and acted upon in accordance with IDAPA 04.02.01, "Rules of Consumer Protection," Office of the Attorney General. (6-24-11)T

02. Violations of State Laws or Rules Related to the Registration of Postsecondary Educational Institutions and Proprietary Schools. A complaint alleging violations of state laws or rules related to the requirement that an institution or school register with the Board shall be submitted in writing to the Board's Executive Director, or his designee, for investigation and appropriate enforcement action, including the remedies specified in Section 33-2408, Idaho Code. (6-24-11)T

03. Complaints Related to Quality of Education, or Other Matters. (6-24-11)T

a. A complaint relating to the quality of education provided by an institution or school or accreditation matters, or any other matter related to the operations or practices of an institution or school other than a state consumer protection matter, shall be submitted on a form provided by the Board to the Executive Director, or his designee, for review and appropriate action. (6-24-11)T

b. If after initial review the Executive Director, or his designee, determines that the complaint relates to the quality of education or accreditation matters, the Executive Director, or his designee, may refer the matter to the accreditation organization of the institution or school at issue for review and recommendation. If a matter referred to an accreditation organization results in resolution of the complaint to the satisfaction of the complainant, then the matter shall be considered resolved and there shall be no further action on the matter. If the matter is not successfully resolved, then the Executive Director, or his designee, will review the recommendation of the accreditation organization and follow the procedures for investigations of complaints described in Subsection 500.03.c. of this rule. (6-24-11)T

c. If the complaint pertains to any other matter related to the operations or practices of an institution or school, other than a state consumer protection matter, then the Executive Director, or his designee, will review the complaint to determine whether such complaint falls within the regulatory authority of the Board. If it does not, then Board staff will notify the complainant in writing of such determination, and may offer referral of such matter to an appropriate agency or entity. If after initial review the Executive Director, or his designee, determines that the complaint falls within the regulatory authority of the Board, then Board staff will notify both the complainant and the respondent institution or school of the complaint resolution process to be utilized and applicable timelines. The review and investigation of a complaint shall occur as expeditiously as possible. The parties may be asked to respond in writing to the complaint, to submit to interviews, and to provide additional records, documents, statements, or other collateral information as necessary. Any request by the investigator for additional information related to such complaint must be provided promptly. The Board's investigator will review the materials submitted by all parties and at the conclusion of the investigation prepare a summary of the allegations, the investigator's findings, and a recommendation for disposition to the Executive Director, or his designee. If the Executive Director, or his designee, determines that the facts indicate a probable violation of law or rule over which the Board has regulatory authority, then the Executive Director, or his designee, shall issue a written decision on the disposition of such complaint. Within thirty (30) days after a decision is issued, a party aggrieved by such decision may file with the Executive

Director, or his designee, a request for a hearing. The provisions of the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, shall apply to such hearing and to judicial review of such decision. (6-24-11)T

d. If the Board office receives a complaint relating to an institution or school that is exempt from registration under Idaho law or these rules, and such institution or school has not elected to voluntarily register, then such institution or school shall be responsible for reimbursing the Board office for the actual costs incurred to process and act on such complaint. (6-24-11)T

501. -- 999. (RESERVED)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

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

DOCKET NO. 08-0111-1102

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) 33-105, 33-107, 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 19, 2011.

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 incorporate the language previously approved by the Board as a temporary rule referencing the new enforcement section in section 33-2400, Idaho Code, and student complaint processes required by the Federal Government. Additional language has been added to clarify the registration requirement for start-up entities, more clearly define "Idaho presence," to define "Executive Director," and to clarify approval standards for proprietary schools. It also eliminates language that allowed for an approval process for postsecondary institutions that were not accredited and clarifies that all postsecondary institutions must be accredited by a national accreditation organization that is recognized by and in good standing with both the United States Department of Education and by the Council for Higher Education Accreditation.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the Office of the State Board of Education solicited input from entities affected by the rule on an informal basis.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tracie Bent, Chief Planning and Policy Officer at (208)332-1582 or tracie.bent@osbe.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011

Tracie Bent
Chief Planning and Policy Officer
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(208)332-1582, Fax: (208)334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0111-1102

010. DEFINITIONS.

01. Accredited. Defined in Section 33-2401(1), Idaho Code, and means that a post-secondary educational institution has been recognized or approved as meeting the standards established by an accrediting organization recognized by the Board. (4-9-09)

02. Agent. Defined in Section 33-2401(2), Idaho Code, and means any individual within the state of Idaho who solicits students for or on behalf of a proprietary school. (4-9-09)

03. Agent's Certificate of Identification. Defined in Section 33-2401(3), Idaho Code, and means a nontransferable written document issued to an agent by the proprietary school that the agent represents. (3-29-10)

04. Course. Defined in Section 33-2401(5), Idaho Code, and means instruction imparted in a series of lessons or class meetings to meet an educational objective. (4-9-09)

05. Course or Courses of Study. Defined in Section 33-2401(6), Idaho Code, and means either a single course or a set of related courses for which a student enrolls, either for academic credit or otherwise. A course of study is sometimes also referred to in this rule as a program. (4-9-09)

06. Degree. Defined in Section 33-2401(7), Idaho Code, and means any written or any academic title that contains, in any language, the word "associate," "bachelor," "baccalaureate," "masters," "doctor," or any abbreviation thereof, and that indicates or represents, or is intended to indicate or represent, that the person named thereon, in the case of any writing, or the person it is awarded thereto, in the case of any academic title, is learned in or has satisfactorily completed a prescribed course of study in a particular field or that the person has demonstrated proficiency in any field of endeavor as a result of formal preparation or training. (3-29-10)

07. Executive Director. Defined in Section 33-102A, shall mean the Executive Officer of the Office of the State Board of Education, or his designee. ()

078. Nonprofit. Means an entity that is recognized under the Internal Revenue Code and applicable regulations as being tax exempt, or an entity such as a nonprofit or not-for-profit organization that possesses the following characteristics that distinguish it from a business enterprise: (a) contribution of significant amounts of resources from resource providers who do not expect commensurate or proportionate pecuniary return, (b) operating purposes other than to provide goods or services at a profit, and (c) absence of ownership interests like those of business enterprises. (4-9-09)

089. Post-Secondary Educational Institution. Sometimes referred to in this rule simply as an institution, is defined in Section 33-2401(8), Idaho Code, and means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within, the state of Idaho, and which provides a course or courses of study that lead to a degree, or which provides, offers or sells degrees. (4-9-09)

0910. Proprietary School. Sometimes referred to in this rule simply as a school, is defined in Section 33-2401(9), Idaho Code, and means an individual, or educational, business or other entity, whether legally constituted or otherwise, which maintains a presence within, or which operates or purports to operate, from a location within the state of Idaho and which conducts, provides, offers or sells a course or courses of study, but which does not provide, offer or sell degrees. (4-9-09)

011. -- 099. (RESERVED)

100. RECOGNITION OF ACCREDITATION ORGANIZATIONS.

For purposes of registration of post-secondary educational institutions, the Board recognizes the regional and

~~institutional~~ national accreditation organizations 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 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. (4-7-11)()

101. -- 199. (RESERVED)

200. REGISTRATION OF POST-SECONDARY EDUCATIONAL INSTITUTIONS.

01. **Delegation.** Section 33-2403, Idaho Code, provides that a 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 post-secondary educational institution, in accordance with Title 33, Chapter 24, Idaho Code, and this rule. (4-7-11)()

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)

d. A new or start-up entity that desires to operate as a postsecondary educational institution in Idaho but which is not yet accredited by an accreditation organization recognized by the Board must register and operate as a proprietary school until accreditation is obtained. A new or start-up entity that is accredited and authorized to operate in another state, and which desires to operate as a postsecondary educational institution in Idaho offering degrees for which specialized program accreditation is required, may be granted approval to operate subject to the successful attainment of such program accreditation within the regular program accreditation cycle required by the accreditor. ()

e. There is no inherent or private right to grant degrees in Idaho. That authority belongs only to institutions properly authorized to operate in Idaho under these rules. ()

03. **Idaho Presence.** ()

a. 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, for purposes of conducting, providing, offering or selling a course or courses of study or degrees. (4-9-09)()

b. Idaho presence shall include medical/osteopathic education clinical instruction occurring in the state of Idaho as part of a course of study leading to a degree pursuant to a formal arrangement or agreement between such clinic and an institution providing medical/osteopathic education instruction. ()

c. Idaho presence shall not include: ()

i. Distance or online education delivered by an institution located outside of the state of Idaho to students in this state when the institution does not otherwise have physical presence in Idaho, as provided in Subsection 200.03.a. of this rule; ()

ii. Medical education instruction occurring in the state of Idaho by an institution pursuant to a medical education program funded by the state of Idaho; ()

iii. Internship or cooperative training programs occurring in the state of Idaho where students are employed by or provide services to a business or company in this state and receive course credit from an institution related to such activities; or ()

iv. Activities limited to the recruiting or interviewing of applicants or potential students in the state of Idaho, whether conducted by a compensated employee, agent, or representative of an institution, or by volunteer alumnus of an institution, even if such individual is physically located in this state. ()

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~~ nonprofit, post-secondary educational institutions. A private, nonprofit, post-secondary educational institution that is already established and operational as of the *effective date of when* this rule first went into effect (Brigham Young University - Idaho, College of Idaho, Northwest Nazarene University, New Saint Andrews College, Boise Bible College), 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. An institution exempt under this subsection may voluntarily register by following the procedure for registration provided herein. (4-9-09)()

c. Idaho religious institutions. A religious institution located within the state of Idaho that is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and that grants only religious degrees shall not be required to register. ()

05. Institutions That Must Register. Unless exempt under Subsection 200.04 of this rule, any entity that desires to operate as a postsecondary educational institution in Idaho must register as provided herein. (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 200.04.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)~~

076. 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)

087. 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~~ nonrefundable. (4-7-11)()

098. 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~~ the registration year. The renewal will be processed within thirty (30) days. Institutions that do not adhere to this schedule and whose renewals are not processed by July 1st must cease all active operations until approval of registration is received. (4-9-09)()

~~109.~~ **Information Required.** ()

a. ~~Such~~ An application must include all 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 letter showing the period of approval; (4-7-11)
- ii. Current list of chief officers - e.g. president, board chair, chief academic officer, chief fiscal officer; (4-9-09)
- iii. 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)~~

~~eb.~~ 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 200.087 of this rule, shall remain applicable. ~~(3-29-10)()~~

~~201. APPROVAL STANDARDS FOR POST-SECONDARY EDUCATIONAL INSTITUTIONS.~~

~~Except as provided in Subsection 200.10.a. of this rule, an institution applying for registration must meet, or demonstrate that it will meet, all of the following standards: (4-9-09)~~

~~01. Standard I—Legal Status and Administrative Structure. The institution must be in compliance with all local, state, and federal laws, administrative rules, and other regulations applicable to post secondary educational institutions. (4-9-09)~~

~~a. The institution must have a clearly stated mission and objectives that are consistent with educational offerings under consideration for approval by the Board. The institution must demonstrate how its stated mission and objectives are being accomplished. (4-9-09)~~

~~b. The governing board or the board of directors must be comprised of at least five (5) members who are selected to represent students, faculty, and other constituents of the institution. Board members must be given the responsibility for assuring that the mission and objectives are achieved, for establishing policies and overseeing their implementation, and for providing oversight for the entire institution, including the financial stability of the institution. Board members should generally not be affiliated with the institution from an employment, contractual, familial, or financial standpoint. Any affiliation or financial interest in the institution must be fully disclosed, and provisions must be made to address any conflicts of interest. (4-9-09)~~

~~c. There must be sufficient distinction between roles and responsibilities of the institution's governing board and the administration, faculty, and staff to ensure appropriate separation and independence. (4-9-09)~~

~~d. Each of the administrative officers must be appropriately qualified with educational credentials to ensure programs are of high quality and that the rights of students are protected. In particular, the chief academic officer of the institution must be academically prepared at least at the Master's degree level, and have a minimum of five (5) years of post secondary educational experience at an accredited institution. (4-9-09)~~

~~e. Administrators must be paid a fixed salary. Commissions may not be used for any portion of the compensation or to supplement an administrative salary. (4-9-09)~~

~~f. Policies must have been established to govern admissions, hiring procedures, and working conditions; evaluation/assessment of all employees and instructional offerings; awarding of credit and grades that are comparable to other institutions; academic freedom; student and faculty rights and responsibilities; grievance procedures; approval of the curriculum and other academic procedures, etc.; to ensure the quality of educational offerings. (4-9-09)~~

~~g. The administration must establish procedures for evaluating the effectiveness of the entire institution and for assessing the quality of instruction through established and recognized methods of instructional assessment. Evaluation and assessment results must be used to improve institutional programs and services. Evaluative/assessment processes must involve internal constituents from the institution and appropriate external representatives. (4-9-09)~~

~~02. Standard II—Educational Program and Curriculum. Instruction must be the primary focus of the institution, and all instructional activities must be clearly related to the achievement of the institution's mission and objectives. (4-9-09)~~

~~a. The requirements for all instructional programs must be defined clearly, including applicable completion requirements for courses, credits, and clinicals. Faculty must be given the responsibility for developing the curriculum for all courses or courses of study or degrees, designing effective learning strategies for students, identifying and organizing all instructional materials and specialized facilities, identifying instructional assessment methods, and evaluating the effectiveness of the course offerings. (4-9-09)~~

~~b. The institution must identify the number of credits required to earn a degree based on the following guidelines. Forty five (45) clock hours of student involvement are required for each semester credit, which includes a minimum of fifteen (15) student contact hours for each semester credit. Degrees are: (4-9-09)~~

~~i. Associate of Applied Science Degree. A credential awarded for completion of requirements entailing at least two (2) years, but less than four (4) years, of full-time professional-technical study with a minimum of sixty (60) semester credits (includes a minimum of sixteen (16) general education credits) and includes mastery of specific competencies drawn from requirements of business/industry; (4-9-09)~~

~~ii. Associate Degree. A credential awarded for completion of requirements entailing at least two (2) years, but normally less than four (4) years, of full-time academic work; (4-9-09)~~

~~iii. Baccalaureate Degree. A credential awarded for completion of requirements entailing at least four (4) years of full-time academic work; (4-9-09)~~

~~iv. Master's Degree. A credential awarded for completion of requirements entailing at least one (1) year, but normally not more than two (2) years, of full-time academic work beyond the baccalaureate degree, including any required research; and (4-9-09)~~

~~v. Doctoral Degree. A credential awarded for completion of requirements entailing at least three (3) years of full-time academic work beyond the baccalaureate degree, including any required research. (4-9-09)~~

~~vi. Written course descriptions must be developed for all courses and for all courses within a program or degree and include the following: course overview, learning objectives and outcomes, course content, assessment, and grading criteria. A written inventory must be maintained for all course descriptions, and course descriptions must be provided to the faculty. Faculty must be expected to follow course descriptions. A syllabus must be developed for each course and distributed to students at the beginning of the course. (4-9-09)~~

~~vii. For each course or courses of study leading to a degree, the institution shall assure that such courses will be offered with sufficient frequency to enable students to complete the courses of study and degree within the minimum time for completion. (4-9-09)~~

~~03. Standard III—Student Support Services. The institution must have clearly defined written policies that are distributed to students through a variety of print and electronic means. Policies must address students' rights and responsibilities, grievance procedures, and must define what services are available to support students and instructional programs. (4-9-09)~~

~~a. The institution must develop a written admissions policy. The admission of students must be determined through an orderly process using published criteria which must be uniformly applied. Admissions must take into account the capacity of the student to undertake a course of study and the capacity of the institution to provide instructional and other support services the student needs to complete the program. (4-9-09)~~

~~b. There must be a clearly defined policy for the readmission of students dismissed from the institution for academic reasons. The readmission of students dismissed under this policy should be consistent with the recognized academic standards of admission to the institution. (4-9-09)~~

~~c. The institution must establish and adhere to a clear and fair policy regarding due process in disciplinary matters, and publish this policy in a handbook, which must include other rights and responsibilities of the students and the grievance procedure. This handbook must be supplied to each student upon enrollment in the institution. The institution must provide the name and contact information for the individual who is responsible for dealing with student grievances and other complaints and for handling due process procedures. (4-9-09)~~

~~d. The institution must provide an effective program of academic advising for all students enrolled. The program must include orientation to the academic program, academic and personal counseling, career information and planning, placement assistance, and testing services. (4-9-09)~~

- ~~e. The institution must provide students, prospective students prior to enrollment, and other interested persons with a catalog containing, at a minimum, the following information: (4-9-09)~~
- ~~i. The institution's mission; (4-9-09)~~
- ~~ii. Admissions policies; (4-9-09)~~
- ~~iii. Information describing the purpose, length, and objectives for the courses or courses of study or degrees offered by the institution; (4-9-09)~~
- ~~iv. Credit requirements for all courses or courses of study or degrees offered by the institution; (4-9-09)~~
- ~~v. Procedures for awarding credit for work completed outside the collegiate setting; (4-9-09)~~
- ~~vi. Policies for acceptance of transfer credit; (4-9-09)~~
- ~~vii. The schedule of tuition, fees, and all other charges and expenses necessary for completion of the courses or courses of study or degrees; (4-9-09)~~
- ~~viii. Cancellation and refund policies; (4-9-09)~~
- ~~ix. A definition of the unit of credit as it applies at the institution; (4-9-09)~~
- ~~x. An explanation of satisfactory progress, including an explanation of the grading/assessment system; (4-9-09)~~
- ~~xi. The institution's calendar, including the beginning and ending dates for each instructional term, holidays, and registration dates; (4-9-09)~~
- ~~xii. A complete listing of each regularly employed faculty member showing name, area of assignment, rank, and each earned degree held, including degree level, degree designation, and institution that awarded the degree; (4-9-09)~~
- ~~xiii. A complete listing of each administrator showing name, title, area of assignment, and each earned degree held, including degree level, degree designation, and institution that awarded the degree; (4-9-09)~~
- ~~xiv. A statement of legal control with the names of the trustees, directors, and officers of the institution or corporation or other entity; (4-9-09)~~
- ~~xv. A complete listing of all scholarships offered, if any; (4-9-09)~~
- ~~xvi. A statement describing the nature and extent of available student services; (4-9-09)~~
- ~~xvii. Complete and clearly stated information about the transferability of credit to other post-secondary educational institutions, including two (2) year and four (4) year colleges and universities; and (4-9-09)~~
- ~~xviii. Any such other material facts concerning the institution and the courses or courses of study as are reasonably likely to affect the decision of the student to enroll at the institution. (4-9-09)~~
- ~~f. Accurate and secure records must be kept for all aspects of the student academic record including, at a minimum, admissions information, transcripts, and financial transactions. Standards established by the American Association of Collegiate Registrars and Admissions Officers (AACRAO) must be used as a basis for establishing, maintaining, securing, and retaining student records. (4-9-09)~~
- ~~g. The institution must provide to each prospective student, newly enrolled student, and returning student, complete and clearly presented information indicating the institution's current graduation rate by courses of~~

~~study, and job placement rate by course of study. (4-9-09)~~

~~**04. Standard IV—Faculty Qualifications, Duties, and Compensation.** Faculty qualifications must be clearly defined for each discipline and the assigned location for each faculty member must be identified. (4-9-09)~~

~~**a.** Faculty must be qualified through academic preparation appropriate to their assigned classes and degree level. For bachelor degree programs, faculty must have a master's degree from an accredited institution. At the graduate level, faculty must have a doctoral degree from an accredited institution. Relevant teaching experience or evidence to indicate they will be successful in the classroom must also be considered. Relevant work experience must also be considered. Transcripts for all faculty must be obtained, reviewed, and retained at the institution. Faculty must be recruited from a variety of institutions and backgrounds to enhance diversity and to avoid hiring a disproportionate number of individuals who are graduates of institutional programs. (4-9-09)~~

~~**b.** There shall be a sufficient number of full time faculty members to maintain the continuity and stability of academic programs and policies. At least one (1) full-time faculty must be located in Idaho for each course or courses of study or degree, unless the institution can demonstrate specifically why this is not feasible, and identify what provisions have been, or will be, made to serve students effectively. (4-9-09)~~

~~**c.** A group of faculty must be organized and given responsibility in conjunction with the institution's chief academic officer for reviewing and approving all courses and courses of study and degrees offered by the institution. This group must also be responsible for overseeing instructional assessment activities and setting standards for program review/evaluation. The group must be of sufficient size to effectively represent a variety of instructional disciplines and faculty perspectives. (4-9-09)~~

~~**d.** The ratio of faculty to students in each course must be sufficient to assure effective instruction. (4-9-09)~~

~~**e.** Faculty must be paid a fixed salary. Commissions may not be used for any portion of the compensation, to supplement faculty salaries, or be connected to recruitment or retention of students. (4-9-09)~~

~~**f.** Procedures for evaluating faculty must be established, including provisions for promoting faculty and recognizing scholarly contributions to their academic discipline. (4-9-09)~~

~~**g.** A faculty development program must be established to encourage professional advancement and to enhance one's knowledge and instructional expertise. (4-9-09)~~

~~**05. Standard V—Resources, Financial Resources, and Facilities.** The institution must have adequate financial resources to accomplish its educational mission and objective. (4-9-09)~~

~~**a.** A financial officer in a managerial position must be designated for the institution and given responsibility for overseeing all of the financial aspects of the institution. (4-9-09)~~

~~**b.** Adequate financial resources must be provided to accomplish the institutional mission and to effectively support the instructional programs, including teaching facilities (i.e., classrooms, labs), instructional materials, supplies and equipment, faculty, staff, library, and the physical and instructional technology infrastructure. (4-9-09)~~

~~**c.** The institution must have sufficient reserves so that, together with tuition and fees, it is able to complete its educational obligations to currently enrolled students, even if it were unable to admit any new students. (4-9-09)~~

~~**d.** Financial records and reports of the institution must be kept and made separate and distinct from those of any affiliated or sponsoring person or entity. Financial records and reports at a public or not for profit institution must be kept in accordance with the most current guidelines from the National Association of College and University Business Officers. Financial records and reports of a for-profit institution must be kept in accordance with generally accepted accounting principles. A for-profit institution must organize its reports and records under categories or cost centers comparable to accounting funds identified in the most current guidelines from the National~~

~~Association of College and University Business Officers. (4-9-09)~~

~~e. An annual independent audit of all fiscal accounts of the educational institution must be authorized by the governing board, and must be performed by a properly authorized certified public accountant. (4-9-09)~~

~~06. Standard VI—Library and Instructional Resources. The institution must obtain and properly catalog library and other learning resources and make these resources readily available to its students and faculty. These holdings must be of sufficient quality and depth to support its mission and achievement of student and faculty learning objectives. (4-9-09)~~

~~a. The institution must have adequate library facilities for the library holdings, space for study, and workspace for the librarian and library staff. (4-9-09)~~

~~b. Library services and resources must be available for student and faculty use with sufficient regularity, and at appropriate hours, to support the mission of the institution and its instructional offerings. (4-9-09)~~

~~c. If the institution relies on other institutions or entities to provide library resources, or this is done through electronic means, the institution must demonstrate how these arrangements effectively meet the needs of students and faculty. These arrangements must be documented through written agreements. Student and faculty use must be documented and frequently evaluated to ensure quality services are being provided. (4-9-09)~~

~~d. The library must be administered by professionally trained staff supported by sufficient personnel. (4-9-09)~~

2021. 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 or Exemption. (4-7-11)()

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. (4-7-11)

b. An institution exempt from registration under these rules may request a certificate of exemption. ()

bc. 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. (4-7-11)

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 Board 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; ~~or~~ ~~(4-9-09)~~()

v. Loss of accreditation status. ()

c. If any information contained in the application submitted by the institution becomes incorrect or incomplete, then the registered institution shall notify the Board office 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)~~()

~~2032.~~ -- 299. (RESERVED)

300. REGISTRATION OF PROPRIETARY SCHOOLS.

01. Delegation. Section 33-2403, Idaho Code, provides that a proprietary school must hold a valid certificate of registration issued by the Board. 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, 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 proprietary school which maintains a presence within the state of Idaho, or which operates or purports to operate from a location within the state of Idaho, shall register annually and hold a valid certificate of registration issued by the Board. A school shall not conduct, provide, offer, or sell a course or courses of study unless registered. A school shall not solicit students for or on behalf of such school, or advertise in this state, unless registered. (3-29-10)

b. Registration shall be for the period beginning July 1 of any year and continue through June 30 of the next succeeding year. For a school that has not previously registered with the Board, registration shall be for the period beginning on the date of issuance of a certificate of registration and continue through June 30 of the next succeeding year. A registered proprietary school must renew its certificate of registration annually and renewal of registration is not automatic. ~~(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. ()

a. A school 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, or 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, for purposes of conducting, providing, offering or selling a course or courses of study or degrees. (4-9-09)()

b. Idaho presence shall not include: ()

i. Distance or online education delivered by an institution located outside of the state of Idaho to students in this state when the institution does not otherwise have physical presence in Idaho, as provided in Subsection 300.03.a. of this rule; ()

ii. Internship or cooperative training programs occurring in the state of Idaho where students are employed by or provide services to a business or company in this state and receive course credit from an institution related to such activities; or ()

iii. Activities limited to the recruiting or interviewing of applicants or potential students in the state of Idaho, whether conducted by a compensated employee, agent, or representative of an institution, or by volunteer alumnus of an institution, even if such individual is physically located in this state. ()

04. Exemptions from Registration. The following individuals or entities are specifically exempt from the registration requirements of this rule: (4-9-09)

a. An individual or entity that offers instruction or training solely a-vocational or recreational in nature, as determined by the Board. (4-9-09)()

b. An individual or entity that offers courses recognized by the Board which comply in whole or in part with the compulsory education law. (4-9-09)

c. An individual or entity that offers a course or courses of study sponsored by an employer for the training and preparation of its own employees, and for which no tuition fee is charged to the student. (4-9-09)

d. An individual or entity which is otherwise regulated, licensed, or registered with another state agency pursuant to Title 54, Idaho Code. (4-9-09)

e. An individual or entity that offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations or medical college admissions tests, or similar instruction for test preparation. (4-9-09)

f. An individual or entity offering only workshops or seminars lasting no longer than three (3) calendar days and offered no more than four (4) times per year. (4-9-09)()

g. A parochial or denominational institution providing instruction or training relating solely to religion and for which degrees are not granted. (4-9-09)

h. An individual or entity that offers post-secondary credit through a consortium of public and private colleges and universities under the auspices of the ~~W~~Western ~~G~~Governors University. (4-9-09)()

i. An individual or entity that offers flight instruction and that accepts payment for services for such training on a per-flight basis after the training occurs, or that accepts advance payment or a deposit for such training in a de minimus amount equal to or less than fifteen (15) percent of the total course or program cost. ()

05. Application. A proprietary school that is required to register under this rule must submit to the

Board office an application for registration (either an application for initial registration, or renewal of registration, as applicable), on a form provided by the Board office. The application must include a list of each course or courses of study the applicant school intends to conduct, provide, offer or sell in Idaho during the registration year. (3-29-10)

06. Registration Fees. The Board shall assess an annual registration fee for initial registration or renewal of registration. The registration fee must accompany the application for registration, and shall be one-half of one percent (.5%) of the gross Idaho tuition revenue of the school during the previous registration year, but not less than one hundred dollars (\$100) and not to exceed five thousand dollars (\$5,000). The school shall provide documentation to substantiate the amount of revenue reported. Registration fees are ~~not~~ nonrefundable. (3-29-10)()

07. Deadline for Registration. An initial application for registration may be submitted to the Board at anytime. A school should expect the Board 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 ~~the~~ registration year. The renewal will be processed within thirty (30) days. Schools that have not completed annual renewal of registration Institutions that do not adhere to this schedule and whose renewals are not processed by July 1st must cease all active operations until approval of registration is received. (3-29-10)()

08. Information Required. Such application must include all the information requested on the application form. In addition, a school ~~applying for registration must submit information and/or documentation with its application for registration that documents~~ must attest by signature of the primary official on the application form that it is in compliance with Standards I through V set forth in Section 301 of this rule and must provide verification of compliance with Standards I through V set forth in Section 301 of this rule upon request. The Board may, in connection with a renewal of registration, request that a school only submit information that documents changes from the previous year, provided that the school certifies that all information and/or documentation submitted in a previous registration year remains current. The annual registration fee, described in Subsection 300.06 of this rule, shall remain applicable. (3-29-10)()

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. (4-7-11)

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, instructor and/or school official must be appropriately qualified by the trade board (as applicable) to ensure courses are of high quality and the rights of students are protected. (4-9-09)()

d. Written policies must 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. (4-7-11)

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. 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. (4-7-11)()

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 follow applicable trade board training curriculum standards or 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~~ Written course descriptions must be provided to instructors. Instructors ~~must be~~ are 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~~ readily available 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.~~ The admission of students must be determined through an orderly process established in a written policy using published criteria which must be uniformly applied. Admissions decisions must take into account the capacity of the student to grasp and complete the instructional training program and the ability of the school to handle the unique needs of the students it accepts. (4-9-09)()

b. There must be a clearly defined policy ~~for the readmission of~~ to re-evaluate students dismissed from the school ~~and, if appropriate, to readmit them.~~ ~~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 for all students, 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 given 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 p~~Prior to enrollment, ~~to include the following~~ **all prospective students must receive the following information in writing:** (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/Instructor 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~~ **recorded and available to students.** (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 classroom and training** 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 **instructional** resources **materials** 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 for a comparable teach-out opportunity with another proprietary school ~~to have students complete a comparable course or courses of study (a teach out provision)~~ or refund one hundred (100) percent of prepaid tuition. (4-9-09)()

c. School ~~financial/business~~ 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 the Board~~ 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 or Exemption. (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 State Board of Education." Registration is not an endorsement of the school. (4-7-11)

b. An institution exempt from registration under these rules may request a certificate of exemption. ()

~~b.c.~~ 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 must submit a letter to the Board 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.(4-7-11)

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 provide written notice to the Board of this event. (4-7-11)
- 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. (4-7-11)
- 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 currently engaged in instructional activities, that covers the period from the beginning through completion of such students' instructional program at the school during the upcoming registration year the course of instruction the student has contracted and paid for. This amount shall be based upon the projected tuition and fees collected by the school from its students covering such period during the previous registration year revenue for the coming registration year, subject to modification in the event a school is beginning operations and has no previous revenue or satisfactorily demonstrates that it expects experiences significant changes in tuition and fee revenue during the upcoming current 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 must keep a valid bond in force, via periodic renewal as needed, throughout the entire registration year with no lapse in coverage. Schools shall ensure that all bonds include "extended coverage" clauses to remain in effect for one hundred twenty (120) days after the date of a school's 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)

303. -- ~~9399~~. (RESERVED)

400. ENFORCEMENT.

The Board, acting by and through its Executive Director may initiate on its own initiative any investigation relating to a violation of the state laws or rules relating to the requirement that an institution or school register with the Board pursuant to Title 33, Chapter 24, Idaho Code. ()

401. -- 499. (RESERVED)

500. COMPLAINTS.

A complaint concerning an institution or school operating in the State of Idaho (maintaining an Idaho presence) that pertains to a matter described herein shall be reviewed and acted upon as appropriate in accordance with the specific procedures described below: ()

01. Violations of State Consumer Protection Laws. A complaint alleging a violation of Idaho consumer protection laws shall be instituted, reviewed, and acted upon in accordance with IDAPA 04.02.01, "Idaho Rules of Consumer Protection, Office of the Attorney General." ()

02. Violations of State Laws or Rules Related to the Registration of Postsecondary Educational Institutions and Proprietary Schools. A complaint alleging violations of state laws or rules related to the requirement that an institution or school register with the Board shall be submitted in writing to the Board's Executive Director for investigation and appropriate enforcement action, including the remedies specified in Idaho Code §33-2408. ()

03. Complaints Related to Quality of Education, or Other Matters. ()

a. A complaint relating to the quality of education provided by an institution or school or accreditation matters, or any other matter related to the operations or practices of an institution or school other than a state consumer protection matter, shall be submitted on a form provided by the Board to the Executive Director for review and appropriate action. ()

b. If after initial review the Executive Director determines that the complaint relates to the quality of education or accreditation matters, the Executive Director may refer the matter to the accreditation organization of the institution or school at issue for review and recommendation. If a matter referred to an accreditation organization results in resolution of the complaint to the satisfaction of the complainant, then the matter shall be considered resolved and there shall be no further action on the matter. If the matter is not successfully resolved, then the Executive Director will review the recommendation of the accreditation organization and follow the procedures for investigations of complaints described in Subsection 500.03.c. of these rules. ()

c. If the complaint pertains to any other matter related to the operations or practices of an institution or school, other than a state consumer protection matter, then the Executive Director will review the complaint to determine whether such complaint falls within the regulatory authority of the Board. If it does not, then Board office will notify the complainant in writing of such determination, and may offer referral of such matter to an appropriate agency or entity. If after initial review the Executive Director determines that the complaint falls within the regulatory authority of the Board, then Board staff will notify both the complainant and the respondent institution or school of the complaint resolution process to be utilized and applicable timelines. The review and investigation of a complaint shall occur as expeditiously as possible. The parties may be asked to respond in writing to the complaint, to submit to interviews, and to provide additional records, documents, statements, or other collateral information as necessary. Any request by the investigator for additional information related to such complaint must be provided promptly. The Board's investigator will review the materials submitted by all parties and at the conclusion of the investigation prepare a summary of the allegations, the investigator's findings, and a recommendation for disposition to the Executive Director. If the Executive Director determines that the facts indicate a probable violation of law or rule over which the Board has regulatory authority, then the Executive Director shall issue a written decision on the disposition of such complaint. Within thirty (30) days after a decision is issued a party aggrieved by such decision may file with the Executive Director a request for a hearing. The provisions of the Idaho Administrative Procedure Act, Chapter 52, Title 67, Idaho Code, shall apply to such hearing and to judicial review of such decision. ()

d. If the Board office receives a complaint relating to an institution or school that is exempt from registration under Idaho law or these rules, and such institution or school has not elected to voluntarily register, then such institution or school shall be responsible for reimbursing the Board office for the actual costs incurred to process and act on such complaint. ()

501. -- 999. (RESERVED)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.01.14 - IDAHO RURAL PHYSICIAN INCENTIVE PROGRAM

DOCKET NO. 08-0114-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is June 24, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 33-105, and 33-3723 through 33-3725.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Current language contained in the rule requires the Rural Physician Incentive Fund award distribution to be made directly to the lender. Changes would allow for the award to be made directly to the physician who would then be required to make the payment to the lender for qualified education debt as outlined in Section 33-3725, Idaho Code. Additional changes in the rule further clarify the definition of a health professional shortage area.

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:

Current language contained in the rule requires the award distribution to be made to the lender. During the last award cycle some lenders have not provided the necessary information required to disperse the award resulting in the physician not being able to receive the award they were granted in a timely manner.

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

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the changes were of a non controversial 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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Tracie Bent, Chief Planning and Policy Officer at (208)332-1582 or tracie.bent@osbe.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

Tracie Bent
Chief Planning and Policy Officer
Office of the State Board of Education
650 W. State St
PO Box 83720
Boise, ID 83720-0037
(208)332-1582, Fax: (208)3342632

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 08-0114-1101

010. DEFINITIONS.

These definitions are applicable to this chapter only. (3-29-10)

01. Community Sponsoring Organization. A hospital, medical clinic or other medical organization which is located in an eligible area and that employs physicians for purposes of providing primary care medical services to patients. (3-29-10)

02. Eligible Area. A medically underserved area of Idaho, further defined to mean an area designated by the U.S. Secretary of Health and Human Services as a ~~Health~~ ~~Professional~~ ~~Shortage~~ area in the category of Primary Care or Mental Health. ~~(3-29-10)~~ (6-24-11)T

03. Oversight Committee. The committee constituted pursuant to Section 33-3724, Idaho Code, composed of knowledgeable individuals or organizations to assist in the administration of the rural physician incentive program. (3-29-10)

04. Primary Care Medicine. Family medicine, general internal medicine, and general pediatrics, but if there is a demonstrated high level of need in an eligible area, as determined by the oversight committee, may also include obstetrics and gynecology, general psychiatry, general surgery and emergency medicine. (3-29-10)

05. Qualified Medical Education Debt. Debt with a financial aid program or financial institution incurred to meet the educational costs of attending a medical school. (3-29-10)

06. Rural Physician. A licensed Idaho physician, MD or DO, who spends a minimum of twenty-eight (28) hours per week, on average, providing primary care medicine services to patients in an eligible area. (3-29-10)

07. Rural Physician Incentive Fee. The fee assessed by the State to students preparing to be physicians in the fields of medicine or osteopathic medicine who are supported by the state pursuant to an interstate compact for professional education in those fields, as those fields are defined by the compact. (3-29-10)

08. Rural Physician Incentive Fund. The special revenue account in the state treasury created pursuant to Section 33-3724, Idaho Code, relating to the Rural Physician Incentive Program. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

014. ELIGIBILITY FOR A RURAL PHYSICIAN INCENTIVE PROGRAM AWARD.

01. Eligibility Requirements. A physician who meets the following requirements is eligible to apply

for a Rural Physician Incentive Program award: (3-29-10)

a. During the period covered by the award, the physician must be a rural physician providing primary care medicine in an eligible area. A physician may provide patient care services in primary care medicine in more than one (1) eligible area; (3-29-10)

b. The physician must be a Doctor of Medicine (M.D.) or Doctor of Osteopathic Medicine (D.O.) and have completed an Accreditation Council of Graduate Medical Education or American Osteopathic Association residency; (3-29-10)

c. The physician must be Idaho Medical Board certified/Board eligible, ~~hold~~ be eligible for an unrestricted Idaho medical license, and be able to meet the medical staffing requirements of the sponsoring organization when applicable; and ~~(3-29-10)~~(6-24-11)T

d. The physician must be eligible to care for Medicare and Medicaid patients within the scope of the physician's primary care medicine practice. (3-29-10)

02. Ineligibility. Notwithstanding Subsection 014.01 of these rules, a physician shall not be entitled to receive an award under this program if the physician is receiving payments for purposes of repaying qualified medical education debt from another state or from a federal debt repayment program. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

017. MONETARY VALUE OF THE AWARD.

01. Award Amounts. A physician selected to receive a Rural Physician Incentive Program award shall be entitled to receive qualified medical education debt repayments for a period not to exceed five (5) years in such amount as is determined annually. The award shall not exceed the qualified medical education debt incurred by the recipient, and the maximum amount of educational debt repayments that a rural physician may receive shall be fifty thousand dollars (\$50,000) over such five (5) year period. Payments shall be limited to a maximum of ten thousand dollars (\$10,000) in a single year. (3-29-10)

02. Establishing Award Amounts. Award amounts shall be established annually based on recommendations of the oversight committee utilizing such factors as availability of funding, the number of new applicants, and the hours an award recipient will devote to providing primary care services in an eligible area. (3-29-10)

03. Repayment of Qualified Medical Education Debt. All qualified medical education debt repayments shall be paid directly to the ~~financial organization~~ award-recipient physician who shall direct payment of an equal amount to the financial institution holding such debt. An award-recipient physician shall sign an affidavit provided by the Office of the State Board of Education affirming that payment will be made to the financial institution. ~~(3-29-10)~~(6-24-11)T

04. Incentive Fund. Pursuant to Section 33-3725, Idaho Code, the total of all awards from the rural physician incentive fund contractually committed in a year shall not exceed the annual amount deposited in the rural physician incentive fund that same year. (3-29-10)

05. Annual Adjustments. An award payment to a recipient in a single year is not guaranteed or assured in subsequent years and may be increased or reduced. Annual award payments for new and existing award recipients will be announced no later than April 30th of each year. (3-29-10)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.01 - RULES GOVERNING ADMINISTRATION

DOCKET NO. 08-0201-1101

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 33-105, Idaho Code, Section 33-107, Idaho Code, and Section 33-1612, Idaho Code.

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

**Tuesday, October 18, 2011
at 4:00 p.m. (MDT)**

**Idaho State Department of Education
Barbara Morgan Conference Room
650 West State Street, 2nd Floor
Boise, Idaho**

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:

This rule change deals with two aspects of collective bargaining and negotiations. First, the Students Come First law now requires district negotiations with personnel be conducted in open session and available for the public to attend. This rule would clarify that open negotiations should adhere to Idaho's Open Meeting Law Manual.

Second, the Students Come First law now limits collective bargaining to compensation and benefits. The State Department of Education received feedback from districts, after districts completed collective bargaining this year, that the definition of compensation and benefits needed to be further clarified. This rule change defines salary as "any monies paid to an employee pursuant to an employment contract, the form of which is approved by the Superintendent of Public Instruction pursuant to Section 33-513, Idaho Code, and the process by which the school district board of trustees will determine local student achievement share awards." The rule change also specifies that the inclusion of any other items in a negotiated agreement is prohibited.

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: NA

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the proposed rule changes were suggestions received from education stakeholders. The proposed language is clarifying existing law.

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: NA

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Camille Wells at (208) 332-6817.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2011.

DATED this 31st Day of August, 2011.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0201-1101

151. NEGOTIATIONS.

01. Open Meeting. For the purposes of Section 33-1273A, Idaho Code, all open meeting negotiations shall adhere to Sections 67-2340 through 67-2344 and 67-2346 through 67-2347, Idaho Code, including posting agendas and such notices on the main page of the school district's website. ()

02. Collective Bargaining Limited to Compensation and Benefits. Items that may be included in master contracts or negotiated agreements shall be limited to the specific items defined under the terms "Compensation" and "Benefits" under Section 33-1272, Idaho Code. For the purposes of the definition of "Compensation" as stated in Section 33-1272, Idaho Code, the term "salary" means: ()

a. Any monies paid to an employee pursuant to an employment contract, the form of which is approved by the Superintendent of Public Instruction pursuant to Section 33-513, Idaho Code; and ()

b. The process by which the school district board of trustees will determine local student achievement share awards pursuant to Section 33-1004I, Idaho Code. ()

c. The inclusion of any other items in a master contract or negotiated agreement is hereby prohibited. Any items included in violation of this provision are hereby declared null, void and of no force or effect. ()

151.2. -- 199. (RESERVED)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1102

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 33-105, Idaho Code, Section 33-107, Idaho Code, and Section 33-1612, Idaho Code.

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

**Tuesday, October 18, 2011
at 4:00 p.m. (MDT)**

**Idaho State Department of Education
Barbara Morgan Conference Room
650 West State Street, 2nd Floor
Boise, Idaho**

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

Idaho Code requires the State Board of Education to establish standards for the accreditation of any secondary school and set standards for all elementary schools as it may deem necessary. In August, 2007, the State Board of Education eliminated the Idaho State Accreditation process and adopted the Northwest Association of Accredited Schools (NAAS) standards for accreditation purposes due to the fact that a duplication of efforts existed between the two processes.

NAAS has changed their name to the Northwest Accreditation Commission (NWAC) to better reflect their organizational structure as a commission rather than an association due to changes in membership and representation. The standards by which schools are accredited in Idaho have not changed as a result of the name change.

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 rule changes are technical correction to accurately reflect the accreditation standards organization's name 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 Luci Willits 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 Wednesday, October 26, 2011.

DATED this 31st Day of August, 2011.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1102

140. ACCREDITATION.

All public secondary schools, serving any grade(s) 9-12, will be accredited. Accreditation is voluntary for elementary schools, grades K-8, and private and parochial schools. (Section 33- 119, Idaho Code) (4-2-08)

01. Continuous School Improvement Plan. Schools will develop continuous school improvement plans focused on the improvement of student performance. (4-2-08)

02. Standards. Schools will meet the accreditation standards of the Northwest ~~Association of Accredited Schools~~ Accreditation Commission. ~~(4-2-08)~~()

03. Reporting. An annual accreditation report will be submitted to the State Board of Education. (4-2-08)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1103

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 33-105, Idaho Code, Section 33-107, Idaho Code, and Section 33-1612, Idaho Code.

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

**Tuesday, October 18, 2011
at 4:00 p.m. (MDT)**

**Idaho State Department of Education
Barbara Morgan Conference Room
650 West State Street, 2nd Floor
Boise, Idaho**

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

The Professional Standards Commission (PSC) approved two clarifications and a revision to endorsements to ensure that the endorsements for certification in the following areas are meeting current needs and adequately preparing candidates for these positions:

08.02.02.021 Endorsements - This rule clarification is in response to a simple oversight. The Exceptional Child Certificate must include an endorsement because it is not a stand-alone certificate. The introduction to the Endorsements section of Idaho Code does not include the Exceptional Child Certificate as one of the certificates eligible for endorsement.

08.02.02.023.04 English as a New Language (ENL) (K-12) - This rule clarification is in response to the need for a more clearly stated intent of the endorsement language. The manner in which the endorsement language is worded, unfortunately allows for interpretation that any Modern Language could meet the four (4) semester credit hour requirement. If that were the case, any four (4) credits of English, for example, could be argued as meeting the requirement. The intent of the endorsement is that the candidate shall have four (4) semester credit hours of Modern Foreign Languages to better serve ENL students. By making this revision to the endorsement language, current and best practices will be more accurately reflected.

08.02.02.027.02 School Psychologist Endorsement - The Idaho School Psychologists Association (ISPA) proposed to PSC that the Idaho State Department of Education accept National Certification requirements for School Psychologists (NCSP). This program is offered through the National Association of School Psychologists (NASP), and should be considered as an additional avenue to meet state certification and recertification requirements.

The process for certification and recertification through NASP are significantly more rigorous than current Idaho requirements. Currently, 33 states (including those neighboring Idaho) accept these National Certification requirements, and the PSC recommends that Idaho also accepts this practice.

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 rule changes were suggested by PSC who receives input from a full spectrum of education stakeholders.

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 Christina Linder at (208) 332-6886.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2011.

DATED this 31st Day of August, 2011.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1103

021. ENDORSEMENTS.

Holders of a Secondary Certificate or a Standard Elementary Certificate, Exceptional Child Certificate, Standard Occupational Specialist Certificate, and Advanced Occupational Specialist Certificate may be granted endorsements in subject areas as provided herein. An official statement of competency in a teaching area or field is acceptable in lieu of courses for a teaching major or minor if such statements originate in the department or division of the accredited college or university in which the competency is established and are approved by the director of teacher education of the recommending college or university. To add an endorsement to an existing credential, an individual shall complete the credit hour requirements as provided herein and shall also meet or exceed the state qualifying score on appropriate, state approved content, pedagogy and performance assessments. When converting semester credit hours to quarter credit hours, two (2) semester credit hours is equal to three (3) quarter credit hours. ~~(3-29-10)~~()

(BREAK IN CONTINUITY OF SECTIONS)

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 Foreign 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. Remaining semester credits must be in health-related course work. (4-7-11)

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)

(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. In order to renew the endorsement, six (6) professional development credits are required every five (5) years in order to renew the endorsement. The renewal credit requirement may be waived if the applicant holds a current valid National Certification for School Psychologists (NCSP) offered through the National Association of School Psychologists (NASP). 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. (4-7-11)

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. (4-7-11)

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)

d. Earn a current and valid National Certification for School Psychologists (NCSP) issued by the National Association of School Psychologists (NASP). (____)

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)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1104

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 33-105, Idaho Code, Section 33-107, Idaho Code, and Section 33-1612, Idaho Code.

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

**Tuesday, October 18, 2011
at 4:00 p.m. (MDT)**

**Idaho State Department of Education
Barbara Morgan Conference Room
650 West State Street, 2nd Floor
Boise, Idaho**

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

The Professional Standards Commission (PSC) approved the need for an Interim Certificate for the Reinstatement of an Expired Certificate. This rule change responds to a statewide challenge in meeting federal guidelines for Highly Qualified status and teacher shortages. This allows for greater flexibility and a shorter timeline for Idaho-trained educators to return to the teaching field.

Currently, if an out-of-state teacher comes to teach in Idaho but does not meet all of Idaho's certification requirements, they are granted an interim certificate. This rule change would allow in-state teachers who have allowed their certifications to lapse to be granted an interim certificate while they take the proper coursework to become certified. This allows for greater flexibility and a shorter timeline for Idaho-trained educators to return to the teaching field. Simply put, this change allows for a three (3) year interim certificate to be issued to any Idaho-trained educator whose certificate has expired.

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 rule changes were suggested by PSC who receives input from a full spectrum of education stakeholders.

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 Christina Linder at (208) 332-6886.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2011.

DATED this 31st Day of August, 2011.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1104

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. (4-7-11)

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. (4-7-11)

02. Reinstatement of Expired Certificate. An individual holding an expired Idaho certificate, that has lapsed for one (1) year or greater, may be issued a nonrenewable three-year interim certificate. During the validity period of the interim certificate, the applicant must meet all current requirements listed for the specific certificate and endorsement(s) including the appropriate content, pedagogy, and performance assessments. ()

023. 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-year interim certificate. The applicant must also complete the requirements listed in Section 013 of these rules. (4-2-08)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1105

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 33-105, Idaho Code, Section 33-107, Idaho Code, and Section 33-1612, Idaho Code.

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

**Tuesday, October 18, 2011
at 4:00 p.m. (MDT)**

**Idaho State Department of Education
Barbara Morgan Conference Room
650 West State Street, 2nd Floor
Boise, Idaho**

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

The Professional Standards Commission (PSC) recommends revising the IDAPA language so that the “official vehicle for approving teacher education programs” is referred to only as the “accepted national standards for the accreditation of educator preparation.” This will allow the accreditation process to remain focused on a single set of nationally recognized standards, yet retain necessary state control. The utilization and emphasis on the Idaho Standards for Initial Certification of Professional School Personnel enables the Idaho State Board of Education to have more oversight of the teacher preparation program approval process.

The National Council for the Accreditation of Teacher Education (NCATE) is undergoing a merger with the Teacher Education Accreditation Council (TEAC) to consolidate efforts into a single national accrediting organization. The planned name for this new organization is the Council for the Accreditation of Educator Preparation (CAEP).

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 rule changes were suggested by PSC who receives input from a full spectrum of education stakeholders.

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 Christina Linder at (208) 332-6886.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2011.

DATED this 31st Day of August, 2011.

Tom Luna
Superintendent of Public Instruction
State Department of Education

650 West State Street, 2nd Floor
P.O. Box 83720, Boise, ID 83720-0027
(208) 332-6812; fax: (208) 334-2228

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1105

100. OFFICIAL VEHICLE FOR APPROVING TEACHER EDUCATION PROGRAMS.
(Section 33-114, Idaho Code)

(4-1-97)

01. The Official Vehicle for the Approval of Teacher Education Programs. The official vehicle for the approval of teacher education programs will be the ~~National Council for Accreditation of Teacher Education (NCATE) approved~~ Idaho Standards for the Initial Certification of Professional School Personnel ~~as approved on June 2004~~ that are based upon the accepted national standards for the accreditation of educator preparation and include state-specific, core teaching requirements. The State Department of Education will transmit to the head of each Idaho college or department of education a copy of all revisions to the Idaho Standards for the Initial Certification of Professional School Personnel. Such revisions will ~~not~~ take effect ~~on approval evaluations of the Idaho program until~~ and must be implemented within a period not to exceed two (2) years after notification of such revision. ~~The two (2) year deferral may be waived upon written request of the head of the college or department to be evaluated~~
(4-6-05)()

02. Effective Date. ~~The effective date for the NCATE approved Idaho Standards for the Initial Certification of Professional School Personnel is September 1, 2001. Students with junior or senior standing and currently enrolled in an institution's program that does not meet the Standards will be eligible for certification in Idaho after successfully completing their program if this program is completed within two (2) years of the September 1, 2001 effective date. All programs not meeting the Standards will be responsible for informing enrolled students of their non-compliance.~~
(3-30-01)

03. Reference Availability. The Idaho Standards for the Initial Certification of Professional School Personnel, ~~are~~ incorporated ~~herein~~ by reference in Subsection 004.01, ~~and~~ are available for inspection ~~in the Office of the State Board of Education.~~ Copies of this document can be found on the Office of the State Board of Education's website at www.boardofed.idaho.gov.
(3-30-01)()

04. Continuing Accreditation Approval. ()

a. The state of Idaho will follow ~~the a~~ National accreditation ~~Council for Accreditation of Teacher Education (NCATE) model~~ and by which institutions shall pursue continuing approval ~~at the end of~~ through a full program review every seven (7) years ~~following baseline approval.~~ The full program review shall be based upon the Idaho Standards for Initial Certification of Professional School Personnel.
(3-16-04)()

b. The state of Idaho will additionally conduct focused reviews of state-specific, core teaching requirements in the interim, not to exceed every third year following the full program review. ()

05. Payment Responsibilities for Teacher Preparation Program Reviews. The Professional Standards Commission is responsible for Idaho teacher preparation program reviews, including assigning responsibility for paying for program reviews. To implement the reviews, it is necessary that: (4-6-05)

a. The Professional Standards Commission pay for all in-state expenses for on-site teacher preparation reviews from its budget. (4-6-05)

b. Requesting institutions pay for all out-of-state expenses related to on-site teacher preparation program reviews. (4-6-05)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.02 - RULES GOVERNING UNIFORMITY

DOCKET NO. 08-0202-1106

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 33-105, Idaho Code, Section 33-107, Idaho Code, and Section 33-1612, Idaho Code.

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

**Tuesday, October 18, 2011
at 4:00 p.m. (MDT)**

**Idaho State Department of Education
Barbara Morgan Conference Room
650 West State Street, 2nd Floor
Boise, Idaho**

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

The Students Come First laws require that parent input be included in teacher and school-based administrator evaluations and that at least fifty percent (50%) of administrator and teacher evaluations are based on growth in student achievement, as determined by the board of trustees. The changes to this rule further clarify the new parent input and growth in student achievement requirements. The domains and components of the teacher evaluation framework have been made more consistent with Charlotte Danielson's Framework for Teaching Second Edition (as referenced in the rule), and citations to Idaho Code have been corrected.

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 language is clarifying existing law and was crafted around public feedback requesting the clarification.

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 Christina Linder at (208) 332-6886.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2011.

DATED this 31st Day of August, 2011.

Tom Luna
Superintendent of Public Instruction
State Department of Education

650 West State Street, 2nd Floor
P.O. Box 83720, Boise, ID 83720-0027
(208) 332-6812; fax: (208) 334-2228

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0202-1106

120. LOCAL DISTRICT EVALUATION POLICY.

Each school district board of trustees will develop and adopt policies for teacher performance evaluation in which criteria and procedures for the evaluation of certificated personnel are research based and aligned to Charlotte Danielson's Framework for Teaching Second Edition domains and components of instruction. The process of developing criteria and procedures for certificated personnel evaluation will allow opportunities for input from those affected by the evaluation; i.e., trustees, administrators and teachers. The evaluation policy will be a matter of public record and communicated to the certificated personnel for whom it is written. (3-29-10)

01. Standards. Each district evaluation model shall be aligned to state minimum standards that are based on Charlotte Danielson's Framework for Teaching Second Edition domains and components of instruction. Those domains and components include: (3-29-10)

- a. Domain 1 - Planning and Preparation: (3-29-10)
 - i. Demonstrating Knowledge of Content and Pedagogy; (3-29-10)
 - ii. Demonstrating Knowledge of Students; (3-29-10)
 - iii. Setting Instructional Goals Outcomes; ~~(3-29-10)~~()
 - iv. Demonstrating Knowledge of Resources; (3-29-10)
 - v. Designing Coherent Instruction; and (3-29-10)
 - vi. Assessing Designing Student Learning Assessments. ~~(3-29-10)~~()
- b. Domain 2 - Learning The Classroom Environment: ~~(3-29-10)~~()
 - i. Creating an Environment of Respect and Rapport; (3-29-10)
 - ii. Establishing a Culture for Learning; (3-29-10)
 - iii. Managing Classroom Procedures; (3-29-10)
 - iv. Managing Student Behavior; and (3-29-10)
 - v. Organizing Physical Space. (3-29-10)
- c. Domain 3 - Instruction and Use of Assessment: (3-29-10)
 - i. Communicating Clearly and Accurately with Students; ~~(3-29-10)~~()
 - ii. Using Questioning and Discussion Techniques; (3-29-10)
 - iii. Engaging Students in Learning; (3-29-10)
 - iv. Providing Feedback to Students Using Assessment in Instruction; and ~~(3-29-10)~~()
 - v. Demonstrating Flexibility and Responsiveness; and. ~~(3-29-10)~~()
 - vi. Use Assessment to Inform Instruction and Improve Student Achievement. ~~(3-29-10)~~

- d. Domain 4 - Professional Responsibilities: (3-29-10)
- i. Reflecting on Teaching; (3-29-10)
- ii. Maintaining Accurate Records; (3-29-10)
- iii. Communicating with Families; (3-29-10)
- iv. ~~Contributing to the School and District~~ Participating in a Professional Community; ~~(3-29-10)~~ ()
- v. Growing and Developing Professionally; and (3-29-10)
- vi. Showing Professionalism. (3-29-10)

02. Parent Input. For evaluations conducted on or after July 1, 2012, input from the parents and guardians of students shall be considered as a factor in the evaluation of any school-based certificated employees. For such certificated employees on a Category A, B or grandfathered renewable contract, this input shall be part of the first half of the evaluation that must be completed before February 1 of each year (Section 33-513 and 33-514, Idaho Code). ()

03. Student Achievement. For evaluations conducted on or after July 1, 2012, all certificated employees must receive an evaluation in which at least fifty percent (50%) of the evaluation results are based on objective measures of growth in student achievement as determined by the board of trustees. This student achievement portion of the evaluation shall be completed by the end of the school year in which the evaluation takes place (Section 33-513 and 33-514, Idaho Code). ()

024. Participants. Each district evaluation policy will include provisions for evaluating all certificated employees identified in Section 33-1001, Idaho Code, Subsection 136, and each school nurse and librarian (~~Section 33-515, Idaho Code~~). Policies for evaluating certificated employees should identify the differences, if any, in the conduct of evaluations for nonrenewable contract personnel and renewable contract personnel. (4-1-97)()

035. Evaluation Policy - Content. Local school district policies will include, at a minimum, the following information: (4-1-97)

- a. Purpose -- statements that identify the purpose or purposes for which the evaluation is being conducted; e.g., individual instructional improvement, personnel decisions. (4-1-97)
- b. Evaluation criteria -- statements of the general criteria upon which certificated personnel will be evaluated. (4-1-97)
- c. Evaluator -- identification of the individuals responsible for appraising or evaluating certificated personnel performance. The individuals assigned this responsibility should have received training in evaluation. (4-1-97)
- d. Sources of data -- description of the sources of data used in conducting certificated personnel evaluations. For classroom teaching personnel, classroom observation should be included as one (1) source of data. (4-1-97)
- e. Procedure -- description of the procedure used in the conduct of certificated personnel evaluations. (4-1-97)
- f. Communication of results -- the method by which certificated personnel are informed of the results of evaluation. (4-1-97)
- g. Personnel actions -- the action, if any, available to the school district as a result of the evaluation and the procedures for implementing these actions; e.g., job status change. Note: in the event the action taken as a result of evaluation is to not renew an individual's contract or to renew an individual's contract at a reduced rate,

school districts should take proper steps to follow the procedures outlined in Sections 33-513 through 33-515, Idaho Code in order to assure the due process rights of all personnel. (4-1-97)

h. Appeal -- the procedure available to the individual for appeal or rebuttal when disagreement exists regarding the results of certificated personnel evaluations. (4-1-97)

i. Remediation -- the procedure available to provide remediation in those instances where remediation is determined to be an appropriate course of action. (4-1-97)

j. Monitoring and evaluation. -- A description of the method used to monitor and evaluate the district's personnel evaluation system. (4-1-97)

k. Professional development and training -- a plan for ongoing training for evaluators/administrators and teachers on the districts evaluation standards, tool and process. (3-29-10)

l. Funding -- a plan for funding ongoing training and professional development for administrators in evaluation. (3-29-10)

m. Collecting and using data -- a plan for collecting and using data gathered from the evaluation tool that will be used to inform professional development. (3-29-10)

n. A plan for how evaluations will be used to identify proficiency and define a process that identifies and assists teachers in need of improvement. (3-29-10)

o. A plan for including all stakeholders including, but not limited to, teachers, board members, and administrators in the development and ongoing review of their teacher evaluation plan. (3-29-10)

046. Evaluation Policy - Frequency of Evaluation. The evaluation policy should include a provision for evaluating all certificated personnel on a fair and consistent basis. *At a minimum, the policy must provide standards for evaluating the following personnel:* All contract personnel shall be evaluated at least once annually. (4-1-97)()

~~**a.** First, second, and third year nonrenewable contract personnel will be evaluated at least once prior to the beginning of the second semester of the school year. (4-1-97)~~

~~**b.** All renewable contract personnel will be evaluated at least once annually. (4-1-97)~~

057. Evaluation Policy - Personnel Records. Permanent records of each certificated personnel evaluation will be maintained in the employee's personnel file. All evaluation records will be kept confidential within the parameters identified in federal and state regulations regarding the right to privacy (Section 33-518, Idaho Code). (4-1-97)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1102

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 33-116, 33-118 and 33-1612, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 33-1627, Idaho Code, mandates the State Board of Education promulgate rules to implement the provisions of said section, including the requirement for online course graduation requirements for the class of 2016.

These rules will clarify the definition of "online course" contained in Section 33-1002A, Idaho Code, set the number of required "online learning" credits for graduation at two (2) credits, and identify an alternate measure for those students who may not be successful in an online learning environment. Of the two (2) credits required, one (1) shall be from an asynchronous online course. The second credit may be an online course or blended course credit, either asynchronous or synchronous. These requirements will be effective for all students who enter the ninth grade in the fall of 2012 or later.

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 conducted. The Board of Education conducted seven public hearings throughout the state to gather public and stakeholder input regarding the proposed rule and to answer questions and discuss options. An eleven member subcommittee made up of stakeholder representatives reviewed the comments and made final language recommendations to the State Board 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 regarding the proposed rule, contact Tracie Bent, Chief Planning and Policy Officer at (208)332-1582 or tracie.bent@osbe.idaho.gov.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 9th day of September, 2011

Tracie Bent
Chief Planning and Policy Officer
Office of the State Board of Education

650 W. State St.
PO Box 83720, Boise, ID 83720-0037
(208)332-1582, Fax: (208)334-2632

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1102

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) - College Board. The Advanced Placement Program is administered by the College Board at <http://www.collegeboard.com>. 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. Asynchronous Course. An online course in which an online platform is used to deliver all curricula. The majority of communication exchanges occur in elapsed time and allow students and teachers to participate according to their schedule. Asynchronous courses do not prohibit the use of a paraprofessional, certificated staff or other staff member being present at the physical location during instructional periods where instruction takes place, such as a school’s computer lab. ()

089. 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)

0910. 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)

11. Blended Course. A blended course, sometimes called hybrid course, consists of a course having between fifty-one percent (51%) and seventy-nine percent (79%) of the course content delivered through the use of technology, and may include the following models: ()

a. Flex Model. Features an online platform that delivers most of the curricula. Teachers provide on-site support on a flexible and adaptive, as-needed basis through in-person tutoring sessions and small group sessions. ()

b. Online Lab Model. Programs rely on an online platform to deliver the entire course but in a brick-and-mortar lab environment. Paraprofessionals or other staff supervise but offer little content expertise. ()

c. Rotation Model. Students rotate on a fixed schedule between learning online in a self-paced environment and sitting in a classroom with a traditional face-to-face teacher. ()

102. **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)

113. **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)

124. **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)

135. **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)

146. **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)

157. **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)

168. **“C” Average.** A combined average of courses taken on a four (4) point scale with “C” equal to two (2) points. (4-11-06)

179. **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)

1820. **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)

1921. **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)

2022. **Employability Skills.** Work habits and social skills desirable to employers, such as responsibility, communication, cooperation, timeliness, organization, and flexibility. (4-5-00)

243. 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)

244. 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)

245. Experiential Education (Application). Experiential education is a process through which a learner constructs knowledge, skill, and value from direct experiences. (4-5-00)

246. 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)

247. Fluency. The clear, rapid, and easy expression of ideas in writing or speaking; movements that flow smoothly, easily, and readily. (4-5-00)

248. 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)

249. 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) - 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. Narrative. Text in any form (print, oral, or visual) that recounts events or tells a story. (4-5-00)

06. 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)

07. 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)

08. Online Course. A course in which at least eighty percent (80%) of the course content is delivered over the Internet or through the use of technology. An online course may be asynchronous or synchronous. Online teachers may perform the course work from an alternate location while a paraprofessional or other school staff member supervises students in a computer lab environment. ()

09. Online Learning. Education in which the majority of course content is delivered online or through the use of technology. Courses may be delivered in an asynchronous or synchronous course format and may include blended or hybrid course models or fully online course models. ()

a. Online learning does not include printed-based correspondence education, broadcast television or radio, videocassettes, and stand-alone education software programs that do not have a significant internet-based instructional component. ()

b. Online learning is not simply computer based instruction, but rather requires that the online teacher and the student have ongoing access to one another for purposes of teaching, evaluating, and providing assistance to the student throughout the duration of the course. ()

d. All online learning must meet the Idaho content standards. ()

10. Online Teacher (Instructor). The teacher of record who holds an appropriate Idaho certification and provides the primary instruction for an online course. ()

~~08~~**11. 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)

~~09~~**12. 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)

~~10~~**3. 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)

~~11~~**4. 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)

~~12~~**5. 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)

~~13~~**6. 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)

~~14~~**7. Professional-Technical Education.** Formal preparation for semi-skilled, skilled, technical, or paraprofessional occupations, usually below the baccalaureate level. (4-11-06)

~~15~~**8. Proficiency.** Having or demonstrating a high degree of knowledge or skill in a particular area. (4-5-00)

~~16~~**9. 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)

~~17~~**20. 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)

1921. 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)

1922. 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)

203. 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)

214. 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)

225. 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)

236. 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)

27. Synchronous Course. A course in which the teacher and students interact at the same time. May be applied to both traditional and technology based courses. ()

(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)

i. Online Learning Requirement. (Effective for all students who enter the ninth grade in the fall of 2012 or later.) Two (2) credits are required: one credit shall be from an asynchronous online course and the second credit may be an online course or blended course credit, either asynchronous or synchronous. ()

i. A student who has taken a one (1) credit asynchronous online course and failed to earn the credit may appeal to the school district or LEA and will be given an opportunity to demonstrate proficiency of the technology content standards through some other locally-established plan. School districts or LEAs shall adopt an alternate plan and provide notice of that plan to all students who have not earned the credits to meet the online learning requirement prior to the fall semester of the student's junior year. All locally-established alternate plans used to demonstrate proficiency shall be forwarded to the Board for review and information. Alternate plans must be promptly re-submitted to the Board whenever changes are made in such plans. ()

(1) Before entering an alternate measure, the student must be: ()

(a) Enrolled in a special education program and have an Individual Education Plan (IEP); or ()

(b) Has been identified as eligible to receive services under Section 504 of the Federal Rehabilitation Act of 1973; or ()

(c) Enrolled in an Limited English Proficient (LEP) program for three (3) academic years or less. ()

(2) The alternate plan must: ()

(a) Contain multiple measures of student achievement; ()

(b) Be aligned at a minimum to Idaho technology content standards; and ()

(c) Be valid and reliable. ()

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. 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 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 alternate plans used to demonstrate proficiency shall be forwarded to the State Board of Education for review and information. Alternate plans must be promptly re-submitted to the Board whenever changes are made in such plans. (4-7-11)

- 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 alternate plan must: (4-7-11)
 - i. Contain multiple measures of student achievement; (4-7-11)
 - ii. Be aligned at a minimum to tenth grade state content standards; (4-7-11)
 - iii. Be aligned to the state content standards for the subject matter in question; (4-7-11)
 - iv. Be valid and reliable; and (4-7-11)
 - v. Ninety percent (90%) of the alternate plan criteria must be based on academic proficiency and performance. (4-7-11)
- 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 OF AND STATE DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1103

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 33-105, Idaho Code, Section 33-107, Idaho Code, and Section 33-1612, Idaho Code.

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

**Tuesday, October 18, 2011
at 4:00 p.m. (MDT)**

**Idaho State Department of Education
Barbara Morgan Conference Room
650 West State Street, 2nd Floor
Boise, Idaho**

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

In June, 2010, the State Department of Education (SDE) received a waiver to discontinue the Direct Math (DMA) and Direct Writing Assessments (DWA) for school year 2010-2011. The DWA and DMA have served their purpose; SDE is focused on end-of-course assessments, the next generation of assessments, and the administration of a college entrance exam for all juniors. There are also concerns about reliability in scoring the DMA and DWA tests as they are hand scored. The changes removes references to the Direct Writing Assessment (DMA) and Direct Math Assessment (DMA) tests.

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

Previous resources used to fund DWA and DMA are being used to develop end-of-course assessments.

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 rule changes are technical corrections to comply with actions of the State Board of Education in June, 2010.

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 Luci Willits 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 Wednesday, October 26, 2011.

DATED this 31st Day of August, 2011.

Tom Luna
Superintendent of Public Instruction
State Department of Education

650 West State Street, 2nd Floor
P.O. Box 83720, Boise, ID 83720-0027
(208) 332-6812; fax: (208) 334-2228

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 08-0203-1103

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, and a college entrance exam. (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. (4-7-11)

a. Effective April 1, 2009, all students taking the Idaho Standards Achievement Test (ISAT) must have a unique student identifier. (4-7-11)

b. Districts must send all assessment results and related communication to parents within three (3) weeks of receipt from the state. (4-7-11)

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, college entrance exam. ~~(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)~~
- eb.** The National Assessment of Educational Progress will be administered in timeframe specified by the U.S. Department of Education. (3-15-02)
- ec.** 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)
- ed.** The Idaho Alternate Assessment will be administered in a time period specified by the State Board of Education. (4-2-08)
- fe.** 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)

IDAPA 08 - STATE BOARD OF AND STATE DEPARTMENT OF EDUCATION

08.02.03 - RULES GOVERNING THOROUGHNESS

DOCKET NO. 08-0203-1104

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 11, 2011.

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 33-105, Idaho Code, Section 33-107, Idaho Code, and Section 33-1612, Idaho Code.

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

**Tuesday, October 18, 2011
at 4:00 p.m. (MDT)**

**Idaho State Department of Education
Barbara Morgan Conference Room
650 West State Street, 2nd Floor
Boise, Idaho**

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

This rule change deals with two aspects of high school graduation requirements: dual credit as it pertains to the senior project requirements and college entrance examinations.

First, the Students Come First laws created a dual credit program, where students completing all state high school graduation requirements by no later than the start of their twelfth grade year are eligible to take dual credit courses paid for by the state during their twelfth grade year. The rule change notes that students participating in the dual credit program do not have to complete their senior project prior to being eligible for the program, but must complete the requirement by the end of their twelfth grade or final year of high school.

Second, change is to allow a testing exemption for two specific student groups: special education students on an Individualized Education Program (IEP) that specifies accommodations that, if used, would not allow a reportable score on the approved tests; and for Limited English Proficient (LEP) students who have been enrolled in a LEP program for three (3) years or less. Both ACT and SAT allow only limited accommodations for special education or LEP students to take the college entrance exam. If a state opts to use state approved accommodations, the tests would be invalidated and the scores would not be college-reportable. The intent of the original rule was to increase the college going student population, thus a non-reportable score would be contrary to the intent. This exemption mirrors the existing exam requirement in IDAPA 08.02.03.06, that allows these specific groups of students to enter into an alternate graduation mechanism.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226, Idaho Code, the temporary adoption of the rule is appropriate because the state has signed a contract for college entrance exam vendor as part of the Students Come First laws.

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

FISCAL IMPACT: The state could potentially save a small amount of money in the statewide contract if a significant portion of the special education or LEP (3 years or less) populations decide to not take the test.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not

conducted because the proposed rule changes are clarifying existing law and making rules consistent with law.

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 on dual credit, contact Jason Hancock at (208) 332-6853; and questions on college entrance exam, contact Wendy St. Michell at (208) 332-6842.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 26, 2011.

DATED this 31st Day of August, 2011.

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

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 08-0203-1104

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.c.~~ through 105.01.~~g.h.~~ ~~(3-29-10)~~**(8-11-11)T**

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. A student 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.) (8-11-11)T

a. A student must take one (1) of the following college entrance examinations before the end of the student's eleventh grade year: COMPASS, ACCUPLACER, ACT or SAT. Scores must be included in the Learning Plan. (5-8-09)(8-11-11)T

b. A student may elect an exemption from the college entrance exam requirement if the student is: (8-11-11)T

i. Enrolled in a special education program and has an Individual Education Plan (IEP) that specifies accommodations not allowed for a reportable score on the approved tests; or (8-11-11)T

ii. Enrolled in a Limited English Proficient (LEP) program for three (3) academic years or less. (8-11-11)T

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.c.~~ through 105.01.~~g.h.~~ in addition to the courses completed in middle school. (~~3-29-10~~)(8-11-11)T

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. 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 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 alternate plans used to demonstrate proficiency shall be forwarded to the State Board of Education for review and information. Alternate plans must be promptly re-submitted to the Board whenever changes are made in such plans. (4-7-11)

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 alternate plan must: (4-7-11)

i. Contain multiple measures of student achievement; (4-7-11)

ii. Be aligned at a minimum to tenth grade state content standards; (4-7-11)

iii. Be aligned to the state content standards for the subject matter in question; (4-7-11)

iv. Be valid and reliable; and (4-7-11)

v. Ninety percent (90%) of the alternate plan criteria must be based on academic proficiency and performance. (4-7-11)

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. A foreign exchange student may be eligible for graduation by completing a comparable program as approved by the school district or LEA. (4-11-06)

106. ADVANCED OPPORTUNITIES (EFFECTIVE JULY 1, 2008).

01. Advanced Opportunities Requirement. All high schools in Idaho shall be required to provide Advanced Opportunities, as defined in Subsection 007.01, or provide opportunities for students to take courses at the postsecondary campus. ~~(3-30-07)~~(8-11-11)T

02. Dual Credit. A student participating in the Dual Credit for Early Completers program (33-1626, Idaho Code) need not have completed a senior project prior to being eligible. However, a student must still complete a senior project by the end of grade twelve (12) or the student's final year of high school. (8-11-11)T

IDAPA 09 - DEPARTMENT OF LABOR

09.01.30 - UNEMPLOYMENT INSURANCE BENEFITS ADMINISTRATION RULES

DOCKET NO. 09-0130-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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 72-1333, 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:

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the [August 3, 2011 Idaho Administrative Bulletin, Vol. 11-8, pages 29 through 31](#).

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 will be no impact on the general fund as a result of this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Josh McKenna at 332-3570 ext. 3919.

DATED this 30th of August, 2011.

Josh McKenna, (Acting) Bureau Chief
Idaho Department of Labor
317 W. Main Street, Boise, Idaho 83735
Phone 332-3570 ext. 3919 / Fax 334-6125

DOCKET NO. 09-0130-1101 - 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 11-8, August 3, 2011, pages 29 through 31](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.

IDAPA 09 - DEPARTMENT OF LABOR

09.01.35 - UNEMPLOYMENT INSURANCE TAX ADMINISTRATION RULES

DOCKET NO. 09-0135-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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 72-1333, 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:

There is no change to the pending rule, therefore, it is being adopted as proposed. The complete text of the proposed rule was published in the [August 3, 2011 Idaho Administrative Bulletin, Vol. 11-8, pages 32 through 34](#).

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 will be no impact on the general fund as a result of this rule change.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Michael Johnson at 332-3570 ext. 3082.

DATED this 30th of August, 2011.

Michael Johnson, (Acting) Bureau Chief
Idaho Department of Labor
317 West Main Street, Boise, Idaho 83735
Phone 332-3570 ext. 3082 / Fax 334-6125

DOCKET NO. 09-0135-1101 - 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 11-8, August 3, 2011, pages 32 through 34](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.

IDAPA 11- IDAHO STATE POLICE

11.10.02 - RULES ESTABLISHING FEES FOR SERVICES - IDAHO CRIMINAL JUSTICE INFORMATION SYSTEM

DOCKET NO. 11-1002-1101 (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 67-3010, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 fees currently collected do not cover the costs of processing the background checks or rolling fingerprints. The fund has rapidly depleted as more of the costs of the stated programs are completely funded by these fees. Some costs were previously funded by general fund dollars that are no longer available. In order to continue doing all the work mandated by statute in these units, the fees need to be raised to meet the costs. The Idaho fees will still be among the lowest in the nation.

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

The rule change will increase the cost for a non-criminal justice fingerprint based state background check to \$25, a state name check to \$20, and the fee for rolling fingerprints to \$10 with a \$5 fee for each additional copy. Fees are authorized under Section 67-3010, Idaho Code, for taking fingerprints and for processing a request for criminal record review of state and federal files when the purpose is other than the administration of criminal justice.

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 impact to the general fund will be experienced.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the fees were set by financial review of the fund.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dawn Peck, Idaho State Police Bureau of Criminal Identification Manager, 208-884-7136.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 8th day of September, 2011.

Col. G. Jerry Russell, Director
Idaho State Police
700 S. Stratford Dr.
Meridian, ID 83642
Phone: 208-884-7003
Fax: 208-884-7090

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 11-1002-1101

004. MAILING ADDRESS AND OFFICE HOURS.

The mailing address is Idaho State Police, Bureau of Criminal Identification, 700 S. Stratford, Suite 120, Meridian, ID 83864. Office Hours are 8 a.m. to 5 p.m., Monday through Friday, except legal holidays. (~~3-30-01~~)()

(BREAK IN CONTINUITY OF SECTIONS)

011. ABBREVIATIONS.

Except as otherwise specifically provided, the terms defined in Section 67-3001, Idaho Code, shall have the same meaning in these rules. ()

01~~2~~. FEES FOR SERVICES.

01. Fingerprint Check. The Bureau shall charge a fee of not more than ~~ten~~ twenty-five dollars (\$~~10~~25) for each fingerprint check requested for other than law enforcement purposes. (~~7-1-96~~)()

02. Name Check. The Bureau shall charge a fee of not more than ~~ten~~ twenty dollars (\$~~10~~20) for each name check requested for other than law enforcement purposes. (~~3-30-01~~)()

03. Rolling Fingerprint. The Bureau shall charge a fee of not more than ten dollars (\$10) for rolling a set of fingerprints and no more than five dollars (\$5) for each additional copy of such rolled fingerprints. ()

01~~2~~3. NON-EXPANSION OF SERVICES.

Nothing within these rules shall be construed to alter or expand the services which will be provided to those requesting fingerprint checks and name checks. (7-1-96)

01~~3~~4. -- 999. (RESERVED)

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1101

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 19, 2011.

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:

Defines the terms "direction" and "supervision" as it relates to reserve officers; establishes that the Basic Misdemeanor Probation Academy may operate as a closed campus if POST has dorm space available; clarifies that a student must attend all basic academy classes to successfully complete the course; establishes criteria for obtaining credit toward higher certifications for officers who formerly served as military law enforcement officers; removes the requirement that communications specialists meet the minimum employment standards for age and traffic record; removes references to the Advanced Dispatch Academy which is no longer offered; removes confusing language in reference to canine team training and certification requirements; and updates the list of explosive substances used for detection canine team 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 26, 2011.

DATED this 31st day of August, 2011.

William L. Flink
POST Division Administrator
Idaho State Police
Idaho Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1101-1101

010. DEFINITIONS.

- 01. Act.** Title 19, Chapter 51, of the Idaho Code. (4-5-00)
- 02. Adult Probation and Parole Officer.** Any employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole. (3-30-07)
- 03. Agency.** A law enforcement agency which is a part of or administered by the state or any political subdivision thereof and which is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; a juvenile detention center; a juvenile probation department; the Idaho Department of Correction; or a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 04. Agency Head.** A chief of police of a city, sheriff of a county, or chief administrator of any law enforcement agency of the state of Idaho or any political subdivision thereof who is responsible for the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; the chief administrator of a juvenile detention center; the chief administrator of a juvenile probation department; the director of the Idaho Department of Correction; or the chief administrator of a private prison contractor of the State Board of Correction that is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the facility. (4-2-08)
- 05. Applicant.** Any person applying to participate in a POST training program or applying for POST certification. (4-2-08)
- 06. Basic Adult Probation and Parole Academy.** A basic course of instruction for Adult Probation and Parole Officers as recognized by POST Council. (4-2-08)
- 07. Basic Correction Academy.** A basic course of instruction for Correction Officers as recognized by POST Council. (4-2-08)
- 08. Basic Detention Academy.** A basic course of instruction for Detention Officers as recognized by POST Council. (4-2-08)
- 09. Basic Juvenile Detention Academy.** A basic course of instruction for Juvenile Detention Officers as recognized by POST Council. (4-2-08)
- 10. Basic Juvenile Probation Academy.** A basic course of instruction for Juvenile Probation Officers as recognized by POST Council. (4-2-08)
- 11. Basic Patrol Academy.** A basic course of instruction for Patrol Officers as recognized by POST Council. (4-2-08)
- 12. College Credit.** A unit of work towards a baccalaureate or vocational degree accepted by a college or university of higher education accredited by the Northwest Association of Schools and Colleges or other equivalent accrediting agency. (7-1-93)
- 13. Correction Officer.** Any employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility. (3-30-07)
- 14. Correction Standards and Training Council.** An advisory group to the POST Council that is

comprised of members from academia and law enforcement agencies. The purpose of the Correction Standards and Training Council is to advise POST Council in the planning, development, and operation of the Basic Correction Academy and the Basic Adult Probation and Parole Academy. (4-2-08)

15. Council. The Idaho Peace Officer Standards and Training Council. (4-2-08)

16. County Detention Officer. An employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates. (4-5-00)

17. Crime of Deceit. Any offense described in Section 18-1301 et seq., Idaho Code, (Bribery), Section 18-1401 et seq. (Burglary), Sections 18-1901 (Fictitious Stock Subscription), 18-1902 (Exhibition of False Papers to Public Officers), 18-1903 (Use of False Name in Prospectus), 18-1904 (Illegal Dividends and Reductions of Capital), 18-1905 (Falsification of Corporate Books), 18-1906 (Fraudulent Reports by Officers), 18-2202(1) (Computer Crime), 18-2302 (False Swearing as to Qualifications as Voter), 18-2304 (Procuring Illegal Votes), 18-2305 (Intimidation, Corruption and Frauds), 18-2306 (Illegal Voting or Interference with Election), 18-2307 (Attempting to Vote When Not Qualified or to Repeat Voting), 18-2309 (Officers Attempting to Change Result), 18-2310 (Forging or Counterfeiting Returns), 18-2311 (Adding to or Subtracting From Votes), 18-2316 (Tampering with Certificates of Nomination or Ballots), 18-2320 (Bribery of Electors), Section 18-2401 et seq. (Theft), Section 18-2601 et seq. (Falsifying Evidence -- Offering Forged or Fraudulent Documents in Evidence), Section 18-2701 et seq. (Bribery of Executive Officers), Sections 18-3105 (False Statement by Commission Merchant, Broker, Agent, Factor or Consignee to Principal or Consignor), 18-3106 (Drawing Check Without Funds -- Drawing Check With Insufficient Funds -- Prima Facie Evidence of Intent -- Standing of Person Having Acquired Rights -- Probation Conditions), 18-3123 (Forgery of a Financial Transaction Card), 18-3124 (Fraudulent Use of a Financial Transaction Card), 18-3125 (Criminal Possession of Financial Transaction Card and FTC Forgery Devices), 18-3125A (Unauthorized Factoring of Credit Card Sales Drafts), 18-3126 (Misappropriation of Personal Identifying Information), 18-3127 (Receiving or Possessing Fraudulently Obtained Goods or Services), 18-3201 (Officer Stealing, Mutilating or Falsifying Public Records), 18-3202 (Private Person Stealing, Mutilating or Falsifying Public Records), 18-3203 (Offering False or Forged Instrument for Record), 18-3204 (False Certificates or Other Instruments from Officers), 18-3206 (Mutilating Written Instruments), Section 18-3601 et seq. (Forgery), Sections 18-4616 (Defacing Marks on Logs or Lumber), 18-4617 (Stealing Rides on Trains), 18-4621 (Stealing Electric Current -- Tampering with Meters), 18-4622 (Stealing Electric Current -- Accessories Liable as Principals), 18-4624 (Taken or Converted Merchandise as Theft), 18-4626 (Willful Concealment of Goods, Wares or Merchandise -- Defense for Detention), 18-4630 (Illegal Use of Documents), 18-4701 (Alteration of Bills), 18-4702 (Alteration of Enrolled Copies), 18-4703 (Offering Bribes to Legislators), 18-4704 (Legislators Receiving Bribes), Section 18-5401 et seq. (Perjury), Section 18-6501 et seq. (Robbery), Sections 18-8201 (Money Laundering and Illegal Investment -- Penalty -- Restitution), 41-293 (Insurance Fraud), 41-294 (Damage to or Destruction of Insured Property), 41-1306 (False Financial Statements), 49-228 (Receiving or Transferring Stolen Vehicles), 49-231 (Farm Implements -- Purchasing or Selling When Identifying Number Altered or Defaced a Felony), 49-232 (Fraudulent Removal or Alteration of Numbers Prohibited), 49-518 (Altering or Forging Certificate -- Stolen Cars -- Destroying or Altering Engine or Decal Number -- Use of Fictitious Name -- Fraud), or any attempt, conspiracy or solicitation to commit any of the foregoing offenses, or any racketeering offense under Section 18-7801 et seq., Idaho Code, in which any of the foregoing offenses constitutes at least one (1) of the predicate acts, or any other crime defined in the Idaho Code involving any form of theft or including fraudulent intent as an element, or an offense equivalent to any of the foregoing in any other jurisdiction. (4-2-08)

18. Direction. Direction, at its broadest term, allows an employing agency to utilize a Level II reserve officer to work under the immediate presence and direction of a full-time peace officer of the same agency. This does not allow a Level II reserve officer to operate alone in his official capacity. He shall be under direct observation and control of the agency's full-time peace officer. ()

189. Field Training. Training in which an individual receives formal instruction on the job for special and defined purposes. (7-1-93)

1920. Full Time. Employment of one hundred sixty (160) hours or more per month for ninety (90) consecutive calendar days. (4-2-08)

201. High School. A school accredited as a high school by the Department of Education of the state in

which the high school is located, or a school accredited as a high school by the recognized regional accreditation body, or a school accredited as a high school by the State University of the state in which the school is located.

(7-1-93)

242. In-Service Training. Training designed to refresh or add to an individual's capabilities to do the task to which they are or may be assigned.

(7-1-93)

223. Juvenile Detention Center. A juvenile detention facility that is part of or administered by the county or any political subdivision thereof and is responsible for the safety, care, protection, and monitoring of juvenile offenders.

(4-2-08)

234. Juvenile Detention Officer. Any employee of a juvenile detention center who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center.

(4-2-08)

245. Juvenile Probation Officer. Any employee of a 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.

(4-2-08)

256. Juvenile Training Council. An advisory group to the POST Council that is composed of 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 Detention and Juvenile Probation Academies.

(4-2-08)

267. Law Enforcement Profession. As used in agreements authorized pursuant to Section 19-5112, Idaho Code, means an employee of a police or law enforcement agency that is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision; an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates; an employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center; an 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; an employee of an Idaho Department of Correction facility or private prison contractor of the State Board of Correction who is responsible for the first-line supervision, security, protection, and risk reduction of offenders housed in the correction facility; or an employee of the Idaho Department of Correction who is responsible for the supervision of offenders on probation or parole.

(4-2-08)

278. Manual. This book of Rules as adopted by the Idaho Peace Officer Standards and Training Council.

(4-5-00)

289. Part Time. Employment of less than one hundred sixty (160) hours per month for ninety (90) consecutive calendar days.

(4-2-08)

2930. Part-Time Juvenile Detention Officer. Any employee of a juvenile detention center that is part of or administered by the county or any political subdivision thereof and who is responsible for the safety, care, protection, and monitoring of juvenile offenders held in the detention center, and does not meet the definition of "employee" as defined in Section 59-1302, Idaho Code.

(4-2-08)

301. Peace Officer. Any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho.

(4-5-00)

342. POST. The Idaho Peace Officer Standards and Training Program.

(7-1-93)

323. **POST Basic Training Academy.** The Basic Adult Probation and Parole Academy, the Basic Correction Academy, the Basic Detention Academy, the Basic Juvenile Detention Academy, the Basic Juvenile Probation Academy, or the Basic Patrol Academy. (4-2-08)

334. **Prosecutor.** A city prosecuting attorney, city assistant prosecuting attorney, county prosecuting attorney, county deputy prosecuting attorney, attorney general, deputy attorney general, United States attorney, or assistant United States attorney. (4-2-03)

345. **Qualified Instructor.** Any person certified by the Idaho POST Council as being competent to teach in a Council-approved school. (4-2-08)

356. **Reserve Peace Officer.** An individual assigned by an agency to perform the duties of a peace officer on a part-time basis. All reserve officers shall be under supervision as set forth in these rules unless they hold a current Part-Time Basic certificate. (4-2-08)

367. **School.** Any school, college, university, academy, or local training program which offers law enforcement training and includes within its meaning the combination of course curriculum, instructors and facilities, or any training session as certified by POST. (7-1-93)

378. **School Director or Coordinator.** An individual charged with the responsibility of conducting a training school under the provisions of the Act. (7-1-93)

389. **Specification.** A description of a requirement supplementing a section of the Rules. (7-1-93)

40. **Supervision.** Supervision allows the employing agency to utilize a Level I reserve officer to work by himself without the immediate presence or direction of a full-time peace officer, but acting under the overall on-duty supervision of an on-duty, full-time peace officer. This may allow a Level I reserve officer to work alone in his jurisdiction, without immediate oversight of an agency full-time peace officer, as long as there were another full-time peace officer of the agency working at the same time to provide supervision of the Level I reserve officer's activities. ()

3941. **Temporary.** Employment of less than ninety (90) consecutive calendar days. (7-1-93)

402. **Trainee.** An officer participating in any POST approved training program. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

071. BASIC TRAINING ACADEMY.

Every peace and detention officer 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 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. (4-7-11)

01. Closed Campus. The POST Basic Patrol, Juvenile Detention, and Juvenile Probation Training Academies shall operate as a closed campus Monday through Thursday. The POST Division Administrator may consider an exemption to this requirement in the case of a documented 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 Division Administrator. A trainee granted a hardship exemption shall be required to attend all mandatory classes, and shall not be late to any class. Unauthorized lateness to or absence from any class shall be grounds for revocation of the hardship exemption by the POST 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. (4-7-11)

02. POST Basic Misdemeanor Probation Academy. The POST Basic Misdemeanor Probation Academy may operate as a closed campus depending upon the availability of POST resources. ()

023. Open Campus. All other POST Basic Training Academies shall operate as an open campus. (4-2-08)

034. Attendance. Attendance 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 shall make up such course content.~~ (4-7-11)()

045. Completion. A trainee 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 shall be repeated. (4-7-11)

056. Field Training. The field training portion shall be completed to be eligible for certification. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

095. LAW ENFORCEMENT EXPERIENCE.

01. Law Enforcement Experience. Law enforcement experience, as used herein, means actual time served with a duly constituted law enforcement agency as a peace officer, county detention officer, or communications specialist. The acceptability of time served as a peace officer, county detention officer, or communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 through 064, ~~will~~ shall be subject to the determination of the Council. (4-2-08)()

02. Military Law Enforcement Service and Education. An applicant who has served in the military as a full-time military law enforcement officer may be awarded partial credit toward law enforcement experience and training. ()

a. The applicant shall have served in the military as a full-time military law enforcement officer for the period of time he is requesting credit for. Regular guard duty does not qualify. ()

b. Education shall be military law enforcement schools successfully completed. All certificates, course outlines, diplomas, DD-214's, and certificates of completion showing length of school shall accompany an appropriate application form designated by the Council. ()

c. Credit shall be awarded as follows: ()

i. One (1) year of accepted military law enforcement service shall equal three (3) months of law enforcement experience. ()

ii. Eight (8) hours of accepted military law enforcement training shall equal four (4) hours of law enforcement training. ()

d. No applicant shall be awarded more than two (2) years of law enforcement experience or more than one thousand (1,000) hours of law enforcement training. ()

(BREAK IN CONTINUITY OF SECTIONS)

174. LAW ENFORCEMENT EXPERIENCE.

01. Law Enforcement Experience. Law enforcement experience, as used herein, means actual time served with a duly constituted law enforcement agency as a peace officer, county detention officer, or communications specialist. The acceptability of time served as a peace officer, county detention officer, or communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 through 064, ~~will~~ shall be subject to the determination of the Council. (4-2-08)()

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d. No applicant shall be awarded more than two (2) years of law enforcement experience or more than one thousand (1,000) hours of law enforcement training. ()

(BREAK IN CONTINUITY OF SECTIONS)

197. GENERAL PROVISIONS.

01. Certificates and Awards. Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. Communications Specialist Certification is not statutorily mandated, but is voluntary. (4-2-03)

02. Property. Certificates and awards remain the property of the Council and are only valid as long as the communications specialist is appointed as an Idaho communications specialist by a duly constituted Idaho law enforcement agency and has not been decertified. (3-29-10)

03. Eligibility. To be eligible for the award of a Level I, Level II, Level III, or Advanced certificate, each applicant shall be a full-time communications specialist appointed by a duly constituted Idaho law enforcement agency. (4-2-03)

04. Applications. All applications for award of the Level I, Level II, Level III, or Advanced Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

05. Submission. The Application for Certification form shall be submitted by the applicant to his

agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

06. Training. Training not listed on the applicant's Idaho POST training record shall be supported by copies of certificates, course outlines, or other verifying documents attached to the application. (4-2-03)

07. Minimum Standards. Each applicant shall meet the minimum standards for employment as provided in Sections 050 ~~through, 051, 052, 054, 055, 056, and~~ 058. (4-2-08)()

198. COMMUNICATIONS SPECIALIST EXPERIENCE.

Communications specialist experience, as used herein, means actual time served as a full-time communications specialist with a duly constituted law enforcement agency. The acceptability of time served as a communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 ~~through, 051, 052, 054, 055, 056, and~~ 058, shall be subject to the determination of the Council. (4-2-08)()

(BREAK IN CONTINUITY OF SECTIONS)

202. ADVANCED CERTIFICATE.

01. Requirements. The Advanced Certificate is for individuals who have consciously decided to focus career efforts on public safety communications. A candidate for the Advanced Certificate ~~must shall:~~ (4-11-06)()

- a. Possess the Level III Communications Specialist Certificate. (4-2-03)
- b. Have satisfactorily completed five hundred (500) hours of POST-certified communications-related training. (4-2-03)
- c. Have satisfactorily completed ~~both~~ the POST Basic ~~and Advanced~~ Dispatch Academies. (4-2-03)()
- d. Have a minimum of ten (10) years of communications specialist experience. (4-2-03)

02. Exception. An applicant who has a minimum of twenty (20) years of communications specialist experience but has not satisfactorily completed the POST Basic ~~and Advanced~~ Dispatch Academies ~~will shall~~ be eligible for the Advanced Certificate without attending the academies provided he meets all other requirements as set forth in Section 202 of these rules and can pass the final examination for ~~each the~~ academy with a minimum score of seventy-five percent (75%). The applicant ~~will shall~~ be allowed two (2) attempts to pass ~~each the~~ examination. The attempts ~~must 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 ~~must shall~~ successfully complete the POST Basic ~~and Advanced~~ Dispatch Academies to be eligible for the Advanced Certificate. (4-11-06)()

203. -- 209. (RESERVED)

210. CANINE EVALUATOR CERTIFICATION.

01. Purpose. Canine Evaluator Certificates are established for the purpose of recognizing competence as an evaluator of police canine teams. (4-11-06)

02. Certification. The Council ~~will shall~~ certify applicants who meet the requirements set forth in this section and are deemed qualified by their training and experience to evaluate police canine teams. Certificates ~~will shall~~ be issued in the areas of Patrol, ~~Tracking, Evidence Search, Controlled Substance Detection, and Explosive Substance Detection~~. The applicant ~~must shall~~ show training and experience in each area he is requesting certification in. Certificates ~~will shall~~ be issued to the agency head for award to the applicant. (4-11-06)()

03. Revocation. Canine Evaluator certification may be revoked by the Council whenever a canine evaluator is deemed to be unqualified to continue evaluating police canine teams. Review of canine evaluator certification may be initiated upon the request of an agency head or other reliable source. Such review may also be initiated by the Council in the absence of external requests or complaints. (4-11-06)

04. Eligibility. To be eligible for the award of a Canine Evaluator Certificate, each applicant ~~must shall~~ meet the following POST requirements: ~~(4-11-06)~~()

a. Be a POST-certified or federally commissioned peace, detention, correction, or adult probation and parole officer who is actively involved in a law enforcement canine program; (4-11-06)

b. Have three (3) years of canine handler experience; (4-11-06)

c. Have three hundred ninety (390) hours of POST-certified or federally-approved canine-related training; (4-11-06)

d. Successfully complete the Idaho POST-certified Canine Evaluators course; (4-11-06)

e. Evaluate seven (7) dogs while under supervision of a current Idaho POST-certified canine evaluator; and (4-11-06)

f. Submit an Idaho POST Canine Evaluator Application Packet to POST Council, which ~~must shall~~ include: ~~(4-11-06)~~()

i. Transcripts, certificates, diplomas, or other documents that substantiate the applicant's education and training in the canine field; and (4-11-06)

ii. A letter of recommendation from an administrator within the applicant's employing agency. (5-8-09)

05. Retaining Certification. To retain certification, a certified canine evaluator ~~must shall~~ evaluate a minimum of four (4) dogs every two (2) years. Any canine evaluator not satisfying this requirement ~~must shall~~ complete all requirements as set forth in Section 210 of these rules to be recertified. ~~(5-8-09)~~()

(BREAK IN CONTINUITY OF SECTIONS)

213. GENERAL PROVISIONS.

01. Mandatory Certification. A canine team shall be Idaho-POST certified in order to perform their duties. (4-7-11)

02. Eligibility. The canine handler shall be an Idaho POST-certified peace, detention, correction, 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. (4-7-11)

03. Notification of Canine Being Put Into Service. Prior to a canine being put into service, the law enforcement agency head 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 shall be submitted within fifteen (15) days of the canine being put into service in Idaho. (4-7-11)

04. Training. (4-11-06)

a. A patrol canine handler shall have completed two hundred forty (240) hours of POST-approved canine handler training. The training shall include, but not be limited to: (4-7-11)

- 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 shall have completed one hundred sixty (160) hours of POST-approved canine handler training. The training shall include, but not be limited to: (4-7-11)

- i. Obedience; and (4-11-06)
- ii. Odor recognition specific to the area the canine team is seeking certification in. (4-11-06)

~~**e.** A tracking, evidence search, controlled substance detection, or explosive substance detection canine handler cross-trained as a patrol canine handler shall have completed two hundred forty (240) hours of POST-approved canine handler training. (4-7-11)~~

05. Evaluation. In evaluating the proficiency of the canine teams, the evaluators shall use the standards approved by the POST Council for that particular skill category. Performance shall be rated on a pass/fail basis. The evaluator shall have the discretion to discontinue the testing if excessive time has been spent without results. The evaluator shall not be the owner or handler of the canine being evaluated, and shall not have a proprietary interest in the training of the canine team being evaluated. A POST Training Specialist shall be notified of all canine certification testing. (4-7-11)

06. Failed Evaluation. If a canine team fails any portion of an evaluation, the entire evaluation is considered to be failed, and all skills shall be repeated and successfully demonstrated during retesting. The canine team shall wait at least twenty-four (24) hours before retesting, and they shall be retested by the same evaluator that evaluated the failed test or his designee. (4-7-11)

07. Areas of Certification. The Council 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: (4-7-11)

- 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 shall remain valid for fifteen (15) months. A canine team shall be evaluated prior to their certification expiration date to maintain their certification. A canine team certification shall lapse if the handler and canine cease to perform canine team functions together. (4-7-11)

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 shall be filed within thirty (30) days of the testing date. ~~(4-7-11)~~()

(BREAK IN CONTINUITY OF SECTIONS)

241. EXPLOSIVE SUBSTANCES.

Explosive substances ~~will~~ shall consist of twelve (12) areas. An explosive detection dog ~~must~~ shall locate one (1) find of each of the following: (4-11-06)

- 01. C-4 Explosive.** (4-11-06)
- 02. Pyrodex.** (4-11-06)
- 03. Ammonium Nitrate.** (4-11-06)
- 04. Detonating Cord.** (4-11-06)
- 05. Time Fuse.** (4-11-06)
- 06. Nitro Methane.** (4-11-06)
- 07. TNT.** (4-11-06)
- 08. ~~Nitro Glycerin Dynamite~~ PETN.** ~~(4-11-06)~~()
- 09. ~~Non Nitro Glycerin~~ Dynamite.** ~~(4-11-06)~~()
- 10. Sodium Chlorate.** (4-11-06)
- 11. Potassium Chlorate.** (4-11-06)
- 12. Gun Powder.** (4-11-06)

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1102

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 19, 2011.

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:

Requires the POST Division Administrator to report decertification proceedings to the POST Council on a regular basis; identifies the conduct that may constitute cause for decertification; requires an officer charged with a felony or misdemeanor to notify his agency head within five business days; requires an agency head to notify POST within fourteen days of learning of the charge; allows an agency head intending to hire a decertified officer to petition the Council, ten years after the date the officer was decertified, for reconsideration for law enforcement officer employment; and establishes the due process procedures.

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 26, 2011.

DATED this 31st day of August, 2011.

William L. Flink
POST Division Administrator
Idaho State Police
Idaho Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1101-1102

031. DIVISION ADMINISTRATOR.

There shall be established in the Idaho State Police a nonclassified position of Division Administrator of the Idaho Peace Officer Standards and Training Council. (4-7-11)

01. Selection of Division Administrator. (4-7-11)

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 Division Administrator shall be selected by the director of the Idaho State Police subject to approval of the POST Council from the approved register established by the Idaho Division of Human Resources after competitive testing. (4-7-11)

02. Under POST Council's Direction. The 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. (4-7-11)

03. Decertification Investigations. The POST Division Administrator shall report to the Council on a regular basis regarding all decertification proceedings. ()

034. Supervision Over Employees. The Division Administrator shall have supervision over the employees and other persons necessary in carrying out the functions of POST. (4-7-11)

045. Administration. For administrative purposes, the Division Administrator and his staff 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. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

063. CODE OF CONDUCT/CODE OF ETHICS.

Each applicant shall attest that he has read, understands, and will abide by the Law Enforcement Code of Conduct POST Council's Code of Ethics as found in Subsection 091.04 and the Law Enforcement Code of Ethics that he has read and understands the conduct that may constitute cause for decertification as found in Subsections 091.03 and 091.054. Each applicant shall additionally attest that he understands and will abide by the following Law Enforcement Code of Conduct: (4-2-08)()

01. Fundamental Duty. As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice. ()

02. Personal and Official Life. I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life. I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret, unless revelation is necessary in the performance of my duty. ()

03. Appropriately Enforce the Law. I will never act officiously or permit personal feelings,

prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and the relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities. ()

04. Public Trust. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice. ()

05. Professional Performance. I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement. ()

(BREAK IN CONTINUITY OF SECTIONS)

091. INTRODUCTION.

01. Certificates and Awards. Certificates and awards may be presented by the Council for the purpose of recognizing or raising the level of competence of law enforcement and to foster cooperation among the Council, agencies, groups, organizations, jurisdictions, and individuals. (3-20-97)

02. Property. Certificates and awards remain the property of the Council and are only valid as long as the officer has not been decertified and is appointed as an Idaho peace, county detention, juvenile detention, juvenile probation, correction, adult probation and parole, or misdemeanor probation officer, or an Idaho Department of Juvenile Corrections Direct Care Staff member. (3-29-10)

03. Decertification -- Mandatory, Discretionary, Reporting, Eligibility. (3-30-07)()

a. The Council shall decertify any officer who is convicted, as defined in Idaho Code Section 19-5109, Idaho Code, of any felony or offense which would be a felony if committed in this state. ()

b. The Council may decertify any officer who is convicted, as defined in Section 19-5109, Idaho Code, of any misdemeanor; willfully or otherwise falsifies or omits any material information to obtain any certified status; or ~~violates any of the standards of conduct as established by the council's code of conduct or code of ethics, as adopted and amended by the council. Any officer charged with a felony, a non-traffic misdemeanor, or a misdemeanor that would be a felony if committed in this state, must notify the POST Division Administrator within fourteen (14) business days. Failure to notify constitutes a violation of the Law Enforcement Code of Ethics and the Law Enforcement Code of Conduct for any of the causes set forth in Subsection 091.04.~~ (3-29-10)()

c. Any officer charged with a felony or misdemeanor shall notify his agency head within five (5) business days. ()

d. The agency head of an officer charged with a felony or misdemeanor shall notify the POST Division Administrator within fourteen (14) days of learning of the charge. ()

be. Any officer decertified by the Council ~~is shall~~ not ~~be~~ eligible for POST certification of any kind ~~in the future~~ for ten (10) years following the date of decertification. An agency head intending to hire an officer who has been decertified shall request a waiver from the POST Council. No decertified officer shall exercise any law enforcement authority until recertified by the POST Council. Any officer who is the subject of a POST decertification investigation ~~is shall~~ not ~~be~~ eligible for POST certification of any kind while under investigation. (3-29-10)()

04. Law Enforcement POST Council's Code of Conduct Ethics, Additional Cause for Decertification. As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and

~~property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality, and justice. I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. In furtherance of these duties, I hereby adopt and accept~~ The Council may also decertify any officer who engages in any of the following ~~code of~~ conduct which shall be considered a violation of the Council's code of ethics: (7-1-99)()

~~a. I shall conduct myself at all times in a manner that does not damage or have the likely result of damaging or bringing the public image, integrity, or reputation of my department or myself into discredit or disrepute~~ Engage in criminal conduct whether charged or not. (7-1-99)()

~~b. I shall not possess or consume~~ Consumption of alcoholic beverages on duty ~~or while in uniform on duty or off duty~~, except as ~~expressly required~~ necessary for the lawful performance of ~~my~~ duties. ~~Nor shall I unlawfully possess, sell, consume, use or assist in the use of any illegal or unauthorized drugs or medications on duty or off duty.~~ (7-1-99)()

~~c. I shall not engage in any~~ Illegal or unlawful harassment or intimidation of another; nor shall I permit personal prejudices, political beliefs, animosities, or friendships to influence my decisions. (7-1-99)()

~~d. I shall not lie, give misleading information,~~ Lying or falsifying official written or verbal communications ~~in official reports or in my actions with another person or organization when it is reasonable to expect that such information may be relied upon because of my position or affiliation with my department.~~ (3-30-07)()

~~e. I shall willfully observe and obey the lawful verbal and written rules, duties, policies, procedures, and practices of my department. I shall also subordinate my personal preferences and work priorities to the lawful verbal and written rules, duties, policies, procedures and practices of my department, as well as to the lawful orders and directives of supervisors and superior command personnel of my department. I shall willfully perform all lawful duties and tasks assigned by supervisory and/or superior ranked personnel. Direct, tacit, or constructive refusal to do so is insubordination~~ Engaging in inappropriate sexual conduct while on duty. (7-1-99)()

~~f. I shall obey the constitutional, criminal and civil laws of the city, county, state, and federal government. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers~~ Engaging in an inappropriate relationship, sexual or otherwise, with a person who the officer knows or should have known is a victim, witness, defendant, or informant in an ongoing investigation or adjudication. (7-1-99)()

g. Unlawful or excessive use of force. ()

h. Acts of corruption or bribery. ()

i. Engaging in conduct, other than protected speech, that damages, discredits, or brings into disrepute the integrity of the officer, his agency, or the law enforcement profession. ()

j. Unauthorized use or unlawful conversion of the property, equipment, or funds of his agency. ()

k. Intentional and unauthorized disclosure of confidential information or information that may compromise an official investigation. ()

l. Failure to report being charged with a felony or misdemeanor within five (5) business days. ()

m. Refusal to respond or failure to respond truthfully to questions asked in relation to an investigation. ()

~~05. Law Enforcement Code of Ethics.~~ (3-30-07)

~~a. As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives~~

~~and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the Constitutional rights of all to liberty, equality and justice.~~
(3-30-07)

~~**b.** I will keep my private life unsullied as an example to all and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed in both my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.~~
(3-30-07)

~~**c.** I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.~~
(3-30-07)

~~**d.** I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.~~
(3-30-07)

~~**e.** I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence. I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.~~
(3-30-07)

Codified Sections 092 through 098 have been moved and renumbered to proposed Sections 096 through 102, respectively.

092. DUE PROCESS PROCEDURES.

01. Overview. The POST Division Administrator shall oversee and conduct investigations into all trustworthy allegations or information received pertaining to officer conduct that could be a cause for decertification as set forth in these rules. Based upon the results of the investigation in each case, the Division Administrator shall make a determination whether decertification proceedings shall be commenced. The due process procedures set forth in these rules shall apply to all decertification proceedings once they are commenced. ()

02. Investigations. ()

a. The officer may be interviewed during the investigation. The officer shall receive an administrative warning requiring the officer to respond to questions, to answer such questions truthfully, and to acknowledge his understanding that no statements provided shall be used against him in criminal proceedings, as based on *Garrity v. New Jersey* 385 U.S. 493 (1967). ()

b. Refusal to respond or failure to respond truthfully to questions asked in relation to an investigation under this section may be cause for decertification. ()

03. Due Process Procedures - Summary Decertification. If the POST Division Administrator determines that the allegations of conduct by the officer constitute cause for decertification and create a situation involving an immediate danger to the public health, safety, or welfare, he shall issue an order of decertification, including a brief, reasoned statement to justify both that the immediate danger exists and the decision to summarily decertify. ()

a. The order shall include findings of fact and conclusions of law and shall be effective when issued. ()

- b.** The officer and his agency head shall be provided written notice of the order. ()
- i.** The notice of the order shall advise the officer of his right to respond to the order and present the POST Division Administrator, in writing or in person, with any reasons why the action should not have been taken. The order shall specify a deadline for such response. ()
- ii.** The notice shall inform the officer of his right to be represented by a person of the officer's own choosing during the opportunity to respond. ()
- iii.** The deadline for the opportunity to respond shall not occur sooner than fourteen (14) days after the notice is given. ()
- c.** The decision of the POST Division Administrator shall become final if the officer fails to respond within the time allowed or if a response has been waived in writing by the officer, whichever occurs first. ()
- d.** If the officer responds, the POST Division Administrator shall review and consider such response and shall, within fourteen (14) days of receiving the response, make a decision and give notice of the decision to the officer. ()
- e.** The agency record need not constitute the exclusive basis for agency action in a summary proceeding or for judicial review thereof. ()
- 04. Due Process Procedures - Non-Summary Decertification.** If the POST Division Administrator determines that the allegations of conduct by the officer do not create a situation involving an immediate danger to the public health, safety, or welfare, the officer shall be provided notice and an opportunity to respond before a decision is made to decertify. ()
- a.** The POST Division Administrator shall provide the officer with a notice of the intent to decertify, which shall state the basis or reason for the contemplated decertification and an explanation of the evidence supporting the intended action. ()
- b.** The officer shall be given the opportunity to respond to the notice and present the POST Division Administrator, in writing or in person, any reasons why the intended action should not be taken. The notice shall inform the officer of his right to be represented by a person of the officer's own choosing during the opportunity to respond. The deadline for the opportunity to respond shall not occur sooner than fourteen (14) days after the notice is given. After the officer has responded, or after the period to respond has expired or has been waived in writing by the officer, whichever occurs first, the POST Division Administrator shall, within twenty-eight (28) days, make a decision on the decertification of the officer and give notice of the decision and the reasons therefore to the officer. ()
- 05. Final Decision.** The decision or action of the POST Division Administrator shall be final and conclusive unless the officer files with the POST Council a request for a hearing on the decision within fourteen (14) days after the date of the POST Division Administrator's decision. The request for hearing shall specifically cite the alleged errors of fact or law made by the POST Division Administrator. ()
- 06. Due Process Procedure - Hearing.** Upon receipt of a request for hearing, the POST Council shall assign the matter to a hearing board or officer for hearing. If after the hearing the hearing board or officer determines that proper cause for decertification did not in fact exist under Subsection 091.03 or 091.04 of these rules, or that proper procedures were not followed in reaching the decision, the hearing board or officer shall order the reinstatement of the officer's certification, or may remand the case to the POST Division Administrator for further proceedings. ()
- a.** Process and procedure for the hearing before the hearing board or officer shall be as summary and simple as reasonably may be. ()
- i.** The hearing board or officer appointed by the POST Council shall have the power to subpoena witnesses, administer oaths, and examine such of the records of the parties as relate to the questions in dispute.

- ()
- ii. The officer shall have the right to be represented at the hearing by a person of the officer's own choosing. ()
- iii. Prior to submitting testimonial evidence, the officer shall receive an administrative warning requiring the officer to respond to questions, to answer such questions or provide testimony truthfully, and to acknowledge his understanding that no statements provided shall be used against him in criminal proceedings, as based on *Garrity v. New Jersey* 385 U.S. 493 (1967). ()
- iv. A verbatim record of the proceedings at hearing before the hearing board or officer shall be recorded at the POST Council's expense. The verbatim record shall be the official record of the proceedings. ()
- v. Any party to the action may, at its expense, request that a transcript of the proceedings be prepared or that additional recordings be made of the proceedings. Such a request shall be approved if the making of the additional recording does not cause distraction or disruption of the hearing. ()
- vi. The hearing board or officer to whom the matter has been assigned shall make such inquiry and investigations as shall be deemed necessary. ()
- vii. The hearings shall be held at the principle office of the Idaho Division of the Peace Officer Standards and Training in Ada County or in such place as the hearing board or officer may designate. ()
- viii. The district court, in and for the county of Ada, shall have the power to enforce by proper proceedings the attendance and testimony of witnesses and production and examination of books, papers, and records. ()
- b. The decision of the hearing board or officer, consisting of such findings of fact, conclusions of law, and orders as are necessary, together with the record of the proceedings, shall be filed with the POST Council. A copy of the hearing board or officer's decision shall be immediately sent to the parties by United States mail. The decision of the hearing board or officer shall be final and conclusive between the parties, unless a petition for review by the full POST Council is filed with the Council within twenty-eight (28) days. The petition for review shall specifically cite the alleged errors of fact or law made by the hearing board or officer. Where the decision and order of the hearing board or officer directed the reinstatement of the officer's certification, the certification shall be reinstated by the POST Division Administrator upon the expiration of the time for filing a petition for review. ()

07. Due Process Procedure - Review by POST Council. If a petition for review is filed, the POST Council shall review the record of the proceedings before the hearing board or officer, briefs submitted in accordance with any briefing schedule it orders, and any transcripts submitted of the hearing. The Council may grant the parties the opportunity to present oral argument, but need not do so. The officer may be represented by a person of the officer's own choosing during the review process. The Council may affirm, reverse, or modify the decision of the hearing board or officer, or may remand the matter. A decision of the POST Council shall be final and conclusive between the parties. The POST Council's decision may be appealed to district court by filing a notice of appeal within twenty-eight (28) days of the filing of the decision. ()

08. Notice. All notices to be given under Section 092 of these rules shall be made either by personal service, facsimile or by U.S. mail. Service by mail shall be deemed complete when a copy of such notice is deposited in the United States post office, with postage prepaid, addressed to a party's last known address, as shown in the records and files of the POST Council. An affidavit of personal service shall be filed by the person making the same. ()

093. -- 095. (RESERVED)

0926. LAPSE OF PEACE OFFICER CERTIFICATION.

The certification of any peace officer ~~will~~ shall be considered lapsed if the officer does not serve as a peace officer in Idaho for three (3) consecutive years. Provided, however, that an Idaho POST-certified peace officer who remains in an administrative, jail, communications, or civil division duty assignment with a police or law enforcement agency

that is a part of or administered by the state of Idaho or any political subdivision thereof or in a duty assignment as a tribal police officer with a federally recognized Indian tribe within Idaho and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision ~~will~~ **shall** retain their POST certification provided they satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year. The three-year period provided herein shall be tolled during any time period that a peace officer is the subject of a POST decertification investigation and is no longer employed in law enforcement. ~~(3-29-10)~~()

01. Three to Five Years. A peace officer who has been out of full-time law enforcement status from three (3) to five (5) years and who wants to reactivate certification ~~must~~ **shall** meet the following POST requirements: ~~(3-29-10)~~()

- a. Submit a POST Certification Patrol Challenge Packet; (4-2-03)
- b. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- c. Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)
- d. Pass the following tests administered by a POST Training Specialist: (4-2-03)
 - i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection ~~097101~~.02.b.; ~~(4-2-03)~~()
 - ii. The POST Firearms Qualification Course; (4-2-03)
 - iii. The POST Physical ~~Fitness~~ **Readiness** Test ~~Battery~~; and ~~(4-2-03)~~()
- e. Satisfy the probationary period requirement of Section 064. (4-2-08)

02. Over Five Years. A peace officer who has been out of full-time law enforcement status for over five (5) years ~~must~~ **shall** attend the POST Basic Patrol Academy 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 law enforcement, the officer was engaged in an occupation requiring law enforcement training, skill, and experience. This evidence ~~must~~ **shall** be submitted with a POST Certification Patrol Challenge Packet. Upon receiving a waiver, the officer ~~must~~ **shall** meet the following POST requirements: ~~(3-29-10)~~()

- a. Disclose information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)
- b. Attend an approved course of study in Idaho law and pass the POST Idaho law exam; (4-2-03)
- c. Attend and pass Idaho POST-certified courses in Emergency Vehicle Operation, Arrest Techniques, Handgun Retention, and Practical Problems; (4-2-03)
- d. Pass the following tests administered by a POST Training Specialist: (4-2-03)
 - i. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection ~~097101~~.02.b.; ~~(4-2-03)~~()
 - ii. The POST Firearms Qualification Course; (4-2-03)
 - iii. The POST Physical ~~Fitness~~ **Readiness** Test ~~Battery~~; and ~~(4-2-03)~~()
- e. Satisfy the probationary period requirement of Section 064. (4-2-08)

03. Over Eight Years. A peace officer who has been out of full-time law enforcement status for over eight (8) years ~~must~~ **shall** attend the POST Basic Patrol Academy to be recertified. No waiver of this requirement ~~will~~ **shall** be granted by the Council. (4-6-05)()

04. Exception. The provisions of Subsections 0926.01 through 0926.03 ~~will~~ **shall** not apply to officers holding a part-time basic certificate who satisfy the continuing training requirements of Sections 360 through 363 and work at least one hundred twenty (120) hours per year within the law enforcement profession. (4-6-05)()

0937. PEACE OFFICER CERTIFICATION.

Any peace officer as defined in Section 19-5101(d), Idaho Code, except any elected official, any deputy sheriff serving civil process, the director of the Idaho State Police, or those peace officers whose primary duties involve motor vehicle parking and animal control pursuant to city or county ordinance, shall be certified by the Peace Officer Standards and Training Council within one (1) year after first being appointed unless granted additional time to complete certification by the POST Council as set forth in Subsection 030.11. (4-2-08)

0948. GENERAL PROVISIONS.

01. Purpose. Basic, Part-Time Basic, Intermediate, and Advanced Certificates are established for the purpose of fostering professionalism, education, and experience necessary to perform adequately the duties of law enforcement. (4-2-03)

02. Eligibility. To be eligible for the award of a Basic, Intermediate, or Advanced Certificate, each applicant shall be a professional member of the POST Council staff, or a full-time peace officer appointed by a duly constituted Idaho law enforcement agency. To be eligible for the award of a part-time Basic certificate each applicant shall be a professional member of the POST Council staff, or a part-time peace officer appointed by a duly constituted Idaho law enforcement agency. (4-2-03)

03. Applications. All applications for award of the Basic, Part-Time Basic, Intermediate, or Advanced Certificates shall be completed by the applicant on the prescribed form "Application for Certification" as provided by the POST Council. (4-2-03)

04. Submission. The Application for Certification form shall be submitted by the applicant to his agency head who shall review it for accuracy prior to signing it and forwarding it to the Council. Certificates shall be issued to the agency head for award to the applicant. (4-2-03)

05. Minimum Standards. Each applicant shall meet the minimum standards for employment and basic training as provided in Sections 050 through 064 and 070 through 076. (4-2-08)

06. Other. The director of the Idaho State Police or any elected official, although specifically excluded by law from meeting the requirements set by the Council, may be certified if they so desire, provided they meet the minimum requirements for certification as prescribed in these rules. (4-2-08)

0959. LAW ENFORCEMENT EXPERIENCE.

Law enforcement experience, as used herein, means actual time served with a duly constituted law enforcement agency as a peace officer, county detention officer, or communications specialist. The acceptability of time served as a peace officer, county detention officer, or communications specialist in a jurisdiction other than the state of Idaho, or in a jurisdiction which does not comply with the minimum standards for employment as set forth in Sections 050 through 064, ~~will~~ **shall** be subject to the determination of the Council. (4-2-08)()

096100. 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. (4-7-11)

~~097~~101. THE BASIC AND PART-TIME BASIC CERTIFICATE.

In addition to the requirements set forth in Section 0948 of these rules, the requirements in Section ~~097~~101 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 college 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~~ College Law Enforcement Program Graduates. Graduates from Idaho POST-certified college law enforcement ~~vo-tech~~ programs shall also comply with the requirements of Subsection 073.02. (~~4-2-03~~)()

05. Patrol and Detention ~~Vo-Tech~~ College Law Enforcement 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 college 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: (~~4-7-11~~)()

a. Was appointed to a county detention officer position in Idaho within three (3) years from graduating from the ~~vo-tech~~ college law enforcement program or POST Academy; (~~4-7-11~~)()

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~~101.02.b.; (4-2-08)

- ii. The POST Firearms Qualification Course; (4-2-08)
- iii. The POST Physical ~~Fitness~~ Readiness Test ~~Battery~~; and (~~4-2-08~~)()
- f. Satisfies the probationary period requirement of Section 064. (4-2-08)

~~008~~ **102. CHALLENGING THE BASIC PATROL ACADEMY.**

Any peace officer presently appointed by a duly constituted Idaho law enforcement agency who, within the last five (5) years, has been employed and certified or commissioned by another state or the federal government as a peace officer or a student who has satisfactorily completed a Basic Police Academy equivalent to the Idaho POST Basic Patrol Academy within the last three (3) years may be eligible for certification in the state of Idaho without attending the Basic Patrol Academy, provided the officer: (3-29-10)

01. Submission of Challenge Packet. Submits a POST Certification Patrol Challenge Packet to POST Council, which ~~must~~ 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; (~~4-6-05~~)()

02. Discloses Decertification Information. Discloses information regarding any decertification investigation or proceeding or the substantial equivalent from any other jurisdiction and the results thereof. (3-29-10)

03. Law Course Attendance. Attends an approved course of study in Idaho law and passes the POST Idaho law exam; (4-2-03)

04. Passes Required Tests. Passes the following tests administered by a POST Training Specialist: (4-2-03)

a. The POST patrol certification examination approved by the Council, conducted in the manner set forth in Subsection ~~007~~ 101.02.b.; (~~4-2-03~~)()

b. The POST Firearms Qualification Course; and (4-2-03)

c. The POST Physical ~~Fitness~~ Readiness Test ~~Battery~~. (~~4-2-03~~)()

05. Completes Probationary Period. Completes his probationary period as required by Subsection ~~007~~ 101.01. (~~4-2-03~~)()

~~009~~ **103. -- 105. (RESERVED)**

IDAPA 11 - IDAHO STATE POLICE

11.11.01 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL

DOCKET NO. 11-1101-1103

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 19, 2011.

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 existing rule in reference to felony conviction allows the POST Council to grant a waiver if the crime has, by statute, been reduced to a misdemeanor or decriminalized. This exceeds statutory authority.

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 26, 2011.

DATED this 31st day of August, 2011.

William L. Flink
POST Division Administrator
Idaho State Police
Idaho Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1101-1103

055. CRIMINAL RECORD.

01. Fingerprints. The applicant shall be fingerprinted on two (2) copies of the standard FBI Applicant fingerprint form, and a search made of local, state, and national fingerprint files to disclose any criminal record. The original copies of all records check results shall be retained by the POST Council. (4-2-03)

02. Conviction. The term “conviction” shall include: (4-2-03)

a. Any conviction in a federal, tribal, state, county, or municipal court; (3-15-02)

b. A voluntary forfeiture of bail, bond, or collateral deposited to secure a defendant’s appearance in court as final disposition; (3-15-02)

c. The payment of a fine; (3-15-02)

d. A plea of guilty, nolo contendere; or (3-15-02)

e. A finding of guilt, notwithstanding the form of judgment or withheld judgment, regardless of whether the sentence is imposed, suspended, deferred, or withheld, and regardless of whether the plea or conviction is set aside or withdrawn, or the case or charge is dismissed or reduced, or the record expunged under Section 19-2604, Idaho Code, or any other comparable statute or procedure, where the setting aside of the plea or conviction, or dismissal or reduction of the case or charge, or expungement of the record is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the plea, finding of guilt, or conviction. ~~(3-15-02)~~()

03. Misdemeanor Conviction. A misdemeanor conviction of any federal, state, or local crime may be grounds for rejection of the applicant. (4-2-03)

a. An applicant shall be rejected who has been convicted of any misdemeanor sex crime, crime of deceit, or drug offense unless the conviction occurred more than five (5) years prior to application and the applicant’s agency head files a written request for review with the POST Council. In the case of a willful concealment or petit theft conviction, the applicant may be accepted upon approval of the POST Division Administrator. The Division Administrator shall have the discretion to refer the application to the POST Council. In all other cases, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho. ~~(4-2-03)~~()

b. An applicant shall be rejected who has been convicted of a DUI during the two (2) years immediately preceding application. No waivers shall be granted by the POST Council for DUI convictions within the last two (2) years. If the conviction occurred more than two (2) years prior to application, the applicant may be accepted upon approval of the POST Division Administrator provided the applicant’s agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Division Administrator shall have the discretion to refer the application to the POST Council. (3-15-02)

c. An applicant with any other misdemeanor conviction may be accepted upon approval of the POST Division Administrator provided the conviction occurred more than two (2) years prior to application and the applicant’s agency head, with knowledge of the facts and circumstances concerning the offense or violation, recommends approval. The Division Administrator shall have the discretion to refer the application to the POST Council. If the conviction occurred during the two (2) years immediately preceding application, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho. ~~(4-2-03)~~()

04. Felony Conviction. An applicant shall be rejected who has been convicted of any felony crime, the punishment for which could have been imprisonment in a federal or state penal institution. For the purpose of this rule, a felony conviction shall continue to be considered a felony conviction regardless of whether the conviction is later reduced to a misdemeanor conviction under Section 19-2604, Idaho Code, or any other comparable statute or

procedure, where the reduction is based upon lenity or the furtherance of rehabilitation rather than upon any defect in the legality or factual basis of the felony conviction. No waivers shall be granted by the POST Council, ~~except where, since the time of the conviction, the crime for which the defendant was convicted has, by statute, been reduced to a misdemeanor or decriminalized in the jurisdiction where the conviction occurred. In such cases, the POST Council shall review the application and determine whether the individual shall be certifiable as a peace, detention, juvenile detention, or juvenile probation officer in the state of Idaho.~~ (4-2-03)()

IDAPA 11 - IDAHO STATE POLICE

11.11.02 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR JUVENILE DETENTION OFFICERS

DOCKET NO. 11-1102-1101

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 19, 2011.

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:

Allows a POST-certified detention officer who does not change employers but simply takes on juvenile detention responsibilities to qualify for Juvenile Detention certification without having to meet the minimum hearing and vision standards again.

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

There are no fees or charges imposed through this rulemaking.

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

No documents have been incorporated by reference into this rule through this rulemaking.

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 26, 2011.

DATED this 31st day of August, 2011.

William L. Flink
POST Division Administrator
Idaho State Police
Idaho Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1102-1101

030. JUVENILE DETENTION OFFICER CERTIFICATION.

01. Decertification. The council may decertify any juvenile detention 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. (3-30-01)

02. Certification. The following dates govern voluntary and mandatory certification. (3-30-01)

a. From October 1, 2000 through September 30, 2002, any county Juvenile Detention Officer may receive voluntary certification from POST upon successful completion of the requirements outlined in Sections 031 or 032. (3-30-01)

b. If employed after October 1, 2002, any juvenile detention officer shall be certified by obtaining mandatory certification from the Peace Officer Standards and Training Council within one (1) year of the date the officer was first employed as a juvenile detention officer. (3-30-01)

c. Juvenile detention officers employed prior to October 1, 2002, shall comply with the training and certification provisions of Section 030 by September 30, 2004, however, the requirement for successful completion of the POST Basic Juvenile Detention Academy ~~will shall~~ be waived if the officer scores a minimum of seventy-five percent (75%) on a challenge examination administered by POST and any other requirements for 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 shall~~ successfully complete the POST Basic Juvenile Detention Academy to be certified. ~~(3-30-01)~~()

03. Applications. All applications for award of the Juvenile Detention Officer Certificate shall be completed on the prescribed form "Application for Certification" as provided by the POST Council. (3-30-01)

04. Submission. The Application for Certification form ~~must shall~~ be submitted by the officer/applicant to the applicant's department head, who shall forward the application to the Council. Certificates ~~will shall~~ be issued to the department head for award to the applicant. ~~(3-30-01)~~()

05. Minimum Standards. ()

a. Each applicant ~~must shall~~ meet the minimum standards for employment and training as provided in IDAPA 11.11.01, "Rules of the Idaho Peace Officer Standards and Training Council," with the exception of ~~height, weight,~~ fitness, and physical disability which ~~will shall~~ be left to the discretion of the employing agency. ~~(3-30-01)~~()

b. A POST-certified detention officer who does not change employers but simply takes on juvenile detention responsibilities, shall not be required to meet the hearing and vision standards again in order to qualify for juvenile detention certification. ()

IDAPA 11 - IDAHO STATE POLICE

11.11.06 - RULES OF THE IDAHO PEACE OFFICER STANDARDS AND TRAINING COUNCIL FOR MISDEMEANOR PROBATION OFFICERS

DOCKET NO. 11-1106-1101

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 19, 2011.

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:

There are five counties that contract for misdemeanor probation officer services. This rule change allows POST to certify Misdemeanor Probation Officers employed by a private contractor.

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

No fees or charges are imposed through this rulemaking.

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

No documents have been incorporated by reference into this rule through this rulemaking.

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 26, 2011.

DATED this 31st day of August, 2011.

William L. Flink
POST Division Administrator
Idaho State Police
Idaho Peace Officer Standards & Training
700 S. Stratford Dr.
Meridian, ID 83642-6202
Phone: (208) 884-7251
Facsimile: (208) 884-7295

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 11-1106-1101

010. DEFINITIONS.

01. Basic Misdemeanor Probation Academy. A basic course of instruction for Misdemeanor Probation Officers as recognized by POST Council. (4-7-11)

02. Misdemeanor Probation Department. Any public or private agency administered by or contracted with 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. (~~4-7-11~~)()

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. (4-7-11)

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. (4-7-11)

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. (4-7-11)

IDAPA 12 - IDAHO DEPARTMENT OF FINANCE

12.01.10 - RULES PURSUANT TO THE IDAHO RESIDENTIAL MORTGAGE PRACTICES ACT

DOCKET NO. 12-0110-1101

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 26-31-103(2)(b), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, by not later than October 19, 2011.

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 the proposed rulemaking is to update references to federal laws and regulations (Real Estate Settlement Procedures Act, Truth in Lending Act, and Regulations X and Z) from "January 1, 2009" to "January 1, 2011" and to amend IDAPA 12.01.10.101 to comport with state law, namely to clarify that use of the Nationwide Mortgage Licensing System and Registry (NMLSR) by Idaho mortgage brokers/lenders/originators for license issuance and maintenance is not optional, but is required.

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 this rulemaking consists merely of housekeeping amendments to update references to incorporated federal laws and regulations and to make IDAPA 12.01.10.101 consistent with existing requirements in the Idaho Residential Mortgage Practices Act, Section 26-31-101 et seq., Idaho Code.

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:

For effective supervision of mortgage practices in Idaho, the Rules Pursuant to the Idaho Residential Mortgage Practices Act define the following federal laws and regulations that are incorporated by reference in the Idaho Residential Mortgage Practices Act: (i) Real Estate Settlement Procedures Act; (ii) Truth in Lending Act; (iii) Regulation X; and (iv) Regulation Z. This proposed rule will update the definitions of the foregoing federal laws and rules by inserting "January 1, 2011" in place of the outdated reference of "January 1, 2009."

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact: Michael Larsen, Idaho Department of Finance, (208) 332-8000.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 25th day of August, 2011.

Michael Larsen
Consumer Finance Bureau Chief
Idaho Department of Finance
800 Park Blvd., Suite 200
Boise, ID 83712
(208) 332-8000 (Phone)
(208) 332-8096 (Fax)

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 12-0110-1101

006. DEFINITIONS (RULE 6).

As used in the Idaho Residential Mortgage Practices Act and these rules, the following definitions apply: (3-29-10)

- 01. Act.** Means the Idaho Residential Mortgage Practices Act, Title 26, Chapter 31, Idaho Code. (3-30-06)
- 02. Application.** In relation to a “residential mortgage loan” or “loan modification” as defined in the Act, an “application” means a request for a residential mortgage loan or loan modification and any form or document representing such request. The term “application” does not include the processing of such request. (3-29-10)
- 03. Closing.** Means the process of executing legally binding documents regarding a lien on property that is subject to a residential mortgage loan and includes the day agreed upon by a borrower and a licensee or person required to be licensed under the Act to complete such process. (3-29-10)
- 04. Director.** Means the director of the Idaho Department of Finance. (3-30-06)
- 05. Real Estate Settlement Procedures Act.** Means the act set forth in 12 USCA 2601, et seq., as amended to and including January 1, 2009~~11~~. ~~(5-8-09)()~~
- 06. Regulation X.** Means Regulation X as promulgated by the Department of Housing and Urban Development and codified in 24 CFR 3500 et seq., as amended to and including January 1, 2009~~11~~. ~~(5-8-09)()~~
- 07. Regulation Z.** Means Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified in 12 CFR 226 et seq., as amended to and including January 1, 2009~~11~~. ~~(5-8-09)()~~
- 08. Truth in Lending Act.** Means the act set forth in 15 USCA 1601 et seq., as amended to and including January 1, 2009~~11~~. ~~(5-8-09)()~~

(BREAK IN CONTINUITY OF SECTIONS)

101. NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY (RULE 101).

01. The Nationwide Mortgage Licensing System and Registry (NMLSR). The NMLSR is an Internet-based filing depository operated by the State Regulatory Registry, LLC (SRR), a wholly-owned operating subsidiary of the Conference of State Bank Supervisors (CSBS). The NMLSR is designed to accept license applications and license renewal applications electronically from mortgage brokers, mortgage lenders, and mortgage loan originators; collect associated statutory filing fees on behalf of participating jurisdictions, as well as the expenses associated with an applicant’s or licensee’s participation in the NMLSR; and provide the public with Internet-based access to information concerning mortgage brokers, mortgage lenders, and mortgage loan originators. The NMLSR began accepting electronic filings of applications from mortgage brokers, mortgage lenders, and mortgage loan originators from Idaho on January 1, 2008. (3-29-10)

~~**02. Reasonable Access to the NMLSR.** All mortgage brokers, mortgage lenders, and mortgage loan originators with reasonable access to the NMLSR via the Internet who seek a license under the Act, or who wish to retain a license previously issued under the Act, must do so through the NMLSR. Applicants for a license or licensees who wish to retain a license under the Act who lack reasonable access to the NMLSR via the Internet may, upon prior approval of the Director and good cause shown, be excused from participation in the NMLSR and may apply for a license or for license renewal through an alternative method designated by the Director. (3-29-10)~~

032. **Licensing Through the NMLSR.** All ~~4~~mortgage brokers, mortgage lenders, and mortgage loan originators who seek to obtain or retain a license under the Act must do so through the NMLSR and must pay the charge imposed and retained by the NMLSR to fund the costs of the NMLSR associated with an applicant's or licensee's participation in the system. (3-29-10)()

043. **Statutory Fees.** The NMLSR shall collect any statutory fees on behalf of the Idaho Department of Finance that are required to be paid to the Idaho Department of Finance by license applicants and licensees pursuant to the Idaho Residential Mortgage Practices Act. The NMLSR is required to forward to the Idaho Department of Finance all statutory fees it collects on behalf of the Idaho Department of Finance, pursuant to the terms of a written agreement between the Idaho Department of Finance and the SRR. (3-29-10)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.02 - RULES GOVERNING PUBLIC SAFETY

DOCKET NO. 13-0102-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 23, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-412, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Provides a mechanism for exemption from the live fire requirement of hunter education certification for persons with military and peace officer training, and responds to constituent and Legislative request.

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.

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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the lack of an identifiable group representing the affected interested persons.

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

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, 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 26, 2011.

DATED this 26th day of August, 2011.

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 OF DOCKET NO. 13-0102-1101

100. HUNTER EDUCATION.

01. Mandatory Hunter Education Program. All students being certified under this program must have successfully completed at least ten (10) hours of instruction in firearms safety, wildlife management, wildlife law, hunter ethics, first aid/survival, plus practical experience in the handling and shooting of firearms. This instruction may be completed through classroom study, home study, an on-line computer course, or other approved methods. The Department of Fish and Game shall manage the Hunter Education Program pursuant to the Idaho Hunter Education Policy and Procedure Manual. Only certificates for courses which meet or exceed the standards of the Idaho course are acceptable from other states or countries. (4-7-11)

02. Fees. A fee as established by Section 36-412(c), Idaho Code, shall be charged each student enrolling in the Hunter Education Program. (3-20-04)

03. Parent to Attend Live Fire Exercise with Student. For students under the age of twelve (12), a parent, legal guardian or other adult designated by the parent or legal guardian shall attend the Hunter Education Live Fire Exercise with the student. Preferably, the adult attending the live fire exercise should be the same adult who will accompany the student into the field while hunting. This requirement is mandatory for successful completion of the Hunter Education Course. (3-20-04)

04. Exemption from Practical Handling and Shooting of Firearms Requirement. An active, former, or retired member of the United States Armed Forces (Army, Navy, Air Force, Marine Corps, and Coast Guard) or an active, former or retired peace officer as defined by Section 19-5101(d), Idaho Code, may be exempted from the practical firearms handling and shooting requirement of the Mandatory Hunter Education Program if they received training in firearms handling and shooting. To qualify for the exemption the applicant must submit by mail or in person a signed affidavit provided by the Department, which certifies the applicant meets the criteria for exemption due to training in the practical handling and shooting of firearms provided through either the Armed Forces or as a peace officer. (5-23-11)T

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2011.

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), 36-404, 36-407 through -409, and 36-416, 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 19, 2011.

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:

2011 HB143 allows nonresident disabled veterans to participate in a hunt in association with a qualified organization to receive reduced fees for certain licenses and tags; provide specific rules for bighorn sheep auction and lottery tags to accommodate proxy bidders, but prevent tag resale; and set Nonresident tag and outfitter set-aside quotas.

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

The temporary rule confers a benefit to certain hunters, and complies with an amendment to governing law.

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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to comply with the amendments approved by HB143, and the lack of organized groups representing nonresident disabled veterans, nonresident hunters, and bidders and buyers for bighorn sheep auction and lottery tags.

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

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 26, 2011.

DATED this 26th day of August, 2011.

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 OF DOCKET NO. 13-0104-1101

010. DEFINITIONS.

These definitions will provide clarity and consistency in enforcement of these rules. (7-1-93)

01. Authorized Corporate Representative. Any shareholder in a corporation, designated in writing by the corporation as the eligible applicant, who is in actual physical control of the eligible property. (7-1-93)

02. Blind Person. A blind person is one who has a medically documented loss or impairment of his or her vision and includes any person whose visual acuity with correcting lens does not exceed twenty/two hundred (20/200) in the better eye, or whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees. (7-1-93)

03. Domicile. The term "domicile" means the place where an individual has his true, fixed, permanent home and to which place he has the intention of returning whenever he is absent. An individual can have several dwelling places, but only one (1) domicile. Factors to consider to establish domicile include, but are not limited to: (7-1-93)

a. What address does the person use on tax returns and where does the person file a state resident income tax return? (7-1-93)

b. Where is the person registered to vote? (7-1-93)

c. Where does the person and his immediate family live? (7-1-93)

d. Where does the person have his mail sent or forwarded to? (7-1-93)

e. Does the person remain listed in the telephone directory? (7-1-93)

f. Where does he register his automobiles? (7-1-93)

g. Where has the person claimed a homeowner exemption on a personal residence? (7-1-93)

h. Where does he have a driver's license? (7-1-93)

i. Where are his regular physicians and dentists located? (7-1-93)

04. Disabled. A person is disabled if they are deemed disabled by one (1) or more, but not necessarily all of the following: the railroad retirement board pursuant to Title 45 of the United States Code, or certified as eligible for Federal Supplemental Security Income (SSI); or Social Security Disability Income (SSDI); or a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability; or if a physician has certified any of the following - that a person has lost the use of one (1) or both

lower extremities or both hands, or is unable to walk two hundred (200) feet or more unassisted by another person, or is unable to walk two hundred (200) feet or more without the aid of a walker, cane, crutches, braces, prosthetic device or a wheelchair, or is unable to walk two hundred (200) feet or more without great difficulty or discomfort due to the following impairments - neurological, orthopedic, respiratory, cardiac, arthritic disorder, blindness, or the loss of function or absence of a limb. (3-8-07)

05. Eligible Applicant. A physically disabled person certified by a physician licensed in the state in which the disabled person resides, as meeting one (1) or more of the criteria set forth in Section 36-1101(b), Idaho Code. (5-8-09)

06. Eligible Property. At least three hundred twenty (320) acres of land in one (1) controlled hunt unit determined by the Department to be valuable for habitat or propagation purposes for deer, elk, and/or pronghorn, whether owned by one (1) or more persons, a partnership, or corporation. It shall not include any government lands. (4-7-11)

07. Landowner. Any person or corporation whose name appears on a deed as the owner of eligible property or whose name appears on a contract for sale of eligible property as the purchaser, and any affiliates, management companies, associated entities, wholly-owned subsidiaries, corporations, or limited liability corporations wherein fifty percent (50%) or more of the ownership or controlling interest is maintained by a single individual, partnership or corporation. (4-7-11)

08. Permanent Disability. Permanent disability is defined as a medically determinable physical impairment, which a physician has certified that the condition has no expectation for a fundamental or marked change at any time in the future. (3-8-07)

~~09.~~ **Physician.** A person licensed to practice medicine pursuant to the Idaho Medical Practice Act (Sections 54-1801 through 54-1820, Idaho Code), or equivalent state licensing authority if the person is not licensed to practice in Idaho. (5-8-09)

10. Qualified Organization. The term "Qualified Organization" is defined in Section 36-408(7), Idaho Code. (8-1-11)T

~~09~~**11. Resident.** The term "resident" is defined in Section 36-202(s), Idaho Code. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

302. DISABILITY LICENSES.

Disabled Combination Hunting/Fishing, Disabled Fishing, Disabled American Veterans Combination Hunting and Fishing License, ~~and~~ Disabled American Veterans Fishing License, and Nonresident Disabled American Veterans Hunting License. (3-8-07)(8-1-11)T

01. Applicants for Disability Licenses Must Attest to the Disability Requirements. It is a violation for any person to misrepresent any information to obtain a disability license. (3-8-07)

02. Required Documentation. Required documentation must be submitted in person or by mail to the Department of Fish and Game set forth in Section 005 of this rule. Applications must be supported by the documentation noted in either Subsection 302.02.a., 302.02.b., ~~or~~ 302.02.c., or 302.02.d. of this rule. (5-8-09)(8-1-11)T

a. License buyer must present, to an Idaho Department of Fish and Game office or select vendor one (1) of the following: (3-8-07)

i. A current year's award statement in the individuals name showing that he or she is receiving SSI or SSDI benefits for the current year; (3-8-07)

ii. A letter from the Railroad Retirement board verifying disability status and being dated within three years preceding the application for a disabled license; (3-8-07)

iii. A letter from the from the Veterans Affairs office verifying a service-connected disability rating of forty percent (40%) or greater. Such documentation can bear any date prior to license application. Such documentation will be required only for the initial application and will not be required for subsequent disability license application. (5-8-09)

iv. A current year's letter from the Veterans Affairs office showing an individual is receiving a nonservice-connected pension. (5-8-09)

b. License buyer must initially present to an Idaho Fish and Game office a form, prescribed by the Department, showing physician certification of permanent disability, defined in Subsections 010.04 and 010.08 of this rule, or an individual may present their valid Idaho driver's license in lieu of the prescribed department form if the individual meets the disability requirements of Section 49-117(7)(b), Idaho Code, and the driver's license is appropriately marked as disabled. Only eligible applicants may submit such applications. Physician certification will not be required for subsequent disability license application. (3-8-07)

c. Individuals using the department form for a physician's permanent disability certification must complete and sign the application form. Each application submitted on the department form shall be accompanied by certification from the applicant's physician, physician assistant, or nurse practitioner stating which of the criteria set forth in Subsection 010.04 of this rule, qualifies the applicant and why. If the physician, physician assistant, or nurse practitioner is not licensed to practice in Idaho, a photo copy of the physician, physician assistant, or nurse practitioner's medical license must accompany the application. Physicians, physician assistants, or nurse practitioners must check the appropriate box for a permanent disability on the application. (5-8-09)

d. Nonresident Disabled American Veterans must meet the requirements in Subsection 302.02.a.iii. and provide information, prescribed by the Department, showing they are participating in a hunt in association with a Qualified Organization. Applicant must provide a letter from a Qualified Organization documenting the following: (8-1-11)T

i. The license applicant is participating in a hunt in association with the Qualified Organization in the calendar year of the application. (8-1-11)T

ii. The Qualified Organization is qualified under Internal Revenue Code Section 501(c)(3) as a nonprofit organization with a mission to offer opportunities, experiences, and assistance to disabled veterans or the qualified organization is a government agency with a mission to offer opportunities, experiences, and assistance to disabled veterans. (8-1-11)T

iii. If the Qualified Organization is a government agency, the letter must be on the government agency letterhead and signed by an employee of the government agency. (8-1-11)T

iv. If the Qualified Organization is a nonprofit organization, a copy of the IRS determination letter showing IRS Section 501(c)(3) status must be included with the letter. (8-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

700. SPECIAL BIGHORN SHEEP AUCTION TAG.

01. Eligibility. In order to be eligible to bid on the special bighorn sheep auction tag, a person must be eligible to purchase an Idaho hunting or combination license. (~~3-20-04~~)(8-1-11)T

02. Validity of Tag. The Special Bighorn Sheep Auction Tag shall be valid in Unit 11 only during odd-

numbered years and during even-numbered years when the Bighorn Sheep Lottery Tag holder chooses not to hunt in Unit 11. ~~(4-7-11)~~(8-1-11)T

03. License and Controlled Hunt Tag. (8-1-11)T

a. A hunting license and controlled hunt tag will be provided to the successful bidder from the net proceeds of the auction. (4-7-11)

b. The successful bidder for the Bighorn Sheep Auction Tag must file a notarized affidavit within fifteen (15) days of the successful bid if the hunting license and tag are to be designated to another individual. (8-1-11)T

04. Application of Big Game Rules. All rules governing the Taking of Big Game Animals, IDAPA 13.01.08, shall apply to the eligible and successful bidders other than as specified herein. (7-1-93)

a. No successful bidder shall be eligible to apply for a bighorn sheep controlled hunt tag the same year the bidder is issued a ~~Special~~ Bighorn Sheep Auction Tag. ~~(4-7-11)~~(8-1-11)T

b. A person receiving a ~~Special~~ Bighorn Sheep Auction Tag, but who is unsuccessful in taking a bighorn sheep, shall be eligible to bid the following year for another ~~Special~~ Bighorn Sheep Auction Tag. ~~(4-7-11)~~(8-1-11)T

c. A person successful in taking a bighorn sheep with a ~~special~~ bighorn sheep tag shall be eligible to bid the following year. ~~(3-20-04)~~(8-1-11)T

701. -- 799. (RESERVED)

800. BIGHORN SHEEP LOTTERY TAG.

01. Eligibility. (7-1-93)

a. In order to win and be issued the Bighorn Sheep Lottery Tag, a person must be eligible to purchase an Idaho hunting or combination license. (4-7-11)

b. If any person wins the Bighorn Sheep Lottery Tag and has already been drawn for a bighorn sheep controlled hunt tag for the same year, the controlled hunt tag shall be returned to the Department and voided and the tag fees refunded. The lottery tag will be valid to hunt bighorn sheep that year. (4-7-11)

02. Validity of Tag. The Bighorn Sheep Lottery Tag shall be valid in Unit 11 only during even-numbered years and during odd-numbered years when the ~~Special~~ Bighorn Sheep Auction Tag holder chooses not to hunt in Unit 11. ~~(4-7-11)~~(8-1-11)T

03. Permit Tag. (8-1-11)T

a. A hunting license (if needed) and a controlled hunt tag will be provided to the lottery tag winner from the net proceeds of the lottery. ~~(4-7-11)~~(8-1-11)T

b. Lottery tickets are not transferable. The Bighorn Sheep Lottery Tag shall be issued to the person whose name appears on the winning ticket, and may not be transferred to another individual. (8-1-11)T

04. Application of Big Game Rules. All Rules Governing the Taking of Big Game Animals shall apply to the eligible ticket purchasers and lottery tag winner, other than as specified herein. (7-1-93)

a. A person receiving a bighorn sheep lottery tag shall be eligible to purchase lottery tickets the following year for another bighorn sheep lottery tag. (3-30-01)

b. A person successful in taking a bighorn sheep with a bighorn sheep lottery tag shall be eligible to

purchase lottery tickets the following year.

(3-20-04)

c. Any person who wins a Bighorn Sheep Lottery Tag, and who is otherwise eligible to apply for a deer, elk or pronghorn controlled hunt tag and who has drawn such a tag, shall be allowed to ~~apply for a controlled~~ hunt for those species during the same year the Bighorn Sheep Lottery Tag is valid. ~~(4-7-11)~~(8-1-11)T

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1102

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 36-104(b), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Improvements to the Landowner Appreciation Program to provide for consistency in tag allocation, and to provide incentives for landowners in certain units who provide benefits for wildlife, wildlife habitat, or sportsmen.

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 funds 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 lack of an identified group to represent interested persons makes it infeasible.

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 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 26, 2011.

DATED this 29th day of August, 2011.

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 PROPOSED TEXT OF DOCKET NO. 13-0104-1102

400. LANDOWNER APPRECIATION PROGRAM.

01. Eligible Applicants. Eligible applicants must be registered with the Department and are limited to landowners. Landowners not complying with prohibitions listed in Subsection 400.08, of these rules, shall not be eligible to participate in the landowner appreciation program for three (3) years. (4-7-11)

02. Hunt ~~Units~~ Areas. Landowner Appreciation Program controlled hunt tags shall be issued only for those controlled hunt ~~units~~ areas designated by the Director as eligible for such permits. (~~4-7-11~~)()

03. Qualifying Property. Only property that is used by and provides significant habitat values for deer, elk or pronghorn qualifies for the Landowner Appreciation controlled hunt tag program. Landowners may receive Landowner Appreciation controlled hunt tags only for the species and sex that use the property. (4-7-11)

04. Applications for Landowner Appreciation Controlled Hunt Tags. Applications for landowner appreciation controlled hunt tag(s) shall be on a form prescribed by the Department. Applicants must be registered with the Department and shall sign the application. (4-7-11)

a. Applications from landowners with six hundred forty (640) acres or more will be accepted on or after June 15 of each year. Applications received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than July 15 of each year will be entered in the random drawing for tags. Each application will be entered in the random drawing one (1) time based upon each six hundred and forty (640) acres of eligible property registered by the landowner that are within the hunt area. For example, if a landowner has six thousand four hundred (6,400) eligible acres, the application will be entered into the random drawing ten (10) times. (4-7-11)

b. One (1) application may be submitted by a landowner with eligible property consisting of six hundred forty (640) acres to four thousand nine hundred ninety-nine (4,999) acres. A second application may be submitted for eligible property consisting of five thousand (5,000) acres or more. (4-7-11)

05. Left Over Tags. Landowners with three hundred twenty (320) acres or more may apply for left-over tags following the random draw. Written applications will be accepted after August 15 of each year on a first-come, first-served basis. Applications must be accompanied by the appropriate application fee as specified in Section 36-416, Idaho Code. (4-7-11)

06. Property and Applicant Registration. (5-15-95)

a. Prior to any eligible applicant applying for a Landowner Appreciation Program controlled hunt, the qualifying property and eligible applicant must be registered with the Department. Registering landowners must notify the Department of any changes in property or applicant eligibility. (4-7-11)

b. Registration of property and eligible applicant must be on a form prescribed by the Department. The landowner must submit the registration form and a copy of the deed(s), and the most recent tax assessment(s), describing the eligible property showing the name(s) of the owner(s), and a map of eligible property to the Department regional office. Department personnel will certify the registration and land description and return a copy to the landowner. (4-5-00)

c. If the person registering is an authorized corporate or partnership representative, he shall submit with his registration written verification from the board of directors, partnership, or an officer of the corporation, other than himself, verifying that he is authorized to register the property and eligible applicants. (4-5-00)

07. Issuance of Controlled Hunt Tag(s). (4-7-11)

a. Once the Department has determined the number of controlled hunt tags to be issued in any controlled hunt unit, an additional ten percent (10%) of the number of controlled hunt tags MAY be issued as Landowner Appreciation Program tags. ~~In subsequent years up to twenty five percent (25%) of the number of controlled hunt tags MAY be issued only if the hunt is over subscribed by eligible Landowner Appreciation Program~~

~~applicants. An additional fifteen percent (15%) of the number of controlled hunt tags MAY be issued in game management units 40, 41, 42, 45 and 52 as Landowner Incentive tags pursuant to Subsection 400.11 of this rule.~~
~~(4-7-11)()~~

b. Where the number of landowner appreciation applicants exceeds the number of landowner appreciation controlled hunt tags available in a unit, successful applicants will be determined by drawing. All eligible landowners in the drawing will be considered for one (1) tag before any landowner is eligible for a second tag.
(4-7-11)

~~**c.** No more than two (2) Landowner Appreciation Program controlled hunt tags may be issued to any eligible landowner.~~
~~(4-7-11)~~

~~**d.** Only one (1) leftover Landowner Appreciation Program controlled hunt tag may be issued for eligible property consisting of between three hundred twenty (320) and six hundred thirty nine (639) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. Only one (1) landowner appreciation program controlled hunt tag may be issued for eligible property consisting of between six hundred forty (640) and four thousand nine hundred ninety-nine (4,999) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. One (1) additional controlled hunt tag may be issued to a landowner or designated agent(s) for eligible property in excess of five thousand (5,000) acres within the hunt area designated by the Director with Landowner Appreciation Program controlled hunt tags. No landowner or designated agent(s) is eligible to receive more than one (1) controlled hunt tag for one (1) species in a calendar year.~~
~~(4-7-11)()~~

d. No landowner or designated agent(s) is eligible to retain more than one (1) landowner controlled hunt tag for one (1) species in a calendar year, except extra tag hunts pursuant to Subsection 400.10.b. of this rule.
()

e. A successful landowner, corporate or partnership representative drawing a landowner appreciation program controlled hunt tag may designate to whom the controlled hunt tag will be issued pursuant to Subsection 400.08 of this rule.
(4-7-11)

08. Prohibitions. Landowner Appreciation Program or Incentive controlled hunt tags shall not be sold or marketed.
~~(4-7-11)()~~

09. Application of Controlled Hunt Restrictions. (7-1-93)

a. The restriction that applying for a moose, bighorn sheep, or mountain goat controlled hunt makes the applicant ineligible to apply for any other controlled hunt shall not apply to persons who are otherwise eligible to apply for a landowner appreciation program controlled hunt tag.
(4-7-11)

b. Landowner appreciation program controlled hunt tags issued to non-residents shall not be considered as part of the non-resident quota.
(4-7-11)

c. Landowner appreciation program controlled hunt tags are exempt from the one (1) year waiting periods applicable for certain deer, elk and pronghorn permits.
(4-7-11)

10. Special Restrictions. Any person hunting with a Landowner appreciation program controlled hunt tag shall hunt only within the boundaries described in the hunt area designated by the Director. Only valid, current-year controlled hunt deer, elk, or pronghorn tags may be used in conjunction with a landowner appreciation program. No person shall kill more than one (1) deer, elk or pronghorn during a calendar year EXCEPT:
(4-7-11)

a. Depredation Hunts. In depredation hunts, one (1) additional deer, elk or pronghorn may be taken by persons holding tags for those hunts; EXCEPT: those depredation hunters who were selected for depredation hunts prior to the controlled hunt season for the unit(s) in which they hold a controlled hunt tag must include any animal they harvest within the restrictions imposed by the controlled hunt tag.
(4-7-11)

b. Extra Tag Hunts. In extra tag hunts, one (1) additional deer, elk or pronghorn may be taken by

persons holding tags for those hunts. (4-7-11)

c. Limits on Take - Deer, Elk, Pronghorn. In no event shall any person take more deer, elk or pronghorn in a calendar year than the number of tags the person legally possesses for each species. (4-7-11)

11. Landowner Incentive Tags. ()

a. Landowners or authorized corporate or partnership representatives with qualifying property in controlled hunt areas within game management units 40, 41, 42, 45 or 52 may apply for up to an additional fifteen percent (15%) of the number of controlled hunt tags. ()

b. Applications will be submitted on a form prescribed by the Department and signed by the applicant. ()

c. Written applications will be accepted on or before May 15 of each year. ()

d. Written applications will be evaluated and ranked by a Sportsmen Review Committee. The Department will determine final eligibility and priority ranking for applications considering Sportsmen Review Committee recommendations. ()

e. Applications must contain one (1) or more of the following: ()

i. Department approved managed public access agreement; ()

ii. Department approved depredation continued use agreement; ()

iii. Department approved habitat improvement agreement; and/or ()

iv. Department approved agreement to provide special sporting opportunity. Veteran and youth hunting opportunities are examples of special sporting opportunity. ()

f. If the number of eligible applications exceeds the number of available Landowner Incentive tags, tags will be issued according to priority ranking and eligibility as determined by the Department. ()

g. Landowner Appreciation Program controlled hunt tag restrictions in Subsection 400.07.c. shall not apply to Landowner Incentive tags. ()

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-1103

NOTICE OF RULEMAKING - ADOPTION OF TEMPORARY RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 24, 2011.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule. The action is authorized pursuant to Sections 36-104(b), 36-408, and 36-415, Idaho Code.

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

Section 36-415, Idaho Code, requires a refund rule when the Commission orders a discount in tag fees. By Commission order, nonresident wolf tag fees have been discounted, requiring a refund rule.

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 nonresident hunters.

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

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

DATED this 29th day of August, 2011.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25, Boise, Idaho 83707
(208) 334-3715, Fax (208) 334-2148

THE FOLLOWING IS THE TEXT OF THE TEMPORARY RULE FOR DOCKET NO. 13-0104-1103

603. NONRESIDENT WOLF TAG DISCOUNT REFUND.

01. Eligibility for Refund. This nonresident wolf tag refund rule applies only to 2011 nonresident wolf tags purchased for a fee of one hundred eighty-six dollars (\$186), inclusive of the vendor issuance fee, between May 5, 2011, and July 27, 2011. (8-24-11)T

02. Payment of Refund. The Department shall pay each holder of a nonresident wolf tag eligible for refund under this section the amount of one hundred fifty-four dollars and twenty-five cents (\$154.25), the difference between one hundred eighty-six dollars (\$186) and the discounted price of thirty-one dollars and seventy-five cents (\$31.75) (inclusive of the vendor fee) authorized by the Commission. (8-24-11)T

603.4. -- 699. (RESERVED)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.05 - RULES GOVERNING FISHING CONTESTS

DOCKET NO. 13-0105-1101

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 36-104(b) and 36-901, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Clarify/simplify the definition of "fishing contest".

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 funds 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 lack of an identified group to represent interested persons makes it infeasible.

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 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 26, 2011.

DATED this 29th day of August, 2011.

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 PROPOSED TEXT OF DOCKET NO. 13-0105-1101

010. DEFINITIONS.

01. **Catch-and-Release Contest.** Any fishing contest where the contest rules require specific procedures to keep target species of fish alive and healthy and require that all fish caught by participants be released back into the contest water on the same day they were captured. (7-1-93)

02. **Fishing Contest.** Any organized fishing event, ~~which is based on the capture of an individual fish or the size or number of fish and total prize value is greater than one thousand dollars (\$1,000); or the individual entry fee is greater than twenty five dollars (\$25); or the number of boats is greater than ten (10) or the number of individual contestants is greater than twenty (20); or there is a live fish weigh-in.~~ that: (3-30-07)()

a. Has a live-fish weigh-in; ()

b. Awards cash or prizes of one thousand dollars (\$1,000) or more based on number, size, or species of fish captured; or ()

c. Is expected to draw or have more than twenty (20) participants. ()

d. Events organized wholly for youth under the age of fourteen (14) are excluded from the requirement for a Fishing Contest Permit. ()

03. **Harvest Contest.** Any fishing contest where the contest rules do not require participants keep all target species of fish alive and healthy and release the fish back into contest waters, but allow participants to harvest or kill the fish. (7-1-93)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.06 - RULES GOVERNING CLASSIFICATION AND PROTECTION OF WILDLIFE

DOCKET NO. 13-0106-1101

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 36-104(b) and 36-201, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Change the classification name for Leatherside chub and Bluehead sucker to comply with recent research.

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 funds 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 lack of an identified group to represent interested persons makes it infeasible.

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 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 26, 2011.

DATED this 29th day of August, 2011.

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 PROPOSED TEXT OF DOCKET NO. 13-0106-1101

200. PROTECTED NONGAME SPECIES.

- 01. Mammals. (7-1-93)
 - a. American pika -- *Ochotona princeps*. (4-6-05)
 - b. Bats -- all species. (4-6-05)
 - c. Chipmunks -- *Neotamias spp.* (4-6-05)
 - d. Columbia Plateau (Merriam's) ground squirrel -- *Spermophilus canus vigilis*. (4-6-05)
 - e. Golden-mantled ground squirrel -- *Spermophilus lateralis*. (7-1-93)
 - f. Great Basin (piute) ground squirrel -- *Spermophilus canus vigilis*. (4-6-05)
 - g. Kit fox -- *Vulpes macrotis*. (7-1-93)
 - h. North American wolverine -- *Gulo gulo luscus*. (4-6-05)
 - i. Northern flying squirrel -- *Glaucomys sabrinus*. (7-1-93)
 - j. Red squirrel -- *Tamiasciurus hudsonicus*. (7-1-93)
 - k. Rock squirrel -- *Spermophilus variegatus*. (4-6-05)
 - l. Southern Idaho ground squirrel -- *Spermophilus brunneus endemicus*. (4-6-05)
 - m. Wyoming ground squirrel -- *Spermophilus elegans nevadensis*. (4-6-05)
- 02. Birds. (3-29-10)
 - a. Bald eagle -- *Haliaeetus leucocephalus*. (3-29-10)
 - b. Peregrine falcon -- *Falco peregrinus*. (3-29-10)
 - c. All native species, except game birds and threatened and endangered wildlife. (3-29-10)
- 03. Amphibians. All native species (4-6-05)
- 04. Reptiles. All native species. (4-6-05)
- 05. Fish. (4-6-05)
 - a. Bear Lake sculpin -- *Cottus extensus*. (4-6-05)
 - b. Northern ~~H~~leatherside chub -- ~~Gila~~ Lepidomeda copei. (~~4-6-05~~)()
 - c. Sand roller -- *Percopsis transmontana*. (4-6-05)
 - d. Shoshone sculpin -- *Cottus greenei*. (4-6-05)
 - e. Wood River sculpin -- *Cottus leiopomus*. (4-6-05)
 - f. Bluehead sucker -- Catostomus discobolus. ()

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 29, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Delete references to a wolf trapping permit; clarification and cleanup of wolf trapping rules; allow wolf trapping near naturally deceased big game carcasses; and clarify and adjust certain Big Game Management Unit descriptions.

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, outfitters, and sportsmen's organizations.

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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to set the rules for 2011 hunting and trapping seasons after delisting.

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

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 26, 2011.

DATED this 29th day of August, 2011.

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 OF DOCKET NO. 13-0108-1101

271. WOLF TRAPPING - **MANDATORY WOLF TRAPPER EDUCATION CLASS.**

~~01. Mandatory Wolf Trapper Education Class.~~ Individuals interested in trapping wolves must **purchase a trapping license and** successfully complete a wolf trapping education class held by the Idaho Department of Fish and Game prior to ~~purchasing a wolf~~ trapping **permit for wolves.** A certificate of completion **and trapping license** will be required to purchase ~~the~~ **tags for** wolf trapping ~~permit.~~ Trappers who complete the class will not be required to take the class again in the future ~~to purchase a wolf trapping permit.~~ ~~(4-7-11)~~**(8-29-11)T**

~~02. Wolf Trapping Permits. Wolf trapping permits will be available only at Idaho Department of Fish and Game offices.~~ ~~(4-7-11)~~

(BREAK IN CONTINUITY OF SECTIONS)

410. UNLAWFUL METHODS OF TAKE.

No person shall take big game animals as outlined in this section. (7-1-93)

01. Firearms. (7-1-93)

a. With any firearm that, in combination with a scope, sling, and/or any other attachments, weighs more than sixteen (16) pounds. (7-1-93)

b. With any shotgun using any shot smaller than double-aught (#00) buck. (7-1-93)

c. With any rimfire rifle, rimfire handgun or any muzzleloading handgun, EXCEPT for mountain lion. (7-1-93)

d. With a fully automatic firearm. (10-26-94)

e. With any electronic device attached to, or incorporated in, the firearm (including handguns and shotguns) or scope; except scopes containing battery powered or tritium lighted reticles are allowed. (4-2-08)

02. Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives. (3-20-97)

a. With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteenth-thousandths (0.015) inch thick. (7-1-93)

b. With any bow having a peak draw weight of less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds. (3-20-97)

c. With any chemicals or explosives attached to the arrow or bolt. (7-1-93)

d. With arrows or bolts having expanding broadheads. (7-1-93)

e. With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)

f. With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt,

crossbow, or bow (except nonmagnifying scopes containing battery powered or tritium lighted reticles may be used by disabled archery permit holders). (5-8-09)

- g.** With any bow capable of shooting more than one (1) arrow at a time. (7-1-93)
- h.** With any compound bow with more than eighty-five percent (85%) let-off. (4-2-08)
- i.** With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than three hundred (300) grains. (4-2-08)
- j.** With an arrow less than twenty-four (24) inches or a crossbow bolt less than twelve (12) inches in length from the broadhead to the nock inclusive. (4-2-08)
- k.** With an arrow wherein the broadhead does not proceed the shaft and nock. (3-30-01)
- l.** During an *Archery Only* season, with any firearm, crossbow (except holders of handicapped archery permits), or other implement other than a longbow, compound bow, or recurve bow, or: (3-30-07)

 - i. With any device attached that holds a bow at partial or full draw (except holders of handicapped archery permits). (3-30-07)
 - ii. With any bow or crossbow equipped with magnifying sights. (3-20-97)
- m.** During a *Traditional Archery Only* season, with any firearm, crossbow, or other implement other than a longbow or recurve bow, or: (3-15-02)

 - i. With an arrow not constructed of wood or fletched with non-natural material. (3-15-02)
 - ii. With any bow equipped with sights. (3-15-02)
- n.** With any crossbow pistol. (3-20-97)
- 03. Muzzleloaders.** (7-1-93)

 - a.** With a muzzleloading rifle or musket which is less than forty-five (.45) caliber for deer, pronghorn, mountain lion, or gray wolf, or which is less than fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (4-7-11)
 - b.** With any electronic device attached to, or incorporated in, the muzzleloader. (3-30-01)
 - c.** During a *Muzzleloader Only* season, with any firearm, muzzleloading pistol or other implement other than a muzzleloading rifle or musket which: (7-1-93)

 - i. Is at least forty-five (.45) caliber for deer, pronghorn, mountain lion, or gray wolf, or at least fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat or black bear. (4-7-11)
 - ii. Is capable of being loaded only from the muzzle. (7-1-93)
 - iii. Is equipped only with open or peep sights. (7-1-93)
 - iv. Is loaded only with loose black powder or, loose Pyrodex or other loose synthetic black powder. Pelletized powders are prohibited. (4-2-08)
 - v. Is equipped with no more than two (2) barrels. (7-1-93)
 - vi. Is loaded only with a projectile with a diameter within one hundredth (.01) of an inch of the bore diameter. Sabots are prohibited. (4-2-08)

- vii. Is equipped only with flint, musket cap, or percussion cap. 209 primers are prohibited. (4-2-08)
- viii. Is equipped with an exposed ignition system. (5-8-09)
- ix. Is loaded only with a patched round ball or conical non-jacketed projectile comprised wholly of lead or lead alloy. Sabots are not allowed. (4-11-06)
- 04. Short-Range Weapon.** During Short-Range Weapon ONLY seasons ONLY the following weapons may be used: (7-1-99)
- a.** With any shotgun using any slug or double-aught (#00) or larger buckshot. (7-1-99)
- b.** With any muzzleloader that is at least forty-five (0.45) caliber for deer, pronghorn, mountain lion, or gray wolf, or at least fifty (0.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (4-7-11)
- c.** With any bow having a peak draw weight of not less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of not less than one hundred fifty (150) pounds. (7-1-99)
- d.** With any handgun using straight wall centerfire cartridges not originally developed for rifles. (3-29-10)
- 05. Other.** (7-1-93)
- a.** With electronic calls EXCEPT for the hunting of mountain lions, black bears, and wolves in seasons set by Idaho Fish and Game Commission proclamation. (4-7-11)
- b.** With any bait including grain, salt in any form (liquid or solid), or any other substance (not to include liquid scent) to constitute an attraction or enticement, with the exception of applicable rules for the black bear baiting permit. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.17, "Rules Governing the Use of Bait for Taking Big Game Animals-"; additionally with the exception that wolves may be trapped or taken near a big game animal that has died naturally and the carcass has not been repositioned for trapping or hunting purposes. Natural causes shall not include any man-caused mortality. Traps or snares may not be set or placed within thirty (30) feet of a carcass of a big game animal. ~~(3-30-07)~~(8-29-11)T
- c.** With dogs, EXCEPT for mountain lion or black bear. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.15, "Rules Governing the Use of Dogs." (7-1-93)
- d.** With any net, snare, trap, chemical, deadfall or device other than legal firearm, archery or muzzleloader equipment; EXCEPT wolves may be trapped or snared in seasons set by Idaho Fish and Game Commission proclamation and subject to all trapping rules in IDAPA 13.01.16 "The Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals." (4-7-11)
- e.** Within an enclosure designed to prevent ingress or egress of big game animals, including fenced facilities defined as Domestic Cervidae Farms under Section 25-3501, Idaho Code, unless authorized by the director. This rule shall not apply to domestic cervidae which are lawfully privately owned elk, fallow deer, or reindeer. (4-6-05)
- f.** With radio telemetry or other electronic tracking devices used as an aid to locate big game animals. This rule does not affect the use of telemetry equipment on hounds or other sporting dogs. (4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

600. GAME MANAGEMENT UNIT BOUNDARY DESCRIPTIONS.

Subsections 600.01 through 600.65 have no changes and are not republished here.

66. Unit 52A. Those portions of BLAINE, BUTTE, LINCOLN, and MINIDOKA COUNTIES within the following boundary: beginning at Shoshone, then north and east on U.S. 93 to the Arco-Minidoka Road (approximately two (2) miles SW of Arco), then south on the Arco-Minidoka Road to the East Minidoka Road (approximately two (2) miles east of Minidoka), then northwest on the East Minidoka Road to Minidoka, then northwest on State Highway 24 to Shoshone, the point of beginning. CRATERS OF THE MOON NATIONAL MONUMENT-CLOSED. The boundary of the Craters of the Moon National Monument was recently greatly enlarged by Presidential Proclamation. Approximately 410,512 acres of the expansion will be primarily managed by the National Park Service which has stated its intention to close this area to hunting. The state of Idaho strongly opposes this action and is working to keep this area open to hunting in accordance with the language in the Presidential Proclamation which assures continued jurisdiction over wildlife by the state of Idaho. This issue remains unresolved. It is the hunter's responsibility to check the current status of open/closed area boundaries prior to hunting. ~~(3-15-02)~~(8-29-11)T

67. Unit 53. Those portions of BLAINE, CASSIA, GOODING, JEROME, LINCOLN, MINIDOKA, POWER, and TWIN FALLS COUNTIES within the following boundary: beginning at Twin Falls, then west and north on U.S. 30 to the Snake River, then down the Snake River to the Malad River, then up the Malad River to U.S. 30, then northwest on U.S. 30 to Bliss, then east on U.S. 26 to Shoshone, then southeast on State Highway 24 to Minidoka, then east on the ~~Union-Pacific-railroad-tracks~~ East Minidoka Road approximately one (1) mile to the Minidoka-Blaine County line, then south along the Minidoka-Blaine County line to the Minidoka National Wildlife Refuge, then southeast along the refuge boundary to the Cassia-Power County line, then south along the Cassia-Power County line to Interstate 86 near Raft River, then west on Interstate 86 to Yale Road, then southwest on Yale Road over Interstate 84 to State Highway 81, then west on State Highway 81 to Burley, then west on U.S. 30 to Twin Falls, the point of beginning. MINIDOKA NATIONAL WILDLIFE REFUGE-CLOSED. ~~(7-1-93)~~(8-29-11)T

68. Unit 54. Those portions of CASSIA and TWIN FALLS COUNTIES within the following boundary: beginning at Burley, then west on U.S. 30 to U.S. 93 west of Twin Falls, then south on U.S. 93 to the Idaho-Nevada State line, then east along the state line to the Oakley-Goose Creek Road, then north on Oakley-Goose Creek Road to Oakley, then north on State Highway 27 to Burley, the point of beginning. (7-1-93)

69. Unit 55. That portion of CASSIA COUNTY within the following boundary: beginning at Burley, then south on State Highway 27 to Oakley, then south on the Oakley-Goose Creek Road to the Idaho-Utah State line, then east on the state line to the Strevell-Malta Road, then north on Strevell-Malta Road to Malta and State Highway 81, then northwest on State Highway 81 to Burley, the point of beginning. (7-1-93)

70. Unit 56. Those portions of CASSIA, ONEIDA, and POWER COUNTIES within the following boundary: beginning at the Yale Road-State Highway 81 junction, then northeast on Yale Road over Interstate 84 to Interstate 86, then east on Interstate 86 to State Highway 37, then south on State Highway 37 to Holbrook, then south on the Holbrook-Stone Road to the Idaho-Utah State line, then west on the state line to Interstate 84, then northwest on Interstate 84 to the Malta-Sublett Road, then west on Malta-Sublett Road to its junction with State Highway 81, then north on State Highway 81 to the point of beginning. (7-1-93)

71. Unit 57. Those portions of CASSIA and ONEIDA COUNTIES within the following boundary: beginning at Malta, then east on the Malta-Sublett Road to Interstate 84, then southeast on Interstate 84 to the Idaho-Utah State line, then west on the state line to the Malta-Strevell Road, then northwest on Malta-Strevell Road to Malta, the point of beginning. (7-1-93)

72. Unit 58. Those portions of BUTTE, CLARK, JEFFERSON, and LEMHI COUNTIES within the Birch Creek drainage northwest of State Highway 22. (3-30-01)

73. Unit 59. That portion of CLARK COUNTY within the following boundary: beginning at Dubois, then north on Interstate 15 to the Idaho-Montana State line, then west along the state line to Bannock Pass (Clark County), then south on Medicine Lodge Road to State Highway 22, then east on State Highway 22 to Dubois, the point of beginning. (7-1-93)

74. Unit 59A. Those portions of CLARK, JEFFERSON, and LEMHI COUNTIES within the following boundary: beginning at Bannock Pass (Clark County) on the Idaho-Montana State line, then west along the state line to the watershed divide between Birch and Crooked Creeks, then south along the divide through Reno Point to State Highway 22, then east on State Highway 22 to Medicine Lodge Road, then north on Medicine Lodge Road to Bannock Pass, the point of beginning. (7-1-93)

75. Unit 60. Those portions of CLARK and FREMONT COUNTIES within the following boundary: beginning at Ashton, then north on U.S. 191-20 to the old (south) Shotgun Valley Road, then west on Shotgun Valley Road to Idmon, then south on the Rexburg-Kilgore Road (Red Road) to the Camas Creek-Jackson Mill Springs Road, then east on Camas Creek-Jackson Mill Springs Road to the Hamilton Hill Road, then southeast on the Hamilton Hill Road to the Sand Creek Road, then southeast on the Sand Creek Road to the old Yellowstone Highway, then east on old Yellowstone Highway to U.S. 191-20, then north on U.S. 191-20 to Ashton, the point of beginning. HARRIMAN STATE PARK WILDLIFE REFUGE-CLOSED. (7-1-93)

76. Unit 60A. Those portions of CLARK, FREMONT, JEFFERSON, and MADISON COUNTIES within the following boundary: beginning at Spencer, east on the Spencer-Kilgore Road to Idmon, then south on the Rexburg-Kilgore Road (Red Road) to the Camas Creek-Jackson Mill Springs Road, then east on Camas Creek-Jackson Mill Springs Road to the Hamilton Hill Road, then southeast on the Hamilton Hill Road to the Sand Creek Road, then south on the Sand Creek Road to the old Yellowstone Highway, then south on old Yellowstone Highway to U.S. 191-20, then south on U.S. 191-20 to Rexburg, then west on State Highway 33 to Sage Junction, then north on Interstate 15 to Spencer, the point of beginning. (7-1-93)

77. Unit 61. Those portions of CLARK and FREMONT COUNTIES within the following boundary: beginning at Spencer, east on the Spencer-Kilgore Road to Idman, then east on the old (south) Shotgun Valley Road to U.S. 191, then south on U.S. 191 to State Highway 47, then southeast on State Highway 47 to the North Hatchery Butte Road, then east on North Hatchery Butte Road to Pineview, then north on the Pineview-Island Park Road to the Baker Draw-Black Mountain Springs Road, then east on Baker Draw-Black Mountain Springs Road to Fish Creek Road, then south on Fish Creek Road to the North Fork of Partridge Creek, then upstream to the Yellowstone Park boundary, then north along the Yellowstone Park boundary to the Idaho-Montana State line, then west to Monida Pass, then south on Interstate 15 to Spencer, the point of beginning. (4-5-00)

78. Unit 62. Those portions of FREMONT, MADISON, and TETON COUNTIES within the following boundary: beginning at the Leigh Creek Road on the Idaho-Wyoming State line, north along the state line to the Yellowstone Park boundary, then northwest along the Yellowstone Park boundary to Robinson Creek, then downstream to State Highway 47, then southwest on State Highway 47 to Ashton, then south on U.S. 191 to State Highway 33, then east on State Highway 33 to Leigh Creek Road east of Tetonia, then east on Leigh Creek Road to the state line, the point of beginning. (7-1-93)

79. Unit 62A. That portion of FREMONT COUNTY within the following boundary: beginning at Ashton, then north on U.S. 191 to State Highway 47, then south on State Highway 47 to the North Hatchery Butte Road, then east on North Hatchery Butte Road to Pineview, then north on the Pineview-Island Park Road to the Baker Draw-Black Mountain Springs Road, then east on Baker Draw-Black Mountain Springs Road to Fish Creek Road, then south on Fish Creek Road to the North Fork of Partridge Creek, then upstream to the Yellowstone Park boundary, then south along the park boundary to Robinson Creek, then downstream to State Highway 47, then southwest on State Highway 47 to Ashton, the point of beginning. HARRIMAN STATE PARK WILDLIFE REFUGE - CLOSED. (7-1-93)

80. Unit 63. Those portions of BINGHAM, BONNEVILLE, BUTTE, CLARK, and JEFFERSON COUNTIES within the following boundary: beginning at Blackfoot then north on Interstate 15 to Dubois, then southwest on State Highway 22 to U.S. 20-26, then southeast on U.S. 26 to Interstate 15 at Blackfoot, the point of beginning. Camas National Wildlife Refuge - CLOSED. (3-30-01)

81. Unit 63A. Those portions of BONNEVILLE, JEFFERSON, and MADISON COUNTIES within the following boundary: beginning at Idaho Falls, then east on U.S. 26 to the spot directly above the Heise measuring cable (about 1.5 miles upstream from Heise Hot Springs), then north across the South Fork of the Snake River to the Heise-Archer-Lyman Road (Snake River Road), then northwest on Heise-Archer-Lyman Road to U.S. 191, then north

on U.S. 191 to Rexburg, then west on State Highway 33 to Interstate 15 (Sage Junction), then south on Interstate 15 to Idaho Falls, then east on Broadway Street to U.S. 26, the point of beginning. (7-1-93)

82. Unit 64. Those portions of BONNEVILLE, JEFFERSON, MADISON, and TETON COUNTIES within the following boundary: beginning at the junction of State Highway 33 and U.S. 191 at Sugar City, then south on U.S. 191 to the Lyman-Archer-Heise Road (Snake River Road), then southeast on Lyman-Archer-Heise Road to the Kelly Canyon-Tablerock Road, then east on Kelly Canyon-Tablerock Road to the Hawley Gulch Road (Forest Service Road 218), then east on Hawley Gulch Road to the Moody Swamp Road (Forest Service Road 226), then northeast on Moody Swamp Road to the head of Hilton Creek, then east along the watershed divide between Big Burns and Canyon Creeks to Garns Mountain, then north along the watershed divide between Canyon Creek and Teton River to Grandview Point, then north down the Milk Creek Road to State Highway 33, then west on State Highway 33 to U.S. 191, the point of beginning. (7-1-93)

83. Unit 65. Those portions of BONNEVILLE, MADISON, and TETON COUNTIES within the following boundary: beginning on the Leigh Creek Road at the Idaho-Wyoming State line east of Tetonia, west to State Highway 33, then west on State Highway 33 to Milk Creek Road, then south on Milk Creek Road to Grandview Point, then south along the watershed divide between Canyon Creek and Teton River to Garns Mountain, then southeast along the watershed divide between Pine Creek and Teton River over Red Mountain to Pine Creek Pass, then east on State Highway 31 to Victor, then southeast on State Highway 33 to the state line, then north to the Leigh Creek Road, the point of beginning. (7-1-93)

84. Unit 66. Those portions of BINGHAM and BONNEVILLE COUNTIES within the following boundary: beginning at the Idaho-Wyoming State line on the South Fork of the Snake River, then downstream to the Swan Valley bridge on U.S. 26, then northwest on U.S. 26 to the watershed divide between Granite and Garden Creeks, then southwest along the divide and the divides between Garden-Antelope Creeks, Antelope-Pritchard Creeks and Fall-Tex Creeks to the Fall Creek Road (Forest Service Road 077), then west on Fall Creek Road to Skyline Ridge Road (Forest Service Road 077), then south on Skyline Ridge Road to Brockman Guard Station, then down Brockman Creek to Grays Lake Outlet, then upstream along the outlet to the Bone-Grays Lake Road, then east on Bone-Grays Lake Road through Herman to the McCoy Creek Road (Forest Service Road 087), then east on the McCoy Creek Road to the Idaho-Wyoming State line, then north to the point of beginning. ~~(7-1-93)~~ (8-29-11)T

85. Unit 66A. Those portions of BONNEVILLE and CARIBOU COUNTIES within the following boundary: beginning on the McCoy Creek Road (Forest Service Road 087) at the Idaho-Wyoming State line, west on McCoy Creek Road through Herman to the Bone ~~Road~~ Grays Lake Road, then west on the Bone-Grays Lake Road to the West Side Road west of Grays Lake, then south on the ~~Bone~~ West Side Road to State Highway 34, then east on State Highway 34 to the state line, then north along the state line to the point of beginning. ~~(7-1-93)~~ (8-29-11)T

86. Unit 67. Those portions of BONNEVILLE, JEFFERSON, MADISON, and TETON COUNTIES within the following boundary: beginning on State Highway 33 at the Idaho-Wyoming State line, then northwest to Victor, then southwest on State Highway 31 to Pine Creek Pass, then northwest along the watershed divide between Pine Creek and Teton River over Red Mountain to Garns Mountain, then west along the watershed divide between Big Burns and Canyon Creeks to the Moody Swamp Road (Forest Service Road 226) at Hilton Creek, then west on Moody Swamp Road to the Hawley Gulch Road (Forest Service Road 218), then west on Hawley Gulch Road and the Kelly Canyon Road to the South Fork Snake River Road, then upstream to the Heise measuring cable (about 1.5 miles upstream from Heise Hot Springs), then due south across the river to the mean high water line on the south shore of the South Fork Snake River, then upstream along the mean high water line to the divide between Garden and Granite Creeks in Conant Valley, then south up the divide to U.S. 26, then southeast on U.S. 26 to the Swan Valley bridge, then up the South Fork Snake River to the Idaho-Wyoming State line, then north on the state line to State Highway 33, the point of beginning. (7-1-93)

87. Unit 68. Those portions of BINGHAM, BLAINE, BUTTE, CASSIA, MINIDOKA, and POWER COUNTIES within the following boundary: beginning at Arco, then southeast on U.S. 26 to Blackfoot, then southwest on State Highway 39 to American Falls, then southwest on Interstate 86 to the Cassia-Power County line east of Raft River, then north along the Cassia-Power county line to the north bank of the Snake River, then northwest along the northern boundary of the Minidoka National Wildlife Refuge to the Minidoka-Blaine County line, then north along the Minidoka-Blaine County line to the Union-Pacific Railroad tracks East Minidoka Road, then west on the tracks to Minidoka east on the East Minidoka Road approximately one (1) mile to the Arco-Minidoka Road, then

north on the Minidoka-Arco Road to U.S. 93 approximately two (2) miles southwest of Arco, then northeast approximately two (2) miles on U.S. 93 to Arco, the point of beginning. ~~(3-30-07)~~(8-29-11)T

88. Unit 68A. Those portions of BANNOCK, BINGHAM, BONNEVILLE, and POWER COUNTIES within the following boundary: beginning at American Falls, then northeast on State Highway 39 to U.S. 26 near Blackfoot, then east on U.S. 26 to Interstate 15, then north on Interstate 15 to Idaho Falls, then east on Broadway Street to U.S. 91 (Old Yellowstone Highway), then south on U.S. 91 to Interstate 15, then south on Interstate 15 to Interstate 86, then southwest on Interstate 86 to American Falls, the point of beginning. (7-1-93)

89. Unit 69. Those portions of BINGHAM, BONNEVILLE, and CARIBOU COUNTIES within the following boundary: beginning at Idaho Falls, then south on U.S. 91 to Blackfoot, then south on Interstate 15 to the Fort Hall interchange, then east on the Fort Hall-Government Dam Road to the Blackfoot River below the Government Dam, then along the north and east shore of the Blackfoot River and Reservoir to State Highway 34, then north on State Highway 34 to the Bone West Side Road, then north on the Bone West Side Road west of Grays Lake to the Bone-Grays Lake Road, then east on the Bone-Grays Lake Road to Grays Lake Outlet, then downstream along the outlet to Brockman Creek, then up Brockman Creek to the Brockman Guard Station, then northwest on the Skyline Ridge Road (Forest Service Road 077) to Fall Creek Road (Forest Service Road 077), then east on the Fall Creek Road to the watershed divide between Fall and Tex Creeks, then north along the Fall Creek-Tex Creek, Antelope Creek-Pritchard Creek, Antelope Creek-Garden Creek and Garden Creek-Granite Creek watershed divides to the South Fork of the Snake River, then downstream along the mean high water line on the south shore of the South Fork to the Heise measuring cable (about 1.5 miles upstream from Heise Hot Springs), then southwest to U.S. 26, then west on U.S. 26 to Idaho Falls, the point of beginning. ~~(7-1-93)~~(8-29-11)T

90. Unit 70. Those portions of BANNOCK and POWER COUNTIES within the following boundary: beginning at the junction of Interstate 86 and Interstate 15 near Pocatello, then west on Interstate 86 to the Bannock Creek-Arbon Valley Highway, then south along Bannock Creek-Arbon Valley Highway to Mink Creek-Arbon Valley junction near Pauline, then northeast along Mink Creek Road to the Rattlesnake Creek Road, then east along the Rattlesnake Creek-Garden Gap-Arimo Road, then southeast on Rattlesnake Creek-Garden Gap-Arimo Road to Arimo, then north on Interstate 15 to the point of beginning. (7-1-93)

91. Unit 71. Those portions of BANNOCK, BINGHAM, and CARIBOU COUNTIES within the following boundary: beginning at Bancroft, then north on the Bancroft-Chesterfield Road to Chesterfield Dam, then upstream on the Portneuf River to the Government Dam-Fort Hall Road, then west to Fort Hall interchange, then south on Interstate 15 to U.S. 30, then east to the Pebble-Bancroft county road (old U.S. 30N), then northeast to Bancroft, the point of beginning. (7-1-93)

92. Unit 72. Those portions of BINGHAM and CARIBOU COUNTIES within the following boundary: beginning at State Highway 34 on the Blackfoot River, then west along the east and north shore of the Blackfoot River and Reservoir to the Government Dam Road, then west on the Government Dam-Fort Hall Road to the Portneuf River, then downstream to Chesterfield Dam, then south on the Chesterfield-Bancroft Road to Bancroft, then east on the Pebble-Bancroft county road (old U.S. 30N) to U.S. 30N-State Highway 34, then northeast on State Highway 34 to the point of beginning. (7-1-93)

93. Unit 73. Those portions of BANNOCK, FRANKLIN, POWER, and ONEIDA COUNTIES within the following boundary: beginning on U.S. 91 at the Idaho-Utah State line, then north to Arimo, then northwest on the Arimo-Garden Gap-Rattlesnake Road to the Mink Creek Highway, then south along Mink Creek Highway to the Arbon Valley Highway near Pauline, then south on the Arbon Valley Highway to State Highway 37, then west to Holbrook, then south on the Holbrook-Stone Road to the Idaho-Utah State line, then east along the state line to U.S. 91, the point of beginning. (7-1-93)

94. Unit 73A. Those portions of BANNOCK, ONEIDA, and POWER COUNTIES within the following boundary: beginning at Holbrook, then north on State Highway 37 to Interstate 86, then northeast on Interstate 86 to the Bannock Creek-Arbon Valley Highway, then south on Bannock Creek-Arbon Valley Highway to State Highway 37, then west to Holbrook, the point of beginning. (7-1-93)

95. Unit 74. Those portions of BANNOCK, CARIBOU, and FRANKLIN COUNTIES within the following boundary: beginning at Preston, then north on U.S. 91 to Interstate 15, then north on Interstate 15 to U.S.

30N, then east on U.S. 30N to the Pebble-Bancroft county road (old U.S. 30N), then northeast to State Highway 34, then south on State Highway 34 to Preston, the point of beginning. (7-1-93)

96. Unit 75. Those portions of BEAR LAKE, CARIBOU, and FRANKLIN COUNTIES within the following boundary: beginning at Montpelier, then northwest on U.S. 30 to State Highway 34, then south to Cleveland Bridge, then south on the county road to Maple Grove Hot Springs, then east on the Hot Springs-Strawberry Canyon Road to the Strawberry Canyon-Emigration Canyon Road, then east on Strawberry Canyon-Emigration Canyon Road to Ovid, then east on U.S. 89 to Montpelier, the point of beginning. (7-1-93)

97. Unit 76. Those portions of BEAR LAKE and CARIBOU COUNTIES within the following boundary: beginning at U.S. 89 on the Idaho-Utah State line, then north to Montpelier, then north on U.S. 30 to Soda Springs, then northeast on State Highway 34 to the Idaho-Wyoming State line, then south on the Idaho-Wyoming State line to the Idaho-Utah State line, then west on the Idaho-Utah State line to U.S. 89, the point of beginning. (7-1-93)

98. Unit 77. That portion of FRANKLIN COUNTY within the following boundary: beginning at U.S. 91 on the Idaho-Utah State line, then north to Preston, then north on State Highway 34 to Cleveland Bridge, then south on the county road to Maple Grove Hot Springs, then east on the Hot Springs-Strawberry Canyon Road to the Strawberry Canyon-Emigration Canyon Road, ~~then east to the Franklin-Bear Lake County line, then south on the county line to the ridge at the head of Hillyard Canyon, then west approximately one mile along the ridge to the Franklin-Basin Road, then south to the Idaho-Utah State line~~ then south on the Highline Trail (Forest Service Trail 316) to Danish Pass (Forest Service Road 415), then west on (Forest Service Road 415), then south on the Franklin Basin Road to the Idaho-Utah State line, then west on the state line to U.S. 91, the point of beginning. ~~(7-1-93)~~ (8-29-11)T

99. Unit 78. Those portions of BEAR LAKE and FRANKLIN COUNTIES within the following boundary: beginning at U.S. 89 on the Idaho-Utah State line, then north to Ovid, then west on the Emigration Canyon-Strawberry Canyon Road ~~to the Bear Lake-Franklin County line, then south to the ridge at the head of Hillyard Canyon, then west approximately one mile along the ridge to Franklin Basin Road,~~ then south on the Highline Trail (Forest Service Trail 316) to Danish Pass (Forest Service Road 415), then west on (Forest Service Road 415), then south on Franklin Basin Road to the Idaho-Utah State line, then east on the state line to U.S. 89, the point of beginning. ~~(7-1-93)~~ (8-29-11)T

601. -- 604. (RESERVED)

605. ELK ZONE DESCRIPTIONS.

- 01. Panhandle Zone.** All of Units 1, 2, 3, 4, 4A, 5, 6, 7, and 9. (7-1-99)
- 02. Palouse Zone.** All of Units 8, 8A, and 11A. (7-1-99)
- 03. Dworshak Zone.** All of Unit 10A. (7-1-99)
- 04. Hells Canyon Zone.** All of Units 11, 13, and 18. (7-1-99)
- 05. Lolo Zone.** All of Units 10 and 12. (7-1-99)
- 06. Elk City Zone.** All of Units 14, 15, and 16. (7-1-99)
- 07. Selway Zone.** All of Units 16A, 17, 19, and 20. (7-1-99)
- 08. Middle Fork Zone.** All of Units 20A, 26, and ~~36B~~ 27. ~~(7-1-99)~~ (8-29-11)T
- 09. Salmon Zone.** All of Units 21, 21A, ~~27,~~ and 28, and 36B. ~~(4-5-00)~~ (8-29-11)T
- 10. Weiser River Zone.** All of Units 22, 32, and 32A. (4-5-00)

11. **McCall Zone.** All of Units 19A, 23, 24, and 25. (7-1-99)
12. **Lemhi Zone.** All of Units 29, 37, 37A, and 51. (7-1-99)
13. **Beaverhead Zone.** All of Units 30, 30A, 58, 59, and 59A. (7-1-99)
14. **Brownlee Zone.** All of Unit 31. (7-1-99)
15. **Sawtooth Zone.** All of Units 33, 34, 35, and 36. (7-1-99)
16. **Pioneer Zone.** All of Units 36A, 49, and 50. (7-1-99)
17. **Owyhee-South Hill Zone.** All of Units 38, 40, 41, 42, 46, 47, 54, 55, and 57. (4-5-00)
18. **Boise River Zone.** All of Unit 39. (7-1-99)
19. **Smoky Mountains Zone.** All of Units 43, 44, and 48. (3-15-02)
20. **Bennett Hills Zone.** All of Units 45 and 52. (7-1-99)
21. **Big Desert Zone.** All of Units 52A and 68. (4-7-11)
22. **Island Park Zone.** All of Units 60, 60A, 61, and 62A. (7-1-99)
23. **Teton Zone.** All of Units 62 and 65. (7-1-99)
24. **Palisades Zone.** All of Units 64 and 67. (7-1-99)
25. **Tex Creek Zone.** All of Units 66 and 69. (7-1-99)
26. **Bannock Zone.** All of Units 56, 70, 71, 72, 73, 73A, and 74. (7-1-99)
27. **Bear River Zone.** All of Units 75, 77, and 78. (7-1-99)
28. **Diamond Creek Zone.** All of Units 66A and 76. (7-1-99)
29. **Snake River Zone.** All of Units 53, 63, 63A, and 68A. (3-15-02)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1102P

NOTICE OF PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2011 Big Game Seasons establishing seasons and limits for deer, elk, pronghorn, black bear and mountain lion hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on November 9 at approximately 7 p.m. at the Salvation Army Kroc Center, 1765 W. Golf Course Road in Coeur d'Alene, Idaho.

FISH AND GAME COMMISSION PUBLIC HEARING

**Wednesday, November 9, 2011
approx. 7:00 p.m. (PDT)**

**Salvation Army Kroc Center
1765 W. Golf Course Road
Coeur d'Alene, ID**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at 208-334-3715.

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at 208-334-5159 or through the Idaho Relay Service at 1-800-377-2529 (TDD).

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707
(208) 334-3715
Fax (208) 334-2148

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME ANIMALS IN THE STATE OF IDAHO

DOCKET NO. 13-0108-1103P

NOTICE OF PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2011-12 Moose, Bighorn Sheep and Mountain Goat Hunting Seasons establishing seasons and limits for moose, bighorn sheep and mountain goat hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on November 9 at approximately 7 p.m. at the Salvation Army Kroc Center, 1765 W. Golf Course Road in Coeur d'Alene, Idaho.

FISH AND GAME COMMISSION PUBLIC HEARING

**Wednesday, November 9, 2011
approx. 7:00 p.m. (PDT)**

**Salvation Army Kroc Center
1765 W. Golf Course Road
Coeur d'Alene, ID**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at 208-334-3715.

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W. Dallas Burkhalter
Deputy Attorney General
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600 S. Walnut
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IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2011.

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), 36-105, 36-1101, and 36-1102, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Amend the Youth Waterfowl Day to correspond to the federal age qualification; and amend obsolete references to seasons, bag limits, and possession limits which are set by Commission Proclamation.

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.

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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the lack of an identified group representing youth waterfowl hunters, and the need to correct obsolete rules.

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

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 26, 2011.

DATED this 26th day of August, 2011.

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 PROPOSED TEXT FOR DOCKET NO. 13-0109-1101

100. TAGS, STAMPS, PERMITS, AND VALIDATIONS.

01. Sage Grouse or Sharp-Tailed Grouse. No person shall hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in his or her possession the appropriate hunting license that has been validated for sage grouse and sharp-tailed grouse. The validation shall be valid from January 1 through December 31 of each year. (5-8-09)

02. Migratory Game Birds. No person shall hunt ducks, geese, brant, coots, ~~common~~ Wilson's snipe, sandhill cranes, or mourning doves anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for the Federal Migratory Game Bird Harvest Information Program. The validation shall be valid from January 1 through December 31 of each year. ~~(7-1-98)~~(8-1-11)T

03. Wild Turkey. No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements: (7-1-98)

a. There are three (3) turkey tags available each calendar year. These are the general tag, extra tag, and special unit tag. Only three (3) turkey tags of the following may be purchased each year; one (1) general and two (2) extra. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. ~~A hunter may not obtain both a spring general and a spring controlled turkey tag during the spring.~~ A hunter may use the general tag to hunt in any spring general season or use the general tag with a controlled hunt permit to hunt in a controlled hunt. ~~(5-8-09)~~(8-1-11)T

b. Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from using that permit ~~tag~~ to hunt in any other wild turkey controlled hunt. ~~(4-5-00)~~(8-1-11)T

c. Nonresident permit limitations: On controlled hunts with ten (10) or fewer permits, not more than one (1) permit will be issued to nonresidents. On controlled hunts with more than ten (10) permits, not more than ten percent (10%) of the permits may be issued to nonresidents. (7-1-98)

d. Eligibility: The holders of valid hunting licenses are eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)

i. Holders of a Type 208 Nongame Hunting License may not apply for any controlled hunt. (7-1-93)

ii. In the event a permit is issued based on erroneous information, the permit will be invalidated and the person will remain on the drawn list. (7-1-93)

e. Applications: Applications for spring and fall controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than February 15 for spring hunts and July 15 for fall hunts, annually. Applications must comply with the following requirements: (5-8-09)

i. Holders of a Duplicate License (Type 501) must use their original license number to apply for a controlled hunt. Duplicate license numbers will not be accepted. (7-1-93)

ii. Only one (1) application card per person or group will be accepted. Additional application cards will result in all applicants being declared ineligible. (7-1-93)

iii. Fees: All applicants for controlled hunts must submit a non-refundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. (5-8-09)

- iv. A single payment (either cashier's check, money order, certified check, or personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. (2-7-95)
- v. A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (2-7-95)
- vi. Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (7-1-93)
- vii. All spring wild turkey hunters may apply for a Fall turkey controlled hunt permit during the same calendar year. (3-30-01)
- f. Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (7-1-93)
- g. Tag validation and attachment: Immediately after any wild turkey is killed, the turkey tag must be validated and securely attached to the wild turkey. (7-1-93)
- h. To validate the tag, the hunter must cut out and completely remove two (2) triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill. (7-1-93)
- i. The tag must remain attached so long as the turkey is in transit or storage. (7-1-93)
- j. The Commission establishes youth-only controlled hunts by proclamation. Only hunters nine (9) to fifteen (15) years of age with a valid license may apply for youth-only controlled hunts, provided they are ten (10) to fifteen (15) years of age during the hunt for which they are applying, EXCEPT hunters sixty-five (65) years of age or older or hunters with a senior combination hunting license or a disabled combination hunting license may apply for first-come, first-served leftover youth-only controlled hunt permits. Hunters nine (9) years of age with a valid license may apply for regular controlled hunts provided they are ten (10) years of age during the hunt for which they are applying. (4-7-11)

04. Early September Canada Goose Hunts. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (7-1-98)(8-1-11)T

~~a. *Controlled Hunts: No person shall hunt Canada geese during controlled, early September seasons (September 1-15) without having in his or her possession the appropriate hunting license and controlled hunt permit. Persons obtaining and using controlled hunt permits must comply with the following requirements:* (7-1-98)~~

~~i. *Applications: Applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than July 15, annually. Applications must comply with the following requirements:* (4-5-00)~~

~~ii. *Fees: All applicants for controlled hunts must submit a nonrefundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. Successful applicants will be issued a permit that entitles them to hunt. The Federal Migratory Bird Stamp is required by any person seventeen (17) years of age and older, respectively (Title 50 Code of Federal Regulations, Part 20).* (3-30-01)~~

~~iii. *The following rules previously established for wild turkey also apply to early September Canada goose hunts: Subsections 100.03.b., 100.03.e., 100.03.d., 100.03.e.ii., 100.03.e.iv. through 100.03.e.vi., and 100.03.f.* (3-30-01)~~

~~iv. *Any controlled hunt permits for Canada geese that remain unsold after the controlled hunt drawing may be sold by the Department on a first-come, first-served basis.* (7-1-98)~~

(BREAK IN CONTINUITY OF SECTIONS)

300. UPLAND GAME BIRD METHODS OF TAKE.

- 01. Taking of Upland Game Birds.** No person shall take upland game birds: (7-1-93)
- a.** Except wild turkey, from one-half (1/2) hour after sunset to one-half (1/2) hour before sunrise. ~~Pheasants shall not be taken before twelve o'clock noon on the opening day in certain counties (see Rule 11, Pheasant Seasons).~~ Wild turkey shall not be taken between sunset and one-half (1/2) hour before sunrise. Upland game birds shall not be taken before 10 a.m. during the pheasant season on the Fort Boise, Montour, Payette River and C.J. Strike Wildlife Management Areas. ~~(4-7-11)~~**(8-1-11)T**
- b.** With a trap, snare, net, crossbow, or firearms EXCEPT a shotgun using shells not exceeding three and one-half (3-1/2) inches maximum length, slingshot, hand-held or thrown missiles, EXCEPT forest grouse. Forest grouse shall not be taken with a trap, snare, net, or crossbow. (3-30-01)
- c.** From any watercraft. (4-7-11)
- d.** By the use or aid of any electronic call. (7-1-93)
- e.** By the aid of baiting. Bait is defined as any substance placed to attract upland game birds. (7-1-93)
- f.** When hunting on Wildlife Management Areas where pheasants are stocked without wearing at least thirty-six (36) square inches of visible hunter orange above the waist. (5-8-09)
- 02. Wild Turkey.** In addition to the methods listed above, wild turkey may not be taken: (7-1-93)
- a.** With lead shot exceeding BB size. (7-1-93)
- b.** With steel shot exceeding T size. (7-1-93)
- c.** By the use of dogs, except during fall hunts. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

600. PHEASANT SEASONS, BAG AND POSSESSION LIMITS.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. **(8-1-11)T**

~~**01. Area 1.** Area 1 includes Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

~~**02. Area 2.** Area 2 includes Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Cassia, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Minidoka, Oneida, Power, Twin Falls, and Teton counties. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

~~**03. Area 3.** Area 3 includes Ada, Adams, Boise, Blaine, Camas, Canyon, Elmore, Gem, Gooding,~~

~~Jerome, Lincoln, Owyhee, Payette, Twin Falls, Valley, and Washington Counties (including all islands in the Snake River EXCEPT PATCH AND PORTER ISLANDS). Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

~~041.~~ WMA Upland Game Permit. (4-2-08)

a. Permit Requirement. Any person seventeen (17) years of age or older hunting for or having a pheasant in his or her possession on Fort Boise, C.J. Strike, Montour, Payette River, Sterling, Market Lake, Mud Lake, Cartier, or Niagara Springs Wildlife Management Areas must have a valid WMA Upland Game Bird Permit in his or her possession. (5-8-09)

b. Permit Limit. The WMA Upland Game Bird Permit limit is six (6) cocks. Additional permits may be purchased. (4-2-08)

c. Recording Harvest. Any person harvesting a pheasant on any of the Wildlife Management Areas listed in Subsection 600.041.a. must immediately record their harvest, in writing, on the back of their permit. ~~(4-6-05)~~(8-1-11)T

~~052.~~ Youth Pheasant Season. This season shall be open statewide. (7-1-99)

a. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

b. The Youth Pheasant Season shall be open for all licensed hunters fifteen (15) years of age or younger. All youth hunters must be accompanied by an adult eighteen (18) years or older. One (1) adult may take more than one (1) youth hunter. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

603. BOBWHITE QUAIL AND CALIFORNIA QUAIL SEASONS, BAG AND POSSESSION LIMITS.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (8-1-11)T

~~**01.** **Area 1.** Area 1 includes Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power, and Teton Counties. Season for quail in Area 1 is CLOSED. (5-3-03)~~

~~**02.** **Area 2.** Area 2 includes Ada, Adams, Benewah, Blaine, Boise, Bonner, Boundary, Camas, Canyon, Cassia, Clearwater, Gem, Gooding, Idaho, Kootenai, Latah, Lewis, Nez Perce, Payette, Shoshone, Valley, Jerome, Lincoln, Minidoka, Twin Falls, Elmore, Washington, and Owyhee Counties. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-2-08)~~

(BREAK IN CONTINUITY OF SECTIONS)

605. SAGE GROUSE SEASONS, BAG AND POSSESSION LIMITS.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (8-1-11)T

~~01. **Area 1.** Ada, Adams, Benewah, Blaine County within the Salmon River drainage, Boise, Bonner, Boundary, Canyon, Cassia County south of Interstate 86 and east of Interstate 84, Clearwater, Custer County within the Salmon River drainage upstream from and including Valley Creek, Elmore County EXCEPT that portion south and east of US Highway 20 and north of Interstate 84, Payette, Power County south of Interstate 86, Shoshone, Valley, and Washington counties. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

~~02. **Area 2.** Bannock, Bear Lake, Bingham, Blaine County east of the Arco-Minidoka road, Bonneville, Butte County south of US Highways 20/26 and 22/33 and the entire Birch Creek drainage, Caribou, Cassia EXCEPT that portion south of Interstate 86 and east of Interstate 84, Clark, Franklin, Fremont, Jefferson, Lemhi County within the Birch Creek drainage, Madison, Oneida EXCEPT that portion north and east of Interstate 84, Owyhee County north of the Juniper Mountain/Mud Flat/Poison Creek roads and Highway 78 to Grandview and the Snake River, Owyhee County east of the Bruneau River, Power County north of Interstate 86, Twin Falls and Teton County north of Interstate 86, Twin Falls and Teton counties. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

~~03. **Area 3.** Blaine County EXCEPT that part within the Salmon River drainage and that part east of the Arco-Minidoka Road, that part of Butte County north of US Highway 22/33 not within the Birch Creek drainage, and that part west of the Arco-Minidoka Road, Camas, Custer County EXCEPT that portion within the Salmon River drainage upstream from and including Valley Creek, Elmore County south and east of US Highway 20 and north of Interstate 84, Gooding, Jerome, Lemhi County EXCEPT that portion within the Birch Creek drainage, Lincoln, Minidoka, Owyhee County south of the Juniper Mountain/Mud Flat/Poison Creek roads and Highway 78 to Grandview and the Snake River and west of the Bruneau River. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

606. SHARP-TAILED GROUSE SEASONS, BAG AND POSSESSION LIMITS.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (8-1-11)T

~~01. **Area 1.** Area 1 includes the following counties or portions of counties: Ada, Adams, Bannock County west of Interstate 15 and north of Interstate 86, Benewah, Bingham County west of Interstate 15, Blaine, Boise, Bonner, Bonneville County west of Interstate 15, Boundary, Butte, Camas, Canyon, Cassia County west of Interstate 84 north of the Malta Sublett Road and west of the Malta Strevell Road, Clark County west of Interstate 15, Clearwater, Custer, Elmore, Gem, Gooding, Idaho, Jefferson County west of Interstate 15, Jerome, Kootenai, Latah, Lemhi, Lewis, Lincoln, Minidoka, Nez Perce, Owyhee, Payette, Power County north of Interstate 86, Shoshone, Twin Falls, Valley, and Washington County. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

~~02. **Area 2.** Area 2 includes the following counties or portions of counties: Bingham County east of Interstate 15, Bonneville County east of Interstate 15, Clark County east of Interstate 15, Fremont, Jefferson County east of Interstate 15, Madison, Teton County, Bannock County east of Interstate 15 and south of Interstate 86, Bear Lake County, Caribou County, Cassia County east of Interstate 84 and that portion west of Interstate 84 south of the Malta Sublett Road and east of the Malta Strevell Road, Franklin County, Oneida County, and Power County south of Interstate 86. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

607. -- 614. (RESERVED)

615. SANDHILL CRANES.

No person shall hunt sandhill cranes without having in his or her possession the appropriate hunting license ~~and~~

~~controlled hunt permit. Persons obtaining and using a permit must comply with the following requirements: that has been validated for the Federal Migratory Bird Harvest Information Program (Federal HIP). (7-1-98)(8-1-11)T~~

~~**01. Applications.** Applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than July 15, annually. (4-5-00)~~

~~**02. Fees.** All applicants for controlled hunts must submit a nonrefundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. Successful applicants will be issued a permit that entitles them to hunt. (The Federal Migratory Bird Stamp is not required.) (Idaho Code 36-414; Title 50 Code of Federal Regulations, Part 20.) (3-30-01)~~

~~**03. Hunt Rules.** (7-1-98)~~

~~**a.** The following rules previously established for wild turkey hunts also apply to sandhill crane hunts. Subsections 100.03.b., 100.03.c., 100.03.d., 100.03.e.ii, 100.03.e.iv. through 100.03.e.vi., and 100.03.f. through 100.03.i. (3-30-01)~~

~~**b.** Any controlled hunt permits for sandhill cranes that remain unsold after the controlled hunt drawing may be sold by the Department on a first come, first served basis. (7-1-98)~~

616. SANDHILL CRANE SEASONS AND BAG AND POSSESSION LIMITS.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

~~**01. Controlled Hunts.** Controlled hunt areas include the following: (7-1-98)~~

~~**a.** Area 1 includes all of Bear Lake County and all of Caribou County EXCEPT that portion downstream from the dam at Alexander Reservoir south of U.S. Highway 30, and that portion lying within the Grays Lake Basin. (5-3-03)~~

~~**b.** Area 2 includes all of Teton County. (5-3-03)~~

~~**c.** Area 3 includes all of Fremont County. (5-3-03)~~

~~**d.** Area 4 includes all of Bonneville County. (5-8-09)~~

~~**e.** Area 5 includes all of Jefferson County. (5-8-09)~~

617. -- 619. (RESERVED)

620. EARLY SEPTEMBER CANADA GOOSE SEASONS AND BAG AND POSSESSION LIMITS.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (8-1-11)T

~~**01. General Hunts.** General hunts include the following: All of Nez Perce County EXCEPT: (5-3-03)~~

~~**a.** Mann Lake closure in Lewiston Orchards. This includes all of the lake and three hundred (300) yards beyond the Bureau of Reclamation property encompassing the lake. (5-3-03)~~

~~**b.** Lewiston Preserve along the Clearwater River from Lewiston City limits to Spalding between Highway 12-95 on the north side of the river and the Camas Prairie Railroad on the south side. (5-3-03)~~

~~**c.** Lewiston City limits on the Clearwater River and the Snake River. (5-3-03)~~

~~d. Hellsgate State Park along the Snake River from the north end of the park upstream to the basalt bluffs opposite Asotin. (5-3-03)~~

~~02. **General Hunt Seasons, Bag and Possession Limits, and Permits.** Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)~~

(BREAK IN CONTINUITY OF SECTIONS)

900. MIGRATORY GAME BIRD SEASONS, BAG AND POSSESSION LIMITS.

01. Mourning Dove. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

02. Ducks Including Mergansers and American Coot. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (7-1-93)(8-1-11)T

~~a. Area 1 is that area designated by the U.S. Fish and Wildlife Service as Waterfowl Zone 1 and includes the following counties: Bannock; Bingham EXCEPT that portion within the Blackfoot Reservoir drainage; Power east of State Highway 37 and State Highway 39; and, all lands, including private holdings, within the Fort Hall Indian Reservation. (3-30-01)~~

~~b. Area 2 is that area designated by the U.S. Fish and Wildlife Service as Waterfowl Zone 2 and includes the following counties or portions of counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of State Highway 75, south and east of U.S. Highway 93, and between State Highway 75 and U.S. Highway 93 north of U.S. Highway 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou EXCEPT the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties. (3-30-01)~~

~~c. Area 3 is that area designated by the U.S. Fish and Wildlife Service as Waterfowl Zone 3 and includes the following counties or portions of counties: Ada; those portions of Blaine between State Highway 75 and U.S. Highway 93 south of U.S. Highway 20, and between State Highway 75 and U.S. Highway 93 north of U.S. Highway 20 within the Silver Creek drainage; Boise; Canyon; Cassia EXCEPT the Minidoka National Wildlife Refuge; Elmore EXCEPT the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of State Highway 37 and State Highway 39 EXCEPT the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties. (3-30-01)~~

~~d. Please see the Waterfowl brochure, which contains the Commission's proclamation setting seasons, bag and possession limits. (3-30-01)~~

03. Common Wilson's Snipe. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (7-1-93)(8-1-11)T

~~a. Area 1 is that area designated by the U.S. Fish and Wildlife Service as Waterfowl Zone 1 and includes the following counties or portions of counties: Bannock; Bingham EXCEPT that portion within the Blackfoot Reservoir drainage; Power east of State Highway 37 and State Highway 39; and all lands, including private holdings, within the Fort Hall Indian Reservation. (3-30-01)~~

~~b. Area 2 is that area designated by the U.S. Fish and Wildlife Service as Waterfowl Zone 2 and~~

~~includes the following counties or portions of counties: Adams; Bear Lake; Benewah; Bingham within the Blackfoot Reservoir drainage; those portions of Blaine west of State Highway 75, south and east of U.S. Highway 93, and between State Highway 75 and U.S. Highway 93 north of U.S. Highway 20 outside the Silver Creek drainage; Bonner; Bonneville; Boundary; Butte; Camas; Caribou EXCEPT the Fort Hall Indian Reservation; Cassia within the Minidoka National Wildlife Refuge; Clark; Clearwater; Custer; Elmore within the Camas Creek drainage; Franklin; Fremont; Idaho; Jefferson; Kootenai; Latah; Lemhi; Lewis; Madison; Nez Perce; Oneida; Power within the Minidoka National Wildlife Refuge; Shoshone; Teton; and Valley Counties. (3-30-01)~~

~~e. Area 3 is that area designated by the U.S. Fish and Wildlife Service as Waterfowl Zone 3 and includes the following counties or portions of counties: Ada; those portions of Blaine between State Highway 75 and U.S. Highway 93 south of U.S. Highway 20, and between State Highway 75 and U.S. Highway 93 north of U.S. Highway 20 within the Silver Creek drainage; Boise; Canyon; Cassia EXCEPT the Minidoka National Wildlife Refuge; Elmore EXCEPT the Camas Creek drainage; Gem; Gooding; Jerome; Lincoln; Minidoka; Owyhee; Payette; Power west of State Highway 37 and State Highway 39 EXCEPT the Minidoka National Wildlife Refuge; Twin Falls; and Washington Counties. (3-30-01)~~

~~d. Please see the Waterfowl brochure, which contains the Commission's proclamation setting seasons, bag and possession limits. (3-30-01)~~

04. Geese Including Dark Geese -- Black Brant, Canada, Emperor, and White-Fronted, and Light Geese - Ross' and Snow. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (9-1-93)(8-1-11)T

~~a. Area 1 includes the following counties: Benewah; Bonner; Boundary; Clearwater; Idaho; Kootenai; Latah; Lewis; Nez Perce; and Shoshone Counties. (9-1-93)~~

~~b. Area 2 includes the following counties or portions of counties: Ada; Adams; Boise; Canyon; those portions of Elmore north and east of Interstate 84, and south and west of Interstate 84 west of State Highway 51, EXCEPT that portion within the Camas Creek drainage; Gem; Owyhee west of State Highway 51; Payette; Valley; and Washington Counties. (9-1-93)~~

~~e. Area 3 includes the following counties or portions of counties: Blaine; Camas; Cassia; those portions of Elmore south of Interstate 84 east of State Highway 51, and within the Camas Creek drainage; Gooding; Jerome; Lincoln; Minidoka; Owyhee east of State Highway 51; Power within the Minidoka National Wildlife Refuge; and Twin Falls Counties. (7-1-99)~~

~~d. Area 4 includes the following counties or portions of counties: Bear Lake; Bingham within the Blackfoot Reservoir drainage; Bonneville; Butte; Caribou EXCEPT the Fort Hall Indian Reservation; Clark; Custer; Franklin; Fremont; Jefferson; Lemhi; Madison; Oneida; Power west of State Highway 37 and State Highway 39 EXCEPT the Minidoka National Wildlife Refuge; and Teton Counties. EXCEPT, Fremont and Teton Counties are CLOSED to the taking of light geese. (7-1-99)~~

~~e. Area 5 is that area designated by the U.S. Fish and Wildlife Service as Waterfowl Zone 1 and includes the following counties or portions of counties: Bannock; Bingham EXCEPT that portion within the Blackfoot Reservoir drainage; Power east of State Highway 37 and State Highway 39; and, all lands, including private holdings, within the Fort Hall Indian Reservation. (7-1-93)~~

~~f. Please see the Waterfowl brochure, which contains the Commission's proclamation setting seasons, bag and possession limits. (3-30-01)~~

05. Youth Waterfowl Hunting Day. (7-1-98)(8-1-11)T

a. The youth waterfowl hunting day is open only to youth from twelve (12) through fifteen (15) years of age **and younger**. Any youth participating must: (7-1-98)(8-1-11)T

i. Have in his or her possession the appropriate, valid hunting license. (The ~~Idaho Migratory~~

~~Waterfowl Stamp and the~~ Federal Migratory Bird stamp ~~are~~ **is** not required (Idaho Code 36-414; Title 50 Code of Federal Regulations, Part 20)). ~~(7-1-98)~~**(8-1-11)T**

ii. Be accompanied in the field at all times by at least one (1) adult eighteen (18) years of age or older, having in his or her possession a valid hunting license. (7-1-98)

b. Please see the Waterfowl brochure, which contains the Commission's proclamation setting seasons, bag and possession limits. (3-30-01)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1102P

NOTICE OF PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2011 Sage Grouse Hunting Seasons establishing seasons and limits for sage grouse hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on November 9 at approximately 7 p.m. at the Salvation Army Kroc Center, 1765 W. Golf Course Road in Coeur d'Alene, Idaho.

FISH AND GAME COMMISSION PUBLIC HEARING

**Wednesday, November 9, 2011
approx. 7:00 p.m. (PDT)**

**Salvation Army Kroc Center
1765 W. Golf Course Road
Coeur d'Alene, ID**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at 208-334-3715.

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at 208-334-5159 or through the Idaho Relay Service at 1-800-377-2529 (TDD).

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707
(208) 334-3715
Fax (208) 334-2148

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-1103P

NOTICE OF PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2011-12 Migratory Waterfowl Seasons establishing seasons and limits for migratory waterfowl (ducks and geese) hunting in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on November 9 at approximately 7 p.m. at the Salvation Army Kroc Center, 1765 W. Golf Course Road in Coeur d'Alene, Idaho.

FISH AND GAME COMMISSION PUBLIC HEARING

**Wednesday, November 9, 2011
approx. 7:00 p.m. (PDT)**

**Salvation Army Kroc Center
1765 W. Golf Course Road
Coeur d'Alene, Idaho**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at 208-334-3715.

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at 208-334-5159 or through the Idaho Relay Service at 1-800-377-2529 (TDD).

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707
(208) 334-3715
Fax (208) 334-2148

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.10 - RULES GOVERNING THE IMPORTATION, POSSESSION, RELEASE, SALE, OR SALVAGE OF WILDLIFE

DOCKET NO. 13-0110-1101

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 36-103, 36-104(b), 36-501, and 36-504, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Amend the wildlife salvage rules to allow increased salvage of commercially valuable wildlife.

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 funds 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 lack of an identified group to represent interested persons makes it infeasible.

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 26, 2011.

DATED this 29th day of August, 2011.

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 PROPOSED TEXT OF DOCKET NO. 13-0110-1101

300. RECOVERY, POSSESSION AND SALE OF WILDLIFE PARTS.

01. Wildlife Legally Killed. (3-23-94)

a. The possession, sale and purchase of wildlife or parts of wildlife that have been legally killed is lawful except as provided below and as provided in Chapter 5, Title 36, Idaho Code. (3-23-94)

i. The edible flesh of wildlife classified as big game animals, upland game animals, game birds, migratory birds, or rattlesnakes taken from the wild may not be purchased, bartered or sold. (4-7-11)

ii. The edible flesh of wildlife classified as game fish or crustacea that are taken from the wild may not be purchased, bartered or sold except as provided in Idaho Code Sections 36-501 and 36-801 through 36-805 and rules promulgated pursuant thereto. (3-23-94)

iii. The annual sale by holders of a valid Idaho hunting, trapping or combination hunting and fishing license of up to six (6) skins of legally taken rattlesnakes is lawful pursuant to IDAPA 13.01.06, "Classification and Protection of Wildlife," Subsection 300.02 and Subsection 100.06 of this rule. (4-7-11)

b. A written statement showing the taker's name, address, license and tag numbers, date and location of kill, signed by the taker, must be provided to the buyer of any black bear or mountain lion head, hide or parts (except tanned hides finished into rugs or mounts). A copy of the sales statement must be forwarded by the buyer to the Idaho Department of Fish and Game within ten (10) days after such sale. A department CE-50, Statement of Sale/Purchase of Wildlife Parts, may be used in lieu of a sales statement. (4-7-11)

c. Persons possessing a taxidermist or fur buyer license shall keep a record for two (2) years from the date the wildlife was received for mounting or preservation, furbearers purchased and raw black bear skins, raw mountain lion skins or parts of black bears or mountain lions purchased. Records may be written or retained on media other than paper and must comply with standards set forth in Section 9-328, Idaho Code. Copies of sales statements as per Subsection 300.01.b. satisfy provisions of this rule. (4-7-11)

02. Animals Found Dead. Protected species of wildlife that have died naturally or accidentally remain in public trust to be disposed of by the Department of Fish and Game. However, a person may recover, possess, sell or purchase the wildlife parts as specified below, but ONLY under the conditions specified and ONLY if the wildlife has NOT been unlawfully killed. Natural causes shall not include any man-caused mortality. Accidental death shall include accidental vehicle-collision caused mortality. ~~(7-1-98)~~()

a. Horns of Bighorn Sheep. (7-1-93)

i. Bighorn sheep horns of animals that have died of natural causes may be recovered and possessed but may not be sold, bartered or purchased and may not be transferred to another person without a permit issued by the Director. All such pickup horns must be presented to an Idaho Department of Fish and Game regional or subregional office for marking by placement of a permanent metal pin in the horn within thirty (30) days of recovery. The insertion of a pin does not in itself certify that the animal was legally taken or possessed. The pin only identifies the horn(s) and indicates that mandatory check and report requirements were complied with. (3-23-94)

ii. No person shall alter, deface or remove a pin placed in a bighorn sheep horn by the Idaho Department of Fish and Game. No person shall possess the horn(s) of a bighorn sheep that bears an altered, defaced or counterfeit Idaho pin or from which the Idaho pin has been removed. (3-23-94)

b. Antlers, hides, bones, and horns of deer, elk, moose, pronghorn and mountain goat, parts of bear and mountain lion and elk teeth of animals that have died of natural causes may be recovered, possessed, purchased, bartered or sold. Reporting of bear and mountain lion parts is required pursuant to Subsection 300.01, of this rule. ~~(4-7-11)~~()

c. Parts, including meat, of big game animals, upland game animals, upland game birds, and furbearing animals, which may be lawfully hunted or trapped, that have been accidentally killed as a result of vehicle-

collision mortality may be recovered and possessed with notification to the Idaho Department of Fish and Game within twenty-four (24) hours of salvage and with written authorization within seventy-two (72) hours from the Director or a delegate on a form prescribed by the Department, if such taking is not in violation of state, federal, county, or city law, ordinances, rules, or regulations. Mandatory check and report requirements must be followed for bighorn sheep, black bear, mountain lion, mountain goat, moose, gray wolf, bobcat and river otter as described in IDAPA 13.01.08.420 and 13.01.16.500. ()

d. Parts, excluding meat, of big game animals (except bighorn sheep), upland game animals, upland game birds, and furbearing animals, which may be lawfully hunted or trapped, that have been accidentally killed as a result of vehicle-collision mortality may be purchased, bartered, or sold, where sale is not specifically prohibited by federal statute or regulation or state statute, when accompanied by written authorization from the Director as described in IDAPA 13.01.10.300.02.c. Bighorn sheep that have been accidentally killed as a result of vehicle-collision mortality may not be purchased, bartered, or sold. ()

03. Wildlife Taken in Other States. Wildlife or parts thereof that have been legally taken outside of Idaho, may be possessed or sold in Idaho if such sale is not prohibited in Idaho or the state, province or country where taken, or by federal law or regulation; (3-23-94)

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-901, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Amend and simplify definitions of certain terms; specify the conditions by which hatchery steelhead and salmon legally harvested may be transported without tails and heads attached; prohibit marking and releasing fish without a collecting permit; allow the use of a gaff hook when harvesting nongame fish taken with archery equipment, and correct obsolete rules.

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

The temporary rule confers a benefit to certain fishermen.

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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the lack of an identified group to represent the diverse interests of fishermen, and the need to correct obsolete rules.

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

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 26, 2011.

DATED this 26th day of August, 2011.

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 OF DOCKET NO. 13-0111-1101

004. DEFINITIONS.

For the purposes of this chapter, the following terms will be defined as follows: (3-20-97)

01. Artificial Fly. Any fly made entirely of rubber, wood, metal, glass, feather, fiber, or plastic by the method known as fly tying. (3-20-97)

02. Artificial Lure. Any device made entirely of rubber, wood, metal, glass, feather, fiber, or plastic with hook or hooks attached. ~~No bait of any kind may be used with artificial lures when fishing artificial flies and lures only waters.~~ (3-20-97)(8-1-11)T

03. Bag Limit. The maximum number of fish that may be lawfully taken by any one (1) person in one (1) day. The term "bag limit" shall be construed to be an individual, independent effort and shall not be interpreted in any manner as to allow one (1) individual to take more than his "bag limit" toward filling the "bag limit" of another. The bag and possession limits are equal except for salmon and steelhead. (3-20-97)

04. Bait. Organic substances, other than rubber, wood, feather, fiber, or plastic, attached to a hook to attract fish. Bait includes insects, insect larvae, worms, dead fish, fish parts, any other animal or vegetable matter, or scented synthetic materials. (Live fish prohibited.) ~~(See: Subsection 004.19—NO BAIT.)~~ (3-20-97)(8-1-11)T

05. Barbless Hook. A fish hook without barbs or on which barbs have been bent completely closed. (3-20-97)

06. Catch-and-Release. Effort, by permitted methods, to catch or attempt to catch a fish or species of fish is lawful, with the restriction that any fish so caught must be released immediately, unharmed, back to the water. NOTE: Species of fish not specifically listed as catch-and-release may be harvested under their appropriate limits. (3-30-07)

07. Confluence of a Stream or River. The point where two (2) rivers or streams come together. (3-20-97)

08. Diversion. A man-made structure designed to change the direction of flowing water in a stream. (8-1-11)T

09. Diversion Pond. A man-made pond holding water taken from a stream or reservoir. The diversion pond may be connected to the stream or reservoir by an open ditch or pipe. (8-1-11)T

10. Drainage. All water flowing into a common river or stream system, either above or below ground, due to area geography. (8-1-11)T

0811. Electric Motors Only. When fishing waters listed "electric motors only," gas (internal

- combustion) motors may be attached to the boat; but use of the gas motor is prohibited. (3-20-97)
- ~~09~~**12.** **Fishing.** Any effort made to take, kill, injure, capture, or catch any fish, crayfish, or bullfrog. (3-20-97)
- 13.** **Fish Trap.** Any man-made structure designed to capture fish. (8-1-11)T
- 14.** **Fish Weir.** Any man-made structure placed in a water body to delay or divert migrating fish. (8-1-11)T
- 15.** **Flat Water.** Water where there is no observable direction of flow. (8-1-11)T
- ~~10~~**6.** **Float Tube.** A floating device that suspends a single occupant, from the seat down, in the water, and is not propelled by oars, paddles, or motors. (4-6-05)
- ~~17~~**7.** **Fly Fishing.** Fishing with a fly rod, fly reel, fly line, and artificial fly. (3-20-97)
- ~~12~~**8.** **Game Fish.** Brook, brown, bull (Dolly Varden), cutthroat, golden, lake (Mackinaw), rainbow (including steelhead), splake and sunapee trout; trout hybrids; Chinook, coho, Atlantic and kokanee (blueback) salmon; grayling; whitefish; cisco; crappie; perch; bass; catfish; bullheads; sunfish; sturgeon; northern pike; tiger muskie; walleye and sauger; and burbot (ling). Bullfrogs and crayfish are also defined as game fish. (4-6-05)
- 19.** **General Rules.** The seasons, gear, and bag limits adopted for the Department Region where you are fishing. (8-1-11)T
- ~~13~~**20.** **Harvest.** Reduce a fish to possession. (3-20-97)
- ~~14~~**21.** **Hook.** A bent wire device, for the catching of fish, to which one (1), two (2), or three (3) points may be attached to a single shank. Up to five (5) hooks per line may be used, except where specifically prohibited. (3-20-97)
- 22.** **Hybrid Fish.** The offspring of two (2) different species or subspecies of fish. (8-1-11)T
- ~~15~~**23.** **Ice Fishing.** Fishing through an opening broken or cut through the ice. (3-20-97)
- ~~16~~**24.** **Length.** The length between the tip of the nose or jaw and the tip of the tail fin. (3-20-97)
- 25.** **Limit is 0 (Zero).** Fishing is allowed but the species listed in the rule or proclamation must be released after landing and may not be reduced to possession. (8-1-11)T
- ~~17~~**26.** **Motor.** Includes electric and internal combustion motors. (See Subsection 004.09 - Electric Motors Only.) (3-20-97)
- ~~18~~**27.** **Mouth of River or Stream.** The place where a river or stream enters a larger body of water. (3-20-97)
- ~~19~~**28.** **No Motors.** Fishing from a boat with a motor attached is prohibited. (3-20-97)
- ~~20~~**9.** **Possession Limit.** Maximum number of fish that may be lawfully in possession of any person. "Possession limit" shall apply to fish while in the field or being transported to the final place of consumption or storage. (3-20-97)
- ~~21~~**30.** **Reservoir.** The flat water level existing at any time within a reservoir basin. Unless noted otherwise, a stream flowing through the drawdown portion of a reservoir is not considered part of the reservoir. (3-20-97)
- ~~22~~**31.** **Season Limit.** The maximum number of fish that may be lawfully taken in any declared season.

(3-20-97)

32. Section. An area of a river, stream, or reservoir between specific boundary locations. (8-1-11)T

233. Sliding Sinker. A method of attaching a sinker to a device that slides freely on the main line. The line used to attach the sinker to the sliding device must be of lower breaking strength than the main line. (3-2-10)

2434. Snagging. Taking or attempting to take a fish by use of a hook or lure in any manner or method other than enticing or attracting a fish to strike with, and become hooked in, its mouth or jaw. Game fish which are hooked other than in the jaw or mouth must be released immediately. (4-6-05)

35. Special Rule Waters. Any water with a gear, season, or bag limit rule that is different from the regional general rules. (8-1-11)T

2536. Steelhead. Steelhead are defined as any Rrainbow trout longer than twenty (20) inches in length in rivers and streams in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage (excluding lakes and the Lemhi and the Pahsimeroi rivers), and the Clearwater River drainage (excluding that portion above Dworshak Dam, and lakes). Rainbow trout longer than twenty (20) inches in length with the adipose fin clipped (as evidenced by a healed scar) are defined as steelhead in the Snake River from Hells Canyon Dam upstream to Oxbow Dam, and in the Boise River from its mouth upstream to Barber Dam. (~~3-2-10~~)(8-1-11)T

2637. Tributary. A stream flowing into a larger stream or lake. (3-20-97)

2738. Trout. Includes the following trout family fishes: brown, cutthroat, golden, grayling, lake (Mackinaw), rainbow, splake, Sunapee; trout hybrids; and the landlocked forms of Chinook, coho, Atlantic and kokanee (blueback) salmon. (3-30-07)

2839. Unattended Line. A line not under the immediate surveillance by the angler. (3-20-97)

2940. Unprotected Nongame Fish. All fish species other than game fish and protected nongame fish. (3-30-07)

41. Upstream. Moving from a lower elevation towards a higher elevation point in the same stream. (8-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

101. RELEASE OF FISH.

No person shall release or allow the release of any species of live fish, or eggs thereof, in the state of Idaho without the permission of the director of the Idaho Department of Fish and Game, EXCEPT where no permission is required: (3-20-97)

01. Same Location -- Fish. When fish are being freed from a hook and released at the same time and place where caught. No released fish can be marked by any means, including with a tag, by removing fins or injuring with intent to leave a scar, without first obtaining a Scientific Collecting Permit. (~~3-20-97~~)(8-1-11)T

02. Same Location -- Crayfish. When crayfish are being released from a trap and released at the same time and place where caught. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

201. FISHING METHODS AND GEAR.

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

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

~~**02. Bait Restricted.** It is unlawful to fish with bait in waters designated as artificial flies and lures only; fly fishing only; or no bait. (3-30-97)~~

~~**032. Barbed Hooks.** It is unlawful to fish for sturgeon with barbed hooks. It is unlawful to fish for or take steelhead or *Chinook* salmon with barbed hooks in the Clearwater River drainage, Salmon River drainage, and Snake River drainage below Hells Canyon Dam. *It is unlawful to fish in no bait waters with barbed hooks.* (3-2-10)(8-1-11)T~~

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

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

065. Gaff Hook. It is unlawful to land fish of any species with a gaff hook except through a hole cut or broken in the ice in waters which have no length restrictions or harvest closures for that species or when landing nongame fish species taken with archery equipment. (3-20-97)(8-1-11)T

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

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

~~**098. Trapping and Seining Minnows or Crayfish.** It is lawful to take unprotected nongame fish, crayfish, and yellow perch with a minnow net, seine, or up to five (5) traps, subject to the following restrictions: (3-2-10)~~

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

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

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

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

~~402.~~ **Use of Bait.** It is unlawful to use live fish, leeches, frogs, salamanders, waterdogs or shrimp as bait, except that live crayfish and bull frogs may be used if caught on the body of water being fished. (5-8-09)

~~140.~~ **Use of Hands.** It is lawful to take bull frogs and crayfish with the hands. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

300. GENERAL FISHING SEASONS.

The following general seasons apply to all waters of the state, except as listed in ~~“Regional Exceptions.”~~ the Commission’s proclamation. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag, possession, and regional exceptions by proclamation. The proclamation is published in a brochure and is available at Department offices and through license vendors. (3-20-97)(8-1-11)T

01. Lakes, Ponds and Reservoirs (Including Alpine Lakes). Extends ONLY to the edge of flat waters, excluding small, unnamed irrigation diversion ponds, beaver ponds and mill ponds. (3-20-97)
OPEN ALL YEAR

02. Ditches and Canals. Man-made structures used to transport water for irrigation or hydropower purposes. (3-20-97)
OPEN ALL YEAR

03. Rivers and Streams. Small, unnamed irrigation diversion ponds, beaver ponds and mill ponds have the same season as the river or stream on which they are located.

~~Saturday of Memorial Day Weekend through November 30~~ OPEN ALL YEAR (4-6-05)(8-1-11)T

04. General Whitefish Season. Fishing gear or bait restrictions which apply to a river or stream section during the season open for other species apply during the whitefish season.

~~January 1—March 31 and: December 1—December 31~~

NOTE: Whitefish or brook trout may also be taken in any waters during seasons open for other species, including reduced bag limit or size restricted waters, closed to harvest, and catch-and-release waters. (4-6-05)(8-1-11)T

05. General Steelhead Season. See Rule Sections 400 through 499. (3-20-97)

06. General Salmon Season. See Rule Sections 500 through 599. (4-6-05)

07. Bullfrogs, Crayfish and Nongame Fish. Bullfrogs, crayfish, and nongame fish may be taken ONLY during the season set for the taking of game fish in those waters. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

401. STEELHEAD DEFINITION.

See Subsection 004.~~236.~~

(4-6-05)(8-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

404. IDENTIFICATION OF SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

01. Provisions for Processing and Transporting Steelhead. No person shall have in the field or in transit ~~any hatchery-produced anadromous steelhead trout from which that has been processed by removing the head or and tail has been removed.~~ unless the following conditions are met: (3-20-97)(8-1-11)T

- a.** The fish has been recorded on the taker's steelhead permit; (8-1-11)T
- b.** The fish is processed and packaged with the skin naturally attached to the flesh including a portion with a healed, clipped, adipose fin scar; and (8-1-11)T
- c.** The fish must be packaged in a manner that the number of fish harvested can be readily determined. (8-1-11)T

02. Restrictions on Processing and Transporting Steelhead. No person shall process steelhead until they are ashore and done fishing for the day. No person shall transport processed steelhead via boat. Any processed steelhead count towards an angler's possession limit while in the field or in transit. (8-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

500. ~~CHINOOK~~ SALMON.

501. ANADROMOUS SALMON DEFINITIONS.

01. Chinook Salmon. Anadromous (ocean run) salmon of the species *Oncorhynchus tshawytscha* in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage, and the Clearwater River drainage, (excluding lakes and the North Fork of the Clearwater River above Dworshak Dam), and the Boise River Drainages. (3-2-10)

02. Coho Salmon. Anadromous (ocean run) salmon of the species *Oncorhynchus kisutch* in the Snake River drainage below Hells Canyon Dam, the Salmon River drainage, and Clearwater River drainage (excluding lakes and the North Fork of the Clearwater River above Dworshak Dam). (8-1-11)T

03. Sockeye Salmon. Anadromous (ocean run) salmon of the species *Oncorhynchus nerka* in the Snake River drainage below Hells Canyon Dam and the Salmon River drainage. (8-1-11)T

502. SALMON LICENSES AND PERMITS.

01. Licenses. Any person fishing for salmon, except those expressly exempt, must have in his or her possession a valid fishing license. (4-6-05)

02. Permits. Any person fishing for, reducing to possession, or catching and releasing ~~Chinook~~ salmon must have a valid salmon permit in his or her possession. However, when a salmon is immediately released unharmed, or a jack salmon is reduced to possession, the angler is not required to make an entry on the permit. (4-6-05)(8-1-11)T

503. PERMIT VALIDATION.

When an ~~Chinook~~ adult salmon has been hooked, landed, and reduced to possession, the angler hooking the fish must immediately complete the following: (3-2-10)(8-1-11)T

- 01. Permit.** Cut out and completely remove one (1) numbered notch from the permit. (3-20-97)
- 02. Number Code.** Look up the number code from the location code list in Subsection 403.02 of these rules and write it in the space provided. (4-6-05)

03. **Date Entry.** Enter in the space provided, the month, and day the fish was caught. (3-20-97)

504. IDENTIFICATION OF SPECIES IN POSSESSION AND DURING TRANSPORTATION OR SHIPMENT.

01. Provisions for Processing and Transporting Salmon. No person shall have in the field or in transit ~~any Chinook hatchery-produced adult anadromous salmon from which that has been processed by removing the head or and tail has been removed.~~ unless the following conditions are met: ~~(4-6-05)~~(8-1-11)T

a. The fish has been recorded on the taker's salmon permit; (8-1-11)T

b. The fish is processed and packaged with the skin naturally attached to the flesh including a portion with a healed, clipped, adipose fin scar; and (8-1-11)T

c. The fish must be packaged in a manner that the number of fish harvested can be readily determined. (8-1-11)T

02. Restrictions on Processing and Transporting Salmon. No person shall process salmon until they are ashore and done fishing for the day. No person shall transport processed salmon via boat. Jack salmon may not be processed while in the field or in transit. Any processed salmon count towards an angler's possession limit while in the field or in transit. (8-1-11)T

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.11 - RULES GOVERNING FISH

DOCKET NO. 13-0111-1102P

NOTICE OF PROCLAMATION

AUTHORITY: In compliance with Section 36-105(3), Idaho Code, notice is hereby given that this agency is proposing to adopt by proclamation the 2011 Fall Chinook Fishing Seasons establishing seasons and limits for fall Chinook fishing in Idaho.

PUBLIC HEARING SCHEDULE: A number of public hearings and open houses have already occurred. The next public hearing before the Fish and Game Commission will be on November 9 at approximately 7 p.m. at the Salvation Army Kroc Center, 1765 W. Golf Course Road in Coeur d'Alene, Idaho.

FISH AND GAME COMMISSION PUBLIC HEARING

**Wednesday, November 9, 2011
approx. 7:00 p.m. (PDT)**

**Salvation Army Kroc Center
1765 W. Golf Course Road
Coeur d'Alene, Idaho**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed proclamation, contact W. Dallas Burkhalter at 208-334-3715.

Individuals with disabilities may request meeting accommodations by contacting the Director's office at the Idaho Department of Fish and Game directly at 208-334-5159 or through the Idaho Relay Service at 1-800-377-2529 (TDD).

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707
(208) 334-3715
Fax (208) 334-2148

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.12 - RULES GOVERNING COMMERCIAL FISHING

DOCKET NO. 13-0112-1101

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 36-104(b) and 36-804, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 proposed rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Remove mountain sucker from the list of fish species that may be commercially harvested.

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 funds 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 lack of an identified group to represent interested persons makes it infeasible.

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 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 26, 2011.

DATED this 29th day of August, 2011.

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 PROPOSED TEXT OF DOCKET NO. 13-0112-1101

010. DEFINITIONS.

01. Commercial Fishing. Fishing for, taking, or transporting fish or crustacea for the purpose of selling, bartering, exchanging, offering or exposing for sale. (7-1-93)

02. Commercial Fish Species. Except as permitted by the Director of the Department of Fish and Game under Subsection 100.03 of this rule, only the following fish species may be taken for commercial purposes: (4-6-05)

- a. Bridgelip sucker -- *Catostomus columbianus*. (7-1-93)
- b. Common carp -- *Cyprinus carpio*. (4-2-08)
- c. Chiselmouth -- *Acrocheilus alutaceus*. (4-2-08)
- d. Fathead minnow -- *Pimephales promelas*. (7-1-93)
- e. Goldfish -- *Carassius auratus*. (7-1-93)
- f. Lake trout -- *Salvelinus namaycush*. (4-2-08)
- g. Lake whitefish -- *Coregonus clupeaformis*. (4-2-08)
- h. Largescale sucker -- *Catostomus macrocheilus*. (4-2-08)
- i. Longnose dace -- *Rhinichthys cataractae*. (7-1-93)
- ~~j.~~ ~~Mountain sucker -- *Catostomus platyrhynchus*. (~~7-1-93~~)~~
- ~~k.~~ Northern pikeminnow -- *Ptychocheilus oregonensis*. (4-2-08)
- ~~l.~~ Peamouth -- *Mylocheilus caurinus*. (7-1-93)
- ~~m.~~ Redside shiner -- *Richardsonius balteatus*. (7-1-93)
- ~~n.~~ Speckled dace -- *Rhinichthys osculus*. (7-1-93)
- ~~o.~~ Tench -- *Tinca tinca*. (7-1-93)
- ~~p.~~ Tui chub -- *Gila bicolor*. (7-1-93)
- ~~q.~~ Utah chub -- *Gila atraria*. (7-1-93)
- ~~r.~~ Utah sucker -- *Catostomus ardens*. (7-1-93)

03. Commercial Crustacea Species. Except as permitted by the Director of the Department of Fish and Game under Subsection 100.03, only the Crayfish - species of the genus *Pacifastacus*, may be taken for commercial purposes. (7-1-93)

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. 13-0116-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2011.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Commission direction to work with trappers to determine if or how trapping closures near campgrounds and picnic areas could be adjusted; provide detail specifications on trap break-away devices; specify allowable jaw size for foothold traps in ground sets now that wolves have been delisted; and set wolf trap equipment specifications.

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 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.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the need to set wolf trap specifications now that wolves have been delisted, and informal negotiations with and input from trappers and trapping organizations were incorporated.

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

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 26, 2011.

DATED this 26th day of August, 2011.

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 OF DOCKET NO. 13-0116-1101

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. (4-7-11)

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: (4-7-11)

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. (4-7-11)

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. (4-7-11)

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. (4-7-11)

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. (4-7-11)

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. Cage or box live traps are permitted within three hundred (300) feet of designated public campgrounds, trailheads, or picnic areas as allowed by city, county, state, and federal law. ~~(4-7-11)~~(8-1-11)T

h. Place or set any ground set snare without a break-away device or cable stop incorporated within the loop of the snare. ~~(4-7-11)~~(8-1-11)T

i. Place or set any wolf snare without a diverter; or without a break-away device or cable stop incorporated within the loop of the snare. (8-1-11)T

j. Place any ground set incorporating a foothold trap with an inside jaw spread greater than nine (9) inches. (8-1-11)T

IDAPA 15 - OFFICE OF THE GOVERNOR
COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

15.02.02 - VOCATIONAL REHABILITATION SERVICES

DOCKET NO. 15-0202-1101

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 67-5407(e), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 change in the ICBVI's Vocational Rehabilitation policy is required as a result of ICBVI's federal review conducted by the federal Rehabilitation Services Administration in 2010. The policy changes will put ICBVI in compliance with 34 CFR 361.41(a), 34 CFR 361.41(b)(2), and 34 CFR 361.54(b)(3)(ii). ICBVI is adding a policy outlining Information and Referral; changing the Application for VR services to indicate all ways that a client is considered to have applied, and removing the policy citing financial participation for clients that received SSA benefits, as this is not allowed under federal regulations.

Changes to the VR Payment Policy related to maintenance will bring ICBVI into alignment with the provision of services necessary to reasonably allow VR clients to participate in the VR program.

ICBVI is adding a policy that defines what the information and referral process is for ICBVI's VR program. ICBVI is changing the wording related to its policy for VR services to accurately reflect all ways that a client can demonstrate that they have applied and are in compliance with the federal CFRs noted above. The removal of the section citing SSA beneficiaries are required to participate financially makes the policy compliant with federal CFRs governing the VR program.

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 rule changes, and the fact that changes are necessary to comply with requirements disclosed in a federal review of the program.

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 Nanna Hanchett, Rehab Services Chief, at (208) 639-8364.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 23rd day of August 2011.

Angela Jones, Administrator
Idaho Commission for the Blind and Visually Impaired
341 W. Washington St.
P. O. Box 83720
Boise, ID 83720-0012
Phone: (208) 639-8373
Fax: (208) 334-2963

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-0202-1101

011. ABBREVIATIONS.

- | | | |
|----------------|---|----------------|
| 01. | ATC. Assessment and Training Center. | (4-2-08) |
| 02. | CFR. Code of Federal Regulations. | (4-2-08) |
| 03. | ICBVI. The Idaho Commission for the Blind and Visually Impaired. | () |
| 034. | IPE. Individual Plan for Employment. | (4-2-08) |
| 045. | SSDI. Social Security Disability Insurance. | (4-2-08) |
| 056. | SSI. Supplemental Security Income. | (4-2-08) |
| 07. | VR. Vocational Rehabilitation. | () |

(BREAK IN CONTINUITY OF SECTIONS)

101. INFORMATION, REFERRAL, AND APPLICATION FOR VR SERVICES.

~~Any blind or visually impaired or functionally blind individual may apply for vocational rehabilitation services. To apply for vocational rehabilitation services, such an individual must:~~ Any agency, organization, individual (including self) or the One-Stop delivery system may refer an individual to ICBVI for services. ~~(4-2-08)()~~

01. ~~Application. Meet with a vocational rehabilitation counselor and sign the application. An individual is considered to have applied for vocational rehabilitation services with the Commission when that individual has completed the application and acknowledged client rights and responsibilities.~~ Required Information. The referring agent shall provide the local ICBVI office with the following information on the referred individual: ~~(4-2-08)()~~

- | | | |
|----|---|-----|
| a. | <u>Full name - required.</u> | () |
| b. | <u>Address and e-mail address, if available.</u> | () |
| c. | <u>Telephone numbers where referred individual may be reached - required.</u> | () |
| d. | <u>Social security number, if available.</u> | () |

- e. Date of birth - required. ()
- f. Contact person's name, phone number and referral source, if available. ()
- g. Guardian name, telephone number and address, if available. ()
- 02. ~~Evidence. Assist in providing medical and psychological reports to substantiate disability and functional limitations. If the client is an SSA beneficiary, assist in providing evidence of receipt of SSA benefits.~~ Contact by ICBVI. Each referred individual must be seen or contacted by ICBVI staff within three (3) working days of the referral's receipt by scheduling an initial appointment, or documentation in a case note of telephone contact or email contact. ICBVI staff will inform the referral of application requirements and information necessary to initiate an assessment for determining eligibility. (4-2-08)()**
- 03. ~~Availability. Be available to complete assessment process.~~ Right to Apply. All individuals have the right to apply for ICBVI VR Services and to have a decision made regarding their eligibility for such services. (4-2-08)()**
- 04. ~~Partner. Be an active and full partner in the vocational rehabilitation process.~~ Availability and Residence Requirements. Individuals must be available and legally permitted to join the labor market prior to eligibility determination. Residence requirements will not exclude any individual present in the state from vocational rehabilitation services. Individuals must have legal status in the United States and be authorized to work. (4-2-08)()**
- 05. ~~Intention. Intend to achieve an employment outcome.~~ Work Status and Identity Documentation. Documents that establish work status (employment eligibility) and identity must be consistent with Form I-9, Immigration and Naturalization Services (Form I-9, Employment Eligibility Verification). (4-2-08)()**
- 06. Application Forms. A referral or application is not required for an appointment with a VR counselor. An application form shall be supplied upon request from any ICBVI office. Application forms shall be available through referral and outreach programs throughout the state, including the One-Stop Centers. ()**
- 07. Conditions for Applying. An individual is considered to have applied for ICBVI VR Services when the following conditions have been met. The individual, or individual's representative, as appropriate, has: ()**
- a. Completed and signed an ICBVI VR Application; or ()**
- b. Signed and dated a request for ICBVI VR Services; or ()**
- c. Completed a common intake form in a One-Stop Center requesting ICBVI VR Services; or ()**
- d. Otherwise requested ICBVI VR Services and provides ICBVI the information necessary to initiate an assessment to determine eligibility, is available to complete the assessment process, and intends to achieve an employment outcome. ()**

(BREAK IN CONTINUITY OF SECTIONS)

300. PAYMENT POLICY.

01. Upper Limits. In order to ensure a reasonable cost to the Commission's vocational rehabilitation program for provision of certain enumerated services, and in accordance with 34 CFR 361.50, the Commission hereby establishes upper limits on dollar amounts it will contribute to clients for certain categories of services provided as part of an implemented IPE pursuant to Section 210 of these rules: (4-2-08)

a. Education expenses - public in-state institutions. Education expenses, including fees, tuition, and health insurance costs, for enrollment at public in-state institutions: Ninety percent (90%) of the actual costs for two (2) semesters per federal fiscal year at the institution of enrollment. (5-8-09)

b. Education expenses - private in-state institutions. Education expenses, including fees, tuition, and health insurance costs, for enrollment at Idaho private in-state colleges, private in-state vocational technical schools, private in-state universities, and other private in-state education and training institutions and including enrollment in summer school: Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at Boise State University, Idaho State University, or University of Idaho, whichever is higher. If the client receives any grant or scholarship, it shall be applied first for tuition or fees before any expenditure of funds by the Commission. (5-8-09)

c. Education expenses - out-of-state institutions. Education expenses, including fees and tuition, for enrollment at out-of-state colleges, universities, vocational technical schools, and other education and training institutions, and including enrollment in summer school: Ninety percent (90%) of actual costs for two (2) semesters per federal fiscal year up to an amount not to exceed actual costs per federal fiscal year at Boise State University, Idaho State University, or University of Idaho, whichever is higher. If the client receives any grant or scholarship, it shall be applied first for tuition or fees before any expenditure of funds by the Commission. (5-8-09)

i. If the client must attend an out-of-state institution because the course of study is not offered within the state of Idaho, the Commission, at its discretion may pay the "usual and customary" charges for fees and tuition up to the established limits. (4-2-08)

ii. If the course of study is offered in-state, but because of the additional costs caused by the accommodation for disability, it would be more cost effective for the Commission to have the client attend the out-of-state educational institution, the Commission, at its discretion, may pay the usual and customary fees and tuition charges for the out-of-state educational institution up to the established limit. (4-2-08)

iii. If the client chooses to attend an out-of-state institution even though the course of study is offered within the state of Idaho, the Commission will only pay an amount equal to the maximum cost for fees and tuition, up to the established limit, at the in-state-institution offering the course of study that is closest geographically to the Commission regional office assisting the client. (4-2-08)

d. Books and supplies. Actual costs of required books and supplies, including expenditures for books and supplies required for attendance of summer school. If the client receives any grant or scholarship, it shall be applied first for tuition or fees, books and supplies, in this order, before any expenditure of funds by the Commission. (5-8-09)

e. Medical exams including written report. (4-2-08)

i. Specialist exam by M.D.: Two hundred dollars (\$200) plus actual cost of related procedures such as x-rays. (4-2-08)

ii. Psychological exam by licensed psychologist: Two hundred dollars (\$200) plus actual cost of psychometric tests. (4-2-08)

iii. Ophthalmologist/Optometrlist exam: Two hundred dollars (\$200) plus actual cost of visual field exam or other necessary tests. (4-2-08)

(1) Low vision exam: One hundred twenty-five dollars (\$125). (4-2-08)

(2) Follow-up low vision consultation: Fifty-five dollars (\$55). (4-2-08)

(3) Eye report: Twenty-five dollars (\$25). (4-2-08)

iv. Eye glasses or contact lenses: Eighty dollars (\$80) for frames and the usual and customary cost for

- lenses and contact lenses. Nine hundred dollars (\$900) for bioptics. (5-8-09)
- v. Audiologist exam: Eighty-five dollars (\$85). (4-2-08)
 - vi. Physical exam (general basic medical): Sixty-five dollars (\$65). (4-2-08)
 - f. Psychotherapy/Counseling sessions: Up to ten (10) hourly sessions at eighty dollars (\$80) per hour. (4-2-08)
 - g. Medication and medical supplies (including diabetic supplies): Three hundred dollars (\$300) per month for up to three (3) months, during which client must apply for reduced cost or free medication programs provided by drug companies or other sources of comparable benefits, including Medicaid, Medicare Part D, or other insurance. (4-2-08)
 - h. Dental work, including but not limited to cleaning, fillings, extractions, crowns, and dentures: Five hundred dollars (\$500) per case. (4-2-08)
 - i. Transportation. (4-2-08)
 - i. Public conveyance (bus, van, airfare): Actual cost. (4-2-08)
 - ii. Transportation costs associated with personal vehicle usage with or without personal driver: Two hundred dollars (\$200) per month within a twenty (20) mile radius (in-town commuting) and three hundred dollars (\$300) per month for commuting from greater than a twenty (20) mile radius (out-of-town commuting). The Commission does not provide funds for a client's purchase of a motor vehicle. (5-8-09)
 - iii. Cab subsidy programs (Scrip) must be used by clients where available. (4-2-08)
 - j. Maintenance: ~~One Three~~ thousand ~~five hundred~~ dollars (~~\$1,500~~~~3,000~~) per federal fiscal year and no more than ~~three five~~ hundred dollars (~~\$3~~~~500~~) per month. There is no limit on the number of months a client can receive maintenance up to the ~~one three~~ thousand ~~five hundred~~ dollar (~~\$1,500~~~~3,000~~) limit per federal fiscal year. These maximums also apply to room and board for post secondary education and to any rent payments. (4-2-08)()
 - i. The Commission will not pay maintenance for basic living expenses incurred by a client that are not directly related to the client's participation in an IPE for vocational rehabilitation services. (4-2-08)
 - ii. Maintenance for If a client attendance at is participating in the Assessment and Training Center (ATC) and is not commuting to ATC for training, the maximum per month is Three hundred dollars (\$300) per ATC term for basic living expenses incurred during the ATC term which are directly related to client's ATC attendance and participation for maintenance up to the three thousand dollars (\$3,000) per federal fiscal year. Over three hundred dollars (\$300) a month or three thousand dollars (\$3,000) per fiscal year requires approval from the VR Services Chief. Maintenance will not be paid during the ATC breaks. (4-2-08)()
 - k. Copy fees: Fifteen dollars (\$15) for obtaining a copy of any report or other record from an outside agency or entity required by the Commission in order to determine a client's eligibility or otherwise provide vocational rehabilitation services. (4-2-08)
 - l. Tools and equipment: One thousand dollars (\$1,000) per case. Value of tools and equipment provided to client from existing Commission inventory will count towards the one thousand dollar (\$1,000) limit. If there is a change in client's employment outcome, the client shall return the original tools and equipment to the Commission. The Commission will not provide or purchase additional tools or equipment for the client for any new employment outcome until the original tools and equipment have been returned to the Commission. (4-2-08)
 - m. On-the-Job training fees: Three thousand dollars (\$3,000). (4-2-08)
 - n. Computers including hardware and software: One thousand dollars (\$1,000) per case. If the

Commission determines that a change in computers is necessary, the client shall return the original computer to the Commission. The Commission will not provide or purchase a new or different computer for the client until the original computer has been returned. (4-2-08)

o. Self-employment plans: Three thousand dollars (\$3,000). (4-2-08)

p. Child care: Three hundred dollars (\$300) per child per month. The client shall apply and use Department of Health and Welfare child care funding as a comparable benefit before any expenditure of Commission funds towards IPE related child care. (4-2-08)

02. Exclusion of Surgery and Organ Transplantation. (4-2-08)

a. The Commission does not provide funds for a client's surgery when the surgery is the only service required for the client to achieve an employment outcome or otherwise return to work. (4-2-08)

b. The Commission does not provide funds for a client's organ transplantation. (4-2-08)

03. Authorization to Purchase. When purchasing services from a vendor, the Commission requires a written authorization be issued prior to, or on the beginning date of, service. If services are provided without an approved written authorization to purchase, the Commission reserves the right to refuse payment on the vendor's invoice. Verbal authorization for a service may only be given by the rehabilitation services chief or the Commission administrator. If a client fails to show up for an appointment, the client shall be responsible for payment of any charges resulting from the client's failure to show up for the appointment. (4-2-08)

04. Exception Policy. Any and all exceptions to the upper limits established by Subsection 300.01 of these rules will be reviewed on an individual case basis, and require approval by the rehabilitation services chief of the Commission. (4-2-08)

IDAPA 15 - OFFICE OF THE GOVERNOR
DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION

**15.04.01 - RULES OF THE DIVISION OF HUMAN RESOURCES
AND IDAHO PERSONNEL COMMISSION**

DOCKET NO. 15-0401-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2011.

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 67-5309, 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 19, 2011.

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

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

This rulemaking is necessary to reflect the expansion of veterans' preference for disabled veterans to require an interview when their names appear in the top 25 of a hiring list. This change brings the rules into compliance with Title 65 Chapter 5 which was changed in the 2011 legislature.

This rulemaking will properly distinguish that temporary service would apply towards entrance probation and acting appointment service would apply towards promotional probation. This is in line with the legislation that was passed in the 2011 legislature amending Section 67-5309, Idaho Code.

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

To comply with deadlines in amendments to governing law or federal programs. This rulemaking aligns administrative rule with the statute changes adopted by the 2011 Legislature.

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 temporary and proposed changes are only to correct the rules so they align with Idaho Code.

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 Donna Weast at 208-854-3079.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

Vicki Tokita
Administrator
Division of Human Resources
304 N. 8th Street
P.O. Box 83720
Boise, ID 83720-0066
Phone: 208-334-3900
Fax: 208-854-3088

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 15-0401-1101

102. PLACEMENT ON REGISTER.

01. Score Order. Eligible candidates will be placed on the register for a given classification ranked in descending numerical order based on their final score on the examination for such classification. (5-8-09)

02. Veterans' Preference. Eligible veterans or surviving spouses entitled to five (5) point preference will be placed on the open competitive register in accordance with their final score on the examination augmented by preference points. (Ref. Rule Subsection 093.03 and Section 65-504, Idaho Code) (5-8-09)

03. Disabled Veterans' Preference. Eligible ten percent (10%) or more disabled veterans, Purple Heart recipients, or surviving spouses entitled to ten (10) point preference will be placed on the open-competitive register in order of their final score on the examination augmented by preference points. Veterans who have a current service-connected disability of thirty percent (30%) or more will be offered an interview when their final score on the hiring list places them within the top ~~ten~~ **twenty-five (+025)** qualified candidates. If more than ten (10) thirty percent (30%) or greater disabled veterans place in the top ~~ten~~ **twenty-five (+025)** qualified scores of a hiring list, at least ten (10) will be offered an interview. (Ref. Rule Subsection 093.03 and Section 65-504, Idaho Code) ~~(5-8-09)~~**(7-1-11)T**

04. Veterans' Preference Points for Initial Appointment Only. The additional points added by reason of veterans' preference will be used the first time a qualified veteran is hired by a state agency and not for the purpose of promotions. (Ref. Section 65-504, Idaho Code) Initial appointments do not include: (5-8-09)

- a. Jobs held by patients, inmates, or students employed at a state institution; (5-8-09)
- b. Temporary or casual employment; or (5-8-09)
- c. An office filled by election. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

150. PROBATIONARY PERIODS.

01. Probationary Period Required. Except as provided in Section 040 of these rules, every appointment and promotion to a classified position is probationary, or in the absence of adequate registers, provisional. (5-8-09)

02. Types of Probationary Periods. The probationary period serves as a working test period to provide the agency an opportunity to evaluate a probationary employee's work performance and suitability for the position. There are three (3) types of probationary periods: (5-8-09)

a. Entrance probation is the probationary service required of an employee at the time of his original appointment or any subsequent appointment to state classified service excluding reinstatement and transfer, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. (5-8-09)

b. Promotional probation is the probationary service required when an employee is promoted, the duration of which is one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who must serve two thousand eighty (2,080) hours. (5-8-09)

c. Voluntary probation is an agreement between employees and the appointing authority for interagency employment actions such as reinstatement, transfer, or voluntary demotion. A voluntary probation is not to be used for employment actions within the agency. The probationary period is negotiable but may not exceed one thousand forty (1,040) hours of credited state service except for peace officers (defined in Section 19-5101, Idaho Code), who may serve up to two thousand eighty (2,080) hours. (5-8-09)

03. Extension of Probationary Period. Upon written request demonstrating good cause, the administrator may extend the probationary period of an employee for an additional specified period not to exceed one thousand forty (1,040) hours of credited state service. Extension must occur before an employee has worked one thousand forty (1,040) hours or two thousand eighty (2,080) hours for peace officers. (Ref. Section 67-5309(j), Idaho Code) (5-8-09)

04. Interruption of Probationary Period. The probationary period in any classification must be completed within a single agency uninterrupted by termination (Ref. Rule Subsection 152.02) or dismissal (Ref. Rule Section 190). An employee who separated during the probationary period must begin a new probationary period upon reappointment or promotion. (5-8-09)

05. ~~Acting and Temporary Service Credit.~~ At the request of the hiring agency, the administrator will allow temporary ~~and acting appointment~~ service time in a given classification to be used toward fulfilling the entrance probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The temporary ~~or acting appointment~~ duties must be substantially the same as the regular permanent appointment. (Ref. Section 67-5309(x), Idaho Code, and Rule Sections ~~122 and 129~~ and Subsection 150.01) ~~(5-8-09)~~ (7-1-11)T

06. Acting Service Credit. At the request of the hiring agency, the administrator will allow acting appointment service time in a given classification to be used toward fulfilling the promotional probationary requirement in that classification as established in Section 67-5309(j), Idaho Code. The acting appointment duties must be substantially the same as the regular permanent appointment. (Ref. Section 67-5309(y), Idaho Code, and Rule Sections 129 and Subsection 150.01) (7-1-11)T

IDAPA 15 - OFFICE OF THE GOVERNOR
IDAHO STATE LIQUOR DIVISION
15.10.01 - RULES OF THE IDAHO STATE LIQUOR DIVISION
DOCKET NO. 15-1001-1101
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 23-206(b), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 Liquor Division needs to make numerous housekeeping revisions to its administrative rules in order to render the rules more accurately coinciding with long-standing agency business practices and procedures. The Liquor Division's administrative rules have not been revised since 1997. The Division desires to make changes in the definitions to more accurately reflect terminology used in ISLD day-to-day operations and make corresponding changes as subsequently referenced in the rules. ISLD also seeks to make numerous other changes in the rules to clarify ambiguous language, eliminate unnecessary terms and eliminate or modernize obsolete terms and language relating to its day-to-day business operations.

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 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 Jeffrey R. Anderson, Director, (208) 947-9402.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 29th day of August 2011.

Jeffrey R. Anderson, Director
Idaho State Liquor Division
1349 Beechcraft Court
P. O. Box 179001, Boise, ID 83717-9001
Phone: (208) 947-9402 / Fax: (208) 947-9401

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 15-1001-1101

000. LEGAL AUTHORITY.

These rules are adopted by the Director of the Idaho State Liquor Division pursuant to Section 23-206(b), Idaho Code, and are written in accordance with Article III, Sections 24 and 26, Idaho Constitution; and the Idaho Administrative Procedures Act. These rules relate to the sale of packaged ~~l~~ liquor as defined in Subsection 004.09 of these rules, and to the general operations of the Idaho State Liquor Division. (3-20-97)()

001. TITLE AND SCOPE.

The title of this chapter is: IDAPA 15.10.01, "Rules of the Idaho State Liquor Division," Office of the Governor. These rules ~~are intended to~~ provide guidance ~~to persons doing business with~~ regarding operational aspects of the ~~Idaho State Liquor~~ Division and support and enforce applicable terms in the Idaho Liquor Act, Title 23, Idaho Code. Promulgation of new rules and revision of existing rules will be a continual process in accordance with the Idaho Administrative Procedures Act, Title 67, Chapter 52, Idaho Code. (3-20-97)()

(BREAK IN CONTINUITY OF SECTIONS)

004. DEFINITIONS.

The following terms, whenever used in these rules, shall have the meanings ascribed thereto, unless the context in which they are used clearly requires otherwise. (3-20-97)

01. Bailment. A system of storing Supplier-owned inventory in state-operated Warehouses. The ~~control authority~~ Division holds the Liquor in trust until stock is needed at retail. (3-20-97)()

02. Central Office. The main business office and Warehouse of the Idaho State Liquor Division. (3-20-97)

03. Close Relative. A person related by blood or marriage within the second degree of kinship. (3-20-97)

04. Contract Store. Distributing Stations, as defined in Subsection 004.08 of these rules, whose Liquor inventory is owned by the state under an ~~an~~ contractual agreement. (3-20-97)()

05. Delisting. The process of discontinuing any product offered for sale resulting in the product's removal ~~of liquor~~ from the Division's Product Line. The decision to retain or delist a product rests solely with the Director. (3-20-97)()

~~2506.~~ **Director.** The chief executive officer of the ~~Idaho State Liquor~~ Division. (3-20-97)()

~~067.~~ **Division.** The Idaho State Liquor Division. (3-20-97)

~~078.~~ **Distressed Liquor.** Liquor which is not in its original state of packaging. (3-20-97)

~~089.~~ **Distributing Station.** A privately owned business that sells Liquor. It operates under an ~~an~~ contractual agreement with the Division pursuant to Title 23, Chapter 3, Idaho Code. Distributing Stations may also be termed Contract Stores ~~or private stores.~~ (3-20-97)()

~~0910.~~ **Liquor.** Liquor controlled by the Division shall have the definition ascribed to it by Section 23-105, Idaho Code, excluding certain beers as defined in Section 23-1002, Idaho Code, and certain Wines as defined in Section 23-1303, Idaho Code. (3-20-97)

Codified Subsection 004.10 has been moved and renumbered to Subsection 004.25

11. Licensee. Person authorized to sell beer or Wine by the drink or by the bottle, Liquor by the drink, or any combination thereof. (3-20-97)

12. **Listing (Listed).** Liquor that is carried or approved to be carried in the Division's Product Line. (3-20-97)
13. **Political Office.** A public office for which partisan politics is a basis for nomination, election, or appointment. (3-20-97)
14. **Price Quotation.** Written verification of detailed product information submitted to the Division by ~~vendors~~ Suppliers. (3-20-97)()
- ~~15. **Private Store.** Distributing station whose inventory is owned by the station's Special Distributor.~~ (3-20-97)
16. **Product Line.** ~~Liquor which is kept in continual inventory and sold~~ Items offered for sale by the Division. (3-20-97)()
17. **Promotional Samples.** Liquor furnished by the liquor industry to local representatives for the purpose of promoting the product which must be attached to another Liquor product in the liquor store as a value added promotion. (3-20-97)
18. **Retail Store.** Any State Store or Distributing Station. (3-20-97)
19. **Samples.** Liquor furnished by the liquor industry to ~~local~~ Supplier ~~Representatives~~ for the purpose of promoting the product. (3-20-97)()
20. **Shortage.** Any amount of cash or Liquor less than the true balance as maintained by the Central Office. Liquor Shortages shall be based on current retail value. (3-20-97)
21. **Special Distributor (Distributor).** A private business owner authorized to operate a Distributing Station. A Special Distributor is not a state employee. (3-20-97)
22. **Special Distributor Agreement (Agreement).** The contract signed by a Special Distributor acknowledging the conditions and terms for operation of a Distributing Station in accordance with Idaho Code and the rules of the Division. (3-20-97)
23. **Special Order.** Any item not ~~carried in~~ regularly offered as part of the Division's Product Line. (3-20-97)()
24. **State Store.** A Retail Store that sells Liquor. It is operated by state employees under the direct supervision of the Division. (3-20-97)
25. **Vendor Supplier.** Any manufacturer, rectifier, importer, wholesaler or Supplier of alcoholic Liquor, Wine, or related products offered for sale by the Division. (3-20-97)()
- ~~25. **Liquor Industry Supplier Representative.** An individual, company, or entity authorized to represent a vendor Supplier in the state of Idaho. ~~This~~ A Supplier Representative may be an individual, a group of individuals operating as a broker~~age-~~ firm or may be an direct employee of ~~a vendor~~ the Supplier. A Liquor Supplier Representative must obtain an annual Supplier Representative permit from the Division. (3-20-97)()~~
26. **Warehouse.** The main Division distribution center and satellite distribution points operated by the Division. ()
27. **Wine (Table Wine).** Alcoholic beverages defined in Sections ~~23-105(e) and~~ 23-1303(a), Idaho Code. (3-20-97)()
28. **Wine Gallon.** The liquid measure equivalent to the volume of two hundred thirty-one (231) cubic inches or one hundred twenty-eight (128) ounces. (3-20-97)

005. -- 009. (RESERVED)

010. RETAIL STORES.

01. **Site Location.** Based on the criteria set forth in this section and in accordance with Sections 23-301 and 23-302, Idaho Code, the Division will select an appropriate Retail Store site to adequately serve the community. (3-20-97)

~~a. State stores will generally be established in larger cities of the state where sales volume cost justifies adequate profitable operation. (3-20-97)~~

~~b. Special distributors will generally be contracted in the smaller cities of the state. However, special distributors who meet or exceed Division operating expectations, and whose sales volume has grown to exceed minimum state store sale thresholds, will not be denied a special distributor agreement because of their larger size of operation. (Sections 23-301 and 23-302, Idaho Code.) (3-20-97)~~

02. **Site Selection Criteria.** The following criteria will be used in selecting a location for a new Retail Store. (3-20-97)

a. Public acceptability of location in accordance with Sections 23-301 and 23-302, Idaho Code. (3-20-97)

b. Location and suitability of premises. (3-20-97)

c. Lease amount may not be the sole determining factor in site selection; final selection will be determined at the discretion of the Director. (3-20-97)

d. Compliance with local zoning. (3-20-97)

03. **Customer Refunds and Exchanges.** No cash refunds will be authorized without prior approval of the Director or his authorized agent. (3-20-97)

a. Liquor may be exchanged for other Liquor of the same or higher price upon approval of the store manager and presentation of a valid receipt. (3-20-97)

b. Liquor brought in for exchange or refund must have been purchased in Idaho through the Division and must have the official Idaho seal as prescribed by the Division. (3-20-97)

c. A re-shelving charge may be assessed on all returned items in accordance with Section 23-311, Idaho Code. (3-20-97)

04. **Disabled Customers.** Appropriate special services, in accordance with the Americans with Disabilities Act, will be provided to disabled customers. (3-20-97)

05. **Special Orders.** Customers seeking Liquor not carried in the Division's Product Line may place a Special Order for such Liquor. (3-20-97)

a. The order must be picked up in total within one (1) week's time after notification by the store manager. Orders not picked up within one (1) week following such notification are subject to forfeiture of deposit and the Liquor may be placed on the shelf for sale. (3-20-97)

b. Order cancellations will be honored if done within seven (7) calendar days from the date the order was placed and, if the cancellation is accepted by the ~~vendor~~ **Supplier**. (3-20-97)()

c. A deposit or a percentage of the order price, as specified by the Director, may be required before a Special Order is placed. (3-20-97)

d. If the Liquor is not available within ninety (90) days, a customer may request a deposit refund if the cancellation is accepted by the ~~vendor~~ **Supplier**. (3-20-97)()

06. Prices. All prices will be in accordance with the published price list set by the Director in accordance with Section 23-207(h), Idaho Code. (3-20-97)

07. Distressed Liquor. Price adjustments can be made on Distressed Liquor with the approval of the Director or his authorized agent. (3-20-97)

08. Hours and Days of Operation. ~~Standard Retail~~ Store hours **and days of business operation** shall be ~~from 11 a.m. to 7 p.m. Monday through Saturday and shall be set by the Director~~ in accordance with Section 23-307, Idaho Code. ~~Special hours of operation may be adjusted as approved by the Director or his authorized agent.~~ (3-20-97)()

09. Customer Response Cards. Each store will have customer response cards for customers to use when filing comments or complaints. These cards will be pre-addressed to the Division. The Director or his authorized agent shall investigate all comments and promptly respond to the customer. (3-20-97)

10. Audits. Designated Division personnel shall perform periodic inspections of all Retail Stores. Such inspections may be on an unannounced basis and may include physical inventory counts with the assistance of the store manager or authorized agent to assess the suitability of inventory levels and product mix and other evaluation procedures. (3-20-97)

11. Admission to State Store. To protect the assets of a State Store, to enhance the safety of Division personnel and the public, and to aid in the performance of the Division's duties, State Store personnel may refuse a person entry into a State Store, may require a person to leave a State Store, or may take other actions as are appropriate to cause the removal of a person from a State Store where such person's presence in the State Store is disrupting performance of the Division's duties or is inconsistent with the Division's charge to curtail the intemperate use of alcoholic beverages. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

~~**012. PRIVATE STORES.**
Private stores will be allowed when the Director finds it to be in the public's best interest. Existence of these stores will be limited to extraordinary circumstances. (3-20-97)~~

~~**013.**~~ **CONTRACT STORES.**

01. Fiduciary Responsibility. Any and all unremitted monies collected by the Contract Store are held in trust for the Division, and upon their receipt by the Contract Store, are assigned to the Division in accordance with Section 23-401, Idaho Code. (3-20-97)

02. Liquor Shortage. The Contract Store must pay the monetary value of any Shortage to the Division immediately after receipt of the request for payment from the Division showing its calculation of the Shortage. (3-20-97)

a. If the Contract Store disputes the existence, amount of, or responsibility for Liquor or cash Shortages, the Contract Store may request a hearing before the Director. (3-20-97)

b. Any payment made by the Contract Store for Liquor Shortages may be refunded in whole or in part if the Contract Store's position is upheld by the Director. (3-20-97)

03. Compensation. For Contract Store, compensation will be the gross profit allowance set by the Division. Compensation will vary based on sales volume. (3-20-97)

0143. SALES TO LICENSEES.

To be eligible to purchase Liquor at discount (Section 23-217, Idaho Code) a Licensee shall obtain a no cost purchase order permit from any State Store or Distributing Station. (3-20-97)()

01. Valid Permit Term. The permit shall remain valid only as long as the permit holder is an authorized Licensee as defined in Section 23-902(e), Idaho Code. (3-20-97)()

02. Permits Are Not Transferable. Permits are not transferable and will automatically terminate on suspension, revocation, sale, lease, or transfer of the liquor license. (3-20-97)()

0154. -- 019. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

021. VENDORS SUPPLIERS.

01. Price Quotations. All vendors Suppliers must submit a Liquor Price Quotation, on forms prescribed by the Division, for every item they have Listed with the Division. (3-20-97)()

a. All Price Quotations must be submitted to the Division by certified mail or electronic transmission. (3-20-97)

b. Price change quotations must be submitted sixty (60) days in advance of any price changes. (3-20-97)

02. Warranties. Vendor Supplier warranties will conform to the requirements of the Bureau of Alcohol, Tobacco and Firearms Tax and Trade Bureau of the Internal Revenue Service. (3-20-97)()

03. Liquor Shipments. Pursuant to Sections 23-203(a), 23-203(b) and 23-207(d), Idaho Code, all Liquor transported into the state of Idaho shall be under the direction of the Division. (3-20-97)

a. Such Liquor shall be transported directly to, and only to, the Division's Warehouse. (3-20-97)

b. It is a violation of Sections 23-203(a), 23-203(b) and 23-207(d), Idaho Code, for any vendor Supplier or other party to ship Liquor into the state of Idaho for purposes not authorized by the Director, or to any location other than the Division's Warehouse. (3-20-97)()

c. The Division reserves the right to select the mode of transportation for all Liquor within the state of Idaho. (3-20-97)

04. Title to Liquor, Wines and Related Products. The title to liquor Product Line items delivered to the Division passes from the vendor Supplier to the Division when the Division accepts the liquor product, unless Product Line items are delivered directly to Bailment status. (3-20-97)()

a. Liquor The Division reserves the right to conduct quality tests, or to inspect products directly ordered or withdrawn from Bailment will be received subject to the right of the Division to make tests and inspections thereof at any time. (3-20-97)()

b. The Division reserves the right at any time to reject any liquor Product Line item if, upon tests and inspections, the liquor it does not conform to requirements. (3-20-97)()

c. Upon rejection by In the event the Division rejects any delivery, ownership of such property shall automatically vest with products refused will remain with the vendor or transportation company depending upon circumstances and cause of rejection Supplier. It shall be the Supplier's responsibility to remove or relocate any refused products. (3-20-97)()

05. **Liquor Product Returns.** Liquor, Wine, or related products may be returned to ~~vendors~~ Suppliers by the Division, in full or partial cases, for “ordinary and ~~un~~usual commercial reasons” in accordance with the ~~Bureau of Alcohol, Tobacco and Firearms~~ Tax and Trade Bureau of the Internal Revenue Service regulations. (3-20-97)()

a. The ~~vendor~~ Supplier shall immediately reimburse the Division the full invoice cost plus an additional amount, fixed by the Division, as reimbursement for the Division’s expense in shipping to and from its stores and Warehouse. (3-20-97)()

06. **New Listings.** New Listings shall be added at the discretion of the Director pursuant to Sections 23-203 and 23-207, Idaho Code. (3-20-97)

a. For new products to be considered, Vendors Suppliers must submit Price Quotations sixty (60) days in advance of any price change in order to have their product considered for listing and other requested information as shown in the Division’s Listing procedure. (3-20-97)()

b. New Listings will be given one (1) year from the time of Listing to attain a minimum quota as set by the Division. (3-20-97)

07. **Delisting.** Delistings shall be at the discretion of the Director pursuant to Sections 23-203 and 23-207, Idaho Code. (3-20-97)

a. All items Listed with the Division must maintain a minimum quota in order to insure continued distribution Listing in Idaho. (3-20-97)()

b. A list of minimum quotas by class is available upon request from the Division. (3-20-97)

08. **Resident Supplier Representatives.** All ~~vendors~~ Suppliers doing business with the Division shall have resident representation. (3-20-97)()

a. Vendors Suppliers shall be limited to five ten (510) representatives, one (1) of whom must be a resident of Idaho, who will be designated the primary Supplier Representative. (3-20-97)()

b. One (1) Idaho A resident Supplier Representative shall be designated as the primary representative and shall be the direct representative of that vendor cannot have been convicted of any felony. (3-20-97)()

c. In the event that the primary Idaho resident Supplier Representative position becomes vacant, it must be filled within sixty (60) days. (3-20-97)()

09. **Supplier Representative Permits.** ~~Resident~~ Supplier Representatives must obtain an annual permit from the Division. (3-20-97)()

a. Permits must be renewed January 1st of each year. (3-20-97)

b. Permits will not be issued to any holder of a bartender’s permit, retail licensee, a distributor of restaurant or bar supplies, a distributor of beer or Wine, or to a food wholesaler. (3-20-97)

c. Supplier Representatives may represent more than one (1) ~~vendor~~ Supplier without additional permit fees. (3-20-97)()

10. **Facility Visitations.** ~~Vendor~~ Supplier Representatives, or anyone acting in that capacity, must obtain prior approval from the Director or his authorized agent to conduct business at any State Store or Distributing Station. Visits to the Division are to be confined to the Central Office area only, unless otherwise approved by the Director or his authorized agent. (3-20-97)

11. **Samples.** Samples shall be limited to ten (10) Wine Gallons per month and the sizes of Samples shall be that which are permitted by federal regulation or statute. (3-20-97)

12. **Promotional Samples.** Promotional Samples shall be limited to fifty (50) ml size bottles unless specified otherwise by the Director. (3-20-97)

13. **Contact With Licensees.** No ~~vendor~~ **Supplier** Representative, or anyone acting in that capacity, shall deliver any Liquor, Wine, or beer sold by the Division to a Licensee's place of business, other than Samples. (3-20-97)()

a. Such Samples shall be limited to sizes permitted by federal regulation or statute. (3-20-97)

b. Such Samples shall be only those items not carried in that Licensee's Product Line. (3-20-97)

14. **Liquor Displays.** The Division will regulate all Retail Store Liquor displays. (3-20-97)

a. No ~~vendor~~ **Supplier** Representative shall be permitted to interfere with product displays. (3-20-97)()

b. Any ~~vendor~~ **Supplier**-owned display material may be discarded if not picked up within thirty (30) days after termination of the display period. (3-20-97)()

15. **Advertising.** Advertising in all Retail Stores will be in accordance with Section 23-607, Idaho Code. If an industry member is doubtful as to whether a proposed advertisement is in compliance with the provisions of these rules, a specimen of the proposed advertisement may be submitted to the Director of the Division for approval prior to publication. (3-20-97)

16. **Violations.** Any ~~vendor~~ **Supplier** Representative, or anyone acting in that capacity, who violates Title 23, Idaho Code, or any rule of the Division, shall thereby subject the manufacturer's, wholesaler's or Distributor's products to removal from the Division's Product Line or; the Director, at his discretion, may suspend (temporarily or permanently) their ~~liquor industry~~ **Supplier** Representative permit. (3-20-97)()

022. **SCHEDULE OF FEES.**
The following fees may be charged by the Division. (3-20-97)

01. **Cost Reimbursement.** The Division may seek cost reimbursement, as determined by the Division, from ~~liquor~~ **Supplier** Representatives for mailing, shipping, or other expenses incurred by the Division to distribute information or displays to liquor stores at the request of a ~~liquor~~ **Supplier** Representative. (3-20-97)()

02. **Maximum Fee for Samples.** There will be a maximum fee of twenty-five dollars (\$25) per case charged to ~~liquor~~ **Supplier** Representatives for Samples. (3-20-97)()

03. **Maximum Fee for Annual **Supplier Representative** Permit.** There will be a maximum fee of fifty dollars (\$50) charged to ~~liquor~~ **Supplier** Representatives each January for an annual permit. (3-20-97)()

023. -- 030. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

032. **WINES.**
~~Table w~~ Wines may be sold in any State Store or Distributing Station at the discretion of the Director pursuant to Section 23-1305, Idaho Code. All rules of the Division applicable to Liquor are also applicable to ~~table~~ Wines and beer sold by the Division. (3-20-97)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.01 - ELIGIBILITY FOR HEALTH CARE ASSISTANCE FOR FAMILIES AND CHILDREN

DOCKET NO. 16-0301-1101

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 Department is aligning the Eligibility for Health Care Assistance for Families and Children rules with other Department eligibility assistance program rules regarding business processes. These changes streamline and improve the outcomes for individuals in need of assistance by adding a self-employment standard deduction for allowable expenses and excluding veterans' educational payments.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these changes are being made to improve outcomes for individuals in need of assistance and improve efficiencies in the Department's business processes.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathy McGill at (208) 334-4934.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

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 OF DOCKET NO. 16-0301-1101

351. SELF-EMPLOYMENT EARNED INCOME.

Income from self-employment is treated as earned income. Countable self-employment income is the difference between the gross receipts and the allowable costs of producing the self-employment income, if the amount is expected to continue. [The Department calculates self-employment income by adding monthly income to capital gains](#)

and subtracting a deduction for expenses.

~~(3-30-07)~~()

01. Allowable Costs of Producing the Self-Employment Income. Allowable costs of producing the self-employment income include: (3-30-07)

- a. The cost of labor paid to persons not in the home; (3-30-07)
- b. The cost of stock; (3-30-07)
- c. The cost of material; (3-30-07)
- d. The cost for rent and utilities, advertising, shipping and legal fees; (3-30-07)
- e. The cost of seed and fertilizer; (3-30-07)
- f. Interest paid to purchase income-producing property, including real estate; (3-30-07)
- g. Insurance premiums; (3-30-07)
- h. Taxes paid on income-producing property; (3-30-07)
- i. Transportation, when a vehicle is an integral part of business activity; and (3-30-07)
- j. Expenses directly related to producing the goods or services and, without which, the goods or services could not be produced. (3-30-07)

02. Non-Allowable Costs of Producing the Self-Employment Income. The non-allowable costs of producing the self-employment income are: (3-30-07)

- a. Payments on the principal of the purchase price of income-producing real estate and capital assets, equipment, machinery, and other durable goods; (3-30-07)
- b. Net losses from previous periods; (3-30-07)
- c. Federal, State, and local income taxes; (3-30-07)
- d. Money set aside for retirement; (3-30-07)
- e. Personal expenses such as meals and transportation to and from work; (3-30-07)
- f. Personal business, personal entertainment expenses, and personal transportation costs which are not an integral part of business activity; and (3-30-07)
- g. Depreciation. (3-30-07)

03. Self-Employment Standard Deduction. The Department uses a standard self-employment deduction, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the allowable expenses described in Subsection 351.02 of this rule. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment receipts. ()

(BREAK IN CONTINUITY OF SECTIONS)

382. EDUCATIONAL INCOME.

Any student financial assistance provided under Title IV of the Higher Education Act, the Bureau of Indian Affairs education program, Veteran's Administration educational benefits, grants, loans, scholarships, or work study is excluded. ~~(3-30-07)~~()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.04 - RULES GOVERNING THE FOOD STAMP PROGRAM IN IDAHO
DOCKET NO. 16-0304-1101
NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates of the temporary rules are: February 1, 2011, March 1, 2011, and November 1, 2011.

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, and 7 CFR Part 273.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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:

Rule changes are being made in this chapter to allow households to conduct business with the Department electronically and allow the Department to e-mail notices to participants. Rule changes are also needed to streamline the process for determining student eligibility, as well as the recertification process for simplified reporting households. Finally, rule changes are needed to add a Job Search Assistance Program (JSAP) exemption for women who are in their third trimester of pregnancy, to refine the definition of prohibited participation, and to ensure that Idaho is in compliance with federal food stamp regulations.

Specifically, this includes:

1. Allow the Department to send eligibility notices electronically to participants who voluntarily chose an electronic method of communication.
2. Average student hours over the month, rather than by the week, when determining food stamp eligibility. This will simplify the business process for the Department and increase participation among students by allowing them flexibility to schedule their work hours around academic responsibilities and remain eligible for food stamps.
3. Allow for the interview requirement to be waived at the 6-month recertification in certain cases, allowing for written contact and subsequent verification of the participant's circumstances in lieu of the interview. This streamlines the recertification process for participants and staff by allowing for a higher completion rate, and resulting in fewer new applications (which are more labor and time intensive than the 6-month recertification).
4. Exempt women from JSAP who are in their third trimester of pregnancy, due to the difficulty in gaining employment in advanced stages of pregnancy.
5. Prohibit a child from receiving Temporary Assistance for Families in Idaho (TAFI) with one caretaker relative while receiving Food Stamps in another household. This allows the Department to proactively end participation for children who would otherwise create an overpayment resulting in subsequent hardship for the family involved.
6. Extend the penalty period for participants who refuse to cooperate with a state quality control review per federal rule change.

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate. Some changes comply with deadlines in amendments to governing law or federal programs (due to changes in 7 CFR Part 273), and the rest confer benefits to Food Stamp participants.

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

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to bring this chapter of rules into compliance with 7 CFR Part 273, and to streamline and update the Food Stamps Program thereby conferring benefits to Food Stamp participants.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

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 26, 2011.

DATED this 31st day of August, 2011.

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 OF DOCKET NO. 16-0304-1101

010. DEFINITIONS A THROUGH D.

For the Food Stamp Program, the following definitions apply: (4-11-06)

01. Adequate Notice. Notice a household must receive on or before the first day of the month an action by the Department is effective. (4-6-05)

02. Administrative Error Claim. A claim resulting from an overissuance caused by the Department's action or failure to act. (6-1-94)

03. Aid to the Aged, Blind and Disabled (AABD). Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. (4-11-06)

04. Applicant. A person applying for Food Stamps. (6-1-94)

05. Application for Participation. The application form filed by the head of the household or authorized representative. (6-1-94)

06. Application for Recertification. When a household applies for recertification within thirty (30) days of the end of the certification period, it is considered an application for recertification even if a partial month of benefits is received. (4-11-06)

07. Authorized Representative. A person designated by the household to act on behalf of the household to apply for or receive and use Food Stamps. Authorized representatives include private nonprofit organizations or institutions conducting a drug addiction or alcoholic treatment and rehabilitation center acting for center residents. Authorized representatives include group living arrangement centers acting for center residents. Authorized representatives include battered women's and children's shelters acting for the shelters' residents. Homeless meal providers may not be authorized representatives for homeless Food Stamp recipients. (4-11-06)

08. Battered Women and Children's Shelter. A shelter for battered women and children which is a public or private nonprofit residential facility. If the facility serves others, a portion of the facility must be set aside on a long-term basis to serve only battered women and children. (6-1-94)

09. Boarder. Any person or group to whom a household, other than a commercial boarding house, furnishes meals and lodging in exchange for an amount equal to or greater than the thrifty food plan. Children, parents and spouses in a household must not be treated as boarders. (6-1-94)

10. Boarding House. A licensed commercial enterprise offering meals and lodging for payment to make a profit. (6-1-94)

11. Categorical Eligibility. If all household members receive or are authorized to receive monthly cash payment through TAFI, AABD or SSI, the household is categorically eligible. Categorically eligible households are exempt from resource, gross and net income eligibility standards. (4-11-06)

12. Certification Determination. Actions necessary to determine household eligibility including interviews, verification, approval, denial, field investigation, analysis and corrective action necessary to insure prompt, efficient and correct certifications. (6-1-94)

13. Certification Period. The period of time a household is certified to receive Food Stamp benefits. The month of application counts as the first month of certification. (4-11-06)

14. Contact. A six-month or twelve-month contact is a mid-certification update that may or may not include an interview with the participant. (2-1-11)T

~~145.~~ **Claim Determination.** The action taken by the Department establishing the household's liability for repayment when an overissuance of Food Stamps occurs. (6-1-94)

~~156.~~ **Client.** A person entitled to or receiving Food Stamps. (6-1-94)

~~167.~~ **Department.** The Idaho Department of Health and Welfare. (6-1-94)

~~17.~~ **Desk Review.** A desk review is a recertification that may or may not include talking to the participant. (4-11-06)

18. Disqualified Household Members. Individuals required to be excluded from participation in the Food Stamp Program are Disqualified Household Members. These include: (6-1-94)

a. Ineligible legal non-citizen who do not meet the citizenship or eligible legal non-citizen requirements. (7-1-98)

b. Individuals awaiting proof of citizenship when citizenship is questionable. (6-1-94)

c. Individuals disqualified for failure or refusal to provide a Social Security Number (SSN). (6-1-94)

d. Individuals disqualified for Intentional Program Violation (IPV). (6-1-94)

- e. Individuals disqualified for receiving three (3) months of Food Stamps in a three (3) year period in which they did not meet the work requirement for able-bodied adults without dependent children. (7-1-98)
- f. Individuals disqualified as a fugitive felon or probation or parole violator. (7-1-98)
- g. Individuals disqualified for a voluntary quit or reduction of hours of work to less than thirty (30) hours per week. (7-1-98)
- h. Individuals disqualified for failure to cooperate in establishing paternity and obtaining support for a child under eighteen (18). (7-1-98)
- i. Individuals convicted under federal or state law of any offense classified as a felony involving the possession, use, or distribution of a controlled substance when they do not comply with the terms of a withheld judgment, probation, or parole. The felony must have occurred after August 22, 1996. (3-30-01)

19. Documentation. The method used to record information establishing eligibility. The information must sufficiently explain the action taken and the proof and how it was used. (6-1-94)

20. Drug Addiction or Alcoholic Treatment Program. Any drug addiction or alcoholic treatment rehabilitation program conducted by a private nonprofit organization or institution or a publicly operated community mental health center under Part B of Title XIX of the Public Health Service Act (42 USC 300x, et seq.). Indian reservation based centers may qualify if FCS requirements are met and the program is funded by the National Institute on Alcohol Abuse under Public Law 91-616 or was transferred to Indian Health Service funding. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

012. DEFINITIONS M THROUGH Z.
For the Food Stamp Program, the following definitions apply: (4-11-06)

01. Migrant Farmworker Household. A migrant farmworker household has a member who travels from community to community to do agricultural work. (4-6-05)

02. Minimum Utility Allowance (MUA). Utility deduction given to a food stamp household that has a cost for one (1) utility that is not heating, cooling, or telephone. (3-29-10)

03. Nonexempt. A household member who must register for and participate in the JSAP program. A household member who must register for work. (6-1-94)

04. Nonprofit Meal Delivery Service. A political subdivision or a private nonprofit organization, which prepares and delivers meals, authorized to accept Food Stamps. (6-1-94)

05. Overissuance. The amount Food Stamps issued exceeds the Food Stamps a household was eligible to receive. (6-1-94)

06. Parental Control. Parental control means that an adult household member has a minor in the household who is dependent financially or otherwise on the adult. Minors, emancipated through marriage, are not under parental control. Minors living with children of their own are not under parental control. (4-6-05)

07. Participant. A person who receives Food Stamp benefits. (4-6-05)

08. Program. The Food Stamp Program created under the Food Stamp Act and administered in Idaho by the Department. (6-1-94)

- 09. Public Assistance.** Public assistance means Temporary Assistance for Families in Idaho (TAFI), and Aid to the Aged, Blind, and Disabled (AABD). (4-6-05)
- 10. Recertification.** A recertification is a process for determining ongoing eligibility for Food Stamps. (4-11-06)
- 11. Retail Food Store.** A retail food store, for Food Stamp purposes means: (6-1-94)
- a.** An establishment, or recognized department of an establishment, or a house-to-house food trade route, whose food sales volume is more than fifty percent (50%) staple food items for home preparation and consumption. (6-1-94)
- b.** Public or private communal dining facilities and meal delivery services. (6-1-94)
- c.** Private nonprofit drug addict or alcohol treatment and rehabilitation programs. (6-1-94)
- d.** Public or private nonprofit group living arrangements. (6-1-94)
- e.** Public or private nonprofit shelters for battered women and children. (6-1-94)
- f.** Private nonprofit cooperative food purchasing ventures, including those whose members pay for food prior to the receipt of the food. (6-1-94)
- g.** A farmers' market. (6-1-94)
- h.** An approved public or private nonprofit establishment which feeds homeless persons. The establishment must be approved by FCS. (7-1-98)
- 12. Sanction.** A penalty period when an individual is ineligible for Food Stamps. (3-30-07)
- 13. Seasonal Farmworker Household.** A seasonal farmworker household has a member who does agricultural work of a seasonal or other temporary nature. (4-6-05)
- 14. Spouse.** Persons who are living together, married or free to marry, and are holding themselves out as man and wife. (4-6-05)
- 15. Standard Utility Allowance (SUA).** Utility deduction given to a food stamp household that has a cost for heating or cooling. (4-11-06)
- 16. State.** Any of the fifty (50) States, the District of Columbia, Puerto Rico, Guam, the Northern Mariana Islands and the Virgin Islands of the United States. (6-1-94)
- 17. State Agency.** The Idaho Department of Health and Welfare. (6-1-94)
- 18. Student.** An individual between the ages of eighteen (18) and fifty (50), physically and intellectually fit, and enrolled at least half-time in an institution of higher education. (6-1-94)
- 19. Supplemental Security Income (SSI).** Monthly cash payments under Title XVI of the Social Security Act. Payments include state or federally administered supplements. (4-11-06)
- 20. Systematic Alien Verification for Entitlements (SAVE).** The federal automated system that provides immigration status needed to determine an applicant's eligibility for many public benefits, including Food Stamps. (4-11-06)
- 21. Telephone Utility Allowance (TUA).** Utility deduction given to a Food Stamp household that has a cost for telephone services and no other utilities. (3-29-10)

22. **Timely Notice.** Notice that is mailed via the U. S. Postal Service, or electronically, at least ten (10) days before the effective date of an action taken by the Department. ~~(4-6-05)~~(2-1-11)T

23. **Twelve Month Contact.** For households that have a twenty-four (24) month certification period, Department staff contact the household during the twelfth month of the certification period for the purpose of determining continued eligibility. (4-6-05)

24. **Tribal General Assistance.** Cash, excluding in-kind assistance, financed by federal, state or local government and provided to cover living expenses or other basic needs. This cash is intended to promote the health and well-being of recipients. (4-11-06)

25. **Verification.** The proof obtained to establish the accuracy of information and the household's eligibility. (6-1-94)

26. **Verified Upon Receipt.** Food stamp benefits are adjusted on open food stamp cases when information is received from "verified upon receipt" sources. Information "verified upon receipt" is received from a manual query or automated system match with the Social Security Administration or Homeland Security query for citizenship status. (3-30-07)

27. **Written Notice.** Correspondence that is generated by any method including handwritten, typed, or electronic, delivered to the customer by hand, U.S. Mail, professional delivery service, or by any electronic means. The terms "notice" and "written notice" are used interchangeably. (2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

113. HOUSEHOLD COOPERATION.

The household must cooperate with the Department. The application must be denied if the household refuses to cooperate. Refusal to cooperate includes failing to act without a sound and timely excuse. Giving false information on purpose is failure to cooperate. The Department must show false information was given on purpose before denying the application. The household is ineligible if it refuses to cooperate in a ~~later review~~ six-month or twelve-month contact, recertification, program review or evaluation. If an application is denied or Food Stamps are stopped for refusal to cooperate, the household can reapply. The household is not eligible until it cooperates with the Department. ~~(6-1-94)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

137. PROOF FOR QUESTIONABLE INFORMATION.

Prior to the certification, a six-month or twelve-month contact, or recertification of the household, the Department must verify all questionable information regarding eligibility and benefit level. Proof is required when details are not consistent with information received by the Department. Proof may be obtained either verbally or in writing. ~~(4-6-05)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

162. EXPEDITED SERVICES FOR DESTITUTE HOUSEHOLDS.

Migrant or seasonal farmworker households meeting destitute conditions below can get expedited services. The rules for destitute households apply at initial application, the six-month or twelve-month contact, and recertification, but only for the first month of each contact or certification period. ~~(7-1-97)~~(2-1-11)T

01. Terminated Source of Income. The household's only income for the application month was received before the application date and was from a terminated source. The household is considered destitute. Terminated income is income received monthly or more often, no longer received from the same source the rest of the application month or the next month or income received less often than monthly, not expected in the month the next regular payment is normally due. (6-1-94)

02. New Income in Application Month. When only new income is expected in the application month, the household is considered destitute. Only twenty-five dollars (\$25), or less, of new income can be received in the ten (10) days after the application date. Income is new if twenty-five dollars (\$25), or less, is received during the thirty (30) days before the application date. New income received less often than monthly was not received in the last normal payment interval or was twenty-five dollars (\$25) or less. (6-1-94)

03. Terminated Income and New Income in Application Month. Destitute households can get terminated income before the application date and new income before and after the application date. New income must not be received for ten (10) days after application and must not exceed twenty-five dollars (\$25). The household must get no other income in the application month. (6-1-94)

04. Application Month. For the application month, count only income received between the first day of the month and the application date. Do not count income from a new source expected after the application date. (6-1-94)

163. SPECIAL CONSIDERATION OF INCOME FOR DESTITUTE HOUSEHOLDS.

Special consideration of income for destitute households is listed below. The rules for destitute households apply at initial application, a six-month or twelve-month contact, and recertification, but only for the first month of each contact or certification period. ~~(7-1-97)~~(2-1-11)T

01. Travel Advances. For destitute eligibility and benefit level, travel advances apply as follows: Travel advances from employers for travel costs to a new employment location are excluded. Travel advances against future wages are counted as income, but not a new source of income. (6-1-94)

02. Household Member Changes Job. A person changing jobs with the same employer is still getting income from the same source. A migrant's income source is the grower, not the crew chief. When a migrant moves with a crew chief from one (1) grower to another, the income from the first grower is ended. The income from the next grower is new income. (6-1-94)

03. Recertification or Six-Month or Twelve-Month Contact. Disregard income from the new source for the first month of the new certification period if more than twenty-five dollars (\$25) will not be received by the tenth calendar day after the normal issuance. ~~(6-1-94)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

203. SOCIAL SECURITY NUMBER (SSN) REQUIREMENT.

Before certification, households must provide the Department the SSN, or proof of application for SSN, for each household member. If a household member has more than one (1) SSN, he must provide all of his SSNs. Each SSN must be verified by the Social Security Administration (SSA). A household member with an unverified SSN is not eligible for Food Stamp benefits. The ineligible person's income and resources must be counted in the Food Stamp budget. If benefits are reduced or ended, because one (1) or more persons fail to meet the SSN requirement, the household must be notified in writing. (3-20-04)

01. Application for SSN. (3-20-04)

a. If a household member does not have an SSN, he must apply for an SSN. After the household member files the SSN application, he may receive Food Stamp benefits while the SSN is assigned. (3-20-04)

- b.** If a household member is unable to provide his SSN, he must apply for a duplicate SSN card. (3-20-04)
- c.** If a household member does not know if he has an SSN, he must apply for an SSN. (3-20-04)
- d.** If a household member has a questionable SSN, he must apply for an SSN. (3-20-04)
- e.** If the person is unable to get the proof required by SSA for an SSN, the Department will help the person get proof. (3-20-04)

02. Proof of Application for an SSN for a Newborn. A newborn may receive Food Stamp benefits when the household cannot provide proof of application for an SSN for the newborn. Proof of application for an SSN for that child must be provided at the next Food Stamp six-month or twelve-month contact or recertification or six (6) months after the month the child was born, whichever is later. If the household does not provide proof of SSN or application for SSN, the child will be ineligible to receive Food Stamp benefits the month following the month the household failed to provide the proof. ~~(3-20-04)~~(2-1-11)T

03. SSN Requirements for Expedited Food Stamp Service. Households entitled to expedited service under the criteria in Section 155 of this chapter of rules will be asked to furnish an SSN or proof of application for SSN for each person in the household applying for benefits before the first day of the second full month of Food Stamp participation. Those household members unable to provide the SSN or who do not have one prior to the second full month of participation may be allowed to continue to participate only if they satisfy the good cause requirements in Subsections 203.04.a. through 203.04.c. of this rule. (3-20-04)

04. Good Cause for Not Applying for SSN. If a household member can show good cause why an SSN application was not completed in a timely manner, an extension must be granted to allow him to receive Food Stamp benefits for one (1) month in addition to the month of application. Good cause for failure to apply must be shown monthly in order for such a household member to continue to participate. Good cause is described below: (3-20-04)

- a.** Good cause exists if the application for SSN was not processed in a timely manner by the SSA. (3-20-04)
- b.** Good cause exists if documents or collateral data show the household applied for, or made every effort to apply for, an SSN. (6-1-94)
- c.** Good cause does not include household-caused delays due to illness, lack of transportation, or temporary absences. (6-1-94)

05. Exception for Religious Objection. The Department may assign an identification number to a person who is applying for Food Stamps, but who, because of well-established religious objections as defined under 42 CFR 435.910, refuses to obtain an SSN. The identification number may be either an SSN obtained by the Department on the applicant's behalf or another unique identifier. (3-20-04)

(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 at the time of application if he: (4-7-11)
- 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; (4-7-11)
- e. Receives Food Stamp benefits in another household; ~~or~~ ~~(4-7-11)~~(2-1-11)T
- f. Is deceased; or ~~(4-7-11)~~(2-1-11)T
- g. Receives cash benefits in a TAFI Caretaker Relative household. (2-1-11)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. (4-7-11)

220. (RESERVED)

221. DETERMINATION OF HOUSEHOLD COMPOSITION.

Household composition must be determined at application, a six-month or twelve-month contact, recertification, and when a reported change in household members would result in an increase in the food stamp benefits. ~~(3-29-10)~~(2-1-11)T

222. -- 225. (RESERVED)

226. JOB SEARCH ASSISTANCE PROGRAM (JSAP).

The JSAP program is designed to help Food Stamp recipients become self-sufficient. (7-1-99)

01. JSAP Status. All household members, unless exempt, must participate in JSAP. Household members who are on strike must participate in JSAP. Members who are not migrants in the job stream must participate in JSAP. Determine the JSAP status of a participant at certification, a six-month or twelve-month contact, recertification, and when household changes occur. ~~(7-1-99)~~(2-1-11)T

02. JSAP Information. Explain, both in writing and orally, the JSAP requirement, rights, responsibilities, and the result of failure to comply. (7-1-99)

227. EXEMPTIONS FROM JSAP.

Exemptions from JSAP are listed in Subsections 227.01 through 227.12 of these rules. (5-3-03)

01. Parents or Caretakers of a Child Under Six Years of Age. A parent or caretaker responsible for the care of a dependent child under age six (6) is exempt from JSAP. If the child becomes six (6) during the certification period, the parent or caretaker must register for JSAP at the next scheduled six-month or twelve-month contact or recertification, unless exempt for another reason. ~~(5-3-03)~~(2-1-11)T

02. Parents and Caretakers of an Incapacitated Person. A parent or caretaker responsible for the care of a person incapacitated due to illness or disability is exempt from JSAP. (5-3-03)

03. Persons Who Are Incapacitated. A person who is physically or intellectually unfit for employment is exempt from JSAP. If a disability is claimed which is not evident, proof to support the disability can be required. Acceptable proof includes receipt of permanent or temporary disability benefits, or a statement from a physician or licensed or certified psychologist. (5-3-03)

04. Students Enrolled Half Time. A student who is eighteen (18) years or older is exempt from JSAP if: (4-11-06)

a. He is enrolled at least half-time in any institution of higher learning and if he meets the definition of an eligible student in Section 282 of these rules; or (5-3-03)

- b. He is enrolled at least half-time in any other recognized school or training program. (5-3-03)
- c. He remains enrolled during normal periods of class attendance, vacation, and recess. If he graduates, enrolls less than half-time, is suspended or expelled, drops out, or does not intend to register for the next normal school term (excluding summer), he must register for work at the next scheduled six-month or twelve-month contact or recertification. ~~(4-11-06)~~(2-1-11)T
- 05. SSI Applicants.** A person who is applying for SSI is exempt from JSAP until SSI eligibility is determined. (5-3-03)
- 06. Persons Who Are Employed.** A person who is employed is exempt from JSAP if: (5-3-03)
- a. He is working at least thirty (30) hours per week; or (5-3-03)
- b. He is receiving earnings equal to the Federal minimum wage multiplied by thirty (30) hours; or (5-3-03)
- c. He is a migrant or seasonal farm worker under contract or agreement to begin employment within thirty (30) days. (5-3-03)
- 07. Persons Who Are Self-Employed.** A person who is self-employed is exempt from JSAP if he is working a minimum of thirty (30) hours per week or is receiving earnings equal to or greater than the Federal minimum wage multiplied by thirty (30) hours. (5-3-03)
- 08. Addicts or Alcoholics.** A regular participant in a drug or alcohol treatment and rehabilitation program is exempt from JSAP. (6-1-94)
- 09. Unemployment Insurance (UI) Applicant/Recipient.** A person receiving UI is exempt from JSAP. A person applying for, but not receiving UI, is exempt from JSAP if he is required to register for work with the Department of Commerce and Labor as part of the UI application process. (5-3-03)
- 10. Children Under Age Sixteen.** A child under age sixteen (16) is exempt from JSAP. A child who turns sixteen (16) within a certification period must register for JSAP at the six-month or twelve-month contact or recertification, unless exempt for another reason. ~~(5-3-03)~~(2-1-11)T
- 11. Persons Age Sixteen or Seventeen.** A household member age sixteen (16) or seventeen (17) is exempt from JSAP if he is attending school at least half-time, or is enrolled in an employment and training program, including GED, at least half-time. (5-3-03)
- 12. Participants Age Sixty or Older.** A participant age sixty (60) or older is exempt from JSAP. (5-3-03)
- 13. Pregnant Women.** A pregnant woman in her third trimester is exempt from JSAP. (11-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

272. VOLUNTARY QUIT OR REDUCTION OF WORK HOURS DURING THE LAST MONTH OF THE CERTIFICATION PERIOD.

If the Department determines a member of the household voluntarily quit a job or reduced work hours, without good cause, in the last month of the six-month or twelve-month contact or certification period the voluntary quit or work reduction penalty is imposed. ~~(7-1-98)~~(2-1-11)T

01. No Reapplication. If the household does not apply for recertification in the last month of the six-month or twelve-month contact or certification, the appropriate penalty is imposed. Begin the penalty the first month

after the last month of the certification. The penalty is in effect should the household apply during the penalty period. ~~(7-1-98)~~(2-1-11)T

02. Reapplication. If the household does apply for recertification in the last month of the six-month or twelve-month contact or certification period, the person quitting work or reducing hours is ineligible. The penalty is imposed, beginning the first month after the last month of the six-month or twelve-month contact or certification period. ~~(4-5-00)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

284. DETERMINING STUDENT ELIGIBILITY.

To be eligible for Food Stamps, a student must meet at least one (1) of the criteria listed below: (6-1-94)

01. Employment. (11-1-11)T

a. The student is employed a minimum of ~~twenty eighty~~ (280) hours per ~~week~~ month and is paid for such employment: or (11-1-11)T

b. The student is self-employed a minimum of ~~twenty eighty~~ (280) hours per ~~week~~ month; and (11-1-11)T

c. The student must earn at least the Federal minimum wage times ~~twenty eighty~~ (280) hours. ~~(6-1-94)~~(11-1-11)T

02. Work Study Program. The student is in a State or Federally financed work study program during the regular school year. The student exemption begins the month the school term begins, or the month the work study is approved, whichever is later. The exemption continues until the end of the month the school term ends, or it becomes known the student has refused an assignment. The student work study exemption stops when there are breaks of a full calendar month or longer between terms, without approved work study. The exemption only applies to months the student is approved for work study. (7-1-97)

03. Caring for Dependent Child. The student is responsible for the care of a dependent household member under age six (6). There must not be another adult in the household available to care for the child. Availability of adequate child care is not a factor. The student is responsible for the care of a dependent household member at least age six (6) but under age twelve (12). The Department must determine adequate child care is not available to enable the student to attend class and satisfy the twenty (20) hour work requirement. The student must be a single parent responsible for the care of a dependent child under the age of twelve (12). The student is enrolled full-time in an institution of higher education. Full-time enrollment is determined by the institution. Availability of adequate child care is not a factor. (6-1-94)

04. TAFI Participant. The student gets cash benefits from the TAFI program. (7-1-98)

05. Training. The student is assigned to or placed in an institution of higher education through or complying with: The WIA program. The JOBS program. The JSAP program. A program under Section 236 of the Trade Act of 1974. A program for employment and training operated by a State or local government. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

303. COUNTING RESOURCES.

At the time of application, a six-month or twelve-month contact, or recertification, a household must report all countable resources it has. Resources are identified and evaluated, as of the Food Stamp interview date, to determine if they are counted or excluded. ~~(4-7-11)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

351. EXCLUDED RESOURCES.

Some resources do not count against the limit because they are excluded. Resources excluded by federal law are also excluded for Food Stamps. Exclusions from resources are listed in Sections 352 through 370~~82~~. ~~(6-1-94)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

389. REPORTING RESOURCES.

Households receiving food stamps must report resource changes at each recertification, or at a six-month or twelve-month contact. ~~(3-29-10)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

405. EXCLUDED INCOME.

Income excluded when computing Food Stamp eligibility is listed below: (6-1-94)

01. Money Withheld. Money withheld voluntarily or involuntarily, from an assistance payment, earned income, or other income source, to repay an overpayment from that income source, is excluded. If an intentional noncompliance penalty results in a decrease of benefits under a means tested program such as SSI or GA, count that portion of the benefit decrease attributed to the repayment as income. (7-1-98)

02. Child Support Payments. Child support payments received by TAFI recipients which must be given to CSS are excluded as income. (7-1-98)

03. Earnings of Child Under Age Eighteen Attending School. Earned income of a household member under age eighteen (18) is excluded. The member must be under parental control of another household member and attending elementary or secondary school. For the purposes of this provision, an elementary or secondary student is someone who attends elementary or secondary school or who attends GED or home-school classes that are recognized, operated, or supervised by the school district. This exclusion applies during semester and summer vacations if enrollment will resume after the break. If the earnings of the child and other household members cannot be differentiated, prorate equally among the working members and exclude the child's share. (7-1-98)

04. Retirement Benefits Paid to Former Spouse or Third Party. Social Security retirement benefits based on the household member's former employment, but paid directly to an ex-spouse, are excluded as the household member's income. Military retirement pay diverted by court order to a household member's former spouse is excluded as the household member's income. Any retirement paid directly to a third party from a household member's income by a court order is excluded as the household member's income. (6-1-94)

05. Infrequent or Irregular Income. Income received occasionally is excluded as income if it does not exceed thirty dollars (\$30) total in a three (3) month period. (6-1-94)

06. Cash Donations. Cash donations based on need and received from one (1) or more private nonprofit charitable organizations are excluded as income. The donations must not exceed three hundred dollars (\$300) in a calendar quarter of a federal fiscal year (FFY). (6-1-94)

07. Income in Kind. Any gain or benefit, such as meals, garden produce, clothing, or shelter, not paid in money, is excluded as income. (6-1-94)

08. Vendor Payments. A vendor payment is a money payment made on behalf of a household by a person or organization outside of the household directly to either the household's creditors or to a person or organization providing a service to the household. (3-20-04)

09. Third Party Payments. If a person or organization makes a payment to a third party on behalf of a household using funds that are not owed to the household, the payment shall be excluded from income. (3-20-04)

10. Loans. Loans are money received which is to be repaid. Loans are excluded as income. (6-1-94)

11. Money for Third Party Care. Money received and used for the care and maintenance of a third party who is not in the household. If a single payment is for both household members and nonhousehold members the identifiable portion of the payment for nonhousehold members is excluded. If a single payment is for both household members and nonhousehold members, exclude the lesser of: (6-1-94)

a. The prorated share of the nonhousehold members if the portion cannot be identified. (6-1-94)

b. The amount actually used for the care and maintenance of the nonhousehold members. (6-1-94)

12. Reimbursements. Reimbursements for past or future expenses not exceeding actual costs. Payments must not represent a gain or benefit. Payments must be used for the purpose intended and for other than normal living expenses. Excluded reimbursements are not limited to: (6-1-94)

a. Travel, per diem, and uniforms for job or training. (6-1-94)

b. Out-of-pocket expenses of volunteer workers. (6-1-94)

c. Medical and dependent care expenses. (6-1-94)

d. Pay for services provided by Title XX of the Social Security Act. (6-1-94)

e. Repayment of loans made by the household from their personal property limit. The repayment must not exceed the amount of the loan. (6-1-94)

f. Work-related and dependent care expenses paid by the JSAP program. (6-1-94)

g. Transitional child care payments. (6-1-94)

h. Child care payments under the Child Care and Dependent Block Grant Act of 1990. (6-1-94)

13. Federal Earned Income Tax Credit (EITC). Federal EITC payments are excluded as income. (9-1-94)

14. Work Study. Work Study income received while attending post-secondary school is excluded as income. (3-20-04)

15. HUD Family Self-Sufficiency (FSS) Escrow Account. The federal exclusion for these funds are only excluded while the funds are in the escrow account or being used for a HUD approved purpose. See Section 363 of these rules for further clarification. (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. (4-7-11)

17. Income Excluded by Federal Law. If income is excluded by federal law, it is excluded for Food Stamps. (2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

500. FOOD STAMP BENEFIT DETERMINATION.

Food Stamp benefits are determined at application, a six-month or twelve-month contact, recertification, and when a change is reported. Benefit determination requires two separate actions. First, determine if the household is eligible for Food Stamps. Second, if the household is eligible, compute the Food Stamp issuance. Use the household's projected resources, income, expenses, and household composition to determine eligibility and Food Stamp amount. Use the household's past and current income, resources, expenses, and household composition to project future circumstances. ~~(6-1-94)~~(2-1-11)T

501. INITIAL CHANGES IN FOOD STAMP CASE.

Act on changes in household circumstances found during the application or the initial interview. (6-1-94)

01. Anticipated Changes. A household can be eligible in the application month, but not eligible the month after the application month because of expected changes in circumstances. The household may not be eligible for the application month, but eligible for the next month. The same application form is used for the denial and the next month's eligibility determination. (6-1-94)

02. Food Stamps for the Application Month. The household's Food Stamp issuance for the application month may differ from its issuance in later months. (6-1-94)

03. Food Stamp Issuance Changes. The Department will make changes to the household's Food Stamp issuance when it is required to act on a change. (3-30-07)

04. Change Before Certification. If a household reports a change in household circumstances before certification and the Department can act on the change, include the reported information in determining Food Stamp eligibility and amount. (6-1-94)

05. Change After Certification. If a household reports a change after the initial Food Stamp benefit has been paid, the Department must act on the change if it was required to be reported or would increase the household's Food Stamp benefits under these rules. Changes in the household's expenses will not be acted upon until a six-month or twelve-month contact, or recertification. Notice of the change must be given to the Food Stamp household. ~~(4-6-05)~~(2-1-11)T

502. EARNED INCOME WHEN A HOUSEHOLD MEMBER TURNS AGE EIGHTEEN.

When a child attending elementary or secondary school turns age eighteen (18), do not count earned income received or expected by that person until the next six-month or twelve-month contact, or recertification. ~~(4-11-06)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

573. ACTING ON HOUSEHOLD COMPOSITION CHANGES.

Changes in household composition are not required to be reported. If a household does report a change in household composition, and the change would increase the Food Stamp benefit, proof is needed to act on the change. If proof is provided within ten (10) days, increase the Food Stamp benefits beginning the month immediately following when the change was reported. If proof is not provided within ten (10) days, increase the Food Stamp benefit beginning the month after the proof is provided. If the reported change decreases the Food Stamp benefit, the change is effective at the next six-month or twelve-month contact, or recertification ~~or twelve-month (12)-contact.~~ ~~(3-29-10)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

576. CERTIFICATION PERIODS.

A certification period must be assigned for each household. Households must be assigned a certification period based on household circumstances at the time of application approval, recertification, and at the six-month or twelve-month

contact in accordance with 7 CFR 273.10(f) and 273.12. Households are assigned a ~~six (6)~~ twelve-month certification period unless they meet the criteria for extended certification, in which case they are assigned a twenty-four (24) month certification period. At the end of each six-month or twelve-month contact or certification period, entitlement to Food Stamps ends. Further eligibility starts only upon successful completion of a six-month or twelve-month contact, or a recertification based upon a newly completed application, an interview, and verification. The certification period cannot be lengthened nor can benefits be continued beyond the end of a certification period without a new determination of eligibility. ~~(3-29-10)~~(2-1-11)T

577. CHANGING THE CERTIFICATION PERIOD.

01. Twenty-Four Month Certification Period. If a household has ~~an extended~~ a twenty-four-month certification period, and at the twelve-month contact it is determined that they remain eligible but they no longer meet the criteria for extended certification, the current certification will be ended and a ~~six~~ twelve-month certification period will be assigned for ongoing benefits. ~~(3-29-10)~~(2-1-11)T

02. Twelve-Month Certification Period. If a household has a twelve-month certification, and at the six-month contact it is determined that they remain eligible and meet the criteria for extended certification, the current certification will be ended and a twenty-four-month certification will be assigned for ongoing benefits. ~~(3-29-10)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

611. TIME FRAMES FOR REPORTING CHANGES IN HOUSEHOLD CIRCUMSTANCES.

Households must report changes in circumstances as required in Section 601 of these rules. Households reporting required changes to the Department must do so by the tenth day of the month following the month in which the change occurred. (3-29-10)

01. Must Not Impose Added Reporting Requirements. The Department must not require additional household reporting not listed in these rules. (6-1-94)

02. Report Form. The Department must give households a Change Report Form at certification, at the six-month or twelve-month contact, at recertification, when the household reports a change, and when the household requests the form. ~~(3-29-10)~~(2-1-11)T

03. Reporting Methods. Changes can be reported by telephone, personal contact, mail, or e-mail. Changes can be reported by a household member or authorized representative. (3-29-10)

04. Failure to Report. If Food Stamps are overissued because a household fails to report required changes, a Claim Determination must be prepared. A person can be disqualified for failure to report a change if he commits an Intentional Program Violation. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

615. CHANGES IN SHELTER, DEPENDENT CARE, CHILD SUPPORT, OR MEDICAL EXPENSES.

A household reporting a change in shelter, utility, dependent care, child support, or medical expenses will be not required to provide proof of the change until recertification ~~or~~ and the six-month or twelve-month contact. The Department will not adjust the Food Stamp benefit during the certification period regardless of whether the change in expenses would cause the Food Stamp benefit to increase or decrease. ~~(3-29-10)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

619. CHANGES NOT REQUIRED TO BE REPORTED.

If the household reports a change not required to be reported that would result in a decrease in Food Stamp benefits, the Department will not request proof and will not take action until recertification and the six-month or twelve-month contact. The household must be notified that no action will be taken on the reported change. ~~(4-11-06)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

646. NOTICE OF DECISION FOR TIMELY RECERTIFICATION.

A Notice of Decision must be sent to households that reapply for Food Stamps. To receive Food Stamps with no break in issuance, households must apply for complete a six-month or twelve-month contact or recertification before the fifteenth day of the last month of certification or six-month or twelve-month contact period. If the household applies before the fifteenth day of the month, the Department will notify the household of eligibility or denial by the end of the current certification period. ~~(4-11-06)~~(2-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

793. NARCOTIC ADDICT AND ALCOHOLIC TREATMENT CENTERS.

Narcotic addicts and their children residing in a treatment center may qualify for Food Stamps. Alcoholics and their children residing in a treatment center may qualify for Food Stamps. Food Stamp rules for residents in a drug addiction or alcohol treatment and rehabilitation program lasting at least thirty (30) days are listed below: (9-1-94)

01. Optional Appointment of Authorized Representative. Unless the household requests it, the center will not be made authorized representative on the household's own EBT card for months of benefits received while not in the center. (4-5-00)

02. Center Provides Certification List. Each month, each center must give the Field Office a list of current client residents. The list's accuracy must be certified in writing by the center manager or designee. The Department must conduct random on-site visits to assure list accuracy. If the list is not accurate, or the Department fails to act on the change, the Department may transfer the Food Stamp amount from the center's account to the household's Food Stamp account, for the months the household was not living in the center. (4-5-00)

03. Resident and Nonresident Clients. Eligible narcotic addicts or alcoholics must be certified as one (1) person households. Eligible narcotic addicts with children or alcoholics with children residing in a center must be certified as one (1) household. Clients not residing at the treatment center are certified under normal procedures. (9-1-94)

04. Food Stamp Basis. Eligibility and Food Stamp amounts must be based on income and resources. (6-1-94)

05. Work Registration. Resident clients are exempt from work registration. (6-1-94)

06. Expedited Processing. When the application needs expedited processing, Food Stamps must be received by the seventh calendar day after the application date. (7-1-98)

07. Normal Processing. If processing under normal procedures, the Department must verify circumstances before determining eligibility. Changes, six-month or twelve-month contacts, and recertifications are processed using the standards for all other households. Resident clients have the same rights to adverse action notices, fair hearings and lost Food Stamps as all other households. ~~(6-1-94)~~(2-1-11)T

08. Center Misusing Food Stamps. The Department must promptly notify FCS if it believes a center is misusing Food Stamps. The Department must not take action before FCS takes action against the center. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

883. QUALITY CONTROL AND FOOD STAMP ELIGIBILITY.

State Quality Control (SQC) is the Department's case review system. SQC determines rates of correct Food Stamp issuances and Department and recipient caused errors. Quality control reviews open Food Stamp cases, denials and closures. The quality control review period extends from October 1st to September 30th of the next year. Households selected for quality control review by State Quality Control (SQC) and Federal Quality Control (FQC) must cooperate with both reviews. If a household refuses to cooperate in a SQC or FQC review, it is ineligible for Food Stamps as shown below: (3-30-07)

01. Refusal to Cooperate with SQC or FQC. If a household refuses to cooperate in a SQC or FQC review, it is not eligible. The SQC analyst or FQC reviewer must notify the appropriate Department Self Reliance Specialist (SRS) of the household's refusal to cooperate. (3-30-07)

a. The Department must send the household advance notice to end Food Stamps. The notice must list the reason for the proposed action, the right to a hearing, the right to schedule a conference or to continue the SQC or FQC review. (3-30-07)

b. The Department will close the Food Stamp case. (6-1-94)

02. Food Stamp Eligibility During Quality Control Review Period, After Refusal to Cooperate. The household is not eligible for Food Stamps during the Quality Control review period until it cooperates with the SQC or FQC review. (3-30-07)

03. Food Stamps After Review Period, Refusal to Cooperate With SQC. The household is not eligible for Food Stamps ~~until one hundred thirteen (113) days after the end of the annual review period~~ for the period of time set forth in 7 CFR 273.02. After this time: ~~(3-30-07)~~(3-1-11)T

a. The household must reapply. (6-1-94)

b. The household must supply proof of all current eligibility information before certification. (6-1-94)

04. Food Stamps After Review Period, Refusal to Cooperate with FQC. The household is not eligible for Food Stamps ~~until seven (7) months after the end of the annual review period~~ for the period of time set forth in 7 CFR 273.02. After this time: ~~(3-30-07)~~(3-1-11)T

a. The household must reapply. (6-1-94)

b. The household must supply proof of all current eligibility information before certification. (6-1-94)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE
16.03.05 - RULES GOVERNING ELIGIBILITY FOR AID TO THE AGED,
BLIND, AND DISABLED (AABD)

DOCKET NO. 16-0305-1102

NOTICE OF RULEMAKING - PROPOSED RULE

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

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 Department is aligning the Eligibility for Aid to the Aged, Blind, and Disabled (AABD) rules with other Department eligibility assistance program rules regarding business processes. These changes streamline and improve the outcomes for individuals in need of assistance by adding a self-employment standard deduction for allowable expenses and excluding veterans' educational payments.

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. N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these changes are being made to improve outcomes for individuals in need of assistance and improve efficiencies in the Department's business processes.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Callie King at (208) 334-0663.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

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 OF DOCKET NO. 16-0305-1102

402. SELF-EMPLOYMENT ALLOWABLE EXPENSES.

Allowable ~~o~~ operating expenses subtracted from self-employment income are listed in Subsections 402.01 through 402.167 of this rule. (7-1-99)()

01. Self-Employment Standard Deduction. The Department uses a standard self-employment deduction, unless the applicant claims that his actual allowable expenses exceed the standard deduction and provides proof of the allowable expenses described in Subsection 402.02 through 402.17 of this rule. The self-employment standard deduction is determined by subtracting fifty percent (50%) of the gross monthly self-employment income as calculated in Section 401 of these rules. ()

- ~~0~~**2.** **Labor.** Labor paid to individuals not in the family. (7-1-99)
- ~~0~~**3.** **Materials.** Materials such as stock, seed and fertilizer. (7-1-99)
- ~~0~~**4.** **Rent.** Rent on business property. (7-1-99)
- ~~0~~**5.** **Interest.** Interest paid to purchase income producing property. (7-1-99)
- ~~0~~**6.** **Insurance.** Insurance paid for business property. (7-1-99)
- ~~0~~**7.** **Taxes.** Taxes on income producing property. (7-1-99)
- ~~0~~**8.** **Business Transportation.** Business transportation as defined by the IRS. (7-1-99)
- ~~0~~**9.** **Maintenance.** Landscape and grounds maintenance. (7-1-99)
- ~~0~~**10.** **Lodging.** Lodging for business related travel. (7-1-99)
- ~~1~~**1.** **Meals.** Meals for business related travel. (7-1-99)
- ~~1~~**2.** **Use of Home.** Costs of partial use of home for business. (7-1-99)
- ~~1~~**3.** **Legal.** Business related legal fees. (7-1-99)
- ~~1~~**4.** **Shipping.** Business related shipping costs. (7-1-99)
- ~~1~~**5.** **Uniforms.** Business related uniforms. (7-1-99)
- ~~1~~**6.** **Utilities.** Utilities for business property. (7-1-99)
- ~~1~~**67.** **Advertising.** Business related advertising. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

422. VA EDUCATIONAL BENEFITS.

VA educational payments funded by the government, ~~but not part of vocational rehabilitation, are unearned income excluded.~~ (7-1-99)()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

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

DOCKET NO. 16-0308-1101

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, and 45 CFR Parts 260 through 265.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 changes are being made to standardize household composition, income, resources and application time frames. Further, rule changes are needed to allow the Department to collect in all situations involving TAFI overpayments. Rule changes are also needed to provide clarification on how actions impact TAFI time limits for eligible recipients.

Specifically, the following changes are being made:

1. Change TAFI rules to more clearly define application timelines and those individuals living in the applicants household who are required to be included on the TAFI case.
2. Update rules regarding treatment of income and resources to align them with other Self-Reliance programs.
3. Add rule to allow for collection of overpayments in all situations. Current TAFI rules only allow for collection of overpayments in the event of an intentional program violation.
4. Make changes to various Sections to add clarity and to allow for client notices to be sent electronically.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done simply to clarify and update the TAFI rules.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

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 26, 2011.

DATED this 31st day of August, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
450 W. State Street - 10th Floor
P.O. Box 83720
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0308-1101

010. DEFINITIONS.

- 01.** Agency Error. A benefit error caused by the Department's action or failure to act. ()
- ~~02.~~ **Applicant.** An individual who applies for Temporary Assistance for Families in Idaho. (7-1-98)
- ~~03.~~ **Assistance.** Cash payments, vouchers, and other benefits designed to meet a family's ongoing basic needs. Assistance includes recurring benefits, such as transportation and child care, conditioned on participation in work activities. (3-30-01)
- ~~034.~~ **Caretaker Relative.** An adult specified relative other than parents who have an eligible related child residing with them and who are responsible for the child's care. (5-8-09)
- 05.** Claim Determination. The action taken by the Department establishing the household's liability for repayment when a TAFI overpayment occurs. ()
- ~~046.~~ **Department.** The Idaho Department of Health and Welfare. (7-1-98)
- ~~057.~~ **Dependent Child.** A child under the age of eighteen (18), or under the age of nineteen (19) and attending, full time, a secondary school or the equivalent level of vocational or technical training. (3-30-01)
- ~~068.~~ **Earned Income.** Cash or in-kind payment derived from employment or self-employment. Receipt of a service, benefit or durable goods instead of wages is in-kind income. Earned income is gross earnings before deductions for taxes or any other purposes. (7-1-98)
- ~~079.~~ **Family.** A family is an eligible individual or group of eligible individuals living in a common residence, whose income and resources are considered in determining eligibility. Spouses living together in a common residence are considered a family. Unrelated adults who are the parents of a common child are considered a family. Adult relatives who reside together are considered separate families. Unrelated families living in a common residence are considered separate families. (3-30-01)
- ~~08.~~ Family Unit. A unit of eligible individuals that includes parents or may include caretaker relatives, who have an eligible related child residing with them. (5-8-09)
- ~~0910.~~ **Good Cause.** The conduct of a reasonably prudent person in the same or similar circumstances, unless otherwise defined in these rules. (7-1-98)
- 11.** Household. A unit of eligible individuals that includes parents and step-parents, or may include caretaker relatives who have an eligible child residing with them. ()

- 12.** Inadvertent Household Error (IHE). A benefit error caused unintentionally by the household. ()
- 103.** **Noncustodial Parent.** A parent legally responsible for the support of a dependent minor child, who does not live in the same household as the child. (3-30-01)
- 174.** **Parent.** The mother or father of the dependent child. In Idaho, a man is presumed to be the child's father if he is married to the child's mother at the time of conception or at the time of the child's birth. (7-1-98)
- 125.** **Participant.** An individual who has signed a Personal Responsibility Contract. (7-1-98)
- 136.** **Personal Responsibility Contract (PRC).** An agreement negotiated between a family and the Department that is intended to result in self-reliance. (7-1-98)
- 147.** **Temporary Assistance for Families in Idaho (TAFI).** Idaho's family assistance program. TAFI replaced the Aid to Families With Dependent Children (AFDC) program. (3-30-01)
- 158.** **Temporary Assistance for Needy Families (TANF).** The Federal block grant provided to Idaho and used to fund TAFI. TANF funds other programs and services, including career enhancement and emergency assistance. (3-30-01)
- 169.** **Unearned Income.** Income received from sources other than employment or self-employment, such as Social Security, unemployment insurance, and workers' compensation. (7-1-98)
- 20.** Step-Parent. An individual in the TAFI household who is married to the parent of an eligible child when there are no children in common. ()

(BREAK IN CONTINUITY OF SECTIONS)

108. APPLICATION FOR ASSISTANCE.

The application form must be signed by an adult participant, a legal guardian or a representative, and must be received by the Department. A new TAFI application is required if the application was denied for failure to provide required verification and more than thirty (30) days have elapsed since the household applied. (7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

116. PERSONAL RESPONSIBILITY CONTRACT (PRC).

A personal responsibility contract must be negotiated and signed by the family mandatory adult household members defined under Section 125 of these rules, and all application activities must be completed before eligibility can be approved. The family must continue to comply with ongoing personal responsibility contract requirements to remain eligible. (7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

125. ~~BUDGETING FOR PARENTAL CARETAKERS~~ MANDATORY TAFI HOUSEHOLD MEMBERS.

Individuals who must be included in the family are listed in Subsections 125.01 through 125.03~~4~~ of this rule. (5-8-09)()

- 01. Children.** Children under the age of eighteen (18) or, under the age of nineteen (19) if they are

attending a secondary school or the equivalent level of vocational or technical training full time. Children must reside with a parent who exercises care and control of them. A dependent child's natural or adoptive brother or sister, including half (1/2) siblings, living in the same home as the dependent child must be included in the family.

(5-8-09)

02. Parents. Parents who have an eligible natural or adopted child residing with them. (7-1-98)

03. Pregnant Woman. A pregnant woman with no other children who is in at least the third calendar month before the baby is due and is unable to work due to medical reasons. (4-5-00)

04. Step-Parents. Individuals who are married to the parent of a dependant child. ()

05. Spouses. Anyone related by marriage to another mandatory household member. ()

(BREAK IN CONTINUITY OF SECTIONS)

163. WORK ACTIVITIES RESPONSIBILITY.

All adults mandatory household members are required to participate in work activities, up to forty (40) hours per week. A child between the ages of sixteen (16) and eighteen (18), who is not attending school, must participate up to forty (40) hours per week in assigned work activities. A single custodial parent of a child less than six (6) years of age is not required to participate in a work activity if one of the reasons listed in Subsections 163.01 through 163.03 occurs. ~~(3-15-02)~~()

01. Reasonable Distance. Appropriate child care is not available within a reasonable distance from the participant's home or work site. (7-1-98)

02. Relative Child Care. Informal child care by relatives or others is not available or is unsuitable. (7-1-98)

03. Child Care Not Available. Appropriate and affordable child care is not available. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

200. RESOURCE LIMIT.

The total of the entire family's countable resources must not be greater than ~~two~~ five thousand dollars (\$~~25~~5,000) in any month. Resources are money, financial instruments, vehicles, and real property. ~~(7-1-98)~~()

(BREAK IN CONTINUITY OF SECTIONS)

215. EXCLUDED INCOME.

The types of income listed in Subsections 215.01 through 215.38 of this rule, are excluded. (4-7-11)

01. Supportive Services. Supportive services payments. (7-1-98)

02. Work Reimbursements. Work-related reimbursements. (7-1-98)

03. Child's Earned Income. Earned income of a dependent child, who is attending school. (7-1-98)

04. Child Support. Child support payments assigned to the State and non-recurring child support

- payments received in excess of that amount. (7-1-98)
- 05. Loans.** Loans with a signed, written repayment agreement. (7-1-98)
- 06. Third Party Payments.** Payments made by a person directly to a third party on behalf of the family. (7-1-98)
- 07. Money Gifts.** Money gifts, up to one hundred dollars (\$100), per person per event, for celebrations typically recognized with an exchange of gifts. (7-1-98)
- 08. TAFI.** Retroactive TAFI grant corrections. (7-1-98)
- 09. Social Security Overpayment.** The amount withheld for a Social Security overpayment. Money withheld voluntarily or involuntarily to repay an overpayment from any other source is counted as income. (7-1-99)
- 10. Interest Income.** Interest posted to a bank account. (7-1-98)
- 11. Tax Refunds.** State and federal income tax refunds. (7-1-98)
- 12. EITC Payments.** EITC payments. (7-1-98)
- 13. Disability Insurance Payments.** Taxes withheld and attorney's fees paid to secure disability insurance payments. (7-1-98)
- 14. Sales Contract Income.** Taxes and insurance costs related to sales contracts. (7-1-98)
- 15. Foster Care.** Foster care payments. (7-1-98)
- 16. Adoption Assistance.** Adoption assistance payments. (7-1-98)
- 17. Food Programs.** Commodities and food stamps. (7-1-98)
- 18. Child Nutrition.** Child nutrition benefits. (7-1-98)
- 19. Elderly Nutrition.** Elderly nutrition benefits received under Title VII, Nutrition Program for the Elderly, of the Older Americans Act of 1965. (7-1-98)
- 20. Low Income Energy Assistance.** Benefits paid under the Low Income Energy Assistance Act of 1981. (7-1-98)
- 21. Home Energy Assistance.** Home energy assistance payments under Public Law 100-203, Section 9101. (7-1-98)
- 22. Utility Reimbursement Payment.** Utility reimbursement payments. (7-1-98)
- 23. Housing Subsidies.** An agency or housing authority pays a portion of or all of the housing costs for a participant. (5-8-09)
- 24. Housing and Urban Development (HUD) Interest.** Interest earned on HUD family self-sufficiency escrow accounts established by Section 544 of the National Affordable Housing Act. (7-1-98)
- 25. Native American Payments.** Payments authorized by law made to people of Native American ancestry. (7-1-98)
- 26. Educational Income.** Educational income, ~~except that AmeriCorps living allowances, stipends, and AmeriCorps Education Award minus attendance costs are earned income~~ includes deferred repayment education 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. (7-1-98)()

27. **Work Study Income of Student.** College work study income. (7-1-98)
28. **VA Educational Assistance.** VA Educational Assistance. (7-1-98)
29. **Senior Volunteers.** Senior volunteer program payments to individual volunteers under the Domestic Volunteer Services Act of 1979, 42 U.S.C. Sections 4950 through 5085. (7-1-98)
30. **Relocation Assistance.** Relocation assistance payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. (7-1-98)
31. **Disaster Relief.** Disaster relief assistance paid under the Disaster Relief Act of 1974 and aid provided under any federal statute for a President-declared disaster. Comparable disaster assistance provided by states, local governments, and disaster assistance organizations. (7-1-98)
32. **Radiation Exposure Payments.** Payments made to persons under the Radiation Exposure Compensation Act. (7-1-98)
33. **Agent Orange.** Agent Orange settlement payments. (7-1-98)
34. **Spina Bifida.** Spina bifida allowances paid to children of Vietnam veterans. (7-1-99)
35. **Japanese-American Restitution Payments.** Payments by the U.S. Government to Japanese-Americans, their spouses, or parents (or if deceased to their survivors) interned or relocated during World War II. (3-30-01)
36. **Vista Payments.** Volunteers in Service to America (VISTA) payments. (3-30-01)
37. **Subsidized Employment.** Employment for which the employer receives a subsidy from public funds to offset a portion or all of the wages and costs of employing an individual. This type of employment is a short-term placement, pays prevailing wage, and a specific skill is acquired. The employment is prescribed through a memorandum of agreement with no guarantee of permanent employment for the participant. (5-8-09)
38. **Temporary Census Income.** All wages paid by the Census Bureau for temporary employment related to U.S. Census activities are excluded for a time period not to exceed six (6) months during the regularly scheduled ten (10) year U.S. Census. (4-7-11)
39. **Income Excluded By Federal Law.** Income excluded by federal law is not counted in determining income available to the participant. ()

(BREAK IN CONTINUITY OF SECTIONS)

300. DEPARTMENT NOTIFICATION RESPONSIBILITY.

Notification must be provided to a family whenever eligibility or the grant amount changes. The notification must state the effective date and the reason for the action, the rule that supports the action, and the family's appeal rights. Notification may be delivered to the customer by hand, U.S. Mail, professional delivery service, or by any electronic means. (7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

302. ADVANCE NOTIFICATION NOT REQUIRED.

Notification must be provided by the date of the action, but advance notification is not required when a condition listed in Subsections 302.01 through 302.07 exists. (3-30-07)

- 01. Family Request.** The family requests closure of the grant *in writing*. (7-1-98)()
- 02. Family Member in Institution.** A family member is admitted or committed to an institution. (7-1-98)
- 03. Family's Address Unknown.** The family's whereabouts are unknown and Department mail is returned showing no known forwarding address. (7-1-98)
- 04. TANF Received in Another State.** A family member is receiving TANF in another state. (7-1-98)
- 05. Child Removed.** A child family member is removed from the home due to a judicial determination. (7-1-98)
- 06. Intentional Program Violation (IPV).** An IPV disqualification begins the first month after the month the member receives written notice of disqualification. (7-1-98)
- 07. Failure to Comply with Personal Responsibility Contract.** A participant fails to comply with activities agreed to in the participant's Personal Responsibility Contract. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

318. CONTINUATION PENDING LOCAL HEARING DECISION.

The family may continue to receive assistance during the hearing process if the Department receives the request for continued benefits within ten (10) days from the date the notification was mailed. Assistance will be continued at the current month's level while the hearing decision is pending, unless the twenty-four (24) month limit is reached or another change affecting the family's eligibility occurs, including failure to cooperate with requirements of the Personal Responsibility Contract while waiting for the Fair Hearing decision. (7-1-98)()

(BREAK IN CONTINUITY OF SECTIONS)

332. NOTICE OF OVERPAYMENT.

The Department must notify the participant when an *IPV* overpayment exists. The notice must inform the participant of mandatory recovery, the right to a hearing, the method for repayment and the need to arrange a repayment interview. (7-1-99)()

333. INADVERTENT HOUSEHOLD ERROR AND AGENCY ERROR TAFI OVERPAYMENTS.

An overpayment exists when a household receives a TAFI payment that exceeds the amount they were eligible to receive. The Department must establish a claim against the household, to recover the value of the overpaid TAFI benefit. ()

01. Inadvertent Household Error (IHE). An IHE is an error caused by an adult household member, without intent to cause an overpayment, which results in an overpayment. Examples of IHE claims are: ()

a. Failure to Give Information. A household, without intent to cause an overpayment, fails to give correct or complete information. ()

b. Failure to Report a Change that was required to be reported. A household, without intent to cause an overpayment, fails to report changes or to report at all. ()

c. Failure to Comply. A household, without intent to cause an overpayment, fails to comply due to a language barrier, educational level, or not understanding written or verbal instructions. ()

d. Benefits Paid Pending a Hearing. A household gets continued TAFI pending a fair hearing decision and the hearing decision, when made, is against the household. ()

02. Agency Error (AE). An agency error overpayment claim results from an overpayment caused by a Department action, or failure to act. ()

~~333.~~ 334. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1105

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2011.

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 56-202(b), 56-203(g), 56-203(i), 56-250 through 56-257, Idaho Code, and House Bill 260 (2011) codified in Sections 56-255, 56-257, and 56-260 through 56-266, Idaho Code, as amended.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

Wednesday, October 12, 2011 2:00 p.m. MDT	Thursday, October 13, 2011 2:00 p.m. PDT	Friday, October 14, 2011 2:00 p.m. MDT
State Office Building 2nd Floor Conf. Rm. 150 Shoup Avenue Idaho Falls, ID	Health & Welfare Region I Lower Level Conf. Room 1120 Ironwood Drive, Suite 102 Coeur d'Alene, ID	Medicaid Central Office Conf. Rooms D East & West 3232 Elder Street 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 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:

Rule changes are being made to align these rules with House Bill 260 passed by the 2011 Legislature. Under Section 56-255, Idaho Code, as amended by House Bill 260 (2011), the Department is adding a rule that requires mental health agency providers to meet national accreditation standards.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to comply with deadlines in amendments to governing law or federal programs, in particular, House Bill 260 (2011).

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. N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being done to bring this chapter of rules into compliance with House Bill 260 (2011).

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Carolyn Burt at (208) 364-1844.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 23rd day of August, 2011.

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 OF DOCKET NO. 16-0309-1105

712. MENTAL HEALTH CLINIC SERVICES: CREDENTIALING RESPONSIBILITIES OF THE DEPARTMENT.

01. Reimbursement. In compliance with Section 56-255(3)(d), Idaho Code, mental health services must be delivered by providers that meet national accreditation standards. A mental health clinic must be designated as credentialed or provisionally credentialed in order to receive Medicaid reimbursement for services. Any agency that fails to achieve or maintain credentialed status will have its Medicaid provider agreement terminated.

~~(5-8-09)~~(10-1-11)T

02. Application. All existing providers and new provider applicants must submit an application for credentialing that will be reviewed in order to proceed with the credentialing process and obtain the required credential by the Department. All initial applications will be responded to within thirty (30) calendar days. If the application is incomplete or is not in substantial compliance with these rules, the applicant must submit the additional information within ten (10) business days of receipt of notice for the application to be considered further. The application will be reviewed up to three (3) times. If the applicant has not provided the required information by the third submittal, then the application will be denied and the application will not be considered again for twelve (12) months. (5-8-09)

03. Temporary Credentialed Status. In order for existing providers to be able to continue to provide services during initial development, the Department will grant a one-time temporary credential to all existing providers. (5-8-09)

04. New Providers. New provider applicants will be required to submit a credentialing application and successfully complete the credentialing application process as a condition for Department approval as a Medicaid provider. If the new provider applicant successfully passes the application portion of credentialing, then a temporary credential will be issued to the provider for up to one hundred eighty (180) days. Within the one hundred eighty (180) days, an on-site review will be conducted. If the provider applicant is deemed to be in substantial compliance with these rules, then the temporary credential will be converted to a full credential. If the provider fails to be in substantial compliance, then the temporary credential will expire, credentialed status will be denied, and the provider applicant will not be considered for credentialing again for twelve (12) months. (5-8-09)

05. Elements of Credentialing. The initial credentialing process consists of the application, self-study, and an on-site review for compliance with the requirements of these rules. (5-8-09)

a. The application provides documentation the agency has met the criteria set forth in these rules. Elements contained in the application include: (5-8-09)

- i. Ownership and governance; (5-8-09)
 - ii. Physician contract for medical and clinical oversight and supervision; (5-8-09)
 - iii. Proof of appropriate insurance; (5-8-09)
 - iv. Appropriate employment and contract documentation; and (5-8-09)
 - v. Copies of relevant licenses and transcripts. (5-8-09)
- b.** The self-study provides the agency the opportunity to formally document policies and procedures that demonstrate compliance with Sections 713 and 714 of these rules. (5-8-09)
- c.** The on-site review provides the Department the opportunity to observe service delivery and ensure the agency actually implements and complies with their policies and procedures. (5-8-09)
- 06. Deemed Status.** Providers accredited by private accreditation agencies, (i.e., the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) or Commission on the Accreditation of Rehabilitation Facilities (CARF)), will be exempt from credentialing processes. Other accrediting agencies may be determined acceptable upon review by the Department. Providers must submit to the Department appropriate documentation of their private accreditation status. (5-8-09)
- 07. Expiration and Renewal of Credentialed Status.** Credentials issued under these rules will be issued for a period up to three (3) years. Unless denied or revoked, the agency's credential will expire on the date designated by the Department. No later than ninety (90) days before expiration, an agency must apply for renewal of credentials. A site review may be conducted by the Department for renewal applications. (5-8-09)
- 08. Provisional Credentialed Status.** If a new or renewal applicant is found deficient in one (1) or more of the requirements for credentialing, but does not have deficiencies that jeopardize the health and safety of the participants or substantially affect the provider's ability to provide services, a provisional credential may be issued. Provisional credentials will be issued for a period not to exceed one hundred eighty (180) days. During that time, the Department will determine whether the deficiencies have been corrected. If so, then the agency will be credentialed. If not, then the credential will be denied or revoked. (3-30-07)
- 09. Denial or Revocation of Credentialed Status.** The Department may deny or revoke credentials when conditions exist that endanger the health, safety, or welfare of any participant or when the agency is not in substantial compliance with these rules. Additional causes for denial or revocation of credentials include the following: (5-8-09)
- a.** The provider agency or provider agency applicant has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining credentialed status; (3-30-07)
 - b.** The provider agency or provider agency applicant has been convicted of fraud, gross negligence, abuse, assault, battery or exploitation; (5-8-09)
 - c.** The provider agency or provider agency applicant has been convicted of a criminal offense within the past five (5) years other than a minor traffic violation or similar minor offense; (3-30-07)
 - d.** The provider agency or provider agency applicant has been denied or has had revoked any health facility license or certificate; (3-30-07)
 - e.** A court has ordered that any provider agency owner or provider agency applicant must not operate a health facility, residential care or assisted living facility, or certified family home; (3-30-07)
 - f.** Any owners, employees, or contractors of the provider agency or provider agency applicant are listed on the statewide Child Abuse Registry, Adult Protection Registry, Sexual Offender Registry, or Medicaid exclusion lists; (3-30-07)

g. The provider agency or provider agency applicant is directly under the control or influence, whether financial or other, of any person who is described in Subsections 712.09.a. through 712.09.f. of this rule.
(3-30-07)

10. Procedure for Appeal of Denial or Revocation of Credentials. Immediately upon denial or revocation of credentials, the Department will notify the applicant or provider in writing by certified mail or by personal service of its decision, the reason for its decision, and how to appeal the decision. The appeal is subject to the hearing provisions in IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings."
(3-30-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1106

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202(b), and 56-209p, Idaho Code.

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

**Thursday, October 20, 2011
6:00 p.m. (Local)**

**Health & Welfare Region VI
1720 Westgate Drive
Suite A Rm. 131
Boise, ID**

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

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

Under Section 56-209p, Idaho Code, the Department is required to pay for midwife services provided to eligible participants through the medical assistance program. Because system changes are needed to add this provider group for Certified Professional Midwife (CPM) Services and time is needed to enroll providers, these proposed rules will be implemented on January 1, 2012. The changes in this docket provide for the administration and policies needed to reimburse for CPM services.

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 anticipated fiscal impact due to this rulemaking is uncertain given the uncertainty of the number of participants who will choose to use Certified Professional Midwife (CPM) services.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is in response to 2011 legislation under HB 165.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeanne Siroky (208) 364-1897.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 8th day of September, 2011.

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 OF DOCKET NO. 16-0309-1106

011. DEFINITIONS: I THROUGH O.

For the purposes of these rules, the following terms are used as defined below: (3-30-07)

01. ICF/ID. Intermediate Care Facility for People with Intellectual Disabilities. An ICF/ID is an entity licensed as an ICF/ID and federally certified to provide care to Medicaid and Medicare participants with developmental disabilities. (3-30-07)

02. In-Patient Hospital Services. Services that are ordinarily furnished in a hospital for the care and treatment of an in-patient under the direction of a physician or dentist except for those services provided in mental hospitals. (3-30-07)

03. Intermediary. Any organization that administers Title XIX or Title XXI; in this case the Department of Health and Welfare. (3-30-07)

04. Intermediate Care Facility Services. Those services furnished in an intermediate care facility as defined in 42 CFR 440.150, but excluding services provided in a Christian Science Sanatorium. (3-30-07)

05. Legal Representative. A parent with custody of a minor child, one who holds a legally-executed and effective power of attorney for health decisions, or a court-appointed guardian whose powers include the power to make health care decisions. (3-30-07)

06. Legend Drug. A drug that requires, by federal regulation or state rule, the order of a licensed medical practitioner before dispensing or administration to the patient. (3-30-07)

07. Level of Care. The classification in which a participant is placed, based on severity of need for institutional care. (3-30-07)

08. Licensed, Qualified Professionals. Individuals licensed, registered, or certified by national certification standards in their respective discipline, or otherwise qualified within the state of Idaho. (3-30-07)

09. Lock-In Program. An administrative sanction, required of a participant found to have misused the services provided by the Medical Assistance Program. The participant is required to select one (1) provider in the identified area(s) of misuse to serve as the primary provider. (3-30-07)

10. Locum Tenens/Reciprocal Billing. The practice of a physician to retain a substitute physician when the regular physician is absent for reasons such as illness, pregnancy, vacation, or continuing medical education. The substitute physician is called the "Locum Tenens" physician. Reimbursement to a Locum Tenens physician will be limited to a period of ninety (90) continuous days. Reciprocal billing occurs when a substitute physician covers the regular physician during an absence or on an on-call basis a period of fourteen (14) continuous days or less. (3-30-07)

- 11. Medical Assistance.** Payments for part or all of the cost of services funded by Titles XIX or XXI of the federal Social Security Act, as amended. (3-30-07)
- 12. Medicaid.** Idaho's Medical Assistance Program. (3-30-07)
- 13. Medicaid-Related Ancillary Costs.** For the purpose of these rules, those services considered to be ancillary by Medicare cost reporting principles. Medicaid-related ancillary costs will be determined by apportioning direct and indirect costs associated with each ancillary service to Medicaid participants by dividing Medicaid charges into total charges for that service. The resulting percentage, when multiplied by the ancillary service cost, will be considered Medicaid-related ancillaries. (3-30-07)
- 14. Medical Necessity (Medically Necessary).** A service is medically necessary if: (3-30-07)
- a.** It is reasonably calculated to prevent, diagnose, or treat conditions in the participant that endanger life, cause pain, or cause functionally significant deformity or malfunction; and (3-30-07)
- b.** There is no other equally effective course of treatment available or suitable for the participant requesting the service which is more conservative or substantially less costly. (3-30-07)
- c.** Medical services must be of a quality that meets professionally-recognized standards of health care and must be substantiated by records including evidence of such medical necessity and quality. Those records must be made available to the Department upon request. (3-30-07)
- 15. Medical Supplies.** Items excluding drugs, biologicals, and equipment furnished incident to a physician's professional services commonly furnished in a physician's office or items ordered by a physician for the treatment of a specific medical condition. These items are generally not useful to an individual in the absence of an illness and are consumable, nonreusable, disposable, and generally have no salvage value. Surgical dressings, ace bandages, splints and casts, and other devices used for reduction of fractures or dislocations are considered supplies. (3-30-07)
- 16. Midwife. An individual qualified as one of the following:** ()
- a. Nurse Midwife (NM). An advanced practice professional nurse who is licensed by the Idaho Board of nursing and who meets all the applicable requirements to practice as a nurse midwife under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing."** ()
- b. Certified Professional Midwife (CPM). An individual who is certified by the North American Registry of Midwives (NARM) and licensed by the Idaho Board of Midwifery under Title 54, Chapter 55, Idaho Code, and IDAPA 24.26.01, "Rules of the Idaho Board of Midwifery."** ()
- 167. Nominal Charges.** A public provider's charges are nominal where aggregate charges amount to less than one-half (1/2) of the reasonable cost of the services provided. (3-30-07)
- 178. Nonambulatory.** Unable to walk without assistance. (3-30-07)
- 189. Non-Legend Drug.** Any drug the distribution of which is not subject to the ordering, dispensing, or administering by a licensed medical practitioner. (3-30-07)
- ~~**19. Nurse Midwife (NM). A licensed professional nurse (RN) who meets all the applicable requirements to practice as nurse midwife under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing."** (3-30-07)~~
- 20. Nurse Practitioner (NP).** A licensed professional nurse (RN) who meets all the applicable requirements to practice as nurse practitioner under Title 54, Chapter 14, Idaho Code, and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing." (3-30-07)
- 21. Nursing Facility (NF).** An institution, or distinct part of an institution, that is primarily engaged in

providing skilled nursing care and related services for participants. It is an entity licensed as a nursing facility and federally certified to provide care to Medicaid and Medicare participants. Participants must require medical or nursing care, or rehabilitation services for injuries, disabilities, or sickness. (3-30-07)

22. Orthotic. Pertaining to or promoting the support of an impaired joint or limb. (3-30-07)

23. Outpatient Hospital Services. Preventive, diagnostic, therapeutic, rehabilitative, or palliative items or services furnished by or under the direction of a physician or dentist to a patient not in need of inpatient hospital care. (3-30-07)

24. Out-of-State Care. Medical service that is not provided in Idaho or bordering counties is considered out-of-state. Bordering counties outside Idaho are considered out-of-state for the purpose of authorizing long term care. (3-30-07)

25. Oxygen-Related Equipment. Equipment which is utilized or acquired for the routine administration of oxygen in the home. This includes oxygen tanks, regulators, humidification nebulizers, oxygen concentrators, and related equipment. Equipment which is used solely for the administration of medication into the lungs is excluded from this definition. (3-30-07)

(BREAK IN CONTINUITY OF SECTIONS)

399. COVERED SERVICES UNDER BASIC PLAN BENEFITS.

Individuals who are eligible for Medicaid Basic Plan Benefits are eligible for the following benefits, subject to the coverage limitations contained in these rules. Those individuals eligible for services under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," are also eligible for the services covered under this chapter of rules, unless specifically exempted. (5-8-09)

01. Hospital Services. The range of hospital services covered is described in Sections 400 through 449 of these rules. (5-8-09)

a. Inpatient Hospital Services are described in Sections 400 through 406. (3-30-07)

b. Outpatient Hospital Services are described in Sections 410 through 416. (3-30-07)

c. Reconstructive Surgery services are described in Sections 420 through 426. (3-30-07)

d. Surgical procedures for weight loss are described in Sections 430 through 436. (3-30-07)

e. Investigational procedures or treatments are described in Sections 440 through 446. (3-30-07)

02. Ambulatory Surgical Centers. Ambulatory Surgical Center services are described in Sections 450 through 499 of these rules. (5-8-09)

03. Physician Services and Abortion Procedures. Physician services and abortion procedures are described in Sections 500 through 519 of these rules. (5-8-09)

a. Physician services are described in Sections 500 through 506. (3-30-07)

b. Abortion procedures are described in Sections 510 through 516. (3-30-07)

04. Other Practitioner Services. Other practitioner services are described in Sections 520 through 559 of these rules. (5-8-09)

a. Midlevel practitioner services are described in Sections 520 through 526. (3-30-07)

- b. Chiropractic services are described in Sections 530 through 536. (3-30-07)
- c. Podiatrist services are described in Sections 540 through 546~~5~~. ~~(3-30-07)~~()
- ~~d.~~ Certified professional midwife (CPM) services in Sections 546 through 552. ()
- ~~d.e.~~ Optometrist services are described in Sections 550~~3~~ through 556. ~~(3-30-07)~~()
- 05. Primary Care Case Management.** Primary Care Case Management services are described in Sections 560 through 569 of these rules. (5-8-09)
- 06. Prevention Services.** The range of prevention services covered is described in Sections 570 through 649 of these rules. (5-8-09)
- a. Health Risk Assessment services are described in Sections 570 through 576. (3-30-07)
- b. Child wellness services are described in Sections 580 through 586. (3-30-07)
- c. Adult physical services are described in Sections 590 through 596. (3-30-07)
- d. Screening mammography services are described in Sections 600 through 606. (3-30-07)
- e. Diagnostic Screening Clinic services are described in Sections 610 through 616. (3-30-07)
- f. Preventive Health Assistance benefits are described in Sections 620 through 626. (5-8-09)
- g. Nutritional services are described in Sections 630 through 636. (3-30-07)
- h. Diabetes Education and Training services are described in Sections 640 through 646. (3-30-07)
- 07. Laboratory and Radiology Services.** Laboratory and radiology services are described in Sections 650 through 659 of these rules. (5-8-09)
- 08. Prescription Drugs.** Prescription drug services are described in Sections 660 through 679 of these rules. (5-8-09)
- 09. Family Planning.** Family planning services are described in Sections 680 through 689 of these rules. (5-8-09)
- 10. Substance Abuse Treatment Services.** Services for substance abuse treatment are described in Sections 690 through 699 of these rules. (5-8-09)
- 11. Mental Health Services.** The range of covered Mental Health services are described in Sections 700 through 719 of these rules. (5-8-09)
- a. Inpatient Psychiatric Hospital services are described in Sections 700 through 706. (3-30-07)
- b. Mental Health Clinic services are described in Sections 707 through 718. (3-30-07)
- 12. Home Health Services.** Home health services are described in Sections 720 through 729 of these rules. (5-8-09)
- 13. Therapy Services.** Occupational therapy, physical therapy, and speech-language pathology services are described in Sections 730 through 739 of these rules. (5-8-09)
- 14. Audiology Services.** Audiology services are described in Sections 740 through 749 of these rules.

(5-8-09)

15. Durable Medical Equipment and Supplies. The range of covered durable medical equipment and supplies is described in Sections 750 through 779 of these rules. (5-8-09)

a. Durable Medical Equipment and supplies are described in Sections 750 through 756. (3-30-07)

b. Oxygen and related equipment and supplies are described in Sections 760 through 766. (3-30-07)

c. Prosthetic and orthotic services are described in Sections 770 through 776. (3-30-07)

16. Vision Services. Vision services are described in Sections 780 through 789 of these rules. (5-8-09)

17. Dental Services. The dental services covered under the Basic Plan are covered under a selective contract as described in Section 800 through 819 of these rules. (7-1-11)T

18. Essential Providers. The range of covered essential services is described in Sections 820 through 859 of these rules. (5-8-09)

a. Rural health clinic services are described in Sections 820 through 826. (3-30-07)

b. Federally Qualified Health Center services are described in Sections 830 through 836. (3-30-07)

c. Indian Health Services Clinic services are described in Sections 840 through 846. (3-30-07)

d. School-Based services are described in Sections 850 through 856. (3-30-07)

19. Transportation. The range of covered transportation services is described in Sections 860 through 879 of these rules. (5-8-09)

a. Emergency transportation services are described in Sections 860 through 866. (3-30-07)

b. Non-emergency transportation services are described in Sections 870 through 876. (3-30-07)

20. EPSDT Services. EPSDT services are described in Sections 880 through 889 of these rules. (5-8-09)

21. Specific Pregnancy-Related Services. Specific pregnancy-related services are described in Sections 890 through 899 of these rules. (5-8-09)

(BREAK IN CONTINUITY OF SECTIONS)

~~545.—553.~~ (RESERVED)

546. CERTIFIED PROFESSIONAL MIDWIFE (CPM) SERVICES.

The Department will reimburse Certified Professional Midwives for maternal and newborn services performed within the scope of their practice. This section of rules does not include midlevel practitioner services provided by a nurse midwife (NM) which are described in Sections 522 through 525 of these rules. ()

547. CPM SERVICES: DEFINITIONS.

01. NARM. The North American Registry of Midwives, the international certification agency that establishes and administers certification for the CPM credential. ()

02. CPM. A certified professional midwife who is certified by NARM or any successor organization. ()

03. Licensed Certified Professional Midwife. An individual who holds a current license issued by the Idaho Board of Midwifery. ()

04. Board of Midwifery. The Idaho Board of Midwifery is located within the Idaho Bureau of Occupational Licensing and is the licensing authority for CPM providers. ()

548. CPM SERVICES: PARTICIPANT ELIGIBILITY.
A participant is eligible for CPM services if she is pregnant, in the six (6) week postpartum period, or is a newborn up to six (6) weeks old. ()

549. CPM SERVICES: COVERAGE AND LIMITATIONS.

01. Maternity and Newborn - Coverage. Antepartem, intrapartum, and up to six (6) weeks of postpartum maternity and newborn care are covered. ()

02. Maternity and Newborn - Limitations. Maternal or newborn services provided after the sixth postpartum week are not covered when provided by a CPM. ()

03. Medication - Coverage and Limitations. Licensed CPM providers may administer medication and bill Medicaid if the medication is a Medicaid covered service, and is also listed in the CPM formulary in IDAPA 24.26.01, "Rules of the Idaho Board of Midwifery." ()

550. CPM SERVICES: PROVIDER QUALIFICATIONS AND DUTIES.
Each CPM provider must: ()

01. NARM Certified. Be certified through NARM. ()

02. Licensed. Have a current license as a CPM from the Idaho Board of Midwifery or be licensed according to the regulations in the state where the services are provided. ()

03. Scope of Practice. Provide only those services that are within the scope of practice under IDAPA 24.26.01, "Rules of the Idaho Board of Midwifery." ()

551. CPM SERVICES: PROVIDER REIMBURSEMENT.
Reimbursement for CPM services will be the lesser of the billed amount, or 85% of the Department's physician fee schedule. The physician fee schedule is available from the Central Office for the Division of Medicaid as described in Section 005 of these rules, or online at: <http://www.idmedicaid.com>. ()

552. CPM SERVICES: PROVIDER QUALITY ASSURANCE ACTIVITIES.

01. Licensure Required. Each provider must maintain licensure with the Idaho Board of Midwifery. ()

02. Informed Consent Form Required. A signed copy of the participant's informed consent must be kept in the participant's record. ()

03. Compliance with Board of Midwifery Requirements. The CPM must adhere to all regulations listed in IDAPA 24.26.01, "Rules of the Idaho Board of Midwifery." ()

04. Department Access to Practice Data. All practice data submitted to the Board of Midwifery according to the provisions in IDAPA 24.26.01, "Rules of the Idaho Board of Midwifery," must be made immediately available to the Department upon request. ()

553. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1107

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 56-202(b) and 56-255, Idaho Code.

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

Thursday, October 13, 2011 6:00 p.m. (Local)	Monday, October 17, 2011 6:00 p.m. (Local)	Wednesday, October 19, 2011 6:00 p.m. (Local)
Health & Welfare Region IV 1720 Westgate Drive Suite A Rm. 131 Boise, ID	Health & Welfare Region I 1120 Ironwood Drive Suite 102, Large Conf. Rm. Coeur d'Alene, ID	Health & Welfare Region VII 150 Shoup Ave 2nd Floor Conf. Rm. Idaho Falls, ID

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

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

Under Section 56-255(5)(a)(xi) and (xii), Idaho Code, the Department is directed to limit benefits to eligible participants of the medical assistance program for physical therapy, speech therapy, and occupational therapy services. These services are to be aligned to meet the annual Medicare caps for the same services. These proposed rule changes limiting therapy services will be implemented on January 1, 2012.

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 anticipated fiscal impact will result in cost savings of \$150,000 in state general funds for the SFY 2012, and \$300,000 for each subsequent year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is in response to 2011 legislation under HB 260.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Jeanne Siroky (208) 364-1897.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 8th day of September, 2011.

Tamara Prisock
DHW - Administrative Procedures Section
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e-mail: dhwrules@dhw.idaho.gov

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1107

732. THERAPY SERVICES: COVERAGE AND LIMITATIONS.

Therapy services are covered under these rules when provided by the following providers: outpatient hospitals, outpatient rehabilitation facilities, comprehensive outpatient rehabilitative facilities, nursing facilities, developmental disability agencies, school-based services, independent practitioners, and home health agencies. (4-2-08)

01. Service Description: Occupational Therapy and Physical Therapy. Modalities, therapeutic procedures, tests, and measurements as described in the Physical Medicine and Rehabilitation Subsection and the Neurology and Neuromuscular Procedures Subsection of the Physician's Current Procedural Terminology (CPT Manual) are covered with the following limitations: (4-2-08)

a. Any evaluation or re-evaluation may only be performed by the therapist. Any changes in the participant's condition not consistent with planned progress or treatment goals necessitate a documented re-evaluation by the therapist before further treatment is carried out. (4-2-08)

b. Any CPT procedure code that falls under the heading of either, "Active Wound Care Management," or "Tests and Measurements," requires the therapist to have direct, one-to-one, patient contact. (4-2-08)

c. The therapist may be reimbursed for the technical component of muscle testing, joint range of motion, electromyography, or nerve velocity determinations as described in the CPT Manual when ordered by a physician, nurse practitioner, or physician assistant. (4-2-08)

d. Any assessment provided under the heading "Orthotic Management and Prosthetic Management" must be completed by the therapist. (4-2-08)

e. Any modality that is defined as "unlisted" in the CPT Manual requires prior authorization by the Department. In this case, the therapist and the physician, nurse practitioner, or physician assistant must provide information in writing to the Department that documents the medical necessity of the modality requested. (4-2-08)

f. The services of therapy assistants used when providing covered therapy benefits are included as part of the covered service. These services are billed by the supervising therapist. Therapy assistants may not provide evaluation services, make clinical judgments or decisions, or take responsibility for the service. Therapy assistants act at the direction and under the supervision of the treating therapist and in accordance with state licensure rules. (4-2-08)

02. Service Description: Speech-Language Pathology. Speech-language pathology services must be provided as defined in Section 730 of these rules. Services provided by speech-language pathology assistants are considered unskilled services, and will be denied as not medically necessary if they are billed as speech-language pathology services. (4-2-08)

03. Non-Covered Services: Occupational Therapy, Physical Therapy, and Speech-Language

- Pathology.** (4-2-08)
- a.** Continuing services for participants who do not exhibit the capability to achieve measurable improvement. (4-2-08)
 - b.** Services that address developmentally acceptable error patterns. (4-2-08)
 - c.** Services that do not require the skills of a therapist or therapy assistant. (4-2-08)
 - d.** Services provided by unlicensed aides or technicians, even if under the supervision of a therapist, except as provided under Section 854 of these rules. (4-2-08)
 - e.** Massage, work hardening, and conditioning. (4-2-08)
 - f.** Services that are not medically necessary, as defined in Section 011 of these rules. (4-2-08)
 - g.** Maintenance programs, as defined under Section 730 of these rules. (4-2-08)
 - h.** Duplicate services, as defined under Section 730 of these rules. (4-2-08)
 - i.** Group therapy in settings other than school-based services and developmental disability agencies. (4-2-08)
- 04. Service Limitations.** (4-2-08)
- a.** Physical therapy (~~PT~~) and ~~Occupational Therapy~~. ~~Each participant is limited to twenty five (25) outpatient physical therapy visits and twenty five (25) outpatient occupational therapy visits during any calendar year~~ speech-language pathology (SLP) services are limited to a combined annual dollar amount for all PT and SLP services. The Department will set the total amount based on the annual Medicare caps. The Department may ~~prior~~ authorize additional ~~visits if additional physical therapy or occupational therapy services, or both,~~ when the services are determined to be medically necessary and supporting documentation is provided to the Department. (4-2-08)()
 - b.** ~~Speech-Language Pathology Services. Each participant is limited to forty (40) outpatient speech-language pathology visits during any calendar year.~~ Occupational therapy services are limited to an annual dollar amount set by the Department based on the annual Medicare caps. The Department may ~~prior~~ authorize additional ~~visits if additional speech-language pathology therapy services,~~ when the services are determined to be medically necessary and supporting documentation is provided to the Department. (4-2-08)()
 - c.** Exceptions to ~~visit~~ service limitations. (4-2-08)()
 - i.** Therapy provided by home health agencies is subject to the limitations on home health ~~visits~~ services contained in Section 722 of these rules. (4-2-08)()
 - ii.** Therapy provided through school-based services is not included in the ~~visit~~ service limitations under Subsection 732.04 of this rule. (4-2-08)()
 - iii.** Therapy provided to EPSDT participants under the age of twenty-one (21) in accordance with the EPSDT requirements contained in Sections 881 through 883 of these rules, and in Section 1905(r) of the Social Security Act, will be authorized by the Department when additional therapy services are medically necessary. ()

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.09 - MEDICAID BASIC PLAN BENEFITS

DOCKET NO. 16-0309-1108

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, 56-203(7), 56-203(9), 56-250 through 56-257, 56-260 through 56-266, 56-1504, 56-1505, and 56-1511, and 56-1601 through 56-1610, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 Department is clarifying the rules related to Medicaid's reimbursement policies to providers for non-Medicare coordination of benefits when a third party payor (insurance company) reimburses a provider for services, or when the Department determines that a third party liability exists. These policies are determined under the guidance in the Centers for Medicare & Medicaid Services State Medicaid Manual (SSM), Section 3904.7.

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: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because this rulemaking is being for clarification of current policies.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Robert Kellerman at (208) 364-1994.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

Tamara Prisock
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 16-0309-1108

215. THIRD PARTY LIABILITY.

01. Determining Liability of Third Parties. The Department will take reasonable measures to determine any legal liability of third parties for medical care and services rendered to a participant. (3-30-07)

02. Third Party Liability as a Current Resource. The Department is to treat any third party liability as a current resource when such liability is found to exist and payment by the third party has been made or will be made within a reasonable time. (3-30-07)

03. Withholding Payment. The Department must not withhold payment on behalf of a participant because of the liability of a third party when such liability, or the amount thereof, cannot be currently established or is not currently available to pay the participant's medical expense. (3-30-07)

04. Seeking Third Party Reimbursement. The Department will seek reimbursement from a third party when the party's liability is established after reimbursement to the provider is made, and in any other case in which the liability of a third party existed, but was not treated as a current resource, with the exceptions of EPSDT and EPSDT-related services. (3-30-07)

a. The Department will seek reimbursement from a participant when a participant's liability is established after reimbursement to the provider is made; and (3-30-07)

b. In any other situation in which the participant has received direct payment from any third party resource and has not forwarded the money to the Department for services or items received. (3-30-07)

05. Billing Third Parties First. Medicaid providers must bill all other sources of direct third party payment, with the exception of absent parent (court ordered) without secondary resources, prenatal, EPSDT and EPSDT-related services before submitting the claim to the Department. If the resource is an absent parent (court ordered) and there are no other viable resources available or if the claims are for prenatal, EPSDT, or EPSDT-related services, the claims will be paid and the resources billed by the Department. (3-30-07)

06. Accident Determination. When the participant's Medicaid card indicates private insurance and/or when the diagnosis indicates an accident for which private insurance is often carried, the claim will be suspended or denied until it can be determined that there is no other source of payment. (3-30-07)

07. Third Party Payments ~~in Excess of Medicaid Limits.~~ ~~The Department will not reimburse providers for services provided when the amount received by the provider from the third party payor is equal to or exceeds the level of reimbursement allowed by medical assistance for the services.~~ The Department will pay the provider the lowest amount of the following: (3-30-07)()

a. The provider's actual charge for the service; or ()

b. The maximum allowable charge for the service as established by the Department in its pricing file. If the service or item does not have a specific price on file, the provider must submit supporting documentation to the Department. Reimbursement will be based on the documentation; or ()

c. The third party-allowed amount minus the third party payment, or the patient liability as indicated by the third party. ()

08. Subrogation of Third Party Liability. In all cases where the Department will be required to pay medical expenses for a participant and that participant is entitled to recover any or all such medical expenses from any third party, the Department will be subrogated to the rights of the participant to the extent of the amount of medical assistance benefits paid by the Department as the result of the occurrence giving rise to the claim against the third party. (3-30-07)

a. If litigation or a settlement in such a claim is pursued by the medical assistance participant, the participant must notify the Department. (3-30-07)

b. If the participant recovers funds, either by settlement or judgment, from such a third party, the participant must repay the amount of benefits paid by the Department on his behalf. (3-30-07)

09. Subrogation of Legal Fees. (3-30-07)

a. If a medical assistance participant incurs the obligation to pay attorney fees and court costs for the purpose of enforcing a monetary claim to which the Department is subrogated, the amount which the Department is entitled to recover, or any lesser amount which the Department may agree to accept in compromise of its claim, will be reduced by an amount which bears the same relation to the total amount of attorney fees and court costs actually paid by the participant as the amount actually recovered by the Department, exclusive of the reduction for attorney fees and court costs, bears to the total amount paid by the third party to the participant. (3-30-07)

b. If a settlement or judgment is received by the participant which does not specify portion of the settlement or judgment which is for payment of medical expenses, it will be presumed that the settlement or judgment applies first to the medical expenses incurred by the participant in an amount equal to the expenditure for benefits paid by the Department as a result of the payment or payments to the participant. (3-30-07)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.18 - MEDICAID COST-SHARING

DOCKET NO. 16-0318-1101 (FEE RULE)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective dates for these temporary rules are November 1, 2011, and January 1, 2012.

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 56-202(b), and 56-257, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearings concerning this rulemaking will be held as follows:

Wednesday, October 12, 2011 6:00 p.m. (Local)	Tuesday, October 18, 2011 6:00 p.m. (Local)	Tuesday, October 18, 2011 6:00 p.m. (Local)
Health & Welfare Region VII 150 Shoup Ave 2nd Floor Conf. Rm. Idaho Falls, ID	Health & Welfare Region IV 1720 Westgate Drive Suite A Rm. 131 Boise, ID	Health & Welfare Region I 1120 Ironwood Drive Suite 102, Large Conf. Rm. Coeur d'Alene, ID

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

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

The 2011 Legislature adopted HB 260 that directs the Department to establish, within the federal limitations of Medicaid law and regulations, enforceable cost sharing in the form of copayments to increase the awareness and responsibility of Medicaid participants for the cost of their health care. This docket provides language regarding when copayments can be charged for participants accessing the following services: chiropractic, podiatry, optometry, physical therapy, occupational therapy, speech therapy, physician office visits, and outpatient hospital services.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1),(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate to comply with deadlines in amendments to governing law or federal programs, in particular, House Bill 260 (2011).

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:

These temporary rules are needed to assist Medicaid in meeting budgetary constraints and to meet statutory changes effective July 1, 2011, for the implementation of copayments for Medicaid health care assistance.

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:

Implementation of these copayments is estimated to be an annual cost savings to the Trustee and Benefits (T&B) of \$750,000 in state general funds which was included in the Department's SFY 2012 appropriation.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because of the legislative intent language in House Bill 260 adopted by the 2011 Legislature.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Robin Pewtress at (208) 364-1892.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 22nd day of August, 2011.

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THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 16-0318-1101

000. LEGAL AUTHORITY.

Under Section 56-202(b), Idaho Code, the Legislature has delegated to the Department of Health and Welfare the responsibility to establish and enforce such rules as may be necessary or proper to administer public assistance programs within the state of Idaho. Under Sections ~~56-239 and 56-240~~ 56-253 and 56-257, Idaho Code, ~~the Idaho Legislature has authorized the Department of Health and Welfare to define program requirements and eligibility conditions for federal financial assistance in medical assistance programs~~ is to establish enforceable cost-sharing requirements within the limits of federal medicaid law and regulations. Furthermore, the Idaho Department of Health and Welfare is the designated agency to administer programs under Title XIX and Title XXI of the Social Security Act. ~~(3-19-07)(11-1-11)T~~

001. TITLE, ~~AND~~ SCOPE, ~~AND~~ POLICY.

- 01. Title.** The title of this chapter is IDAPA 16.03.18, "Medicaid Cost-Sharing." (3-19-07)
- 02. Scope.** ~~(11-1-11)T~~
- a.** ~~Under Sections 56-239 and 56-240, Idaho Code, t~~These rules describe the general requirements regarding the administration of the cost-sharing provisions for participation in a medical assistance program providing direct benefits in Idaho. ~~(11-1-11)T~~
- b.** This chapter does not apply to participants receiving benefits under IDAPA 16.03.16, "Premium Assistance." ~~(3-19-07)(11-1-11)T~~
- 03. Policy.** It is the policy of the Department that certain participants share in the cost of their benefits. (3-19-07)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. Copayment (Copay). The amount a participant is required to pay to the provider for specified services. (3-19-07)

02. Cost-Sharing. A payment the participant or the financially responsible adult is required to make toward the cost of the participant's health care. Cost-sharing includes both copays and premiums. (3-29-10)

03. Creditable Health Insurance. Creditable health insurance is coverage that provides benefits for inpatient and outpatient hospital services and physicians' medical and surgical services. Creditable coverage excludes liability, limited scope dental, vision, specified disease or other supplemental-type benefits. (3-29-10)

04. Department. The Idaho Department of Health and Welfare, or a person authorized to act on behalf of the Department. (3-19-07)

05. Family Income. The gross income of all financially responsible adults who reside with the participant, as calculated under IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." (3-29-10)

06. Family Size. Family size is the number of people living in the same home as the child. This includes relatives and other optional household members. (3-29-10)

07. Federal Poverty Guidelines (FPG). The federal poverty guidelines issued annually by the U. S. Department of Health and Human Services (HHS). The federal poverty guidelines are available on the U.S. Health and Human Services website at <http://aspe.hhs.gov/poverty>. (3-29-10)

08. Financially Responsible Adult. An individual who is the biological or adoptive parent of a child and is financially responsible for the participant. (3-29-10)

09. Medical Assistance. Payments for part or all of the cost of services funded by Titles XIX or XXI of the federal Social Security Act, as amended. (3-19-07)

10. Participant. A person eligible for and enrolled in the Idaho Medical Assistance Program. (3-19-07)

11. Physician Office Visit. Services performed by a physician, nurse practitioner or physician's assistant at the practitioner's place of business, including Federally Qualified Health Centers (FOHCs) and Rural Health Clinics (RHCs). Indian Health Clinic/638 Clinics providing services to individuals eligible for Indian Health Services are not included. (1-1-12)T

12. Premium. A regular and periodic charge or payment for health coverage. (4-6-05)

13. Social Security Act. 42 U.S.C. 101 et seq., authorizing, in part, federal grants to the states for medical assistance to eligible low-income individuals. (3-19-07)

14. State. The state of Idaho. (4-6-05)

15. Title XIX. Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. (3-29-10)

16. Title XXI. Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. (3-29-10)

011. -- 024. (RESERVED)

025. PARTICIPANTS EXEMPT FROM COST-SHARING.

Native American and Alaskan Native participants are exempt from the cost-sharing provisions of Sections 200, 205, 215, and ~~302~~20 of these rules. The participant must declare his race to the Department to receive this exemption.

~~(3-29-10)~~(11-1-11)T

026. -- 049. (RESERVED)

050. GENERAL COST-SHARING.

01. Cost-Sharing Maximum Amount. A family will be required to pay out of pocket costs not to exceed five percent (5%) of the family's anticipated gross ~~quarterly~~ monthly income unless an exception is made as provided in Subsection 050.02 of this rule.

~~(3-26-08)~~(11-1-11)T

02. Exception to Cost-Sharing Maximum. A family will be required to pay cost-sharing amounts as provided in Sections 215 and 400 of these rules. These cost-sharing amounts may exceed the family's five percent (5%) of anticipated gross ~~quarterly~~ monthly income.

~~(3-26-08)~~(11-1-11)T

03. Proof of Cost-Sharing Payment. ~~A family that has~~ If a participant believes that his cost-sharing exceeded the five percent (5%) cost-sharing of the family's anticipated gross ~~quarterly~~ monthly income, he must provide proof to the Department of the copay amounts ~~incurred that were paid.~~

~~(3-26-08)~~(11-1-11)T

04. Excess Cost-Sharing. A family that establishes proof of payment for cost-sharing that exceeds the five percent (5%) of the family's anticipated gross ~~quarterly~~ monthly income will be reimbursed by the Department for the amount paid that exceeds the five percent (5%), except as provided in Subsection 050.02 of this rule.

~~(3-26-08)~~(11-1-11)T

05. Cost-Sharing Suspended. A family that exceeds the five percent (5%) maximum amount for cost-sharing will not be required to pay a cost-sharing portion for any family participant for the remainder of the calendar ~~quarter~~ month in which proof of payment is established.

~~(3-26-08)~~(11-1-11)T

(BREAK IN CONTINUITY OF SECTIONS)

300. PARTICIPANTS EXEMPT FROM COPAYMENTS FOR MEDICAID SERVICES.

~~Medicaid participants are responsible for making copayments for the following services under the following circumstances in Subsections 300.01 and 300.02 of this rule.~~

~~(3-26-08)~~

~~**01. Accessing Hospital Emergency Department for Non-Emergency Medical Conditions.** A participant who seeks care at a hospital emergency department for services that do not meet the definition of an emergency medical condition as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," may be required to pay a copayment to the provider. The amount of the copayment is provided in Section 310 of these rules. A participant who must access a hospital emergency department in order to receive routine services for his medical condition is exempt from this provision.~~

~~(3-26-08)~~

~~**02. Accessing Emergency Transportation Services for Non-Emergency Medical Conditions.** A participant who accesses emergency transportation services for a condition that is determined by the Department to be a non-emergency medical condition may be required to pay a copayment to the provider of the service. The amount of the copayment is provided in Section 310 of these rules. Certain participants are exempt from this copayment.~~

Exempt Participants. Certain participants are exempt from copayments for services described in Section 320.02 through 320.10 of these rules. Exempt participants are include:

~~(3-26-08)~~(11-1-11)T

a. A child under the age of nineteen (19) with family income less than or equal to one hundred and thirty-three percent (133%) of the current federal poverty guidelines (FPG);

(3-26-08)

b. An individual age of nineteen (19) or older with family income less than or equal to one hundred

percent (100%) of the current federal poverty guidelines (FPG); (11-1-11)T

bc. A pregnant or post-partum woman when the medical condition for the needed transportation is services provided are related to the pregnancy; ~~(3-26-08)~~(11-1-11)T

ed. An inpatient in a hospital, nursing facility, intermediate care facility for persons with intellectual disabilities (ICF/ID), or other medical institution, who is required to pay all but a nominal amount of his income to the institution for his care; (3-26-08)

e. A participant who qualifies for services provided under a waiver of Section 1915c of the Social Security Act (SSA); (11-1-11)T

df. A ~~Medicare beneficiary, whose Medicaid benefits consist of assistance with his Medicare cost-sharing obligations~~ participant who has other health care coverage that is the primary payor for the services provided; ~~(3-26-08)~~(11-1-11)T

eg. A participant receiving hospice care; (3-26-08)

fh. A child in foster care receiving aid or assistance under the Social Security Act (SSA), Title IV, Part B; (3-26-08)

gi. A participant receiving adoption or foster care assistance under the Social Security Act (SSA), Title IV, Part E, regardless of age; and (3-26-08)

hj. A woman eligible under the breast and cervical cancer eligibility group. (3-26-08)

02. Notification of Copayment. The Department will provide notification to each participant who is not exempt from the copayment requirements in Subsections 320.02 through 320.10 of these rule. (11-1-11)T

301. -- 309. (RESERVED)

310. COPAYMENT FEE AMOUNTS.

01. Nominal Amount. The amount of the copayment must be a nominal amount as provided in 42 CFR 447.54. This nominal amount is set by the U.S. Department of Health and Human Services. (3-26-08)

02. Fee Amount. Beginning on ~~February 1, 2007~~ November 1, 2011, the nominal fee amount required to be paid by the participant as a copayment is three dollars and sixty-five cents (\$3.65). This copayment amount will be adjusted annually as determined by the Secretary of Human Services. ~~(3-26-08)~~(11-1-11)T

03. Annual Increase. The nominal fee amount will be increased annually by an adjusted percentage rate determined by the Secretary of Health and Human Services as set in the Social Security Act Section 1916. (3-26-08)

311. -- ~~30~~19. (RESERVED)

320. MEDICAID SERVICES SUBJECT TO COPAYMENTS.

Medicaid participants are responsible for making copayments for the services described in Subsections 320.01 through 320.10 of this rule, unless exempted. The amount of the copayment is provided in Section 310 of these rules. (11-1-11)T

01. Accessing Hospital Emergency Department for Non-Emergency Medical Conditions. A participant who seeks care at a hospital emergency department for services that do not meet the definition of an emergency medical condition as defined in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," may be required to pay a copayment to the provider. A participant who must access a hospital emergency department in order to receive routine services for his medical condition is exempt from this provision. (11-1-11)T

02. Accessing Emergency Transportation Services for Non-Emergency Medical Conditions. A participant who accesses emergency transportation services for a condition that is determined by the Department to be a non-emergency medical condition may be required to pay a copayment to the provider of the service.

(11-1-11)T

03. Chiropractic Services. Those services for spinal manipulation performed by a chiropractor.

(11-1-11)T

04. Occupational Therapy.

(1-1-12)T

05. Optometric Services. Those services performed by a optometrist that fall into the "General Ophthalmological Services" category of Current Procedural Terminology (CPT).

(11-1-11)T

06. Outpatient Hospital Services. Any of the services included in Subsections 320.03 through 320.05 and Subsections 320.07 through 320.10 of this rule performed in an outpatient hospital setting. Services performed in a Hospital Emergency Department are excluded, except as provided for in Subsection 320.01 of this rule.

(1-1-12)T

07. Physical Therapy.

(1-1-12)T

08. Podiatry Services. Services provided by a podiatrist during an office visit.

(11-1-11)T

09. Physician Office Visit. Each physician office visit, unless the visit is for a preventive wellness exam, immunizations, or family planning.

(1-1-12)T

10. Speech Therapy.

(1-1-12)T

321. -- 324. (RESERVED)

325. EXCEPTION TO CHARGING A COPAYMENT.

In order for a copay to be charged by the provider, the Medicaid payment amount for the services rendered during a visit must be equal to or greater than ten (10) times the amount of the copay described in Section 310 of these rules. The Medicaid payment amount is determined by the Department and published in the Medicaid Fee Schedule.

(11-1-11)T

326. -- 329. (RESERVED)

330. COLLECTION OF COPAYMENTS.

01. Responsibility for Collection. The provider of services is responsible for collection of the copayment from the participant.

(11-1-11)T

02. Denial of Services. The provider may require payment of an applicable copay prior to rendering services.

(11-1-11)T

03. Waiver of Copayment. The provider may choose to waive payment of any copay. The provider must have a written policy describing the criteria for enforcing collection of copayments and when the copay may be waived.

(11-1-11)T

04. Reduction in Reimbursement. When a copay is applicable, the provider's reimbursement will be reduced by the amount of the copay regardless of whether or not a copay was charged or collected by the provider.

(11-1-11)T

331. -- 399. (RESERVED)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.14 - RULES GOVERNING LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

DOCKET NO. 16-0414-1101

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, and 42 U.S.C. Sections 8621 to 8629, Low Income Home Energy Assistance Act of 1981.

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

Tuesday, October 25, 2011, 3:00 p.m.

**DHW Central Office
450 West State Street
Conference Room 2A
Boise, ID**

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

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

The Department is aligning the Low Income Home Energy Assistance Program (LIHEAP) rules with other Department eligibility assistance program rules to streamline and improve the outcomes for individuals in need of assistance. The proposed income eligibility will be aligned with the Food Stamp and Supplemental Security Income eligibility requirements that are 150% of the Federal Poverty Guidelines (FPG).

Definitions will be added for the FPG and vendor. Also, enforcement remedies will be added including actions that can be taken by the Department in the event of a participant or vendor knowingly falsifies documentation or information to receive LIHEAP payments and services.

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. This program is 100% federally funded by a fixed block grant award.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rulemaking was not conducted because these rules are being aligned with other Department rules.

INCORPORATION BY REFERENCE: No materials are being incorporated by reference into these rules.

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

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

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 OF DOCKET 16-0414-1101

010. DEFINITIONS.

Definitions applicable to this chapter of rules. (3-30-07)

01. Community Action Agency. A private non-profit organization serving the low income population in specified counties of the state with which the Department has entered into a contract for the provision of services for purposes of LIHEAP. (3-30-07)

02. Crisis Assistance. Energy assistance provided to an eligible participant household to reduce or eliminate an energy related health threatening situation to the household. (3-30-07)

03. Department. The Department of Health and Welfare or its designee. (3-30-07)

04. Federal Poverty Guidelines (FPG). The federal poverty guidelines issued annually by the U. S. Department of Health and Human Services (HHS). The federal poverty guidelines are available on the U.S. Health and Human Services website at: <http://aspe.hhs.gov/poverty/>. ()

045. Fraud. Recipient fraud is indicated where there appears to be a deliberate attempt to conceal or misrepresent pertinent information which could affect eligibility or grant amounts. (7-1-99)

056. Head of Participant Household. The person designated by the household members to receive energy assistance benefit in behalf of the household and in whose favor the energy assistance warrant is written. (7-1-99)

067. Income. Income is the gross amount of moneys actually received in the participant household from all sources. (4-5-00)

078. Intake Manual. Manual used by community action agencies for procedural policy and benefit calculation factors, which is published annually by the Department. (3-30-07)

089. Participant. An individual or group of individuals who has made application for the Low Income Home Energy Assistance Program from the state of Idaho. (3-30-07)

0910. Participant Household. A participant household is one (1) of the following: (3-30-07)

a. An individual who lives alone; or (3-30-07)

b. A group of individuals who are living together as one (1) economic unit where residential energy is customarily purchased in common or they make undesignated payments for energy in the form of rent. (3-30-07)

101. Primary Fuel. The type of fuel declared by the participant household to be the major source of

their home heating. (7-1-99)

12. Undocumented Resident. Individuals who enter the United States illegally and who have not obtained legal resident status. (3-30-07)

13. Vendor. A utility company or other provider of fuel utilized for home heating. ()

(BREAK IN CONTINUITY OF SECTIONS)

151. INCOME ELIGIBILITY REQUIREMENTS.

Under 42 U.S.C. 8624(b)(2)(B)(ii), Assistance under this program is limited to participant households with countable income at or below ~~sixty percent (60%) of Idaho's "State Median Income Estimate." State median income is defined in 42 USC 8622(11). The federal "State Median Income Estimate" for Idaho. (<http://www.acf.hhs.gov/programs/oes/liheap/guidance/information-memoranda/im09-05.html>)~~ **one hundred fifty percent (150%) of the Federal Poverty Guideline.** Participant households must provide proof of income for all members during the application process. (3-29-10)()

01. Households Receiving SSI or Food Stamps. Households in which one (1) or more individuals are receiving one (1) of the following are eligible for LIHEAP: ()

a. Supplemental Security Income (SSI) under Title XVI of the Social Security Act; or ()

b. Food Stamps under the Food Stamp Act of 1977, under 7 USC 2011 through 2027. ()

02. Income Not Counted. Income listed in Subsections 151.01.a. through 151.01.v. is not counted in determining LIHEAP eligibility or benefit level. All other income is counted in determining LIHEAP eligibility and benefit level. (3-15-02)

a. Benefit payments from Medicare Insurance. (4-5-00)

b. Private loans made to the participant or the household. (4-5-00)

c. Assets withdrawn from a personal bank account. (4-5-00)

d. Sale of real property, if the funds are reinvested within three (3) calendar months. (3-15-02)

e. Income tax refunds. (4-5-00)

f. Infrequent, irregular or unpredictable income from gifts or lottery winnings of less than thirty dollars (\$30) during the three (3) month period before application for LIHEAP. (4-5-00)

g. Wages or allowances for attendant care when the attendant resides in the household of the disabled member. (4-5-00)

h. Interest income of thirty dollars (\$30) or less received during the three (3) month period before application for LIHEAP. (4-5-00)

i. Legal fees or settlements from Workman's Compensation paid in a lump sum. (4-5-00)

j. Monies received for educational purposes from NSDL, College work-study programs, State Student Incentive grants, SEOG, Pell, Guaranteed Student Loans and Supplemental grants funded under Title IV, A-2. (3-15-02)

k. Monies from VA-GI Bill for Education. (4-5-00)

- l.** Department of Health and Welfare Adoption subsidies. (4-5-00)
 - m.** Compensation provided volunteers in the Older American Act or Foster Grandparent Program, including Green Thumb and Vista volunteers, Title V Senior Employment Program. (4-5-00)
 - n.** Third party payments made by a non-household member on behalf of the household. Third party payments include child care, energy assistance funds, shelter, food and clothing assistance. (4-5-00)
 - o.** Value of food stamps or donated food to household. (4-5-00)
 - p.** Utility allowance. (4-5-00)
 - q.** TAFI lump sum payments. (3-15-02)
 - r.** Tribal crop or land payments. (3-15-02)
 - s.** AmeriCorps stipend. (3-15-02)
 - t.** Child support income. (3-29-10)
- 023.** **Income Received Monthly.** To determine LIHEAP eligibility and benefit amount, when participant household income is received at least monthly, use the three (3) month's income prior to the date of application. (4-5-00)
- 034.** **Income Received Less Often Than Monthly.** For household income received less often than monthly convert the income into a three (3) month amount: (4-5-00)
- a.** Multiply income received weekly by twelve and nine tenths (12.9). (4-5-00)
 - b.** Multiply income received every two (2) weeks by six and forty-five hundredths (6.45). (4-5-00)
 - c.** Multiply income received twice each month by six (6). (4-5-00)
- 045.** **Seasonal and Self-Employment Income.** For households with seasonal or self-employment income divide the annual income by four (4). (4-5-00)
- 056.** **Treatment of Undocumented Resident Income.** If a household includes eligible and ineligible undocumented resident participants, and one (1) or more of the ineligible participants had income during the reporting period, count the ineligible participants' income and exclude the undocumented resident from the household count. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

302. OVERPAYMENTS.

~~All overp~~ Payments issued on behalf of a participant household that is not eligible ~~to receive~~ must be repaid to the Department. (7-1-99)()

303. RECOUPMENT OF OVERPAYMENT.

01. Recoupment of Overpayment. The Department may recoup or recover the amount issued on behalf of a LIHEAP participant. Interest will accrue on 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 a vendor or participant 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 vendor or participant error, intentional program violations (IPV), or fraud must be recovered in full. ()

02. Repayment Requirement. A vendor or participant must repay any overpayment, but may negotiate a repayment schedule with the Department. Failure to comply with the negotiated repayment agreement will result in revocation of that agreement and may result in the revocation of the vendor agreement. ()

304. -- 309. (RESERVED)

310. INTENTIONAL PROGRAM VIOLATIONS (IPV).

An IPV is an intentionally false or misleading action or statement as identified below in Subsections 310.01 through 310.07 of this rule. An IPV is established when a vendor or participant admits the IPV in writing and waives the right to an administrative hearing, or when determined by an administrative hearing, a court decision, or through deferred adjudication. Deferred adjudication exists when the court defers a determination of guilt because the accused vendor or participant meets the terms of a court order or an agreement with the prosecutor. ()

01. False Statement. An individual or vendor makes a false statement to the Department, either orally or in writing, in order to participate in LIHEAP. ()

02. Misleading Statement. An individual or vendor makes a misleading statement to the Department, either orally or in writing, to participate in LIHEAP. ()

03. Misrepresentation of Fact. An individual or vendor misrepresents one (1) or more facts to the Department, either orally or in writing, to participate in LIHEAP. ()

04. Concealing Fact. An individual or vendor conceals or withholds one (1) or more facts to participate in LIHEAP. ()

05. Non-Compliance With Rules and Regulations. An individual or vendor fails repeatedly or substantially to comply with this chapter of rules. ()

06. Violation of Vendor Agreement. A vendor or any agent thereof who knowingly violates any term of the vendor agreement. ()

07. Failure to Repay. An individual or vendor has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or vendor agreement. ()

311. PENALTIES FOR AN IPV.

When the Department determines an IPV was committed, the participant or vendor who committed the IPV loses eligibility to participate in LIHEAP. If an individual in a LIHEAP household has committed an IPV, the entire household is ineligible for LIHEAP. If a vendor has committed an IPV, the vendor is ineligible to receive payments. The period of ineligibility for each offense, for both a participant or a vendor, is as follows: ()

01. First Offense. Twelve (12) months, for the first IPV or fraud offense, or the length of time specified by the court. ()

02. Second Offense. Twenty-four (24) months for the second IPV or fraud offense, or the length of time specified by the court. ()

03. Third Offense. Permanent ineligibility for the third or subsequent IPV or fraud offense, or the length of time specified by the court. ()

312. -- 319. (RESERVED)

320. DENIAL OF PAYMENT.

The Department may deny payment to the vendor or participant for the reasons described in Subsections 320.01 through 320.04 of this rule. ()

01. Services Not Provided. Any or all claims for vendor services the Department determines were not provided. ()

02. Contrary to Rules or Provider Agreement. Vendor services provided contrary to these rules or the vendor agreement. ()

03. Failure to Provide Immediate Access to Records. The vendor does not allow immediate access by the Department to LIHEAP records. ()

04. Willful Misrepresentation or Concealment of Facts. The vendor or participant willfully misrepresents or conceals facts relating to LIHEAP. ()

321. -- 349. (RESERVED)

350. TERMINATION OF VENDOR STATUS.

Under Section 56-209h, Idaho Code, the Department may terminate the vendor agreement of, or otherwise deny vendor status for a period up to five (5) years from the date the Department's action becomes final to any individual or entity providing LIHEAP. ()

01. Submits an Incorrect Claim. Submits a claim with knowledge that the claim is incorrect. ()

02. Fraudulent Claim. Submits a fraudulent claim. ()

03. Knowingly Makes a False Statement. Knowingly makes a false statement or representation of material facts in any document required to be maintained or submitted to the Department. ()

04. Immediate Access to Documentation. Fails to provide, upon written request by the Department, immediate access to documentation required to be maintained. ()

05. Non-Compliance With Rules and Regulations. Fails repeatedly or substantially to comply with the rules and regulations governing LIHEAP payments. ()

06. Violation of Material Term or Condition. Knowingly violates any material term or condition of the vendor agreement. ()

07. Failure to Repay. Has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or vendor agreement. ()

08. Fraudulent or Abusive Conduct. Has been found, or was a managing employee in any entity which has been found, to have engaged in fraudulent conduct or abusive conduct in connection with the delivery of LIHEAP funded services. ()

351. REFUSAL TO ENTER INTO AN AGREEMENT.

The Department may refuse to enter into a vendor agreement for the reasons described in Subsections 351.01 through 351.05 of this rule. ()

01. Convicted of a Felony. The vendor has been convicted of a felony relating to their involvement in a public assistance program. ()

02. Failed to Repay. The vendor has failed to repay the Department monies which had been previously determined to have been owed to the Department. ()

03. Investigation Pending. The vendor has a pending investigation for program fraud or abuse.

()

04. Terminated Vendor Agreement. The vendor was the managing employee, officer, or owner of an entity whose vendor agreement was terminated under Section 350 of these rules. ()

05. Excluded Individuals. The vendor has a current exclusion from participation in federal programs by the Office of Inspector General List of Excluded Individuals and Entities. ()

352. VENDOR OR PARTICIPANT NOTIFICATION.

When the Department determines any actions defined in Sections 303 through 351 of these rules are appropriate, it will send written notice of the decision to the vendor or participant. The notice will state the basis for the action, the length of the action, the effect of the action on the participant or the vendor's ability to provide services under state and federal programs, and appeal rights. ()

~~305~~3. -- 994. (RESERVED)

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.09 - MEDICAL FEES

DOCKET NO. 17-0209-1102

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, 72-720, 72-721, 72-722, 72-723, and 72-803, 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 25, 2011.

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:

Provides the annual adjustment of the medical fee schedule for physician reimbursement in accordance with Section 72-803, Idaho Code. The reference to individual status codes is removed from Subsection 032.02(c)(i), due to occasional additions and deletions made by CMS that could require annual rule changes. As authorized by Section 72-803, Idaho Code, the Conversion Factors in Section 031 are being adjusted.

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, as authorized by Section 72-803, Idaho Code, the Commission adopted a rule, IDAPA 17.02.09.031.05, providing for the annual adjustment of medical fee conversion factors in order to reflect any changes in inflation or market conditions. Negotiations about such changes would not be productive.

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, 208-334-6084.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 29th day of August, 2011.

Mindy Montgomery, Director
Industrial Commission
317 Main Street
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. 17-0209-1102

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. (4-7-11)

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by physicians. (4-7-11)

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. (4-7-11)

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 60.33
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

MEDICAL FEE SCHEDULE			
SERVICE CATEGORY	CODE RANGE(S)	DESCRIPTION	CONVERSION FACTOR
Surgery - Group Four	10000 - 12999	Integumentary System	\$87.72
	20000 - 20615	Musculoskeletal System	
	29000 - 29799	Casts & Strapping	
	30000 - 39999	Respiratory & Cardiovascular	
	40000 - 49999	Digestive System	
	50000 - 59999	Urinary System	
	60000 - 60999	Endocrine System	
	62260 - 62999	Spine & Spinal Cord	
	64000 - 64549	Nerves & Nervous System	
	65000 - 69999	Eye & Ear	
Radiology	70000 - 79999	Radiology	\$87.72 88.54
Pathology & Laboratory	80000 - 89999	Pathology & Laboratory	To Be Determined
Medicine - Group One	90000 - 90799	Immunization, Injections, & Infusions	\$47.00
	94000 - 94999	Pulmonary / Pulse Oximetry	
	97000 - 97799	Physical Medicine & Rehabilitation	
	97800 - 98999	Acupuncture, Osteopathy, & Chiropractic	
Medicine - Group Two	90800 - 92999	Psychiatry & Medicine	\$68.50
	93000 - 93999	Cardiography, Catheterization, & Vascular Studies	
	95000 - 96020	Allergy / Neuromuscular Procedures	
	96040 - 96999	Assessments & Special Procedures	
	99000 - 99607	E / M & Miscellaneous Services	

(4-7-11)()

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. (4-7-11)

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 in accordance with Section 72-803, Idaho Code. (4-7-11)

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. (4-7-11)

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: (4-7-11)
- a. Modifier 50: Additional fifty percent (50%) for bilateral procedure. (4-7-11)
 - 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. (4-7-11)
 - c. Modifier 80: Twenty-five percent (25%) of coded procedure. (4-7-11)
 - d. Modifier 81: Fifteen percent (15%) of coded procedure. This modifier applies to MD and non-MD assistants. (4-7-11)

THE FOLLOWING SECTION WILL BECOME EFFECTIVE JANUARY 1, 2012

PLEASE SEE THE IDAHO ADMINISTRATIVE CODE FOR THE CURRENT CODIFIED TEXT

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. (1-1-12)

01. Acceptable Charge. Payors shall pay providers the acceptable charge for medical services provided by hospitals and ambulatory surgery centers. (1-1-12)

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. (1-1-12)

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%). (1-1-12)

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%). (1-1-12)

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 Medicare Hospital Outpatient Prospective Payment System (OPPS) APC weight in effect on the first day of January of the current calendar year. The base rate for hospital outpatient services is one hundred and thirty-eight dollars (\$138). The base rate for ASC services is ninety dollars (\$90). (1-1-12)

i. ~~If Medical services for which~~ there is no APC 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 ~~reimbursed at~~ seventy-five percent (75%) of the reasonable charge. (1-1-12)()

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. (1-1-12)

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%). (1-1-12)

iv. Status code Q items with an assigned APC weight will not be discounted. (1-1-12)

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 hospital 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. (1-1-12)

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. (1-1-12)

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. (1-1-12)

ii. **Inpatient Implantable Hardware.** Hospitals may seek additional reimbursement beyond the MS-DRG payment for invoiced implantable hardware where the aggregate invoice cost is greater than ten thousand dollars (\$10,000). Additional reimbursement shall be the invoice cost plus an amount which is equal to ten percent (10%) of the invoice cost, but which does not exceed three thousand dollars (\$3,000). Handling and freight charges shall be included in invoice cost. (1-1-12)

iii. **Outpatient Implantable Hardware.** Hospitals and ASCs may seek additional reimbursement beyond the APC payment for invoiced implantable hardware where the aggregate invoice cost is greater than five hundred dollars (\$500). Additional reimbursement shall be the invoice cost plus an amount which is equal to ten percent (10%) of the invoice cost, but which does not exceed one thousand dollars (\$1,000). Handling and freight charges shall be included in invoice cost. (1-1-12)

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. (1-1-12)

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. (1-1-12)

IDAPA 17 - INDUSTRIAL COMMISSION

17.02.11 - RULES GOVERNING SECURITY FOR COMPENSATION -- SELF-INSURED EMPLOYERS

DOCKET NO. 17-0211-1101

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 held as follows:

Wednesday, October 12, 2011 10:00 a.m. - 12:00 p.m.	Thursday, October 20, 2011 10:00 a.m. - 12:00 p.m.	Monday, October 24, 2011 10:00 a.m. - 12:00 p.m.
Ameritel Inn - Spectrum 2501 S. 25th Street East Ammon, Idaho 83406	Best Western Coeur d'Alene Inn 700 S. Clearwater Lane 506 W. Appleway Ave. Coeur d'Alene, ID 83814	Industrial Commission 700 S. Clearwater Lane Boise, ID 83712

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:

Adds to the requirements for public and private employers applying for approval to become self-insured; Expands on the acceptable forms of security; Adds provisions to better ensure that security deposits are sufficient to cover the employer's liabilities and provides credit for excess insurance policies; Changes the reporting requirements and forms to capture the outstanding liabilities of a self-insured employer for workers' compensation which helps in determining their security deposit requirements and ensure injured workers are adequately covered.

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 conducted through a subcommittee of the Commission's Advisory Committee. All self-insured employers in the state of Idaho were invited to attend these meetings and those employers provided input to the Industrial Commission on the drafting of these rule revisions. Subcommittee members and the Advisory Committee members reached consensus to proceed with the changes being submitted.

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 26, 2010.

DATED this 17th day of August, 2011.

Nancy Beeson, Commission Secretary
Industrial Commission
700 S. Clearwater Lane
P.O. Box 83720
Boise, ID 83720-0041
Phone: 208-334-6000

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 17-0211-1101

012. DEFINITIONS.

For the purposes of this chapter, the following definitions are applicable: (4-7-11)

01. Compensation. All benefits payable under the provisions of the Idaho Workers Compensation Law. ()

~~02.~~ **012. 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. (4-7-11)

~~03.~~ **013. Indemnity Claim.** Any claim made for the payment of indemnity benefits. (4-7-11)

~~04.~~ **014. 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. (4-7-11)

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: (4-7-11)

01. Payroll. Have an average annual Idaho payroll over the preceding three (3) years of at least four million dollars (\$4,000,000); (4-7-11)

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. (4-7-11)

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; (4-7-11)

04. Adjuster. Designate in writing a licensed Idaho resident adjuster; (4-7-11)

05. Previous Claims. Provide a history of all workers' compensation claims filed with the employer or the employer's workers' compensation carrier, as well as all compensation paid, during the previous ~~three~~ five (35) (4-7-11) () calendar years.

06. Excess Insurance. Provide an insurance plan and copies of all proposed policies of excess workers' compensation insurance coverage. ()

07. Actuarial Study. Provide an actuarial study prepared by a qualified actuary determining adequate rates for the proposed self-funded worker's compensation plan based upon a fifty percent (50%) confidence level. ()

08. Feasibility Study. Provide a self-insurance feasibility study that includes an analysis of the advantages and disadvantages of self insurance as compared to current coverage, and the related costs and benefits. ()

069. 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; (4-7-11)

0710. Supplemental Information. Provide supplemental information as requested; (4-7-11)

0811. 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; (4-7-11)

0912. Written Approval. Obtain written approval from the Industrial Commission. (4-7-11)

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: (4-7-11)

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. (4-7-11)()

02. Security Deposit with Treasurer. (4-7-11)

a. Maintain a primary 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, or in such other form approved by the Commission, 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~~ such amount equal to all outstanding and unpaid awards of as the Commission determines is necessary to secure the self-insured employer's total unpaid liability for compensation under the Workers' Compensation Law. (4-7-11)()

b. Self-insured employers shall receive a credit for the primary security deposit against the self-insured employer's obligation to post the additional security required by Subsection 014.02.a. of this rule. ()

c. Excess insurance coverage approved by the Commission may apply as a credit against the self-insured employer's obligation to post the additional security required by Subsection 014.02.a. of this rule. The Commission must be provided with thirty (30) days advance written notice of any change or cancellation of an approved excess insurance policy. ()

bd. All security deposited by the self-insured employer shall be maintained as provided by Section 72-

302, Idaho Code.

(4-7-11)

ee. Any withdrawal or partial release of security deposited hereunder must be requested in writing and approved by the Commission. (4-7-11)

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:

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. (4-7-11)

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: (4-7-11)

- a. Investigate and adjust all claims for compensation; (4-7-11)
- b. Pay all compensation benefits due; (4-7-11)
- c. Accept service of claims, applications for hearings, orders of the Commission, and all process which may be issued under the Workers' Compensation Law; (4-7-11)
- d. Enter into compensation agreements and lump sum settlements with Claimants; (4-7-11)
- e. Provide at the employer's expense necessary forms to any employee who wishes to file a claim under the Workers' Compensation Law. (4-7-11)

04. File Reports. Report to the Industrial Commission ~~at the end of each calendar quarter~~ semi-annually, or more often as required by the Commission, total unpaid liability on all outstanding and unpaid awards of compensation open claims. (4-7-11)(____)

a. The semi-annual report of ~~outstanding and unpaid awards~~ total unpaid liability shall be filed with the Industrial Commission by the end of the months ~~following the end of each calendar quarter~~ of January and July. (4-7-11)(____)

b. The report shall provide the aggregate number of open claims, including indemnity with medical and medical only claims, along with the amount of any compensation paid on open claims, as of the end of each June and December. (____)

~~bc.~~ The report shall be filed even if there are no ~~outstanding awards~~ open claims. In that event, the employer shall certify the fact that there are no ~~outstanding awards~~ open claims to be reported. (4-7-11)(____)

~~ed.~~ The report shall be submitted on or in a format that is substantially the same as Form ~~IC36B IC-211, "Report of Outstanding Awards—Self-Insured Employers~~ Report of Total Unpaid Liability," 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 ½" x

11”) in size.

~~(4-7-11)~~()

~~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~~ liability.

~~(4-7-11)~~()

~~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.~~

~~(4-7-11)~~

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.

(4-7-11)

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.

(4-7-11)

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.

(4-7-11)

(BREAK IN CONTINUITY OF SECTIONS)

271. RULE GOVERNING REPORTING INDEMNITY AND MEDICAL 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.

(4-7-11)

01. Filing. The report of indemnity and medical 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.

~~(4-7-11)~~()

02. Form. The report of indemnity and medical payments shall be submitted in writing on, or in a format substantially the same as Form IC2-327, ~~“Report of Indemnity Payments~~ Workers’ Compensation Claims Involving Medical Payments Only and Claims Involving Indemnity Payments Report,” contained in Appendix B at the end of this chapter.

~~(4-7-11)~~()

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.

(4-7-11)

04. Penalty for Late Filing. A penalty shall be assessed by the Commission for filing the report of indemnity and medical payments later than March 3rd each year.

~~(4-7-11)~~()

a. A penalty of two hundred dollars (\$200) shall be assessed for late filing of seven (7) days or less.

(4-7-11)

b. A penalty of one hundred dollars (\$100) per day shall be assessed for late filing of more than seven (7) days. (4-7-11)

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. (4-7-11)

05. Estimating Indemnity Payments for Entities That Fail to Report Timely. If an entity required to report indemnity and medical 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%). (4-7-11)()

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. (4-7-11)

272. -- 999. (RESERVED)

APPENDIX A

~~IC36B – REPORT OF OUTSTANDING AWARDS – SELF-INSURED EMPLOYERS~~

<i>(Name of Self-Insured Employer)</i> _____							
<i>Calendar Year:</i> _____							
<i>For Calendar Quarter Ending: qMarch qJune qSeptember qDecember</i>							
<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>	<i>(5)</i>	<i>(6)</i>	<i>(7)</i>	<i>(8)</i>
<i>Date of Injury</i>	<i>Claimant Name (as shown on First Report of Injury)</i>	<i>Type of Claim</i>	<i>Total Awards</i>	<i>Compensation Paid This Report Period</i>	<i>Total Compensation Paid to Date</i>	<i>Adjustments</i>	<i>Unpaid Balance –{(4) minus (5)}</i>
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* _____

APPENDIX A

<u>IC-211, SELF- INSURED EMPLOYER REPORT OF TOTAL UNPAID LIABILITY</u>							
<u>(Name of Self-Insured Employer)</u>							
<u>Calendar Year:</u> _____							
<u>For Calendar Semiannual Period Ending and As Of:</u>						<u>June</u>	<u>December</u>
<u>(1)</u>	<u>(2)</u>	<u>(3)</u>	<u>(4)</u>	<u>(5)</u>	<u>(6)</u>	<u>(7)</u>	<u>(8)</u>
<u>Total Number of Open Claims</u>	<u>Total Incurred Medical Only</u>	<u>Total Paid Medical Only</u>	<u>Total Unpaid Medical Only (2 – 3 = 4)</u>	<u>Total Incurred Indemnity incl. Medical</u>	<u>Total Paid Indemnity incl. Medical</u>	<u>Total Unpaid Indemnity (5 – 6 = 7)</u>	<u>Total Unpaid Liability (4 + 7 = 8)</u>
	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____	\$ _____
<u>Note: Report Open Claim Totals for All Previous Periods of Self Insurance in Idaho.</u>							
<u>Total Unpaid Liability from Column 8:</u>							<u>\$0.00</u>
<u>Excess Insurance Carrier Reimbursement Expected:</u>							<u>\$0.00</u>
<u>Net Remaining Unpaid Liability:</u>							<u>\$0.00</u>
<u>Note: Credit for Excess Insurance is contingent upon meeting criteria acceptable to the Idaho Industrial Commission.</u>							

Excess Carrier Reimbursement Detail:							
<u>(1)</u> <u>Date</u> <u>Of</u> <u>Injury</u>	<u>(2)</u> <u>Claimant</u> <u>Name</u>	<u>(3)</u> <u>Total</u> <u>Medical &</u> <u>Indemnity</u> <u>Incurred</u>	<u>(4)</u> <u>Total</u> <u>Medical &</u> <u>Indemnity</u> <u>Paid</u>	<u>(5)</u> <u>Excess</u> <u>Carrier</u> <u>Name</u>	<u>(6)</u> <u>Specific</u> <u>Retention</u> <u>Limit</u>	<u>(7)</u> <u>Excess</u> <u>Reimbursement</u> <u>Expected</u>	<u>(8)</u> <u>Excess</u> <u>Reimbursement</u> <u>Obtained</u>
_____	_____	_____	_____	_____	_____	_____	_____
Subtotal:							_____
Self-Insurer's Authorization and Validation							
I, _____ certify that the above information is valid and truthful to the best of my knowledge.							
<u>Corporate Officer's Signature</u>				<u>Printed Name and Title</u>			
<u>Date:</u>							
Report Preparer's Validation:							
I, _____ attest that the above information is valid and truthful to the best of my knowledge.							
<u>Name & Company:</u>				<u>Telephone:</u>			
<u>Address:</u>							
Send Original to: Fiscal Section, Industrial Commission, P.O. Box 83720, Boise, Idaho 83720-0041							Form IC-211

APPENDIX B

IC327 REPORT OF INDEMNITY PAYMENTS
EXHIBIT A to SEMI-ANNUAL PREMIUM TAX REPORT

Reporting Entity Name:

Reporting Period: _____ *January 1 – June 30* (Year)

_____ *July 1 – December 31* (Year)

Date of Preparation:

1- *Total Claims:* _____

2- *Total Number of Indemnity Claims:* _____

3- *Payments Made During the Reporting Period on Indemnity Claims:* _____

a- *Total Amount of All Payments (including Medical):* _____

b- *Total Amount of All Indemnity Payments:* _____

Certification

State of _____)
 _____) ss.
 County of _____)
 _____)

I, _____, being first duly sworn on oath, state that I have read the foregoing report which sets forth certain information relating to indemnity payments made during the reporting period, that I know the contents, and that I certify the report is true and correct to the best of my knowledge.

Signature of Preparer

Title of Preparer

SUBSCRIBED AND SWORN to before me on this ____ day of _____, _____.

Notary Public for _____.

Residing at _____.

My term expires: _____.

APPENDIX B

<u>Idaho Industrial Commission</u>	<u>Physical mail address:</u>
<u>P.O. Box 83720</u>	<u>700 S. Clearwater Lane</u>
<u>Boise, Idaho 83720-0041</u>	<u>Boise, Idaho 83712</u>
<u>IC2-327 - Workers' Compensation Claims Involving Medical Payments Only and Claims Involving Indemnity Payments Report</u>	
<u>Company Name and Address</u>	<u>FEIN:</u>
	<u>Reporting period:</u>
<u>MEDICAL ONLY CLAIMS:</u>	
<u>(A) Total number of medical-only claims on which payments were made during the reporting period:</u>	
<u>(B) Total amount paid on medical-only claims during the reporting period:</u>	<u>\$ _____</u>
<u>INDEMNITY CLAIMS</u>	
<u>(C) Total number of indemnity claims on which payments (including any medical payments) were made during the reporting period:</u>	
<u>(C) Total amount of indemnity payments (not including medical payments) during the reporting period:</u>	<u>\$ _____</u>

<u>Total amount of all indemnity claims payments (including medical payments on indemnity claims only.)</u>		\$ _____
<u>Certification</u>		
State of _____		County of _____
I, _____, being duly sworn on oath, state that I have read the foregoing report which sets forth certain information relating to medical and indemnity payments made during the reporting period, that I know the contents, and that I certify the report is true and correct to the best of my knowledge.		
<u>Signature of Preparer:</u>		<u>Print Name:</u>
<u>Telephone:</u>		
<u>Email Address:</u>		<u>Fax:</u>
SUBSCRIBED AND SWORN to before me on this _____ day of _____		
<u>The ISIF assessment billing should be sent to:</u>		<u>Notary Public for</u> <u>My commission expires:</u>
<u>Name:</u>		
<u>Please Print</u>		
<u>Title:</u>		
<u>Address:</u>		
<u>City, State, Zip</u>		
<u>Phone:</u>		
<u>NOTE: Failure to file this form is a misdemeanor under Section 72-327 Idaho Code. This form is to be submitted annually with the Idaho Semi-Annual Workers: Compensation Premium Tax Report. IC2-327 (rev. 6/25/2009)</u>		

IDAPA 18 - DEPARTMENT OF INSURANCE

18.01.46 - RECOGNITION OF NEW MORTALITY TABLES FOR USE IN DETERMINING THE MINIMUM STANDARD OF VALUATION FOR ANNUITIES AND PURE ENDOWMENT CONTRACTS

DOCKET NO. 18-0146-1101

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 41-211 and 41-612, 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 19, 2011.

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 rule is to supplement permitted mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts by life and annuity insurance companies operating in Idaho with the addition of two new tables: the 1994 Group Annuity Reserving (1994 GAR) Table and the Annuity 2000 Mortality Table.

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 not conducted because the proposed changes are from a National Association of Insurance Commissioners model regulation, and the Idaho domiciled life and annuity insurance company supports adoption of such changes, which are also believed to be widely accepted within the industry.

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 four annuity tables allowed by this rule are incorporated by reference. They are not repeated in this rule due to length and complexity. The four tables incorporated by reference consist of the two new tables noted above and two tables that were adopted by the existing version of the rule but that had not been previously formally incorporated by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Georgia Siehl, (208) 334-4314, georgia.siehl@doi.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 26, 2011.

DATED this 1st Day of September, 2011.

Thomas A. Donovan
Deputy Director
Idaho Department of Insurance

700 W. State Street, 3rd Floor
P.O. Box 83720, Boise ID 83720-0043
Phone (208) 334-4250 / Fax (208) 334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0146-1101

000. LEGAL AUTHORITY.

The statutory authority for this rule is Title 67, Chapter 52, Idaho Code, and Idaho Code, Sections 41-211 and 41-612. ~~(7-1-93)~~()

001. TITLE AND SCOPE.

01. Title. This rule shall be cited as IDAPA 18.01.46, “Recognition of New Annuity Mortality Tables for Use in Determining Reserve Liabilities for Annuities and Pure Endowment Contracts.” ()

02. Scope. The purpose of this rule is to recognize ~~new~~ the following mortality tables, ~~1983 Table ‘a’ and 1983 GAM Table,~~ for use in determining the minimum standard valuation for annuity and pure endowment contracts: the 1983 Table ‘a,’ the 1983 Group Annuity Mortality (1983 GAM) Table, the 1994 Group Annuity Reserving (1994 GAR) Table, and the Annuity 2000 Mortality Table. ~~(7-1-93)~~()

~~002.—003.~~ (RESERVED)

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 this rule, or to the documentation of compliance with this rule. These documents will be available for public inspection and copying in accordance with the Idaho Public Records Law, Title 9, Chapter 3, Idaho Code. ()

003. ADMINISTRATIVE APPEALS.

All administrative appeals shall be governed by Title 41, Chapter 2, Idaho Code, and the Idaho Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, and IDAPA 04.11.01, “Idaho Rules of Administrative Procedure of the Attorney General.” ()

004. INCORPORATION BY REFERENCE.

This rule incorporates by reference four (4) separate mortality tables. These mortality tables are: ()

01. 1983 Table A. A table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and shown on page 708 of Volume 33 of the Transactions of Society of Actuaries 1981 and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners. <http://www.soa.org/library/research/transactions-of-society-of-actuaries/1981/january/tsa81v3325.pdf>, Page 708 ()

02. 1983 GAM (Group Annuity Mortality) Table. A mortality table developed by the Society of Actuaries Committee on Annuities and shown on pages 880-881 of Volume 35 of the Transactions of Society of Actuaries 1983 and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners. <http://www.soa.org/library/research/transactions-of-society-of-actuaries/1983/january/tsa83v3527.pdf>, Pages 880 – 881 ()

03. 1994 Group Annuity Reserving (GAR) Table. A mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and shown on pages 866-867 of Volume 47 of the Transactions of Society of Actuaries 1995. <http://www.soa.org/library/research/transactions-of-society-of-actuaries/1990-95/1995/january/tsa95v4722.pdf>, Pages 886 - 887 ()

04. Annuity 2000 Mortality Table. The mortality table developed by the Society of Actuaries Committee on Life Insurance Research and shown on page 266 of Volume 47 of the Transactions of Society of Actuaries 1995 – 96 Reports. <http://www.soa.org/library/research/transactions-reports-of-mortality-morbidity-and-experience/1990-99/1995/january/TSR9510.pdf>, Page 266 ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS, STREET ADDRESS AND WEB SITE.

01. Office Hours. The Department of Insurance is open from 8 a.m. to 5 p.m. except weekends 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 department's principal place of business is 700 West State Street, 3rd Floor, Boise, Idaho 83720-0043. ()

04. Web Site Address. 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. ()

~~0057.~~ -- ~~0409.~~ (RESERVED)

~~004~~10. DEFINITIONS.

01. 1983 Table 'a'. As used in this rule "1983 Table 'a'" means that mortality table developed by the Society of Actuaries Committee to Recommend a New Mortality Basis for Individual Annuity Valuation and shown on page 708 of Volume 33 of the Transactions of Society of Actuaries 1981 and adopted as a recognized mortality table for annuities in June 1982 by the National Association of Insurance Commissioners. (7-1-93)()

02. 1983 GAM Table. As used in this rule "1983 GAM Table" means that mortality table developed by the Society of Actuaries Committee on Annuities and shown on pages 880-881 of Volume 35 of the Transactions of Society of Actuaries 1983 and adopted as a recognized mortality table for annuities in December 1983 by the National Association of Insurance Commissioners. (7-1-93)()

03. 1994 GAR Table. As used in this rule "1994 GAR Table" means that mortality table developed by the Society of Actuaries Group Annuity Valuation Table Task Force and shown on pages 866-867 of Volume 47 of the Transactions of Society of Actuaries 1995. ()

04. Annuity 2000 Mortality Table. As used in this rule "Annuity 2000 Mortality Table" means that mortality table developed by the Society of Actuaries Committee on Life Insurance Research and shown on page 266 of Volume 47 of the Transactions of Society of Actuaries 1995 – 96 Reports. ()

011. INDIVIDUAL ANNUITY OR PURE ENDOWMENT CONTRACTS.

01. Individual Annuity Mortality Table. Except as provided in Subsections 011.02 and 011.03, of this rule, ~~the~~ 1983 Table 'a' is recognized and approved as an individual annuity mortality table for valuation and, at the option of the company, may be used for purposes of determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after July 1, 1982. (7-1-93)()

02. Minimum Standard for Valuation. Except as provided in Subsection 011.03 of this rule, ~~the~~ 1983 Table 'a' ~~is to~~ or the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987. (7-1-93)()

03. The Annuity 2000 Mortality Table. Except as provided in Subsection 011.04 of this rule, the Annuity 2000 Mortality Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after the effective date of Subsections 011.03 and 011.04. ()

04. The 1983 Table 'a'. The 1983 Table 'a' without projection is to be used for determining the minimum standards of valuation for an individual annuity or pure endowment contract issued on or after the effective date of Subsections 011.03 and 011.04 of this rule solely when the contract is based on life contingencies and issued

to fund periodic benefits arising from: ()

a. Settlements of various forms of claims pertaining to court settlements or out of court settlements from tort actions: ()

b. Settlements involving similar actions such as workers' compensation claims; or ()

c. Settlements of long term disability claims where a temporary or life annuity has been used in lieu of continuing disability payments. ()

012. GROUP ANNUITY OR PURE ENDOWMENT CONTRACTS.

01. Group Annuity Mortality Tables. Except as provided in Subsections 012.02 and 012.03 of this rule, the 1983 GAM Table, and the 1983 Table 'a' and the 1994 GAR Table are recognized and approved as group annuity mortality tables for valuation and, at the option of the company, ~~either~~ any one (1) of these tables may be used for purposes of valuation for any annuity or pure endowment purchased on or after July 1, 1982, under a group annuity or pure endowment contract. (7-1-93)()

02. Minimum Standard for Valuation. Except as provided in Subsection 012.03 of this rule, either the 1983 Table 'a' is to or the 1994 GAR Table shall be used for determining the minimum standard of valuation for any individual annuity or pure endowment contract issued on or after January 1, 1987. (7-1-93)()

03. 1994 GAR Table. The 1994 GAR Table shall be used for determining the minimum standard of valuation for any annuity or pure endowment purchased on or after the effective date of Subsection 012.03 under a group annuity or pure endowment contract. ()

013. FORMULA.

In using the 1994 GAR table, the mortality rate for a person age x in year (1994 + n) is calculated as follows:

$$q_x^{1994+n} = q_x^{1994} (1-AA_x)^n$$

Where the q_x^{1994} and AA_x s are specific in the 1994 GAR table. ()

0134. SEVERABILITY.

If any provision of this rule or the application thereof to any person or circumstances is for any reason held to be invalid, the remainder of the rule and the application of such provision to other persons or circumstances shall not be affected thereby. (7-1-93)

0145. -- 999. (RESERVED)

IDAPA 18 - DEPARTMENT OF INSURANCE
18.01.50 - ADOPTION OF THE INTERNATIONAL FIRE CODE
DOCKET NO. 18-0150-1101
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) 41-254, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 3 changes proposed are intended to:

Change 1. Eliminate the opportunity for the adopted fire code to interfere with a governmental entity's ability to establish conditions of employment.

Change 2. To restore an exemption for the placement of fire extinguishers for certain types of building uses.

Change 3. To clarify when fire sprinklers are required in a building selling upholstered furniture.

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

There are NO FEES associated with this proposed change

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year 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 reflect a consensus formed as the result of interactive discussions on the subject matters among the interested parties. A draft of the proposed changes has been circulated among the 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 Mark Larson, Idaho State Fire Marshal, Idaho Department of Insurance at 208-334-4370.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 30th day of August, 2011.

Mark Larson, State Fire Marshal
Department of Insurance
Fire Marshal Division
700 West State Street, Third Floor
Boise, ID 83720
Phone: 208-334-4350
Fax 208-334-4398

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 18-0150-1101

011. DEPARTMENT OF FIRE PREVENTION, SECTION 103.2 -- APPOINTMENTS, INTERNATIONAL FIRE CODE.

Delete the following language: "... and the fire code official shall not be removed from office except for cause and after full opportunity to be heard on specific and relevant charges by and before the appointing authority." ()

01~~2~~. GENERAL AUTHORITY AND RESPONSIBILITIES, SECTION 104.1, INTERNATIONAL FIRE CODE.

Add the following second paragraph to Section 104.1, General, International Fire Code: (5-3-03)

01. Fire Chief's Authority. The fire chief is authorized to administer and enforce this code. Under the chief's direction, the fire department is authorized to enforce all ordinances of the jurisdiction pertaining to: (5-3-03)

- a. The prevention of fires; (5-3-03)
- b. The suppression or extinguishment of dangerous or hazardous fires; (5-3-03)
- c. The storage, use and handling of hazardous materials; (5-3-03)
- d. The installation and maintenance of automatic, manual and other private fire alarm systems and fire-extinguishing equipment; (5-3-03)
- e. The maintenance and regulation of fire escapes; (5-3-03)
- f. The maintenance of fire protection and the elimination of fire hazards on land and in buildings, and other property, including those under construction; (5-3-03)
- g. The maintenance of means of egress; and (5-3-03)
- h. The investigation of the cause, origin and circumstances of fire and unauthorized releases of hazardous materials, for authority related to control and investigation of emergency scenes, see Section 104.11. (5-3-03)

01~~2~~3. -- 015. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

027. ~~SECTION 906.1, PORTABLE FIRE EXTINGUISHERS, WHERE REQUIRED~~ AUTOMATIC SPRINKLER SYSTEMS, SECTION 903.2.7 GROUP M, INTERNATIONAL FIRE CODE.

Item 1 Exception: delete the exception. Add the following language to Item 4: "...or mattresses exceeds 5000 square feet (464m2)." (4-6-05)()

IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY

19.01.01 - RULES OF THE STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-1102

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) 54-902, 54-912(2)(4), and 54-924(8)(11)(12), Idaho Code.

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

Wednesday, October 19, 2011 - 10:00 a.m.

**Idaho State Board of Dentistry
350 N. 9th Suite M-100
Boise, ID 83702**

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:

Board of Dentistry rules regarding moderate enteral sedation currently limits a qualified dentist from administering moderate enteral sedation to patients under eighteen (18) years of age. The Board proposes to change the rule to allow qualified dentists to administer moderate enteral sedation to patients who are sixteen (16) years of age and older and one hundred (100) pounds and over. These limitations are considered generally accepted safe practice standards.

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 the proposed revisions are non-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 Susan Miller, Idaho State Board of Dentistry, (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 26, 2011.

DATED this 15th day of August, 2011.

Susan Miller, Executive Director
Idaho State Board of Dentistry
350 N. 9th St. Ste M-100
Boise, ID 83702
Ph: (208) 334-2369 Fax: (308) 334-3247

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 19-0101-1102

060. MODERATE SEDATION (RULE 60).

Dentists licensed in the state of Idaho cannot administer moderate sedation in the practice of dentistry unless they have obtained the proper moderate sedation permit from the Idaho State Board of Dentistry. A moderate sedation permit may be either enteral or parenteral. A moderate enteral sedation permit authorizes dentists to administer moderate sedation by either enteral or combination inhalation-enteral routes of administration. A moderate parenteral sedation permit authorizes a dentist to administer moderate sedation by any route of administration. A dentist shall not administer moderate sedation to children under ~~eighteen~~ sixteen (186) years of age and one hundred (100) pounds ~~(4-7-11)()~~

01. Requirements for a Moderate Enteral Sedation Permit. To qualify for a moderate enteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate sedation to a level consistent with that prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and 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 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 moderate enteral sedation permit, a dentist must provide certification of the following: (4-7-11)

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 moderate enteral sedation permit that included documented training of a minimum of twenty-four (24) hours of instruction plus management of at least ten (10) adult case experiences 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; and (4-7-11)

b. Proof of current certification of Advanced Cardiac Life Support or its equivalent. (4-7-11)

02. Requirements for a Moderate Parenteral Sedation Permit. To qualify for a moderate parenteral sedation permit, a dentist applying for a permit shall provide proof that the dentist has completed training in the administration of moderate parenteral sedation as prescribed in the American Dental Association's "Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students," as incorporated in Section 004 of these rules within the five (5) year period immediately prior to the date of application for a 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 training program shall: (4-7-11)

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 of instruction, plus management of at least twenty (20) patients by the intravenous route; and (4-7-11)

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 maintain current certification in Advanced Cardiac Life Support or its equivalent. (4-7-11)

03. General Requirements for Moderate Enteral and Moderate Parenteral Sedation Permits. (4-7-11)

a. Facility Requirements. The dentist must have a properly equipped facility for the administration of moderate 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 moderate sedation and providing the equipment, drugs and protocol for patient rescue. 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 004.01.c. and Section 004.01.d. of these rules as set forth by the American Dental Association. (4-7-11)

b. Personnel. For moderate sedation, the minimum number of personnel shall be two (2) including: (4-7-11)

i. The operator; and (10-1-87)

ii. An assistant currently certified in Basic Life Support for Healthcare Providers. (4-7-11)

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. (4-7-11)

c. Permit Renewal. Renewal of the permit will be required every five (5) years. Proof of a minimum of twenty-five (25) credit hours continuing education in 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. (4-7-11)

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 moderate sedation 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. (4-7-11)

IDAPA 20 - DEPARTMENT OF LANDS

20.03.15 - RULES GOVERNING THE ISSUANCE OF GEOTHERMAL LEASES

DOCKET NO. 20-0315-1102 (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 58-104(6) and 58-105, Idaho Code, and Section 47-1603, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than, October 19, 2011.

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

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

Rule format is revised to conform with Title 67, Chapter 52, Idaho Code, and IDAPA 44.01.01. Definitions are changed for consistency and clarity. Most leases would be initially offered at auction instead of on a first-come basis. Lease term is extended up to 49 years in conformance with Section 47-1601, Idaho Code, and Section 58-307, Idaho Code. Timely exploration and development of the lease is required or the lease may be cancelled. In addition, exploration and development requirements are reorganized for clarity. Geothermal rents and royalties would be determined through bidding or set by the board according to market rates in conformance with Section 47-1605, Idaho Code. The size of a lease is not restricted and will be determined by the Land Board in conformance with Section 47-1604, Idaho Code. Reinjection of surplus geothermal water is required to recharge the geothermal aquifer. The confidentiality of well logs is limited to one year in conformance with Section 42-4010(b) Idaho Code. Bond amounts are to be determined based on the costs of reclamation in conformance with Section 47-1608 Idaho Code. Application fees are increased to the amount needed to cover administrative costs.

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

Application fees are raised from \$25 to \$250. Assignment fees are raised from \$20 to \$150. The increased fees are needed to cover the administrative costs of processing these requests, and are consistent with other applications on state lands.

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(1), Idaho Code, negotiated rulemaking was conducted. The Notice of Intent to Promulgate Rules - Negotiated Rulemaking was published in the [July 6, 2011 Idaho Administrative Bulletin, Volume 11-7, page 132](#).

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 Eric Wilson, Minerals Program Manager, at (208) 334-0261 or ewilson@idl.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 26, 2011.

DATED this 29th day of August, 2011.

Eric Wilson, Minerals Program Manager
Idaho Department of Lands
300 N 6th Street, Suite 103
Boise, ID 83720
(208) 334-0261

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 20-0315-1101

000. LEGAL AUTHORITY.

~~These rules are promulgated by the Idaho State Board of Land Commissioners (“Board”) pursuant to Title 47, Chapter 16 and Title 67, Chapter 52, Idaho Code, and are intended to satisfy the Board’s mandate (Idaho Constitution, Article 9) to maximize the long-term return on state mineral lands by encouraging leasing and development of the geothermal resources while preventing waste and protecting the other natural resources of the state mineral lands. This Chapter is adopted under the legal authorities of Sections 58-104(1), 58-104(6), 58-104(9), 58-105, and 58-127, Idaho Code; Section 58-307, Idaho Code; Title 47, Chapter 7, Idaho Code; Title 47, Chapter 16, Idaho Code; and Title 67, Chapter 52, Idaho Code.~~ (9-3-91)()

~~001.—002. (RESERVED)~~

001. TITLE AND SCOPE.

01. Title. These rules will be cited as IDAPA 20.03.15, “Rules Governing Geothermal Leasing on Idaho State Lands.” ()

02. Scope. These rules apply to the exploration and extraction of any and all geothermal resources situated in state-owned mineral lands. ()

03. Other Laws. Operators engaged in the leasing, exploration, and extraction of state owned geothermal resources must comply with all applicable laws and rules of the State of Idaho including, but not limited to, the following: ()

a. Idaho water quality standards and waste water treatment requirements established in Title 39, Chapter 1, Idaho Code; IDAPA 58.01.02, “Water Quality Standards and Wastewater Treatment Requirements”; and IDAPA 58.01.11, “Ground Water Quality Rule,” administered by the IDEQ. ()

b. Requirements and procedures for hazardous and solid waste management, as established in Title 39, Chapter 44, Idaho Code, and rules promulgated thereunder including, IDAPA 58.01.05, “Rules and Standards for Hazardous Waste” and IDAPA 58.01.06, “Solid Waste Management Rules,” administered by the IDEQ. ()

c. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and applicable rules as promulgated and administered by the IDWR. ()

002. WRITTEN INTERPRETATIONS.

The Idaho Department of Lands maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals and other written guidance, which pertain to the interpretation of the rules of this chapter. Copies of interpretations, subject to the exemptions in Title 9, Chapter 3, Idaho Code, Sections 9-340A through 9-340H, are available for public inspection and copying at the director’s office of the Idaho Department of Lands, 300 North 6th Street, Suite 103, Boise, Idaho. ()

003. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final agency action will be entitled to judicial review pursuant to the provisions of Title

67, Chapter 52, Idaho Code, IDAPA 20.01.01, and Title 47, Chapter 16, Idaho Code. ()

~~01. Preference Rights. Where contests arise as to the preference rights of claimants for lands under the control of the Board, it shall have full power to hold a hearing thereon and to direct the taking of evidence concerning the questions involved, either directly or through a subcommittee of the Board or a designated hearing officer. Any hearing shall be recorded in full. The Board shall make findings of fact and conclusions of law, enter its order with respect thereto, and notify the parties to such hearing of its findings, conclusions and order. (9-3-91)~~

~~02. Written Protest. No claimant for lands under control of the Board can appeal for judicial review of a decision of the Board involving any sale, lease or disposition of state lands, or any action relating thereto, unless such claimant files a written protest with respect thereto with the Board within thirty (30) days after the final decision of the Board relating to such matter; or, with respect to decisions rendered prior to the effective date of these rules within thirty (30) days after such effective date. This provision shall not relate to disputes between the Board and any party as to the ownership or title to any lands or geothermal resources. (9-3-91)~~

~~03. Appeal to Board. To obtain review of any final action taken by the director himself pursuant to authority contained expressly or impliedly under these rules, any person adversely affected thereby must within thirty (30) days after his action petition the Board in writing for leave to appeal, stating the grounds therefore, which petition will be acted upon by the Board within sixty (60) days after filing with the director or be treated as denied. The Board may dispose of appeals in a summary manner. (9-3-91)~~

~~004.—009. (RESERVED)~~

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.
The principal place of business of the Idaho Department of Lands is 300 North 6th Street, Suite 103, Boise, Idaho and it is open from 8 a.m. To 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone number of the office is (208) 334-0200 and the fax number is (208) 334-2339. ()

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. ()

~~0047. -- 009. (RESERVED)~~

010. DEFINITIONS.
For purposes of these rules, unless otherwise indicated herein by express term or by context, the term: (9-3-91)

~~01. Accountable Acreage Holdings. An interest in the acres held under lease subject to an agreement to pay a percentage based on production. (9-3-91)~~

021. Associated By-Products or By-Product: (9-3-91)()

a. Any mineral or minerals (exclusive of oil, hydrocarbon gas, and helium), which are found in solution or developed in association with geothermal resources ~~and which have a value of less than seventy five percent (75%) of the value of the geothermal resources or are not, because of quantity, quality, or technical difficulties in extraction and production, of sufficient value to warrant extraction and production by themselves; and~~ or (9-3-91)()

b. Commercially demineralized or mineralized water. (9-3-91)()

~~032. Available State Lands. All state lands except those state lands already leased and those state lands of which the Board has withdrawn from leasing, declared a Known Geothermal Resources Area, (KGRA), or reserved for research and development or other purposes. (9-3-91)()~~

~~043.~~ **Board.** The Idaho State Board of Land Commissioners or ~~such representatives as may be designated by the Board~~ its designee. (9-3-91)()

~~04.~~ **Completion.** A well is considered to be completed thirty (30) days after drilling operations have ceased and the drill rig is removed from the premises or thirty (30) days after the initial production or injection test has been completed, whichever occurs last. ()

~~05.~~ **Department.** The Idaho Department of Lands ~~located at 300 North 6th Street, Suite 103, Boise, Idaho, P.O. Box 83720, Boise, Idaho 83720-0050~~ or its designee. (9-3-91)()

~~06.~~ **Director.** The ~~director~~ head of the Idaho Department of Lands or ~~such representative as may be designated by the director~~ his designee. (9-3-91)()

~~07.~~ **Direct Use.** The use of geothermal resources for space heating of buildings, recreation, greenhouse warming, aquaculture, or industrial applications where geothermal heat is used in place of other energy inputs. ()

~~08.~~ **Electrical Generation.** The use of geothermal resources to either directly generate electricity or to heat a secondary fluid and use it to generate electricity. ()

~~09.~~ **Field.** A geographic area overlying a geothermal system with one (1) or more geothermal reservoirs. ()

~~0710.~~ **Geothermal Resources.** The natural heat energy of the earth, the energy, in whatever form, which may be found in any position and at any depth below the surface of the earth present in, resulting from, or created by, or which may be extracted from, such natural heat, and all minerals in solution or other products obtained from the material medium of any geothermal resource. When used without restriction, it includes associated by-products.

~~0811.~~ **Lease.** A lease covering the geothermal resources and associated by-products in state lands. (9-3-91)

~~0912.~~ **Lessee.** The person to whom a geothermal lease has been issued and his successor in interest or assignee. It also means any agent of the lessee or an operator holding authority by or through the lessee. (9-3-91)

~~13.~~ **Market Value.** The most probable price at a specified date, in cash, or on terms reasonably equivalent to cash, for which the property or commodity should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. ()

~~14.~~ **Motorized Earth-Moving Equipment.** Backhoes, bulldozers, front-loaders, trenchers, core drills, drill rigs, power augers, and other similar equipment. ()

~~105.~~ **Operator.** The person having control or management of operations on the leased lands or a portion thereof. The operator may be the lessee, designated operator, or agent of the lessee, or holder of rights under an approved operating agreement. (9-3-91)

~~146.~~ **Overriding Royalty.** An interest in the geothermal resource produced at the surface free of any cost of production. It is a royalty in addition to the royalty reserved to the state. (9-3-91)

~~127.~~ **Person:** Any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representatives of any kind, and includes any government or any political subdivision of any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter genders. (9-3-91)()

~~a.~~ A United States citizen of legal age; (9-3-91)

~~b.~~ ~~Any firm, association, or corporation which is qualified to do business in the state of Idaho, and is not in default under the laws of the state of Idaho, relative to qualifications to do business within this state; or~~ (9-3-91)

~~e.~~ ~~Any public agency or governmental units, including without limitation, municipalities.~~ (9-3-91)

~~138.~~ **Record Title.** The publicly recorded lease which is the evidence of right that a person has to the possession of the leased property. (9-3-91)

~~19.~~ **Reservoir or Pool.** A porous, permeable geologic layer containing geothermal resources. ()

~~20.~~ **Shut In.** To close the valves at the wellhead so that the well stops flowing or producing. Also describes a well on which the valves have been closed. ()

~~1421.~~ **State Lands.** Without limitation, lands in which the title to the mineral rights are owned by the state of Idaho and are under the jurisdiction and control of the Board or under the jurisdiction and control of any other state body or agency, having been obtained from any source and by any means whatsoever, including the beds of navigable waters of the state of Idaho. (9-3-91)

~~22.~~ **Waste.** Any physical loss of geothermal resources including, but not limited to: ()

~~a.~~ Underground loss of geothermal resources resulting from inefficient, excessive, or improper use, or dissipation of geothermal energy, or of any geothermal resource pool, reservoir, or other source; or the locating, spacing, constructing, equipping, operating, or producing of any well in a manner which results, or tends to result in reducing the quantity of geothermal energy to be recovered from any geothermal area in the state; ()

~~b.~~ The inefficient above-ground transporting and storage of geothermal energy; and the locating, spacing, equipping, operating, or producing of any well or injection well in a manner causing or tending to cause unnecessary or excessive surface loss or destruction of geothermal energy; the escape into the open air from a well of steam or hot water in excess of what is reasonably necessary in the efficient development or production of a well. ()

011. ABBREVIATIONS.

~~01.~~ **IDAPA.** Idaho Administrative Procedure Act. ()

~~02.~~ **IDEO.** Idaho Department of Environmental Quality. ()

~~03.~~ **IDWR.** Idaho Department of Water Resources. ()

012. -- 019. (RESERVED)

~~020.~~ APPLICABILITY.

~~01.~~ ~~State Lands.~~ ~~These rules apply to the exploration and extraction of any and all geothermal resources situated in state-owned mineral lands.~~ (9-3-91)

~~021.~~ **Other Geothermal Resources.** These rules apply to all geothermal resources where other rules and regulations are silent or where the geothermal resource is otherwise regulated. (9-3-91)

~~032.~~ **Exclusions.** These rules do not apply to the application and leasing of other mineral resources covered by Title 47, Chapter 7, Idaho Code, nor the application and leasing of oil and gas resources covered by Title 47, Chapter 8, Idaho Code. (9-3-91)

~~0201.~~ QUALIFIED APPLICANTS AND LESSEES.

Any person as defined in Subsection 010.127 ~~shall be~~ of this rule, is qualified to lease the geothermal resources in state lands or take or hold an interest therein unless the Board first determines, after notice and hearing, for good

cause shown, that a person is disqualified from leasing or taking or holding an interest in geothermal resources in state lands. No member of the Board, the director, or employee of the department may take or hold any such lease or interest in state lands. (9-3-91)()

0212. APPLICATION AND PROCESSING—SIMULTANEOUS FILINGS LEASE AWARD THROUGH AUCTION.

01. Filing. ~~An application for a geothermal resources lease shall be submitted to the department in Boise on a department form or exact copies thereof and shall contain the following: name, address, telephone number, and the notarized signature of the applicant; power of attorney if applicant is an agent; legal description of lands applied for; the application fee specified in Section 120; and shall comply with the size requirements of Section 040.~~ **Auctions Required.** Except for requests to the Board as described in Subsection 022.02 of these rules, all leases must be awarded through a public action. Collusion between bidders is a violation of these rules and may result in the department voiding the auction results and cancelling any leases that were issued. (9-3-91)()

02. Simultaneous Filings. ~~Applications for a geothermal resource lease shall be considered in the order in which they are filed. Should two (2) or more applications be received on the same day for the same site, they shall be considered as simultaneous filings.~~ **Leasing Additional Lands.** Leases may be issued without going to auction in any of the following situations: (9-3-91)()

a. A tract that was offered at auction but not awarded is available for application and leasing for one (1) year following the auction. ()

b. An existing geothermal lessee who is in production and paying royalties to the state may request that the board issue them additional geothermal leases for unleased state lands located adjacent to the producing leases and in the same geothermal field as the leased lands. ()

c. A person who has leased private and federal lands that adjoin or encompass state lands may request that the board issue them geothermal leases for any unleased and adjoining state lands located in the same geothermal field. The request will not be unreasonably denied. ()

03. Conflicts. ~~Conflicts resulting from simultaneous filings shall be resolved by a competitive auction to be held within thirty (30) days receipt of the simultaneous filings.~~ (9-3-91)

04. Notice. ~~The department shall give notice to the conflicting applicants by certified mail. The notice shall contain the legal description of the lands in conflict, the date, time and place of the competitive auction.~~ (9-3-91)

0223. -- 029. (RESERVED)

030. TERM.

01. Ten-Year Lease Term. All leases shall ~~may~~ be for a ~~primary~~ term of ~~up to ten forty-nine (1049)~~ years from the effective date of the lease. ~~The effective date of the lease shall be the first day of the month following Board approval.~~ (9-3-91)()

02. Diligent Drilling. ~~If, at the expiration of the primary term of the lease, geothermal resources are not being produced or demonstrably capable of being produced from the leased land, but the lessee is actively engaged in drilling operations one thousand (1,000) feet or deeper, then the lease shall continue in force so long as drilling operations are being diligently and continuously prosecuted on the leased land or upon lands with which the leased land is unitized. Drilling operations shall be considered to be diligently and continuously prosecuted if not more than one hundred twenty (120) days shall elapse between the completion or abandonment of one (1) well and the beginning of operations for the drilling of another well. For good cause shown, the director may extend the time for an additional period, not to exceed one hundred twenty (120) days. A written request must be received by the director at least ten (10) calendar days before the expiration of the initial one hundred twenty (120) day period.~~ (9-3-91)

~~03. Continuation of Lease. If geothermal resources are produced or utilized in paying quantities within the primary term of the lease or as extended under Subsection 030.02, that lease shall continue for so long thereafter as geothermal resources are produced or utilized in paying quantities, but the lease shall in no event continue for more than forty (40) years after the end of the primary term. The lessee shall have a preferential right to a renewal of his lease for a second forty (40) year term upon such terms and conditions as the Board deems appropriate after notice and an opportunity to be heard, if at the end of the first forty (40) year term geothermal resources are produced or utilized in paying quantities; provided, however, that the royalty during the second forty (40) year term shall not exceed fifteen percent (15%). Production or utilization of geothermal resources in paying quantities shall be deemed to include the completion of one or more wells producing or capable of producing geothermal resources for delivery to or utilization by a facility or facilities not yet installed, but scheduled for installation.~~ (9-3-91)()

~~04. Diligence in Utilization. Lessee shall will use due diligence to market or utilize geothermal resources in paying quantities. If leased land is capable of producing geothermal resources in paying quantities, but production is shut-in, the lease shall will continue in force upon payment of rentals for the duration of the primary lease term or five two (52) years after shut-in, whichever is longer shorter. If the director Department determines that the lessee is proceeding diligently to acquire a contract to sell or to utilize the production or is progressing with installations needed for production, the lease shall may continue in force for an one (1) additional five (5) years; upon payment of rentals, otherwise the lease may be terminated by the Board if rental payments are kept current. The director shall Department will continue to review a shut-in leases every five (5) years until production and payment of royalties takes place, or the lease is terminated by the Board for lessee's lack of due diligence or surrendered by the lessee.~~ (9-3-91)()

~~03. Yearly Reporting. A report of all exploration, development, and production activities must be submitted to the department at the close of each lease year.~~ ()

~~05. By Products. A lease that has been extended by reason of production or utilization of geothermal resources and which has been determined by the director to be incapable of further commercial production and utilization may be further extended for five (5) years if one or more valuable by products are produced in commercial quantities. The Board may extend the lease for one or more additional five (5) year terms upon such terms and conditions as the Board deems fit to allow continued production of one or more valuable by products in commercial quantities.~~ (9-3-91)

031. LEASE EXPIRATION.

~~Prior to lease expiration, the lessee will have the first right of refusal for a new lease of up to forty-nine (49) years upon such terms and conditions as the department deems appropriate after notice and an opportunity to negotiate a new lease.~~ ()

~~034.2. -- 034. (RESERVED)~~

035. RENTALS.

~~01. Advance Annual Rental. Lessee shall will pay to the state of Idaho in advance each year an annual rental for each acre or fraction thereof under lease. The annual rental for the first year of the term shall will be due and payable and shall will be received in the offices of the department in Boise, together with a lease agreement executed by lessee within thirty (30) days of the date of notice of approval or award. The department will notify the applicant or his representative designated in the application to lease by certified or registered mail of the Board's approval of a lease and specify the exact amount of rental due thereon and the bond requirement under Section 100. Failure to return an executed lease together with the first year rental and bond within thirty (30) days shall will result in automatic rejection of the application without further action of the director Department or Board. Second year and subsequent rental payments must be received in the office of the department in Boise on or before the anniversary date of the lease. Failure to pay exact rental shall constitute grounds for immediate termination of the lease by the director who shall note the termination on the official records of the department.~~ (9-3-91)()

~~02. Amount. Annual rentals for each acre or fraction thereof under lease shall will be as follows: set by the Board through competitive bidding, negotiation, fixed amounts, formulas, or some other method.~~ (9-3-91)()

- ~~a. One dollar (\$1) per acre for the first five (5) years; (9-3-91)~~
- ~~b. Two dollars (\$2) per acre for the second five (5) years; (9-3-91)~~
- ~~c. Three dollars (\$3) per acre thereafter. (9-3-91)~~

036. ROYALTIES.

01. Royalty Payments. The lessee ~~shall will~~ cause to be paid to the state of Idaho ~~the following~~ royalties on the value of geothermal production from the leased premises. ~~The royalty rate will be established by the Board based on the market value of the geothermal resources produced from the lands under lease. The royalties specified in geothermal leases will be fixed in any manner by the state board of land commissioners, including but not limited to competitive bidding, negotiation, fixed amounts, or formulas. Royalty rates may be adjusted through the term of the lease in order to keep pace with market values. When leases are issued, the following guidelines will be used for royalty rates not subject to competitive bidding;~~ (9-3-91)()

~~a. A royalty of ten percent (10%) between five percent (5%) and twenty percent (20%) of the amount or value of geothermal resources, or any other form of heat or energy excluding electrical power generation, derived from production under the lease and sold or utilized by the lessee or reasonably susceptible to sale or utilization by the lessee, unless used or consumed by lessee in his production operations; (9-3-91)()~~

~~b. A royalty of five percent (5%) between two percent (2%) and fifteen percent (15%) of the amount or value of any associated by-product derived from production under the lease and sold or utilized or reasonably susceptible of sale or utilization by the lessee, including commercially demineralized water, except that no payment of a royalty will be required on such water if it is used in plant operation for cooling or in the generation of electric energy or otherwise. No royalty shall be paid for associated by products used or consumed by lessee in his production operations. (9-3-91)()~~

~~c. A royalty of between two percent (2%) and five percent (5%) of gross receipts for sale of electrical power. ()~~

02. Calculation of Value. The value of geothermal production from the leased premises for the purpose of computing royalties shall be the following: (9-3-91)

~~a. The total consideration accruing to the lessee from the sale thereof in cases where geothermal resources are sold by the lessee to another party in an arms-length transaction; or (9-3-91)~~

~~b. The value of the end product attributable to the geothermal resource produced from a particular lease where geothermal resources are not sold by the lessee before being utilized, but are instead directly used in manufacturing power production, or other industrial activity; or (9-3-91)~~

~~c. The value of all renewable energy credits or similar incentives based on a proportionate share of the leased lands in the entire project area qualifying for the credits. ()~~

~~ed. When a part of the resource only is utilized by the lessee and the remainder sold, the sum of Subsections Paragraphs 036.02.a. and through 036.02.bc. immediately above of this rule. (9-3-91)()~~

~~03. Notice of Discovery. Lessee shall within fifteen (15) days notify the director of the discovery upon the leased premises of geothermal resources before any such geothermal resources are used or removed for commercial purposes from the leased land or utilized thereon. (9-3-91)~~

043. Due Date. Royalties will be due and payable monthly in the office of the department in Boise on or before the last day of the calendar month following the month in which the geothermal resources and/or their associated by-products are produced and utilized or sold. (9-3-91)

054. Disposal Utilization of Geothermal Resources. The lessee ~~shall~~ must file with the ~~director~~

Department within thirty (30) days after execution a copy of any contract for the disposal utilization of geothermal resources from the lease. Reports of sales or utilization by lessee and royalty for each productive lease must be filed each month once production begins, even though production may be intermittent, unless otherwise authorized by the director Department. Total volumes of geothermal resources produced and utilized or sold, including associated by-products, the value of production, and the royalty due the state of Idaho must be shown. This report is due on or before the last day of the month following the month in which production was obtained and sold or utilized, together with the royalties due the state of Idaho. (9-3-91)()

065. Measurement. The lessee shall will measure or gauge all production in accordance with methods approved by the director Department. The quantity and quality of all production shall will be determined in accordance with the standard practices, procedures and specifications generally used in industry. All measuring equipment shall must be tested consistent with industry practice and, if found defective, the director Department will determine the quantity and quality of production from the best evidence available. (9-3-91)()

076. By-Product Testing. The lessee shall will periodically furnish the director Department the results of periodic tests showing the content of by-products in the produced geothermal resources. Such tests shall will be taken as specified by the director Department and by the method of testing approved by him, except that tests not consistent with industry practices shall will be conducted at the expense of the state of Idaho. (9-3-91)()

087. Commingling. The director Department may authorize a lessee to commingle production from wells on his State lease(s) with production from ~~other leases held by him or by other lessees subject to such conditions as he may prescribe, but lessee shall not do so without the director's approval.~~ non-state lands. Department approval of commingling will not be unreasonably withheld, and will consider the following: (9-3-91)()

- a. The operator's economic necessity of commingling; ()
- b. The type of geothermal use proposed for the commingled waters; and ()
- c. Sufficient measurement and accounting of all the commingled waters to ensure that the department is appropriately compensated by royalties. ()

037. -- 039. (RESERVED)

040. SIZE OF A LEASABLE TRACT.

01. ~~Maximum Size.~~ ~~A geothermal resource lease will include all available state lands within a section, at time of lease issuance, with only lands from one (1) section allowed to be included in any one (1) lease. A geothermal resource lease on state lands will therefore be limited to six hundred and forty (640) acres, or one (1) Section, should the entire section be larger than six hundred and forty (640) acres.~~ Surface Area. Geothermal leases are not limited in surface area. The Board will determine the surface area of a lease after consultation with other state agencies and prospective lessees. The probable extent of a geothermal reservoir, the surface area needed for a viable project, and other relevant factors will be used to help determine lease surface area. (9-3-91)()

02. Navigable Water Courses. Geothermal resources leases may be issued for state lands underlying navigable water courses in Idaho. Such lands are considered "state lands" and will be leased in accordance with ~~Subsection 040.01~~ these rules. Operations in the beds of navigable water courses will not be authorized except in extraordinary circumstances and then only with express written approval of the Board upon such conditions and security as the director Department deems appropriate. (9-3-91)()

041. -- 044. (RESERVED)

045. ~~KNOWN GEOTHERMAL RESOURCE AREAS; PUBLIC AUCTION~~ LESSEE DESIGNATION OF OPERATOR OR AGENT.

01. ~~KGRA Designation.~~ ~~The director may from time to time designate certain state lands as being within a Known Geothermal Resources Area (KGRA). Geothermal resources leases issued upon lands so designated~~

~~shall be upon a competitive bid basis at public auction under such terms and conditions as the director sets. Before leasing geothermal resources owned by the state within a KGRA, the director will advertise the availability of these state lands within a KGRA by posting a notice in the offices of the department in Boise and causing the notice to appear at least once in a newspaper of general circulation in Idaho at least thirty (30) days before the date of the public auction, and mailing a copy to interested persons on a geothermal resources mailing list. Failure to give notice by mail shall not prejudice any procedure or award of leases under these rules. Prevailing bidders shall pay the costs of the public auction and advertising in proportion to the cost of acreage leased in said auction.~~ **Designation of Operator.** In all cases where exploration, development, or production operations are not conducted by the lessee but are to be conducted under authority of an unapproved operating agreement or other arrangement, a designation of operator will be submitted to the department prior to commencement of such operations. Such a designation will be accepted as authority of the operator or his local representative to act for the lessee and to sign any papers or reports required under these rules. All changes of address and any termination of the authority of the operator will be immediately reported, in writing, to the department. (9-3-91)(____)

02. Consultation. ~~The director will consult with the department of water resources prior to designating state lands as being within a KGRA. Actual production in the vicinity of state lands shall be the primary evidence of a KGRA for purposes of these rules. The director may hold a public hearing prior to determining that state lands are within a KGRA.~~ **Agent for Service.** When required by the department, lessee will designate a local representative empowered to receive service of civil or criminal process, and notices and orders of the department issued pursuant to these rules. (9-3-91)(____)

046. -- 049. (RESERVED)

050. LAND SURFACE USE RIGHTS AND OBLIGATIONS.

01- Casual Exploration. ~~At any time after formal approval by the Board of a lease application, lessee may enter upon the leased lands for casual exploration or inspection without notice to the director. As an express condition of an application to lease and of the right of casual inspection without notice, lessee agrees to the indemnity conditions provided in Section 102 without a formally executed lease. Lessee may not enter upon the leased lands for exploration operations using motorized equipment or otherwise engaging in operations which may lead to an appreciable disturbance or damage to lands, timber, other resources or improvements on or adjacent to the leased lands until there is in existence a fully executed lease and the preconditions in Sections 055, 100 and 101 have been satisfied.~~ (9-3-91)

02- Motorized Exploration. ~~Before entering upon the leased lands for exploration operations using motorized equipment or otherwise engaging in operations which may lead to an appreciable disturbance or damage to lands, timber, other resources or improvements on or adjacent to the leased lands, lessee shall file with the director, in writing, notice of the following:~~ (9-3-91)

- ~~a- Name and address of the operator. (9-3-91)~~
- ~~b- The location of the operation and the starting date and estimated completion date. (9-3-91)~~
- ~~c- The anticipated size or scope of the operations in terms of manpower and equipment, and the general method of operation. (9-3-91)~~
- ~~d- Prior to the initiation of operations to drill a well for any purpose to one thousand (1,000) feet or deeper, lessee shall file with the director for approval a plan of operations provided in Subsection 055.05 and increase the surety bond to ten thousand dollars (\$10,000) as provided in Section 100. (9-3-91)~~

031. Use and Occupancy. (____)

a. Lessee shall will be entitled to use and occupy only so much of the surface of the leased lands as may be required for all purposes reasonably incident to exploration for, drilling for, production and marketing or geothermal resources and associated by-products produced from the leased lands, including the right to construct and maintain thereon all works, buildings, plants, waterway, roads, communication lines, pipelines, reservoirs, tanks, pumping stations or other structures necessary to the full enjoyment and development thereof, consistent with a plan

of operations and amendments thereto, as approved by the ~~director~~ Department. (9-3-91)()

b. Uses occurring on the leased area related to exploration, development, production, or marketing of geothermal resources and associated by-products produced from off-lease lands may require the lessee to pay additional rent. ()

042. **Supervision.** Uses of state lands within the jurisdiction and control of the Board are subject to the supervision of the ~~director~~ Department. Other state lands are subject to the supervision of the appropriate state agency consistent with these rules. (9-3-91)()

053. **Entry by ~~Director~~ Department.** The ~~director shall~~ Department will be permitted at all reasonable times to go in and upon the leased lands and premises, during the term of a lease, to inspect the operations and the products obtained from the leased premises and to post any notice that the ~~director~~ Department may deem fit and proper. (9-3-91)()

064. **Public Access.** During operations, the lessee shall will regulate public access and vehicular traffic to protect human life, wildlife, livestock and property from hazards associated with the operations. For this purpose, the lessee shall will provide warning, fencing, flagmen, barricades, well and hole coverings and other safety measures as appropriate. Restrictions on access must be approved by the ~~director~~ Department as part of a plan of operations under Rule Section 055. (9-3-91)()

075. **Other Uses.** Operations under other leases or uses on the same lands shall not unreasonably interfere with or endanger operations under leases issued under these rules nor shall operations under these rules unreasonably interfere with or endanger operations under any lease, license, claim, permit or other authorized use pursuant to the provisions of any other Idaho law. (9-3-91)

086. **Distance from Residence.** No well shall may be drilled within two hundred (200) feet of any house or barn on the premises, without the written consent of the ~~director~~ Department and its surface lessees, grantees or contract purchasers. (9-3-91)()

097. **Fences.** Lessee shall will not at any time fence any watering place upon leased lands where the same is the only accessible and feasible watering place upon the lands within a radius of one (1) mile without first having secured the written consent of the ~~director~~ Department. (9-3-91)()

108. **Timber Removal.** Lessee shall must not unreasonably interfere with the removal of timber purchased prior to or subsequent to the issuance of a lease. Lessee may remove any timber required for ingress or egress or necessary for operations. Any timber cut or removed by lessee shall must be paid for by lessee on a current stumpage price basis as determined by the ~~director~~ Department. (9-3-91)()

109. **Grazing.** A geothermal resources lease shall not be construed to prohibit the leasing of the leased lands by the Board to other persons for grazing and agricultural purposes, or for the mining of minerals or for oil and gas development; provided, however, that the lessee under a geothermal resources lease shall have paramount right as against grazing and agricultural lessees to the use of so much of the surface of the land as shall be necessary for the purposes of the lease. All lessees shall have the right of ingress and egress at all times during the term of the lease. (9-3-91)

120. **Disposal of Leased Land.** The Board reserves the right to sell or otherwise dispose of the surface of the lands embraced with a lease, insofar as said surface is not necessary for the use of the lessee in the exploration, development and production of the geothermal resources and associated by-products, but any sale of surface rights made subsequent to execution of a lease shall will be subject to all the terms and provisions of that lease during the life thereof, ~~including extensions and renewals under Section 030.~~ (9-3-91)()

131. **Damage.** Lessee shall pay to the Board, its surface lessees or grantees or contract purchasers, for any damage done to the surface of said lands and improvements thereon, including without limitation growing crops, by reason of lessee's operations. (9-3-91)

~~14. Potable Water Discovery. All leases issued under these rules shall be subject to the condition that,~~

~~where the lessee finds only potable water of no commercial value as a geothermal resource in any well drilled for exploration or production of geothermal resources, and when the water is of such quality and quantity as to be valuable and usable for agricultural, domestic, or other purpose, the Board, or where appropriate, the surface lessee, grantee or contract purchaser, shall have the right to acquire the well with whatever casing is installed in the well at the fair market value of the casing, and upon the assumption of all future liabilities and responsibilities for the well, with the approval of the director of the department of water resources. (9-3-91)~~

~~15. **Reclamation.** Lessee shall reclaim all state lands disturbed by exploration, development, operation and marketing of geothermal resources in accordance with applicable reclamation procedures contained in Section 47-1509 and 47-1510, Idaho Code, as now existing and hereafter amended. Lessee shall conserve, segregate, stockpile and protect topsoil to enhance reclamation. Lessee shall take all necessary steps in the exploration, development, operation and marketing of geothermal resources to avoid a threat to life or property or an unreasonable risk to subsurface, surface or atmospheric resources. (9-3-91)~~

~~051. **DILIGENT EXPLORATION.**~~

~~Each lease will include provisions for the diligent exploration of the leased resources until there is production in commercial quantities from the state lands subject to lease, and failure to perform such exploration may subject the lease to termination. Diligent exploration means exploration operations on or related to the leased lands, including without limitation geochemical surveys, heat flow measurements, core drilling, or drilling of a test well. A report of all exploration operations and expenditures must be submitted to the director at the close of each lease year. (9-3-91)~~

~~052. -- 0543. (RESERVED)~~

054. EXPLORATION UNDER THE LEASE.

01. Diligent Exploration. Lessees must perform diligent exploration and development activities in the first five (5) years of the initial lease term. Diligent exploration includes seismic, gravity, and other geophysical surveys, geothermometry studies, drilling temperature gradient wells, or similar activities that seek to determine the presence or extent of geothermal resources. This exploration may occur off-lease if it is being done on the same geothermal field. Failure to perform diligent exploration as described may result in lease cancellation. ()

02. Casual Exploration. At any time after formal approval by the Board of a lease application, lessee may enter upon the leased lands for casual exploration or inspection without notice to the department. As an express condition of an application to lease and of the right of casual inspection without notice, lessee agrees to the indemnity conditions provided in Section 102 of these rules without a formally executed lease. ()

03. Plan Required. Lessee must submit a plan of operations to the department before any exploration using motorized equipment or before otherwise engaging in operations which may lead to an appreciable disturbance or damage to lands, timber, other resources, or improvements on or adjacent to the leased lands. The proposed activities may not start until the department approves the plan and the applicable preconditions in Sections 100 and 101 of these rules have been satisfied. The plan of operations may be amended as needed with department approval. The plan must include: ()

a. Well drilling information such as the proposed location of each well including a layout showing the position of the mud tanks, reserve pits, etc.; ()

b. Existing and planned access, access controls, and lateral roads; ()

c. Location and source of water supply (if needed) and road building material; ()

d. Location of camp sites, air-strips, buildings, pipelines, and other supporting facilities; ()

e. Other areas of potential surface disturbance; ()

f. The topographic features of the land and the drainage patterns; ()

g. Methods for disposing of waste material; ()

h. A narrative statement describing the proposed measures to be taken for protection of the environment, including, but not limited to the prevention or control of: ()

i. Fires: ()

ii. Soil loss and erosion: ()

iii. Pollution of surface and ground waters: ()

iv. Damage to fish and wildlife or other natural resources: ()

v. Air and noise pollution; and ()

vi. Hazards to public health and safety during lease activities. ()

i. All pertinent information or data which the department may require to support the plan of operations for the utilization of geothermal resources and the protection of the environment; ()

j. An estimate of reasonable reclamation costs for reclamation performed by an outside party. This estimate will form the basis for the bond required in Section 100 of these rules; and ()

k. A map or maps of sufficient scale to depict the information required in Paragraphs a. through j. of this Subsection. ()

055. OPERATIONS PRODUCTION UNDER THE LEASE.

01. Diligent Development of Lease and Production. Lessee must develop the geothermal resources on their lease area within the first ten (10) years of the initial lease term and start production. Development of the lease area requires wells to be drilled and other necessary infrastructure to be built. Production on the lease area means that geothermal fluids are being used and royalties are being paid to the state. Failure to develop the lease and start production as described may result in lease cancellation unless the lessee applies to the department for an extension and the extension is granted. ()

~~02.~~ **Best Practices.** All operations will conform to the best practice and engineering principles in use in the industry. Operations shall must be conducted in such a manner as to protect the natural resources on the leased lands, including without limitation geothermal resources, and to result in the maximum ultimate recovery of geothermal resources with a minimum of waste, and be consistent with the principles of the use of the land for other purposes and of the protection of the environment. ~~Operations shall be conducted with due regard for the safety and health of employees.~~ Lessee shall must promptly remove from the leased lands or store, in an orderly manner, all scraps or other materials not in use and not reasonably incident to the operation. Lessee shall notify the director of all accidents within twenty-four (24) hours and shall submit a written report within thirty (30) days. (9-3-91)()

~~02.~~ **Compliance with Rules.** Lessee shall comply with and be subject in all respects to the conditions, limitations, penalties and provisions of the laws of the state of Idaho and the rules of the Board, the Department of Water Resources, the Department of Environmental Quality, and all other federal, state and local laws, now existing or hereafter enacted. (9-3-91)

03. Reclamation. Lessee must reclaim all leased lands disturbed by exploration, development, operation and marketing of geothermal resources in accordance with applicable reclamation procedures contained in Sections 47-1509 and 47-1510, Idaho Code, as now existing and hereafter amended. Lessee must conserve, stockpile, and protect topsoil to enhance reclamation. Lessee must take all necessary steps in the exploration, development, operation, and marketing of geothermal resources to avoid a threat to life or property or an unreasonable risk to subsurface, surface, or atmospheric resources. ()

034. Waste and Damage. ()

- a.** Lessee ~~shall~~ **must** take all reasonable precautions to prevent the following: ()
- i.** ~~(1) Waste~~; ()
- ii.** ~~(2) Damage to any other natural resources including trees and other vegetation, fish and wildlife and their habitat~~; ()
- iii.** ~~(3) Injury or damage to persons, real or personal property; and~~ ()
- iv.** ~~(4) Any environmental pollution or damages that may constitute a violation of state or federal laws.~~ ()

b. The ~~director~~ **Department** may inspect lessee's operations and issue such orders as are necessary to accomplish these purposes in Paragraph 055.04.a. Any significant effect on the environment created by the lessee's operations or failure to comply with environmental standards ~~shall~~ **must** be reported to the ~~director~~ **Department** by lessee within twenty-four (24) hours and confirmed in writing within thirty (30) days. ~~(9-3-91)~~()

05. Notice of Production. Lessee must notify the department within sixty (60) days before any geothermal resources are used or removed for commercial purposes. ()

046. Shut Downs. The ~~director~~ **Department** is authorized to shut down any operations which ~~he~~ **it** determines ~~are unsafe or~~ are causing, or ~~can~~ **may imminently** cause, pollution of the natural environment or waste of ~~natural resources including~~ geothermal resources upon failure by lessee to take timely, corrective measures ~~ordered by the director.~~ ~~(9-3-91)~~()

~~05. Wells One Thousand Feet or Deeper. Prior to initiation of operations to drill a well for any purpose to one thousand (1,000) feet or deeper, lessee shall submit to the director for his approval a plan of operations. Such plan shall include:~~ ~~(9-3-91)~~

~~**a.** The proposed location of each well including a layout showing the position of the mud tanks, reserve pits, cooling towers, pipe rack, etc.;~~ ~~(9-3-91)~~

~~**b.** Existing and planned access, access controls and lateral roads;~~ ~~(9-3-91)~~

~~**c.** Location and source of water supply and road building material;~~ ~~(9-3-91)~~

~~**d.** Location of camp sites, air strips and other supporting facilities;~~ ~~(9-3-91)~~

~~**e.** Other areas of potential surface disturbance.~~ ~~(9-3-91)~~

~~**f.** The topographic features of the land and the drainage patterns;~~ ~~(9-3-91)~~

~~**g.** Methods for disposing of waste material;~~ ~~(9-3-91)~~

~~**h.** A narrative statement describing the proposed measure to be taken for protection of the environment, including, but not limited to the prevention or control of (1) fires, (2) soil erosion, (3) pollution of the surface and ground water, (4) damage to fish and wildlife or other natural resources, (5) air and noise pollution, and (6) hazards to public health and safety during lease activities;~~ ~~(9-3-91)~~

~~**i.** All pertinent information or data which the director may require to support the plan of operations for the utilization of geothermal resources and the protection of the environment;~~ ~~(9-3-91)~~

~~**j.** Provisions for monitoring deemed necessary by the director to insure compliance with these rules for the operations under the plan;~~ ~~(9-3-91)~~

~~**k.** The information required for sections a through k of this section may be shown on a map or maps of sufficient scale available from state or federal sources.~~ ~~(9-3-91)~~

067. Amendments. The plan of operations shall must be amended by the lessee for the director Department's approval to reflect changes in operations on the leased lands, including the installation of works, buildings, plants or structures for the production, marketing or utilization of geothermal resources. ~~(9-3-91)(____)~~

078. Sampling. When necessary or advisable, the ~~director shall~~ Department will require that adequate samples be taken and tests or surveys be made using techniques consistent with industry practice, without cost to the state of Idaho, to determine the identity and character of formations; the presence of geothermal resources, water or reservoir energy; the quantity and quality of geothermal, water or reservoir energy; the amount and direction of deviation of any well from the vertical; formation, casing and tubing pressures, temperatures, rate of heat and fluid flow, and whether operations are conducted in a manner looking to the protection of the interest of the state of Idaho. Lessee will forward a copy of the results obtained from all geochemical, hydrologic, geologic, and other tests or surveys to the department within thirty (30) days of receiving the results. ~~(9-3-91)(____)~~

~~08. **Marking of Derrick.** The lessee shall mark each derrick upon commencement of drilling operations and each producing or suspended well in a conspicuous place with his name or the name of the operator, the serial number of the lease, the number and location of the well. Whenever possible, the well location shall be described by section or tract, township, range and by quarter quarter section or lot. The lessee shall take all necessary means and precautions to preserve these markings.~~ ~~(9-3-91)~~

~~09. **Additional Requirements.** The lessee shall: (1) take all necessary precautions to keep all wells under control at all times; (2) utilize trained and competent personnel; (3) utilize properly maintained equipment and materials; and (4) use operating practices which insure the safety of life and property. The selection of the types and weights of drilling fluids and provisions for controlling fluid temperatures, blowout preventers and other surface control equipment and materials, casing and cementing programs, etc., to be used shall be based on sound engineering principles and shall take into account apparent geothermal gradients, depths and pressures of the various formations to be penetrated and other pertinent geologic and engineering data and information about the area.~~ ~~(9-3-91)~~

~~10. **Unused Wells.** Except as provided in Subsection 050.14 the lessee shall promptly plug and abandon any well on the leased land that is not used or useful, in conformity with regulations promulgated by the Idaho department of water resources or its predecessor agency. No production well shall be abandoned until its lack of capacity for further profitable production of geothermal resources has been demonstrated to the satisfaction of the director. A producible well may be abandoned only after receipt of written approval by the director. Equipment shall be removed, and premises at the well site shall be restored as near as reasonably possible to its original condition immediately after plugging operations are completed on any well except as otherwise authorized by the director. Drilling equipment shall not be removed from any suspended drilling well without taking adequate measures to close the well and protect subsurface resources. Upon failure of lessee to comply with any requirements under this rule, the director is authorized to cause the work to be performed at the expense of the lessee and the surety.~~ ~~(9-3-91)~~

~~11. **Designation of Operator.** In all cases where operations are not conducted by the lessee but are to be conducted under authority of an unapproved operating agreement, assignment or other arrangement, a designation of operator shall be submitted to the director prior to commencement of operations. Such a designation will be accepted as authority of the operator or his local representative to act for the lessee and to sign any papers or reports required under these rules. All changes of address and any termination of the authority of the operator shall be immediately reported, in writing, to the director.~~ ~~(9-3-91)~~

~~12. **Agent for Service.** When required by the director, lessee shall designate a local representative empowered to receive service of civil or criminal process, and notices and orders of the director issued pursuant to these rules.~~ ~~(9-3-91)~~

056. WASTE PREVENTION, DRILLING AND PRODUCTION OBLIGATIONS.

01. Waste. All leases shall be subject to the condition that the lessee will, in conducting his exploration, development and producing operations, use all reasonable precautions to prevent waste of geothermal resources and other natural resources found or developed in the leased lands. (9-3-91)

02. Diligence. The lessee ~~shall~~ **must**, subject to the right to surrender the lease, diligently drill and produce, ~~or unitize~~ such wells as are necessary to protect the Board from loss by reason of production on other properties, ~~or in lieu thereof, with the consent of the director shall pay a sum determined by the director as adequate to compensate the Board for failure to drill and produce any such well. The lessee shall promptly drill and produce such other wells as the director determines a reasonably prudent operator would drill in order that the lease be developed and produced in accordance with good operating practices.~~ (9-3-91)()

03. ~~Loss Through Waste or Failure to Produce.~~ ~~The director shall determine the value of production accruing to the Board where there is loss through waste or failure to drill and produce production wells on the lease, and the compensation due to the Board as reimbursement for such loss. Payment for such losses will be paid when billed.~~ **Prevention of Waste Through Reinjection.** Geothermal lessees must return geothermal waters to the geothermal aquifer in a manner that supports geothermal development. (9-3-91)()

04. By-Products. Subject to lessee's right to surrender the lease, where the ~~director~~ **Department** determines that production, use or conversion of geothermal resources under a geothermal lease is ~~susceptible~~ **capable** of producing a valuable by-product or by-products, including commercially demineralized ~~or mineralized~~ water contained in or derived from such geothermal resources for beneficial use in accordance with applicable state water laws, ~~the~~ ~~shall~~ **Department may** require substantial beneficial production or use thereof, except where ~~the~~ **Department** determines that: (9-3-91)()

a. Beneficial production or use ~~of by-products~~ is not in the interest of conservation of natural resources; or (9-3-91)()

b. Beneficial production or use ~~of by-products~~ would not be economically feasible ~~for the lessee~~; or (9-3-91)()

c. Beneficial production ~~and~~ ~~or~~ use ~~of by-products~~ should not be required for other ~~satisfactory~~ reasons ~~satisfactory to him~~. (9-3-91)

05. Additional Requirements. The selection of the types and weights of drilling fluids and provisions ~~for controlling fluid temperatures, blowout preventers and other surface control equipment and materials, casing and cementing programs, etc., to be used must be based on sound engineering principles and must take into account apparent geothermal gradients, depths and pressures of the various formations to be penetrated and other pertinent geologic and engineering data and information about the area. In addition, the lessee must do the following:~~ ()

a. ~~Take all necessary precautions to keep all wells under control at all times;~~ ()

b. ~~Utilize trained and competent personnel;~~ ()

c. ~~Utilize properly maintained equipment and materials; and~~ ()

d. ~~Use operating practices which insure the safety of life and property.~~ ()

06. Unused Wells. Except as provided in Subsection 070.02 of these rules, the lessee must promptly ~~plug and abandon any well on the leased land that is not used or useful in conformity with regulations promulgated by the IDWR or its successor agency. No production well will be abandoned until its lack of capacity for further profitable production of geothermal resources has been demonstrated to the satisfaction of the department and the department has been given an opportunity to either acquire the well permit or assign it to another party. A producible well may be abandoned only after receipt of written approval by the department. Equipment will be removed, and premises at the well site will be restored as near as reasonably possible to its original condition immediately after plugging operations are completed on any well except as otherwise authorized by the department. Drilling equipment must not be removed from any suspended drilling well without taking adequate measures to close the well and protect subsurface resources. Upon failure of lessee to comply with any requirements under this rule, the department is authorized to cause the work to be performed at the expense of the lessee and the surety.~~ ()

057. -- 059. (RESERVED)

060. EXPLORATION AND OPERATION RECORDS, CONFIDENTIALITY.

01. **Drilling Records.** Lessee ~~shall~~ **must** keep or cause to be kept and to be filed with the ~~department of water resources~~ **IDWR** such careful and accurate well drilling records as are now or may hereafter be required by that department. Lessee ~~shall~~ **must** file with the ~~director, Department of lands,~~ such production records and exploration evidence as required by Sections ~~036 and Rule 051~~ **030, 036, and 055 of these rules**, which records ~~shall~~ **will** be subject to inspection by the public at the offices of the department during regular business hours under such conditions as the ~~director~~ **Department** deems appropriate, subject, however, to exemptions from disclosure as set forth in Section 9-340, Idaho Code. As an express condition of the lease, the ~~director~~ **Department** may inspect and copy well drilling records filed with the ~~department of water resources~~ **IDWR** at any time after the records are filed. (9-3-91)()

02. **Continuing Obligations.** Lessee's obligations under this rule ~~shall~~ **will** continue beyond assignment, surrender, termination or expiration of the lease. Lessee ~~shall~~ **must**, within thirty (30) days after assignment, surrender, termination or expiration or such additional time as the ~~director~~ **Department** may grant, file all outstanding data and records required by this rule with the ~~director~~ **Department**. (9-3-91)()

03. **Well Logs.** The confidentiality of well logs is limited to one year from well completion as stated in Section 42-4010(b), Idaho Code. ()

061. -- 064. (RESERVED)

065. LESSEE'S RECORDS, RIGHT OF INSPECTION BY **DIRECTOR DEPARTMENT**.

Lessee ~~shall~~ **will** permit ~~director~~ **the Department** to examine during reasonable business hours all books, records and other documents and matters pertaining to operations under a lease, in ~~his~~ **lessee's** custody or control, and to make copies of and extracts therefrom ~~at the Board's expense~~. (9-3-91)()

066. -- 069. (RESERVED)

070. WATER RIGHTS.

01. **Water Rights.** Lessee ~~shall~~ **must** comply with all laws of the state of Idaho, including the rules and regulations of the ~~department of water resources~~ **IDWR**, regulating the appropriation of the public waters of Idaho to beneficial uses. No water right developed or obtained by lessee in conjunction with operations under this lease ~~shall~~ **will** be sold, assigned or otherwise transferred without written approval of the ~~director~~ **Department**. Upon surrender, termination or expiration of the lease, lessee ~~shall~~ **must** take all actions required by the ~~director~~ **Department** to assign to the Board all water rights, including applications, permits and licenses. Lessee ~~shall~~ **will** enjoy the right of use of any private waters upon the leased lands during the term of the lease, but not thereafter. (9-3-91)()

02. **Potable Water Discovery.** All leases issued under these rules will be subject to the condition that, where the lessee finds only potable water of no commercial value as a geothermal resource in any well drilled for exploration or production of geothermal resources, and when the water is of such quality and quantity as to be valuable and usable for agricultural, domestic, or other purpose, the Board, or where appropriate, the surface lessee, grantee or contract purchaser, will have the right to acquire the well with whatever casing is installed in the well at the fair market value of the casing, and upon the assumption of all future liabilities and responsibilities for the well, with the approval of the director of the IDWR. ()

071. -- 074. (RESERVED)

075. ASSIGNMENTS.

01. **Prior Written Approval.** A total or partial assignment of a lease must be approved in writing by the ~~director and no assignment shall~~ **department**. ~~Approval will not be effective until unreasonably withheld and will only be effective after~~ written approval is given. ~~An assignee must accept, and the assignor must release, all responsibility for improvements, operations, and obligations under the lease before the department approves the assignment.~~ An assignment ~~shall~~ **will** take effect ~~the first day of the month following the~~ **immediately upon** approval of the assignment. (9-3-91)()

02. Full or Partial. A lease may be assigned as to all or part of the acreage included therein to any person qualified to hold a state lease, provided that neither the assigned nor the retained part created by the assignment shall contain less than forty (40) acres. No undivided interest in a lease of less than ten percent (10%) shall be created by assignment. (9-3-91)

03. Overriding Royalty Disclosure. Overriding royalty interests created by an assignment are subject to the requirements in Section 080 of these rules. ()

034. Responsibility. In an assignment of the complete interest in all of the lands in a lease the assignor and his surety shall continue to be responsible for performance of any and all obligations under the lease until the effective date of the assignment. After the effective date of any assignment, the assignee and his surety shall be bound by the terms of the lease to the same extent as if the assignee were the original lessee, any conditions in the assignment to the contrary notwithstanding. (9-3-91)

045. Segregation of Assignment. An assignment of the record title of the complete interest in a portion of the lands in a lease shall clearly segregate the assigned and retained portions. After the effective date, the assignor is released and discharged from any obligations thereafter accruing with respect to the assigned lands. Such segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of these rules. (9-3-91)

056. Joint Principal. Where an assignment does not segregate the record title to the lease, the assignee, if the assignment so provides, may become a joint principal on the bond with the assignor. The application must also be accompanied by a consent of assignor's surety to remain bound under the bond of record, if the bond, by its terms, does not contain such consent. If a party to the assignment has previously furnished a statewide bond, no additional showing by such party is necessary as to the bond requirement. (9-3-91)

067. Form of Assignment. An assignment must be a good and sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the serial number of the lease, the land involved, the name and address of the assignee, the interest transferred and the consideration. A fully executed copy of the instrument of assignment must be filed with the application for approval. An assignment must effect or concern only one (1) lease or a portion thereof, except for good cause shown. (9-3-91)

078. Application. The application for approval of an assignment must be on forms provided by the department or exact copies thereof. It must be accompanied by a signed statement by the assignee either (1) that he is the sole party in interest in the assignment, or (2) setting forth the names and qualifications of the other parties taking an interest in the lease. Where the assignee is not the sole party in interest, separate statements must be signed by each of the other parties and by the assignee setting forth the nature and extent of the interest of each party and the nature of the agreement between them. In addition, it shall be declared which party in interest will be the party of record for purpose of receiving all communications and other notices from the lessor. If payments out of production are reserved, a statement must be submitted stating the details as to the amount, method of payment, and other pertinent items. These separate statements must be filed in the office of the department in Boise, not later than fifteen (15) days after the filing of the application for approval. (9-3-91)

089. Denial. Unless the lease account is in good standing at the time the assignment is reached for action, the request for approval of the assignment will be denied, and the lease shall be subject to termination in accordance with these rules. (9-3-91)

076. -- 079. (RESERVED)

080. OVERRIDING ROYALTY INTERESTS.

01. Statements. ~~Overriding royalty interests in geothermal leases constitute accountable acreage holdings under these regulations. If a~~ **An overriding royalty interest, is created which is not shown in the instrument of or any similar interest whereby an agreement is made to pay a percentage based on production, must be disclosed at the time of assignment or transfer; by filing a statement must be filed of such interest with the director Department describing the interest. Any such assignment will be deemed valid if accompanied by a statement over the assignee's**

~~signature that the assignee is a person as defined in these rules and that his interests in geothermal leases do not exceed the acreage limitations provided in these rules. Assignees must meet the requirements of Section 021 of these rules.~~ All assignments of overriding royalty interests without a working interest and otherwise not contemplated by Rule Section 075 of these rules, must be filed ~~for record in the office of with~~ the department ~~in Boise~~ within ninety (90) days from the date of execution. ~~Such interests will not receive formal approval.~~ (9-3-91)()

02. Maximum Amount. No overriding royalty on the production of geothermal resources created by an assignment contemplated by Rule Section 075 of these rules or otherwise ~~shall~~ will exceed five percent (5%) nor ~~shall~~ will an overriding royalty, when added to overriding royalties previously created, exceed five percent (5%). (9-3-91)()

03. Conformance with Rules. The creation of an overriding royalty interest that does not conform to the requirements of this rule shall be deemed a violation of the lease terms, unless the agreement creating overriding royalties provides for a prorated reduction of all overriding royalties so that the aggregate rate of overriding royalties does not exceed five percent (5%). (9-3-91)

04. Director's Authority. In addition to the foregoing limitations, any agreement to create or any assignment creating royalties or payments out of production from the leased lands shall be subject to the authority of the director, after notice and hearing, to require the proper parties thereto to suspend or modify such royalties or payments out of production in such manner as may be reasonable when and during such periods of time as they may constitute an undue economic burden upon the reasonable operations of such lease. (9-3-91)

081. -- 084. (RESERVED)

085. UNIT OR COOPERATIVE PLANS OF DEVELOPMENT OR OPERATION.

01. IDWR Approval. Nothing in this rule will excuse the parties to a unit agreement from procuring the approval of the IDWR pursuant to Section 42-4013, Idaho Code, if approval is required. ()

~~012.~~ **Unit Plan.** For the purpose of conserving the natural resources of any geothermal pool, field or like area, lessees under lease issued by the Board are authorized, with the written consent of the director Department, to commit the state lands to unit, cooperative or other plans of development or operation with other state lands, federal lands, privately-owned lands or Indian lands. Departmental consent will not be unreasonably withheld. Applications to unitize, ~~shall~~ or a copy of the application filed with IDWR, will be filed with the director Department who ~~shall~~ will certify whether such plan is necessary or advisable in the public interest. The director Department may require whatever documents or data he or she deems necessary. To implement such unitization, the Board may with the consent of its lessees modify and change any and all terms of leases issued by it which are committed to such unit, cooperative or other plans of development or operations. (9-3-91)()

023. Contents. The agreement ~~shall~~ must describe the separate tracts comprising the unit, disclose the apportionment of the production of royalties and costs to the several parties, and the name of the operator, and ~~shall~~ must contain adequate provisions for the protection of the interests of all parties, including the state of Idaho. The agreement should be signed by or in behalf of all interested necessary parties before being submitted to the director Department. It will be effective only after approval by the director Department. The unit operator must be a person as defined by these rules and he must be approved by the director Department. (9-3-91)()

~~03.~~ **Interested Parties.** ~~The owners of any rights, title or interest in the geothermal resources to be developed or operated under an agreement can be regarded as proper parties to a proposed agreement. All such owners must be invited to join as parties to the agreement. If any owner fails or refuses to join the agreement, the proponent of the agreement should declare this to the director and should submit evidence of efforts made to obtain joinder of such owner and the reasons for nonjoinder.~~ (9-3-91)

04. Collective Bond. ~~In lieu of separate bonds required for each lease committed to a unit agreement, the unit operator may furnish and maintain a collective corporate surety bond conditioned upon faithful performance of the duties and obligations of the agreement and the terms of the leases subject thereto and these rules. The liability under the bond shall be for such amount as the director shall determine to be adequate to protect the interests of the state of Idaho. Additional bond coverage may be required whenever deemed necessary by the director. In case of~~

changes of unit operator, a new bond must be filed or a consent of surety to the change in principal under the existing bond must be furnished. (9-3-91)()

054. Lease Modification. Any modification of an approved agreement will require approval of the ~~director~~ Department under procedures similar to those cited in Subsection 085.01 *above*, of ~~this~~ these rules. (9-3-91)()

065. Term. The term of all leases included in any cooperative or unit plan of development or operation ~~shall will~~ be extended automatically for the term of such unit or cooperative agreement, but in no event beyond that time provided in Subsection 030.03 1 of these rules. Rentals or royalties on leases so extended ~~shall will~~ be at the rate specified in the lease. (9-3-91)()

076. Continuation of Lease. Any lease which ~~shall will~~ be eliminated from any such cooperative or unit plan of development or operation, or any lease which ~~shall will~~ be in effect at the termination of any such cooperative or unit plan of development or operation, unless relinquished, ~~shall will~~ continue in effect for the term of the lease ~~or for one (1) year after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as lessee engages in diligent and continuous drilling as provided in Subsection 030.02, or so long thereafter as geothermal resources are produced in paying quantities, but in no event beyond the time provided in Subsection 030.03.~~ (9-3-91)()

087. Evidence of Agreement. Before issuance of a lease for lands within an approved unit agreement, the lease applicant or successful bidder will be required to file evidence that he has entered into an agreement with the unit operator for the development and operation of the lands in a lease if issued to him under and pursuant to the terms and provisions of the approved unit agreement, or a statement giving satisfactory reasons for the failure to enter into such agreement. If such statement is acceptable, he will be permitted to operate independently, but will be required to perform his operations in a manner which the ~~director~~ Department deems to be consistent with the unit operations. (9-3-91)()

098. Department of Water Resources. Nothing in this rule shall excuse the parties to a unit agreement from procuring the approval of the department of water resources pursuant to Section 42-4013, Idaho Code, if approval is required. (9-3-91)

086. -- 089. (RESERVED)

090. PREFERENTIAL RIGHTS UPON DISCOVERY OF UNLEASED MINERALS, OIL, GAS AND OTHER HYDROCARBONS.

Any lessee who ~~shall~~ discovers any minerals or oil, gas or other hydrocarbons on lands leased from the Board for development of geothermal resources ~~shall will~~ have a preference right to a state lease covering such minerals, or oil, gas or other hydrocarbons, provided the unleased minerals at the time of discovery are not included within a mineral location under Section 47-703, Idaho Code, a mineral lease or mineral lease application of another party, and provided that the oil, gas or other hydrocarbons are not under lease or subject to a pending lease application under Section 47-801, Idaho Code. Any preference-right lease ~~shall will~~ be issued upon a lease form in current use by the Board. The preference right ~~shall will~~ continue for a period of sixty (60) days after the discovery of unleased minerals, or oil, gas or other hydrocarbons, provided the lessee must notify the ~~director~~ Department within thirty (30) days after the discovery and must make application to lease the unleased minerals or oil, gas or other hydrocarbons, within sixty (60) days after the date of discovery. Nothing herein ~~shall will~~ require the Board to issue a mineral lease or a lease for oil, gas or other hydrocarbon development. (9-3-91)()

091. -- 094. (RESERVED)

095. SURRENDER, TERMINATION, EXPIRATION OF LEASE.

01. Procedure. A lease, or any surveyed subdivision of the area covered by such lease, may be surrendered by the record title holder by filing a written relinquishment in the office of the department in Boise, on a form furnished by the ~~director~~ Department, provided that a partial relinquishment does not reduce the remaining acreage in the lease to less than forty (40) acres. The minimum acreage provision of this section may be waived by the ~~director~~ Department where he finds such exception is justified on the basis of exploratory and development data

derived from activity on the leasehold. The relinquishment must:

~~(9-3-91)~~()

- a. Describe the lands to be relinquished; (9-3-91)
- b. Include a statement as to whether the relinquished lands had been disturbed and, if so, whether they were restored as prescribed by the terms of the lease; (9-3-91)
- c. State whether wells had been drilled on the lands and, if so, whether they have been plugged and abandoned pursuant to the rules of the ~~department of water resources~~ IDWR; and ~~(9-3-91)~~()
- d. Furnish a sworn statement that all monies due and payable to workers employed by the record title holder of the interest on the leased premises have been paid. (9-3-91)

02. Continuing Obligations. A relinquishment shall take effect on the date it is filed, subject to the continued obligation of the lessee and his surety: (9-3-91)

- a. To make payments of all accrued rentals and royalties; (9-3-91)
- b. To place all wells on the land to be relinquished in condition for suspension of operations or abandonment; (9-3-91)
- c. To restore the surface resources in accordance with these rules and the terms of the lease; and (9-3-91)
- d. To comply with all other environmental stipulations provided for by these rules or lease. (9-3-91)

03. Failure to Pay Rental or Royalty. ~~Except as provided in Subsection 095.04 below, any lease may be immediately terminated by the director if the lessee fails to pay the rental on or before the anniversary date of the lease. The director may terminate a lease for failure to pay rentals or royalties thirty (30) days after mailing a notice of delinquent payment.~~ However, if the time for payment falls upon any day in which the office of the department in Boise is not open, payment received on the next official working day ~~shall will~~ be deemed to be timely. The termination of the lease for failure to pay the rental ~~shall will~~ be noted on the official records of the department. Upon termination the lands included in such lease may become subject to leasing as provided by these rules. ~~(9-3-91)~~()

~~**04. Rental Deficiency.** If the rental payment due under a lease is paid on or before its anniversary date, but the amount of the payment is deficient and the deficiency is nominal, the lease shall not be immediately terminated unless the lessee fails to pay the deficiency within the period prescribed in a notice deficiency, or by the due date, whichever is later. A deficiency is nominal if it is not more than ten dollars (\$10) or one percent (1%) of the total payment due, whichever is more. The notice of deficiency shall be sent by certified mail, return receipt requested, and shall allow the lessee twenty (20) days from the date of notice to submit the full balance due. If the payment called for in the notice is not made within the time allowed, the lease will be terminated by the director as of its anniversary date.~~ (9-3-91)

054. Termination for Cause. A lease may be terminated by the ~~director~~ Department for any violation of these rules, or the lease terms, sixty (60) days after notice of the violation has been given to lessee by personal service or certified mail, return receipt requested, to the address of record last appearing in the files of the department, unless: ~~(9-3-91)~~()

- a. The violation has been corrected; or (9-3-91)
- b. The violation is one that cannot be corrected within the notice period and the lessee has in good faith commenced within the notice period to correct the violation and thereafter proceeds diligently to complete the correction. (9-3-91)

~~**065. Equipment Removal.** Upon the expiration of the lease, or the earlier termination or surrender thereof pursuant to this rule, the lessee shall will have the privilege at any time within a period of ninety (90) days thereafter of removing from the premises any materials, tools, appliances, machinery, structures, and equipment other~~

than improvements needed for producing wells. Any materials, tools, appliances, machinery, structures and equipment subject to removal, but not removed within the ninety (90) day period, or any extension thereof that may be granted because of adverse climatic conditions during that period, ~~shall will~~, at the option of the ~~director~~ Department, become property of the state of Idaho, but the lessee ~~shall must~~ remove any or all such property where so directed by the ~~director~~ Department. (9-3-91)()

~~076.~~ **Surrender After Termination.** Upon the expiration or termination of a lease, the lessee ~~shall will~~ quietly and peaceably surrender possession of the premises to the state and deliver to the state a good and sufficient release on a form furnished by the ~~director~~ Department. (9-3-91)()

096. -- 099. (RESERVED)

100. BOND REQUIREMENTS.

~~01.~~ **Minimum Bond.** ~~Concurrent with the execution of the lease by the lessee, lessee shall furnish to director a good and sufficient bond in the amount of two thousand dollars (\$2,000) Prior to initiation of operations using motorized earth-moving equipment lessee must furnish a bond. This bond will be~~ in favor of the state of Idaho, conditioned on the payment of all damages to the land surface and all improvements thereon, including without limitation crops on the lands, whether or not the lands under this lease have been sold or leased by the Board for any other purpose; conditioned also upon compliance by lessee of his obligations under this lease and these rules. ~~Prior to initiation of operations to drill a well for any purpose to one thousand (1,000) feet or deeper, lessee shall increase such bond to the amount of ten thousand dollars (\$10,000).~~ The ~~director~~ Department may require a new bond in a greater amount at any time after operations have begun, upon a finding that such action is reasonably necessary to protect state resources. (9-3-91)()

~~02.~~ **Statewide Bond.** In lieu of the aforementioned bonds, lessee may furnish a good and sufficient "statewide" bond conditioned as ~~above~~ in Subsection 100.01. ~~the amount of fifty thousand dollars (\$50,000) in favor of the state of Idaho, to~~ This bond will cover all lessee's leases and operations carried on under all geothermal resource leases issued and outstanding to lessee by the Board at any given time during the period when the "statewide" bond is in effect. The amount of such bond will be equal to the total of the requirements of the separate bonds being combined into a single bond. (9-3-91)()

~~03.~~ **Period of Liability.** The period of liability of any bond will not be terminated until all lease terms and conditions have been fulfilled and the bond is released in writing by the ~~director~~ Department. (9-3-91)()

~~04.~~ **General Lease Bond.** ~~An operator, or, if there is more than one for different portions of the lease, each operator, may furnish a general lease bond of not less than ten thousand dollars (\$10,000) in his own name as principal on the bond in lieu of the lessee. Where there is more than one operator's bond affecting a single lease, each such bond must be conditioned upon compliance with all lease terms for that portion of the leasehold for which each operator is responsible.~~ (9-3-91)

~~054.~~ **Operator Bond.** Where a bond is furnished by an operator, suit may be brought thereon without joining the lessee if he is not a party to the bond. (9-3-91)

101. LIABILITY INSURANCE.

~~01.~~ **Liability Insurance Required.** The department will require the lessee to purchase and maintain suitable insurance for the duration of the lease ~~P~~ prior to entry upon the leased lands for other than casual exploration or inspection as contemplated by Subsection 0504.01 ~~2 of these rules, lessee shall purchase and maintain, for the duration of the lease, the following liability insurance:~~ (9-3-91)()

~~a.~~ Public Liability Insurance in the form of comprehensive general liability or commercial general liability including the following: (9-3-91)

~~i.~~ Blanket contractual; (9-3-91)

~~ii.~~ Products and completed operations; (9-3-91)

- iii. ~~Premises liability; and~~ (9-3-91)
- iv. ~~Collapse, explosion, underground hazard (for drilling operation one thousand (1,000) feet or deeper).~~ (9-3-91)
- b. ~~Workers' Compensation and Employers' Liability as required by law.~~ (9-3-91)

~~02. **Limits of Liability.** All such coverage required under Subsection 101.01.a.i. above shall have a combined single limit (CSL), by virtue of one or more policies, on a per-occurrence basis, in amounts not less than one million dollars (\$1,000,000).~~ (9-3-91)

~~03. **Additional Requirements.** The state of Idaho, Department of Lands, and the Idaho State Board of Land Commissioners shall be named an additional insured on the insurance required in Subsection 101.01.a.i. above. Additionally, if the land surface and improvements thereon covered by the lease have been sold or leased by the state of Idaho, the owner or lessee of surface rights and improvements shall also be an additional insured.~~ (9-3-91)

~~042. **Insurance Certificate Required.** No work under this lease shall will commence prior to the Department's receipt by the Department of Lands of a certificate, signed by a licensed insurance agent, evidencing existence of insurance as required above. Further, such certificate must reflect that no change of or cancellation in such coverage shall will become effective until thirty (30) days after the Department of Lands has receiveds written notice of such change or cancellation.~~ (9-3-91)(____)

102. INDEMNITY.

Lessee shall will expressly agree to indemnify, defend and save harmless the state of Idaho, state Board of land commissioners, the ~~director~~ Department of the department of lands, the department of lands, and the owner of the surface rights and improvements, if not the state of Idaho, or state lessee of surface rights, if there be one, the officers, agents and employees of each and every of the foregoing, from and against any and all claims, liability, costs, damages, or expenses including any claims, by the federal government or other damages to the environment or for loss, injury, or damage to persons or property including claims of the employees of the lessee or lessee's agent, operator or contractor which may arise out of the activities conducted on the leased premises by the lessee, its agent, operator, contractor, or employees. (9-3-91)(____)

(BREAK IN CONTINUITY OF SECTIONS)

110. IMPOSSIBILITY OF PERFORMANCE.

Whenever, as a result of any cause beyond lessee's control, including without limitation, fire, flood, windstorms, or other act of God; law, order or regulation of any governmental agency, or inability to secure men, material or transportation, it becomes impossible for lessee to perform or to comply with any obligation under a lease other than payment of rentals, the ~~director~~ Department may by written order excuse lessee from damages or forfeiture of the lease and lessee's obligations shall will be suspended so long as the ~~director~~ Department finds that good cause exists; provided, however, that nothing herein shall will extend the term of the lease. (9-3-91)(____)

(BREAK IN CONTINUITY OF SECTIONS)

~~114. **RIGHT OF CANCELLATION BY THE BOARD.**~~

~~The Board reserves the right to cancel any geothermal resources lease upon failure by the lessee to exercise due diligence or care in the prosecution of his operations or upon failure by lessee to comply with the terms and conditions stated in the lease and with all laws of the state of Idaho, including without limitation these rules.~~ (9-3-91)

~~115. **AMENDMENTS.**~~

~~These rules may be amended, altered, changed, modified or repealed at any time by action of the Board, pursuant to~~

~~the Administrative Procedures Act, Title 67, Chapter 52, Idaho Code; provided, however, any amendment to these rules changing the rental or royalty due the state of Idaho or the term of geothermal resource leases shall not adversely affect leases outstanding upon the effective date of the amendment. (9-3-91)~~

~~1164.~~ -- 119. (RESERVED)

120. FEES.

The following fees shall apply: (9-3-91)

01. Non-Refundable Application Fee for Lease. ~~Twenty five~~ **Two hundred fifty** dollars (\$~~250~~) per application. ~~(9-3-91)~~()

02. Application Fee for Approval of Assignment. ~~Twenty~~ **One hundred fifty** dollars (\$~~2150~~) per lease involved in the assignment. ~~(9-3-91)~~()

03. Late Payment Fee. The greater of the following: (9-3-91)

a. Twenty-five dollars (\$25); or (9-3-91)

b. One percent (1%) per month (or portion thereof) on the unpaid balance. (9-3-91)

IDAPA 20 - DEPARTMENT OF LANDS

20.07.02 - RULES GOVERNING OIL AND GAS CONSERVATION IN THE STATE OF IDAHO

DOCKET NO. 20-0702-1102

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) 47-317(b), Idaho Code.

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

Wednesday, October 12, 2011, 7:00 pm - 9:00 pm

**Capitol Building, Room WW55
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 format is revised to conform with Section 67-52, Idaho Code, and IDAPA 44.01.01, "Rules of the Administrative Rules Coordinator." Definitions are changed for consistency and clarity. Well drilling permit requirements are expanded to ensure that the Department has the information needed to properly review them. A public comment period on applications is added. Application, operating, and reporting requirements for well treatments, including hydraulic fracturing, are added. Bond amounts are increased and additional bonding requirements are added to decrease the potential well plugging liabilities present in other states. Basic surface owner protections are added, and geophysical exploration requirements are expanded, to reduce conflicts between surface and mineral owners and thereby enhance orderly development of oil and gas resources. Well drilling and plugging rules are modified to better prevent waste and protect fresh waters. Comprehensive pit requirements and surface reclamation standards are added to protect fresh waters. Well completion and well log reporting is clarified to improve the flow of information and stimulate additional exploration. Active and inactive wells are defined to reduce the potential liability of abandoned wells. The periodic testing of well integrity is added to prevent waste and protect fresh waters. Class II injection wells are no longer permitted under this rule as the Idaho Department of Water Resources currently prohibits their use in IDAPA 37.03.03 and they will pursue permitting authority with the Environmental Protection Agency. Basic emergency response requirements were added to ensure that accidents and fires are handled appropriately and public safety issues are addressed. Other sections of the rules addressing wellhead equipment, tools with radioactive material, the pulling of casing, gas-oil ratios, and multiple zone completions were upgraded or added based on the existing standards used in other states to prevent waste, protect correlative rights, and protect fresh water supplies. Responsibilities of the Department and the Oil and Gas Conservation Commission are clarified. Multiple documents are incorporated by reference to allow the industry standards to be adopted 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 as a result of 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 6, 2011 Idaho Administrative Bulletin, Volume 11-7, page 133](#).

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 following documents are being incorporated by reference into these rules to give them the force and effect of law. The documents are not being published in this chapter of rules due to the cost of republication.

API Bulletin E3, Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations, Environmental Guidance Document. 1st Edition, January 1993 and Reaffirmed June 2000.

API SPEC 5CT, Specifications for Casing and Tubing. The 8th edition dated 7/1/05 and amendments dated 3/31/06 and 4/7/06.

API SPEC 10a, Specification for Cements and Materials for Well Cementing. The 24th Edition dated December, 2010.

ASTM D698-07e₁, Standard Test Methods For Laboratory Compaction Characteristics Of Soil Using Standard Effort (12,400 ft-lbf/ft³ (600 kN-m/m³)). 2007 revision.

ASTM D1250-08, Standard Guide For Use Of The Petroleum Measurement Tables. 2008 revision.

ASTM D1557-09, Standard Test Methods For Laboratory Compaction Characteristics Of Soil Using Modified Effort (56,000 ft-lbf/ft³ (2,700 kN-m/m³)). 2009 revision.

EPA SW-846 Method 9090A, Compatibility Test For Wastes And Membrane Liners. Revision 1, July 1992.

OSHA Standard 1910.1200 (Hazard Communication). Last revised 1996.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Eric Wilson, Minerals Program Manager, at (208) 334-0261 or ewilson@idl.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 26, 2011.

DATED this 29th day of August, 2011.

Eric Wilson, Minerals Program Manager
Idaho Department of Lands
300 N 6th Street, Suite 103
Boise, ID 83720
(208) 334-0261
Fax (208) 334-3698

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 20-0702-1102

000. ~~(RESERVED)~~ LEGAL AUTHORITY.

This Chapter is adopted under the legal authorities of Title 58, Chapter 1, Sections 58-104(6), 58-105, and 58-127, Idaho Code; Title 47, Chapter 3, Idaho Code; and Title 67, Chapter 52, Idaho Code. ()

001. TITLE AND SCOPE.

General rules shall be statewide in application unless otherwise specifically stated. These rules set forth the policy

~~and procedures for the conservation of crude oil and gas.~~

~~(10-21-92)~~

01. Title. These rules shall be cited as IDAPA 20.07.02, "Rules Governing Oil and Gas Conservation in the State of Idaho." ()

02. Scope. These rules apply to the exploration and extraction of any and all crude oil and natural gas resources in the state of Idaho, not including biogas, manufactured gas, or landfill gas, regardless of ownership. ()

03. Other Laws. Owners or operators engaged in the exploration and extraction of crude oil and natural gas resources shall comply with all applicable laws and rules of the State of Idaho including, but not limited to the following: ()

a. Idaho water quality standards and waste water treatment requirements established in Title 39, Chapter 1, Idaho Code; IDAPA 58.01.02, "Water Quality Standards"; IDAPA 58.01.16, "Wastewater Rules"; and IDAPA 58.01.11, "Ground Water Quality Rule" administered by the IDEQ. ()

b. Idaho air quality standards established in Title 39, Chapter 1, Idaho Code and IDAPA 58.01.01 "Rules for the Control of Air Pollution in Idaho" administered by the IDEQ. ()

c. Requirements and procedures for hazardous and solid waste management, as established in Title 39, Chapter 44, Idaho Code, and rules promulgated thereunder including IDAPA 58.01.05, "Rules and Standards for Hazardous Waste"; IDAPA 58.01.06, "Solid Waste Management Rules"; and IDAPA 58.01.10, "Rules Regulating the Disposal of Radioactive Materials Not Regulated Under the Atomic Energy Act of 1954, As Amended", administered by the IDEQ. ()

d. Idaho Stream Channel Protection Act, Title 42, Chapter 38, Idaho Code, and rules promulgated thereunder including IDAPA 37.03.07, "Stream Channel Alteration Rules" administered by the IDWR. ()

e. Injection Well Act, Title 42, Chapter 39, Idaho Code and rules promulgated thereunder including IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells" administered by the IDWR. ()

f. Department of Water Resources – Water Resource Board Act, Title 42, Chapter 17, Idaho Code and rules promulgated thereunder including IDAPA 37.03.06, "Safety of Dams Rules" administered by the IDWR. ()

002. WRITTEN INTERPRETATIONS.

The Idaho Department of Lands maintains written interpretations of its rules which may include, but may not be limited to, written procedures manuals and operations manuals and other written guidance which pertain to the interpretation of the rules of this chapter. Copies of the procedures manuals and operations manuals and other written interpretations, if applicable, are available for public inspection and copying at the director's office of the Idaho Department of Lands, 300 North 6th Street, Suite 103, Boise, Idaho. ()

003. ADMINISTRATIVE APPEALS.

Any person aggrieved by any final decision or order of the Commission shall be entitled to judicial review pursuant to the provisions of Title 67, Chapter 52, Idaho Code, IDAPA 20.01.01, Title 47, Chapter 3, Idaho Code, and IDAPA 20.07.01, "Rules of Practice and Procedure before the Idaho Oil and Gas Conservation Commission." ()

004. INCORPORATION BY REFERENCE.

The following documents are incorporated by reference into these rules: ()

01. API Bulletin E3, Well Abandonment and Inactive Well Practices for U.S. Exploration and Production Operations, Environmental Guidance Document. 1st Edition, January 1993 and Reaffirmed June 2000 available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

02. API SPEC 5CT, Specifications for Casing and Tubing. The 8th edition dated July, 1, 2005 and

the amendments dated March, 31, 2006 and April, 7, 2006 are available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

03. API SPEC 10a, Specification for Cements and Materials for Well Cementing. The 24th Edition dated December, 2010 is available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

04. ASTM D698-07e1, Standard Test Methods For Laboratory Compaction Characteristics Of Soil Using Standard Effort (12,400 ft-lbf/ft³ (600 kN-m/m³)). 2007 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

05. ASTM D1250-08, Standard Guide For Use Of The Petroleum Measurement Tables. 2008 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

06. ASTM D1557-09, Standard Test Methods For Laboratory Compaction Characteristics Of Soil Using Modified Effort (56,000 ft-lbf/ft³ (2,700 kN-m/m³)). 2009 revision. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103. ()

07. EPA SW-846 Method 9090A, Compatibility Test For Wastes And Membrane Liners. Revision 1, July 1992. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103 and this website: <http://www.epa.gov/osw/hazard/testmethods/sw846/pdfs/9090a.pdf>. ()

08. OSHA Standard 1910.1200 (Hazard Communication). Last revised 1996. Available at the office of the Idaho Department of Lands at 300 North 6th Street, Suite 103 and this website: http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=standards&p_id=10099. ()

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.
The principal place of business of the Idaho Department of Lands is 300 North 6th Street, Suite 103, Boise, Idaho and it is open from 8 a.m. To 5 p.m., Monday through Friday, except legal holidays. The mailing address is: Idaho Department of Lands, P.O. Box 83720, Boise, Idaho 83720-0050. The telephone number of the office is (208) 334-0200 and the fax number is (208) 334-2339. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

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

02. Confidentiality. Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code. Upon request in any application or material submitted to the Department, confidentiality protection shall be provided for trade secrets consistent with Section 9-340D(1), Idaho Code, and for "[a]rchaological and geologic records concerning exploratory drilling, logging, mining and other excavation" consistent with Idaho Code § 9-340E(2). Only those parts of an application or other materials that fall under these provisions of Idaho Code § 9-340 can be held as confidential. The owner or operator shall not unreasonably designate other parts of their application or other materials as confidential. ()

0027. -- 009. (RESERVED)

010. DEFINITIONS.

Unless the context otherwise requires, the words defined shall have the following meaning when found in these rules: (10-21-92)

01. Act. The Idaho Oil and Gas Conservation Act, Idaho Code, Title 47, Chapter 3. (10-21-92)

02. Active Well. A permitted well used for production, disposal, or injection that is not idled for more than twenty-four (24) continuous months. ()

023. Barrel. Forty-two (42) U. S. gallons at sixty (60) Degrees F at atmospheric pressure. (10-21-92)

034. **Blowout.** An unplanned sudden or violent escape of oil or natural gas, as fluids from a drilling well ~~when high formational pressure is encountered.~~ (10-21-92)()

045. **Blowout Preventer.** A heavy casinghead control equipped with special gates or rams which can be closed around the drill pipe, or which completely closes the top of the casing. (10-21-92)()

056. **Casing Pressure.** The pressure built up within the casing or between the casing, and tubing, when the casing and tubing are packed off at the top of the well or drill pipe. (10-21-92)()

07. **Casinghead.** A metal flange attached to the top of the conductor pipe that is the primary interface for the diverter system during drilling out for surface casing. ()

068. **Casinghead Gas.** Any gas or vapor, or both ~~gas and vapor~~, indigenous to an oil stratum and produced from such stratum with oil. (10-21-92)()

079. **Commission.** The Oil and Gas Conservation Commission of the state of Idaho. (10-21-92)

0810. **Common Source of Supply.** ~~Synonymous with pool.~~ The geographical area or horizon definitely separated from any other such area or horizon and which contains, or from competent evidence appears to contain, a common accumulation of oil or gas or both. Any oil or gas field or part thereof which comprises and includes any area which is underlaid, or which from geological or other scientific data or experiments or from drilling operations or other evidence appears to be underlaid by a common pool or accumulation of oil or gas or both oil and gas. (10-21-92)

09. **Condensate.** ~~Liquid hydrocarbons that were originally in the gaseous phase in the reservoir.~~ (10-21-92)

11. **Completion.** An oil well shall be considered completed when the first new oil is produced through wellhead equipment into lease tanks from the ultimate producing interval after the production casing has been run. A gas well shall be considered completed when the well is capable of producing gas through wellhead equipment from the ultimate producing zone after the production casing has been run. ()

12. **Conductor Pipe.** The first and largest diameter string of casing to be installed in a well. This casing extends from land surface to a depth great enough to keep surface waters from entering and loose earth from falling in the hole and to provide anchorage for the diverter system prior to setting surface casing. ()

103. **Cubic Foot of Gas.** The volume of gas contained in one (1) cubic foot of space at a standard pressure base and a standard temperature base. The standard pressure base shall be fourteen ~~point~~ and seventy-three hundredths (14.73) pounds per square inch absolute and the standard temperature base shall be sixty (60) Degrees F. (10-21-92)()

14. **Day.** A period of twenty-four (24) consecutive hours from eight (8) a.m. one day to eight (8) a.m. the following day. (10-21-92)()

15. **Department.** The Idaho Department of Lands or its designee. ()

126. **Development.** Any work which actively promotes bringing in production. (10-21-92)

13. **Developed Area.** ~~A spacing unit on which a well has been completed that is capable of producing oil or gas, or the acreage that is otherwise attributed to a well by the Commission.~~ (10-21-92)

147. **Director.** The ~~Director~~ head of the Idaho Department of Lands and secretary to the Oil and Gas Conservation Commission, or their designee. (10-21-92)()

18. **Drilling Logs.** The recorded description of the lithologic sequence encountered in drilling a well, and any electric, gamma ray, geophysical, or other logging done in the hole. ()

- ~~15~~**9.** **Field.** The general area underlaid by one (1) or more pools. (10-21-92)
- ~~16.~~ ~~**Gas.** All natural gas and all other fluid hydrocarbons not herein below defined as oil, including condensate because it originally was in the gaseous phase in the reservoir.~~ (10-21-92)
- 20.** **Fresh Water.** All surface waters and those ground waters that are used, or may be used in the future, for drinking water, agriculture, aquaculture, or industrial purposes other than oil and gas development. The possibility of future use is based on hydrogeologic conditions, water quality, future land use activities, and social/economic considerations. ()
- ~~17~~**21.** **Gas-Oil Ratio.** The volume of gas produced in standard cubic feet to each ~~stock tank~~ barrel of oil or condensate produced concurrently during any stated period. (10-21-92)()
- ~~18~~**22.** **Gas Well.** (10-21-92)
- a. A well which produces primarily natural gas ~~only~~; (10-21-92)()
- b. Any well capable of producing gas in commercial quantities and also producing oil from the same common source of supply but not in commercial quantities; or (10-21-92)
- c. Any well classed as a gas well by the Commission for any reason. (10-21-92)
- ~~19.~~ ~~**Just and Equitable Share of the Production.** As to each person, that part of the production from the pool that is substantially in the proportion that the amount of recoverable oil or gas or both in the developed area of the person's tract(s) in the pool bears to the recoverable oil or gas or both in the total of the developed areas in the pool.~~ (10-21-92)
- 23.** **Geophysical or Seismic Operations.** Any geophysical method performed on the surface of the land utilizing certain instruments operating under the laws of physics respecting vibration or sound to determine conditions below the surface of the earth which may contain oil or gas and is inclusive of but not limited to the preliminary line survey, the acquisition of necessary permits, the selection and marking of shot-hole locations, necessary clearing of vegetation, shot-hole drilling, implantation of charge, placement of geophones, detonation and backfill of shot-holes, and vibroseis. ()
- 24.** **Hydraulic Fracturing, or Fracing.** A method of stimulating or increasing the recovery of hydrocarbons by perforating the production casing and injecting fluids or gels into the potential target reservoir at pressures greater than the existing fracture gradient in the target reservoir. ()
- 25.** **Inactive Well.** An unplugged well that has no reported production, disposal, injection, or other permitted activity for a period of greater than twenty-four (24) continuous months, and for which no extension has been granted. ()
- 26.** **Intermediate Casing.** The casing installed within the well to seal intermediate zones above the anticipated bottom hole depth. The casing is generally set in place after the surface casing and before the production casing. ()
- 27.** **Junk.** Debris in a hole that impedes drilling or completion. ()
- ~~20~~**8.** **Lease.** A tract(s) of land which by virtue of an oil and gas lease, fee or mineral ownership, a drilling, pooling or other agreement, a rule, regulation or order of a governmental authority, or otherwise constitutes a single tract or leasehold estate for the purpose of the development or operation thereof for oil or gas or both. (10-21-92)
- ~~21.~~ ~~**Oil.** Crude petroleum oil and all other hydrocarbons, regardless of gravity, that are produced in liquid form by ordinary production methods but does not include liquid hydrocarbons that were originally in a gaseous phase in the reservoir.~~ (10-21-92)

- ~~29.~~ **Mechanical Integrity Test.** A test designed to determine if there is a significant leak in the casing, tubing, or packer of a well. ()
- ~~22~~**30.** **Oil and Gas.** Oil or gas or both. (10-21-92)
- ~~23~~**1.** **Oil Well.** Any well capable of primarily producing oil in paying quantities, but not a gas well. (~~10-21-92~~)()
- ~~24~~**32.** **Operator.** Any duly authorized person who is in charge of the development of a lease or the operation of a producing well. (10-21-92)
- ~~25~~**33.** **Owner.** The person who has the right to drill into and produce from a pool and to appropriate the oil or gas that produces there from either for himself and/or others. (10-21-92)
- ~~26~~**34.** **Person.** Any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, or other representative of any kind, and includes any government or any political subdivision or any agency thereof. The masculine gender, in referring to a person, includes the feminine and the neuter gender. (10-21-92)
- ~~35.~~ **Pit.** Any excavated or constructed depression or reservoir used to contain reserve, drilling, well treatment, produced water, or other fluids at the drill site. This does not include enclosed, mobile, or portable tanks used to contain fluids. ()
- ~~36.~~ **Pollution.** Constituents of oil, gas, salt water, or other materials used in oil and gas extraction, occurring in fresh water supplies at levels that exceed the standards in IDAPA 58.01.02, "Water Quality Standards," and IDAPA 58.01.11, "Ground Water Quality Rules" as the result of the drilling, casing, treating, operation or plugging of wells. ()
- ~~23~~**7.** **Pool or Reservoir.** An underground reservoir containing a common accumulation of oil or gas or both; each zone of a structure that is completely separated from any other zone in the same structure is a pool. (~~10-21-92~~)()
- ~~23~~**8.** **Pressure Maintenance.** The injection of gas, water, or other fluids into oil or gas reservoirs to maintain pressure or retard pressure decline in the reservoir for the purpose of increasing the recovery of oil or other hydrocarbons therefrom. (10-21-92)
- ~~39.~~ **Produced Water.** Water that is produced along with oil or gas. ()
- ~~29~~**40.** **Producer.** The owner of a well(s) capable of producing oil or gas or both. (10-21-92)
- ~~41.~~ **Production Casing.** The casing set across the reservoir interval and within which the primary completion components are installed. ()
- ~~30.~~ **Protect Correlative Rights.** ~~The action or regulation by the Commission should afford a reasonable opportunity to each person entitled thereto to recover or receive the oil or gas in such person's tract(s) or the equivalent thereof, without being required to drill unnecessary wells or to incur other unnecessary expense to recover or receive such oil or gas or its equivalent.~~ (~~10-21-92~~)
- ~~42.~~ **Proppant.** Sand or other materials used in hydraulic fracturing to prop open fractures. ()
- ~~43.~~ **Release.** Any unauthorized spilling, leaking, emitting, discharging, escaping, leaching, or disposing into soil, ground water, or surface water. ()
- ~~44.~~ **Surface Casing.** The first casing which is run after the conductor pipe to anchor blow out prevention equipment and to seal out fresh water zones. ()

45. Tubing. Pipe used inside the production casing to convey oil or gas from the producing interval to the surface. ()

46. Volatile Organic Compound. Organic chemical compounds whose composition makes it possible for them to evaporate under normal indoor atmospheric conditions of sixty-eight (68) degrees F and an absolute pressure of fourteen point seven (14.7) psi atmospheric. ()

347. Waterflooding. The injection into a reservoir through one (1) or ~~several~~ more wells ~~of~~ with volumes of water for the purpose of increasing the recovery of oil therefrom. ~~(10-21-92)~~()

3248. Waste as Applied to Oil. Underground waste; inefficient, excessive, improper use, or dissipation of reservoir energy, including gas energy and water drive; surface waste, open-pit storage, and waste incident to the production of oil in excess of the producer's above-ground storage facilities and lease and contractual requirements, but excluding storage (other than open-pit storage) reasonably necessary for building up and maintaining crude stocks and products thereof for consumption, use, and sale; the locating, drilling, equipping, operating, or producing of any well in a manner that causes, or tends to cause, reduction of the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations. (10-21-92)

3349. Waste as Applied to Gas. The escape, blowing or releasing, directly or indirectly, into the open air of gas from wells productive of gas only, or gas in an excessive or unreasonable amount from wells producing oil or both oil and gas; and the production of gas in quantities or in such manner as will unreasonably reduce reservoir pressure or unreasonably diminish the quantity of oil or gas that might ultimately be produced; excepting gas that is reasonably necessary in the drilling, completing, and testing of wells and in furnishing power for the production of wells (10-21-92)

3450. Well Log Report. The written record progressively describing the strata, water, oil, or gas encountered in drilling a well with such additional information as to give volumes, pressures, rate of fill-up, water depths, casing strata, casing record, etc., as is usually recorded in normal procedure of drilling; also, it includes electrical radioactivity, or other similar logs run, lithologic description of all cores, and all drill-stem tests, including depth-tested, cushion-used, time tool open, flowing and shut-in pressures and recoveries. ~~(10-21-92)~~()

51. Well Treatment. Actions performed on a well to acidize, fracture, or stimulate the target reservoir. ()

352. Wildcat Well. An exploratory well drilled ~~to discover a previously unknown pool in an area of~~ unknown subsurface conditions. ~~(10-21-92)~~()

011. ABBREVIATIONS.

01. API. American Petroleum Institute. ()

02. ASTM. American Society for Testing and Materials. ()

03. BOP. Blowout Preventer. ()

04. CAS. Chemical Abstracts Service. ()

05. EPA. United States Environmental Protection Agency. ()

06. F. Fahrenheit. ()

07. GPS. Global Positioning System. ()

08. HDPE. High Density Polyethylene. ()

09. IDAPA. Idaho Administrative Procedure Act. ()

10. IDEO. Idaho Department of Environmental Quality. ()

11. IDWR. Idaho Department of Water Resources. ()

12. MSDS. Material Safety Data Sheet. ()

13. OSHA. Occupational Safety & Health Administration. ()

14. PSI. Pounds per Square Inch. ()

014~~2~~. -- 014. (RESERVED)

015. **SPECIAL RULES PROTECTION OF CORRELATIVE RIGHTS.**

~~Special rules will be issued when required and shall prevail as against general rules if in conflict therewith.~~ The Commission and the Department should afford a reasonable opportunity to each person entitled thereto to recover or receive the oil or gas in such person's tract(s) or the equivalent thereof, without being required to drill unnecessary wells or to incur other unnecessary expense to recover or receive such oil or gas or its equivalent. (10-21-92)()

016. -- 03~~19~~. (RESERVED)

020. **APPLICABILITY.**

01. **Oil and Gas Development.** These rules apply to oil and gas development and carry out the Commission's duty to prevent waste, protect correlative rights, and prevent pollution of fresh water supplies through activities authorized by these rules. ()

02. **Exclusions.** These rules do not apply to the exploration and development of other mineral resources covered by Title 47, Chapter 13, Idaho Code; Title 47, Chapter 15, Idaho Code; or Title 42, Chapter 40, Idaho Code. ()

021. -- 039. (RESERVED)

040. NOTICES - GENERAL.

01. **Written Authorization Required.** Any written notice of intention to do work or to change plans previously approved must be filed with the ~~director~~ Department, unless otherwise directed, and must ~~reach the director and receive his approval~~ be approved before the work is begun. Such approval may be given orally and, if so given, shall thereafter be confirmed by the ~~director~~ Department in writing. (10-21-92)()

02. **Emergency Authorization.** In case of emergency, or a situation where operations might be unduly delayed, any written notice required by these rules and regulations to be given the ~~director~~ Department may be given orally or by wire and if approval is obtained, the transaction shall be confirmed in writing, as a matter of record. (10-21-92)()

041. -- 049. (RESERVED)

050. PERMIT TO DRILL, DEEPEN, OR PLUG BACK.

01. **Permits Required.** Prior to the commencement of operations to drill, deepen, or plug back to any source of supply other than the existing producing horizon, application shall be delivered to the Commission Department of intention to drill, deepen, or plug back any well for oil or gas, and approval obtained. (10-21-92)()

02. **Fees.** An ~~one hundred dollar (\$100) service~~ application fee must accompany each application for permit to drill, deepen, or plug back ~~for any well on which the service fee has not been paid~~. No service fee is required for a permit to deepen or plug back in a well for which the fee has been paid for permit to drill unless the drilling permit has expired. (10-21-92)()

03. Time Required to Commence Operations; Term of Permit. On the first anniversary of the date of issuance of a permit to drill, deepen, or plug back, said permit ~~shall terminate~~ will expire and be of no further force or effect, unless the work for which the permit was issued has been started. Prior to the anniversary date, the owner or operator may apply for a one-time six (6) month extension if work has not started. If conditions have not changed, and no changes to the permit are requested, the extension may be approved by the Department. If a permit expires due to the failure to commence operations, then reapplication is required prior to commencing operations.

~~(10-21-92)~~()

04. Plat Application. The Application for Permit to Drill shall ~~be accompanied by an~~ include a Department approved form and the following: ()

a. An accurate plat showing the location of the proposed well with reference to the nearest lines of an established public survey. ()

b. The location of the nearest structure with a water supply, or the nearest water well as shown on the IDWR registry of water rights or well log database. ()

c. Information ~~to be included in such notice shall be~~ on the type of tools to be used; and the proposed logging program. ()

d. ~~p~~Proposed total depth to which the well will be drilled, estimated depth to the top of the important geologic markers, and the estimated depth to the top of ~~objective horizons,~~ the target formations. ()

e. ~~The~~ proposed casing program, including size and weight thereof, the depth at which each casing string type is to be set; ~~and~~ ()

f. ~~The~~ type and amount of cement to be used, and the intervals cemented. ()

g. Information ~~shall also be given relative to~~ on the drilling plan; ~~together with~~ ()

h. Best management practices to be used for erosion and sediment control. ()

i. Plan for interim reclamation of the drill site after the well is completed, and a plan for final reclamation of the drill site following plugging and abandonment of the well. These plans must contain the information needed to implement reclamation as described in Subsection 080.15 and Section 325 of these rules. ()

j. Applications that include the following actions must also provide the information from the respective Section of these rules: ()

i. Well treatments require the submittal of the information in Section 055. ()

ii. Pit construction and use requires the submittal of the information in Section 085. ()

iii. Directional or horizontal drilling requires the submittal of the information in Section 170. ()

k. ~~Any~~ other information which may be required by the ~~Commission~~ Department based on site specific reasons. ~~(10-21-92)~~()

05. Permit Denial. Applications may be denied for the following reasons: ()

a. Application fee was not submitted. ()

b. Application is incomplete. ()

c. Failure to post required bonds. ()

d. Proposed well will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. ()

051. PUBLIC COMMENT.

Applications submitted under Sections 050, 055, 085, and 170 of these rules will be posted on the Department's website for a fifteen (15) day written comment period. The purpose of the comment period is to receive written comments on whether a proposed application complies with these rules. These comments will be considered by the Department prior to permit approval or denial. Relevant comments will be posted on the Department's website following the comment period. ()

~~054.2.~~ -- ~~0594.~~ (RESERVED)

055. WELL TREATMENTS.

01. Application Required. An Application for Permit to Drill required by Section 050 must include any plans for well treatment if they are known before the well is drilled. If well treatments are not covered in the original drilling permit, then an application to amend the permit must be made to the Department with an application fee. Approval by the Department is required prior to the well treatments being implemented. Actions to clean the casing or perforations not in excess of pressures sufficient to overcome the fracture gradient in the surrounding formation are not considered to be well treatments, but a notice to the Department as described in Section 350 of these rules is still required. Applications for well treatments must include the permit number, well name, well location, as-built description if drilling has been completed, and the following: ()

a. Depth to perforations or the openhole interval; ()

b. The source of water or type of base fluid; ()

c. Additives, meaning any substance or any combination of substances including proppant, having a specified purpose that is combined with base treatment fluid by trade name, if available, and MSDS for each additive; ()

d. Type of proppant(s); ()

e. Anticipated percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s); ()

f. Estimated pump pressures; ()

g. Method and timeline for the management, storage, and disposal of well treatment fluids, including anticipated disposal site of treatment fluids or plans for reuse; ()

h. Size and design of storage pits, if proposed, in conformance with Section 085 of these rules; ()

i. Information specific to hydraulic fracturing as described in Section 056 of these rules; ()

j. Summary identifying all water bearing zones from the surface down to the bottom of the well; ()

k. Fresh water protection plan that describes the proposed site specific measures to protect water quality from activities associated with well treatments. The Department will review this plan in consultation with the IDEQ. The Fresh Water Protection Plan shall include the following information: ()

i. Ground water and storm water best management practices; ()

ii. Statement certifying that the owner or operator is complying with Spill Prevention, Control, and

Countermeasures (SPCC) requirements administered by the EPA: ()

iii. A preconstruction topographic site map or aerial photos identifying all habitable structures, wells, perennial and intermittent springs, surface waters, and irrigation ditches within one-quarter (1/4) mile of the oil or gas well. The distance or location may be changed based on site specific factors such as horizontal drilling, the expected length of fractures, or lack of suitable water sample locations within one-quarter (1/4) mile; ()

iv. A brief description of the structural geology that may influence ground water flow and direction;
and ()

v. The general hydrogeological characteristics of the treatment area and surrounding land. ()

l. Certification by the owner or operator that all aspects of the well construction, including the suitability and integrity of the cement used to seal the well, are designed to meet the requirements of proposed well treatments; ()

m. Affidavit signed by the owner or operator stating that all home owners and water well owners within one-quarter (1/4) mile of the oil or gas well, and all owners of a public drinking water system that have a IDEQ recognized source water assessment or protection area within one-quarter (1/4) mile of the oil or gas well, have been notified of the proposed treatment. If a well deviates from the vertical, these surface distances will be from the entire length of the wellbore from the surface to total depth. The notification will also offer an opportunity to have the owner or operator sample and test the water, at the owner or operator's cost, prior to and after the oil or gas well being treated. Notification shall be by certified mail to the surface owner as identified by the county assessor's records, or to the well owner as identified on the IDWR registry of water rights or well log database; ()

n. Proof of publication in a newspaper of general circulation in the county where the well is located of a legal notice briefly describing the well treatment to be performed. Notice shall also advise all water well or public drinking water system owners, as described in paragraph 055.01.m. of these rules, of the opportunity to have their water tested at the owner's or operator's cost before and after the well treatment; and ()

o. Additional information as required by the Department. ()

02. Master Drilling/Treatment Plans. Where multiple stimulation activities will be undertaken for several wells proposed to be drilled in the same field within an area of geologic similarity, approval may be sought from the Department for a comprehensive master drilling/treatment plan containing the information required. The approved master drilling/treatment plan must then be referenced on each individual well's Application for Permit to Drill. ()

03. Application Denial. The Department may deny well treatment applications for one or more of the following reasons: ()

a. Application does not contain the information in Subsection 055.01 of these rules; ()

b. Application fee was not submitted. ()

c. Proposed treatment will result in a waste of oil or gas, a violation of correlative rights, or the pollution of fresh water supplies. ()

04. Time Limit. If a treatment approved in a drilling permit or amended drilling permit is not started within one (1) year of the approval of the well treatment, the well treatment permit will expire and reapplication will be required prior to conducting the well treatment. Prior to the anniversary date, the owner or operator may apply for a six (6) month extension. If conditions have not changed, and no changes to the permit are requested, the extension may be approved by the Department. ()

05. Inspections. The Department may conduct inspections prior, during, and after well treatments. ()

06. Reporting Requirements. A report on the well treatment must be submitted within thirty (30) days of the treatment. The report shall present a detailed account of the work done and the manner in which such work was performed, including: ()

- a.** The daily production of oil, gas, and water both prior to and after the operation. ()
- b.** The size and depth of perforations. ()
- c.** Percentages by volume and total volumes of base treatment fluid, individual additives, and proppant(s). This requirement can be met by the submittal of well completion field tickets if they contain this information. ()
- d.** Information specific to hydraulic fracturing, as described in Section 056 of these rules. ()
- e.** Static pressure testing results before and after the well treatment. ()
- f.** The amounts, handling, and if necessary, disposal at an identified appropriate disposal facility, or reuse of the well stimulation fluid load recovered during flow back, swabbing, and/or recovery from production facility vessels. Reporting of recovered fluids shall be included with other monthly production reports required by the Department. Storage of such fluid shall be protective of ground water as demonstrated by the use of either tanks or authorized lined pits as described in Section 085 of these rules. ()
- g.** Any other information related to operations which alter the performance or characteristics of the well. ()

07. Fresh Water Protections for Well Treatments. ()

a. The Department will not authorize pits, lagoons, ponds, or other methods of subsurface storage for treatment fluids within IDEQ recognized source water assessment or protection areas for public drinking water systems. Owners or operators must store and transport treatment fluids using above ground storage facilities and tanker trucks for well treatments in these locations. ()

b. The Department will not authorize well treatments to create fractures within five hundred (500) vertical feet below fresh water aquifers within one-quarter (1/4) horizontal mile of the treated well. ()

c. The Department shall require the owner or operator to complete fresh water monitoring at the owner's or operator's cost before and after a well treatment unless the Department, in consultation with the IDEQ, determines that the proposed treatment does not pose a threat of pollution to fresh waters. The Department will review and approve all monitoring proposals with the IDEQ. The monitoring will be done using representative existing water wells or surface waters within one-quarter (1/4) horizontal mile of the treated well. For wells that deviate from the vertical, sampling may be required within one-quarter (1/4) horizontal mile of the wellbore's projected location on the surface. If no water wells or surface waters are present in this area, the sampling area may be enlarged as needed with approval by the Department. If the Department determines that existing water wells are not representative of the ground waters that could be impacted, then the Department may require the owner or operator to install one (1) or more ground water monitoring wells at the owner's or operator's cost. The owner or operator must obtain consent from appropriate property owners to gain access prior to any sampling or well construction. When monitoring is required by the Department, the operator will prepare a monitoring plan that includes the following: ()

i. Location of proposed monitoring sites; ()

ii. Construction details of any sampled or constructed wells including total well depth, depth of screened interval(s), screen size, and drilling log. For existing wells, the operator must make every reasonable attempt to locate this information; ()

iii. When possible, data from the existing wells collected within the last five (5) years and analyzed in a state or EPA certified drinking water lab; ()

- iv. List of proposed analytes, testing methods, and their detection limits; ()
- v. Additional tests such as stable isotopic analysis; and ()
- vi. Pre-treatment sampling and analysis when no relevant data exists, and a schedule for post-treatment sampling and analysis. ()
- d. The owner or operator will provide the Department with copies of any analysis or reports within thirty (30) days of samples being taken. All samples must be analyzed in a state or EPA certified drinking water lab. ()
- e. Pollution of fresh water supplies due to a well treatment is a violation of these rules and Title 47, Chapter 3, Idaho Code. ()

056. HYDRAULIC FRACTURING.

01. Application Requirements. In addition to the information required by Subsection 055.01 of this rule, the owner or operator shall provide the following application information; ()

a. The geological names and descriptions of the formation into which well stimulation fluids are to be injected; ()

b. Detailed information on the base stimulation fluid source. For each stage of the well stimulation program, provide the chemical additives and proppants and concentrations or rates proposed to be mixed and injected, including; ()

i. Stimulation fluid identified by additive type (such as but not limited to acid, biocide, breaker, brine, corrosion inhibitor, crosslinker, demulsifier, friction reducer, gel, iron control, oxygen scavenger, pH adjusting agent, proppant, scale inhibitor, surfactant); ()

ii. The chemical compound name and Chemical Abstracts Service (CAS) number as found on the previously submitted MSDS shall be identified (such as the additive biocide is glutaraldehyde, or the additive breaker is ammonium persulfate, or the proppant is silica or quartz sand, and so on for each additive used); ()

iii. The proposed rate or concentration for each additive and the total volume of each shall be provided (such as gel as pounds per thousand gallons, or biocide at gallons per thousand gallons, or proppant at pounds per gallon, or expressed as percent by weight or percent by volume, or parts per million, or parts per billion); and ()

iv. The formulary disclosure of the chemical compounds used in the well stimulation(s) for the purpose of protecting public health and safety. ()

c. A detailed description of the proposed well stimulation design, which shall include: ()

i. The anticipated surface treating pressure range; ()

ii. The maximum injection treating pressure, which shall be within accepted safety limits. Accepted safety limits are generally 80% of the maximum pressure rating of the pressurized system; ()

iii. The estimated or calculated fracture height in both the horizontal and vertical directions. ()

02. BTEX Compounds. The injection of volatile organic compounds, such as benzene, toluene, ethyl benzene and xylene, also known as BTEX compounds, or any petroleum distillates into ground water in excess of the applicable ground water quality standards is prohibited. BTEX compounds may be appropriate as additives, but they are not appropriate for use as the base fluids. The proposed use of BTEX compounds or any petroleum distillates for well stimulation into hydrocarbon bearing zones may be authorized with prior approval of the director. Water that is produced with oil and gas, and which may contain small amounts of naturally occurring volatile organic compounds

or petroleum distillates, may be used as well stimulation fluid in hydrocarbon bearing zones. ()

03. Well Integrity. Prior to the well stimulation, the owner or operator will perform a suitable mechanical integrity test of the casing or of the casing-tubing annulus or other mechanical integrity test methods and submit an affidavit certifying that the well was tested in anticipation of proposed treatment pressures. The owner or operator will notify the Department of this test twelve (12) to twenty-four (24) hours in advance. ()

04. Pressure Monitoring. During the well stimulation operation, the owner or operator shall monitor and record the annulus pressure at the casinghead. If intermediate casing has been set on the well being stimulated, the pressure in the annulus between the intermediate casing and the production casing shall also be monitored and recorded. If the annulus pressure increases by more than five hundred (500) psi gauge as compared to the pressure immediately preceding the stimulation, the owner or operator shall verbally notify the Department as soon as practicable but no later than twenty-four (24) hours following the incident. ()

05. Post Treatment Report. In addition to the information required by Subsection 055.07 of this rule, the owner or operator shall provide the following post-treatment reporting: ()

a. The actual total well stimulation treatment volume pumped; ()

b. The actual surface pressure and rate at the end of each fluid stage and the actual flush volume, rate and final pump pressure; ()

c. The instantaneous shut-in pressure, and the actual fifteen (15) minute and thirty (30) minute shut-in pressures when these pressure measurements are available; ()

d. A continuous record of the annulus pressure during the well stimulation; ()

e. A copy of the well stimulation service contractor's job log, without any cost/pricing data from the field ticket, in lieu of paragraphs (a) through (d) above. If the job log does not contain all the needed information, it must be supplemented with additional information needed to satisfy paragraphs 056.05.a. through 056.05.d. of this rule. ()

f. A report containing all details pertaining to any annulus pressure increases of more than five hundred (500) psi gauge as described in Subsection 056.05 of this rule. The report shall include corrective actions taken, if necessary. ()

g. Results of post treatment fluid analysis used to help determine where the fluid can be disposed. ()

057. -- 059. (RESERVED)

060. TRANSFER OF DRILLING PERMITS.

No person to whom a permit has been issued shall transfer the permit to any other location or to any other person until the following requirements have been complied with: (10-21-92)

01. Prior to Drilling Well. If, prior to the drilling of a well, the person to whom the permit was originally issued desires to change the location, they shall submit a letter so stating and another application properly filled out showing the new location. No additional fee is necessary, but a Drilling shall not be started until the transfer has been approved and the new permit posted at the new location. (10-21-92)()

02. During Drilling or After Completion. If, while a well is drilling being drilled or after it has been completed, the person to whom the permit was originally issued disposes of his their interest in the well, they shall submit a written statement to the Commission Department setting forth the facts and requesting that the permit be transferred to the person who has acquired the well. (10-21-92)()

03. Terms for Acceptance of Transfer-by Commission. Before the transfer of a drilling permit shall be recognized, the person who has acquired the well must submit a written statement setting forth that he has they

have acquired such well and assumes full responsibility for its operation and abandonment in conformity with the law, rules, regulations, and orders issued by the Commission. If bond is required to guarantee compliance with the rules and regulations of the Commission, the person acquiring such well shall furnish bond. ~~(10-21-92)~~()

061. -- 069. (RESERVED)

070. BONDING.

01. Individual Bond. The ~~Commission~~ Department shall, except as hereinafter provided, require from the owner or operator a good and sufficient bond in the sum of not less than ten thousand dollars (\$10,000) plus one dollar (\$1) for each foot of planned well length in favor of the ~~Commission,~~ Department. The bond shall be conditioned upon the performance of the owner's or operator's duty to comply with the requirements of the ~~Idaho Oil and Gas Conservation~~ Act and the rules and regulations of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas and the reclamation of surface disturbance associated with these activities. Said bond shall remain in force and effect until the plugging of said well is approved by the ~~Commission~~ Department, or the bond is released by the ~~Commission~~ Department. ()

02. Blanket Bond. ~~It is provided that~~ In lieu of the bond in Subsection 070.01 of this rule, any owner or operator ~~in lieu of such bond~~ may file with the ~~Commission~~ Department a good and sufficient blanket bond ~~in a sum of not less than twenty five thousand dollars (\$25,000),~~ covering all active wells drilled or to be drilled in the state of Idaho ~~by the principal in said bond, and the acceptance and approval by the Commission of such blanket bond shall be in full compliance with the above provision requiring an individual well bond.~~ The bond(s) herein before referred to shall be by a corporate surety authorized to do business in the state of Idaho or in cash. The amount of the blanket bond will be as follows according to the number of active wells covered by the bond:~~(10-21-92)~~()

a. Up to ten (10) wells, fifty thousand dollars (\$50,000); ()

b. Eleven (11) to thirty (30) wells, one hundred thousand dollars (\$100,000); or ()

c. More than thirty (30) wells, one hundred fifty thousand dollars (\$150,000). ()

03. Inactive Well Bond. An owner or operator must provide the Department with a bond of at least ten thousand dollars (\$10,000) plus one dollar (\$1) for each foot of planned well length for each inactive well conditioned upon the performance of the duty to comply with the requirements of the Idaho Oil and Gas Conservation Act and the rules and regulations of the Commission, with respect to the drilling, maintaining, operating, and plugging of each well drilled for oil and gas. Said bond shall remain in force and effect until the plugging of said well is approved by the Department, or the bond is released by the Department. Inactive wells may not be covered by a blanket bond as provided in Subsection 070.02 of this rule. ()

04. Additional Bonding. The Department may impose additional bonding on an owner or operator given sufficient reason, such as non-compliance, unusual conditions, horizontal drilling, or other circumstances that suggest a particular well or group of wells has potential risk or liability in excess of that normally expected. The owner or operator may request a hearing to appeal either the decision to impose an additional bond or the proposed amount of the bond. ()

071. -- 074. (RESERVED)

075. SURFACE OWNER PROTECTIONS.

01. Surface Use Agreement. If the mineral estate has been severed from the surface estate where an oil or gas well is to be located, the owner or operator shall attempt a good faith negotiation of a surface use agreement with the surface owner. The surface use agreement must address how the surface owner will be compensated for lost agricultural income and lost value of improvements directly caused by oil and gas exploration and production. The owner or operator may rely on the tax records of the respective county assessor to identify the surface owner. ()

02. Surface Owner Notification. If a surface use agreement cannot be negotiated, then the owner or operator must notify the surface owner of the intent to drill by certified mail at least sixty (60) days prior to the

commencement of surface disturbing activities, unless otherwise agreed to by the surface owner. The notification must include a proposed surface use bond amount, and a copy must be sent to the Department. ()

03. Surface Owner Objection. If the surface owner disagrees with the owner's or operator's proposed surface use bond amount, the surface owner must send a written objection to the Department within thirty (30) days of receiving the notification from the owner or operator. The objection must contain their proposed surface use bond amount. Any objection filed will not delay the owner's or operator's proposed start of surface disturbing activities. ()

04. Surface Use Bond. The minimum surface use bond in all instances with no surface use agreement will be five thousand dollars (\$5,000), and will be paid in cash to the Department. If the surface owner objects to the owner's or operator's proposed bond amount, the Department will determine a surface use bond based on the information received from both the owner or operator and the surface owner. The Department will then request that the owner or operator submit this bond. The Department may issue the permit and authorize the commencement of drilling operations after this bond has been received. The purpose of this bond is to safeguard the surface owner's loss of agricultural income and improvement values pending the results of a hearing on the final bond. ()

05. Hearing to Determine Surface Use Bond. When the owner, operator, or surface owner objects to the Department's proposed surface use bond, a hearing will be scheduled as soon as possible to determine the final bond amount. The owner, operator, surface owner, and Department may offer testimony to the hearing officer. The hearing officer will recommend a final bond amount to the Commission. After the Commission's final order, the owner or operator and surface owner will have twenty eight (28) days to file a request for judicial review. ()

06. Release of Surface Use Bond. The Department will hold the bond pending either a surface use agreement between the two (2) parties that negates the need for a surface use bond, or reclamation of the surface disturbance. ()

07. Forfeiture of Surface Use Bond. The Department may forfeit this bond upon failure of the owner or operator to reclaim the disturbed area in a timely manner, or upon failure of the parties to reach a surface use agreement, upon the completion of drilling operations. ()

076. -- 079. (RESERVED)

080. GENERAL DRILLING RULES.

Unless altered, modified, or changed for a particular pool(s), upon hearing before the Commission, the following shall apply to the drilling of all wells: (10-21-92)

01. General Design Requirements for Casing and Cementing. Casing and cementing programs adopted for wells must be so planned as to protect any potential oil- or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to another. Owners and operators shall follow the standards for casing and tubing in API SPEC 5CT and the standards for cementing in API SPEC 10A. ()

02. Wildcat and High-Pressure Conditions. When drilling wildcat territory or in any field where high pressures are likely to exist, the owner or operator shall take all necessary precautions to keep the well under control at all times and shall use proper high-pressure fittings and equipment at the time the well is started. Under such conditions all strings of casings must be securely anchored. ()

03. High Temperature Conditions. Due to high geothermal gradients in Idaho, the temperature of the return drilling mud shall be monitored daily during the drilling of the surface casing hole and all deeper holes. The owner or operator must use cements appropriate for the temperatures expected or encountered. ()

014. Wildcat and High-Pressure Conditions; Conductor Pipe or Casing and Well Control Requirements. *When drilling "wildcat" territory or in any field where high pressures are likely to exist, the owner shall take all precautions for keeping the well under control at all times and shall provide at the time the well is started proper high pressure fittings and equipment. Under such conditions the conductor string of casings must be cemented throughout its length, unless other procedure is authorized or prescribed by the director, and all strings of*

~~casings must be securely anchored. A minimum of forty (40) feet of conductor pipe shall be installed. If geologic conditions are such that forty (40) feet is not feasible, the owner or operator may request a variance from the Department. The annular space is to be cemented solid to the surface. A twenty-four (24) hour cure period for the grout must be allowed prior to drilling out the shoe unless sufficient additives, as determined by the Department, are used to obtain early strength.~~ (10-21-92)(____)

~~**025. Surface Casing Requirements; Unknown Formation and Pressure Conditions.** In areas where pressure and formations are unknown, sufficient surface casing shall be run to reach a depth below all known or reasonably estimated utilizable domestic freshwater levels and to prevent blowouts or uncontrolled flows and shall be of sufficient size to permit the use of an intermediate string(s) of casing. Surface casing shall be set in or through an impervious formation and shall be cemented by the pump and plug or displacement or other approved method with sufficient cement to fill the annulus to the top of the hole, in accordance with reasonable requirements of the director.~~ (10-21-92)(____)

~~**a.** Surface casing must be set at a minimum depth equal to ten percent (10%) of the proposed total depth of the well. In areas where pressures and formations are unknown, a minimum of two hundred (200) feet of surface casing shall be set.~~ (____)

~~**b.** This casing shall provide for control of formation fluids, protection of fresh water, and for adequate anchorage of blow out prevention equipment. The casing must be seated through a sufficient series of low permeability, competent lithologic units such as claystone, siltstone, basalt, etc., to insure a solid anchor for blow out prevention equipment and to protect usable ground water from contamination. Additional surface casing may be required if the first string has not been cemented through a sufficient series of low permeability, competent lithologic units, or rapidly increasing thermal gradients or formation pressures are encountered.~~ (____)

~~**c.** All surface casing shall be cemented solid to the surface by pump and plug, displacement, or other approved method. When surface samples are cured, additional drilling activities may commence.~~ (____)

~~**03. Surface Casing Requirements; Known Subsurface Conditions.** In wells drilled in areas where subsurface conditions have been established by drilling experience, surface casing, size at the owner's option, shall be set and cemented to the surface by the pump and plug or displacement or other approved method at a depth sufficient to protect all utilizable domestic fresh water and to insure against blowouts or uncontrollable flows.~~ (10-21-92)

~~**04. Cement Minimum Set Up Time.** Cement shall be allowed to set a minimum of eight (8) hours under pressure before drilling the plug. The term "under pressure" as used herein will be complied with if one (1) float valve is used or if pressure is otherwise held.~~ (10-21-92)

056. Requirements for Blowout Prevention BOP Equipment. Unless altered, modified, or changed for a particular pool(s) upon hearing before the Commission, ~~blowout preventers~~ BOP and related equipment shall be installed and maintained during the drilling of all wells in accordance with the following rules: (10-21-92)(____)

a. BOP equipment installed on wells in which formation pressures to be encountered are abnormal or unknown shall consist of a double-gate, hydraulically operated preventer with pipe and blind rams or two (2) single-ram-type preventers; one (1) equipped with pipe rams, the other with blind rams and an annular type preventer. In addition, upper and lower kelly cocks, pit level indicators with alarms and/or flow sensors with alarms, and surface facilities to handle pressure kicks shall be installed prior to drilling any formation with known abnormal pressure. (10-21-92)

i. Accumulators shall maintain a pressure capacity reserve at all times to provide for operation of the hydraulic preventers and valves with no outside source. (10-21-92)

ii. In all other drilling operations, BOP equipment shall consist of at least one (1) double-gate preventer with pipe and blind rams or two (2) single-ram-type preventers, one (1) equipped with pipe rams, the other with blind rams, and sufficient valving to permit fluid circulation at the surface. (10-21-92)

b. All blowout preventers, choke lines, and manifolds shall be installed above ground level. Casing

heads and optional spools may be installed below ground level provided they are visible and accessible.

~~(10-21-92)~~()

c. ~~Blowout preventer~~ BOP equipment and related casing heads and spools shall have a vertical bore no smaller than the inside diameter of the casing to which they are attached. ~~(10-21-92)~~()

d. The working pressure rating of all blowout preventers and related equipment shall equal or exceed the maximum anticipated pressure to be contained at the surface. (10-21-92)

e. All ram-type blowout preventers and related equipment, including casing, shall be tested to the full working pressure rating of said equipment upon installation, provided that components need not be tested to levels higher than the lowest working pressure rated component. Annular type blowout preventers are to be tested in conformance with the manufacturer's published recommendations. If, for any reason, a pressure seal in the assembly is disassembled, a test to a full working pressure rating of that seal shall be conducted prior to the resumption of any drilling operation. In addition to the initial pressure tests, ram-type preventers shall be checked for physical operation ~~each trip~~ at least once per week and all components, again with exception of the annular-type blowout preventer, tested ~~monthly~~ at least once every twenty-one (21) days to at least fifty percent (50%) of the rated pressure of the BOP equipment and/or to the maximum anticipated pressure to be contained at the surface, whichever is greater.

~~(10-21-92)~~()

f. The ~~Commission~~ Department may require an affidavit covering the initial pressure tests after installation signed by the ~~owner~~, operator, or contractor attesting to the satisfactory pressure tests. The ~~Commission staff~~ Department is to be advised at least twenty-four (24) hours in advance of all tests. ~~(10-21-92)~~()

g. A schematic diagram of the BOP and well head assembly shall be submitted to the ~~Commission staff~~ Department upon application for a permit to drill. The schematic diagram should indicate the minimum size and pressure rating of all components of the well head and BOP assembly. ~~(10-21-92)~~()

h. Studs on all well head and BOP flanges shall be checked for tightness each week. Hand wheels for locking screws shall be installed and operational, and the entire BOP and well head assembly shall be kept clean of mud and ice. (10-21-92)

i. A drillstem safety valve shall be available on the rig floor at all times with correct thread for the pipe in use. ~~(10-21-92)~~()

j. A drillstem float valve shall be installed in bit sub or as close to bit as reasonably possible. ()

07. Intermediate Casing. ()

a. Intermediate casing, if installed, shall be cemented solidly to the surface or to the top of the casing. ()

b. Intermediate casing not run to surface will be lapped into at least one hundred feet (100) feet of the surface casing, or at least 100 feet of the next larger casing to provide overlap and secure a seal. ()

c. Such casing shall be cemented and pressure tested before cement plugs are drilled. ()

068. Production ~~String~~ Casing; Cementing and Testing Requirements. ()

a. If and when it becomes necessary to run a production ~~string~~ casing, such ~~string~~ casing shall be cemented ~~by the pump and plug method and shall be properly~~ and pressure tested ~~by the pressure method~~ before cement plugs are drilled. ~~(10-21-92)~~()

a. When not run to the surface, production casing will be cemented from the bottom of the hole up into at least one hundred feet (100) feet of the next larger casing to provide overlap and secure a seal. ()

b. If the bottom plug will be drilled out, the open hole interval must be completed to protect any

potential oil-bearing or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one (1) horizon to another. ()

079. **Blowout Control (Rotary Tools); Auxiliary Reserve Mud Tanks.** When drilling with rotary tools, the owner or operator shall provide, as required by the ~~director~~ Department, ~~an auxiliary~~ a reserve mud pit or tank of suitable capacity for the anticipated depth of the well and maintain ~~therein~~ an on-site supply of mud ~~having the proper characteristics for emergency use~~ additives that can raise the mud weight by one (1) pound per gallon in case of blowouts. (10-21-92)()

0810. **Mud Pits.** Before commencing to drill, proper and adequate mud pits shall be constructed for the reception and confinement of mud and cuttings and to facilitate the drilling operation. Special precautions shall be taken, if necessary, to prevent contamination of ~~streams and potable~~ fresh waters. All pits must be lined. If tanks will be used, then mud pits may not be required. (10-21-92)()

0911. **Well Control (Cable Tools); Fluid Containment and Gas Flaring.** Natural gas or oil which may be encountered in a substantial quantity in any section of a cabletool drilled hole above the ultimate objective shall be shut off with reasonable diligence either by mudding or by casing, or other approved method, and confined to its original source to the satisfaction of the ~~director~~ Department. Any gas escaping from the well during drilling operations shall be, as far as practicable, conducted to a safe distance from the well site and burned. (10-21-92)()

12. **Drilling Mud Disposal.** Drilling mud will be disposed of at an appropriate facility in compliance with applicable state and federal requirements. ()

~~10. **Casing Programs; General Design Requirements.** Casing programs adopted for wells must be so planned as to protect any potential oil- or gas-bearing horizons penetrated during drilling from infiltration of injurious waters from other sources, and to prevent the migration of oil or gas from one horizon to another.~~ (10-21-92)

143. **Report of Fresh Waters Encountered; Owner's or Operators Duties.** It shall be the duty of any ~~person, owner or operator or contractor~~ drilling an oil or gas well or drilling a seismic, core or other exploratory hole to report to the ~~Commission~~ Department all ~~freshwater sands~~ potential water bearing zones encountered; such report shall be in writing and give the location of the well or hole, the depth at which the ~~sands zones~~ were encountered, the thickness of such ~~sands zones~~, and the rate of flow of water if known. This requirement can be met by the submittal of the logs required in Section 090 of this rule. (10-21-92)()

14. **Spill Prevention, Control, and Countermeasures Plan.** Owner or operator must have a Spill Prevention, Control, and Countermeasures Plan in conformance with the requirements of the EPA. This plan must be updated as needed when facilities or activities change ()

15. **Interim Drill Site Clean Up.** If a well is completed for production or other purposes, interim reclamation must be completed within six (6) months of the rig being removed. Interim reclamation includes the following activities: ()

a. Debris and waste materials including, but not limited to, concrete, sack bentonite and other drilling mud additives, sand, plastic, pipe, and cable associated with the drilling, re-entry, or completion operations shall be removed and disposed of properly. ()

b. All disturbed areas affected by drilling or subsequent operations, except areas reasonably needed for production operations or for subsequent drilling operations to be commenced within twelve (12) months, shall be reclaimed and revegetated to approximately the pre-drilling condition or to the condition specified in an agreement with the surface owner. The reclamation standards in Subsections 325.04 through 325.07 of these rules, shall apply. ()

081. -- ~~084.~~ (RESERVED)

085. PIT REQUIREMENTS.

01. Plans Required. If pits are proposed to be constructed in connection with another permit application required by these rules, then the owner or operator must include plans for pit construction in the application. If a pit is needed after the other permits have been approved, then an application to amend the permit must be made to the Department with an application fee. Approval by the Department is required prior to the pit being constructed unless the pit is necessary for an emergency action. Pit applications must include the permit number, well name, well location, as-built description if drilling has been completed, proposed pit location, and plans for pit construction, operation, and reclamation. ()

02. Location. ()

a. Pits must be located where they are structurally sound and the liner systems can be adequately protected against factors such as wild fires, floods, landslides, surface and ground water systems, equipment operation, and public access. ()

b. Pits located in a one hundred (100) year floodplain must be in conformance with any applicable floodplain ordinances pertaining to activities within the one hundred (100) year floodplain. ()

c. Pits shall not be located within an IDEQ recognized source water assessment or protection areas for public drinking water systems. ()

03. Site Preparation. All sites must be properly prepared prior to pit construction. Vegetation, roots, brush, large woody debris and other deleterious materials, topsoil, historic foundations and plumbing, or other materials that may adversely affect appropriate construction, must be removed from the footprint of the pit unless approved by the Department. ()

04. Pit Sizing Criteria. ()

a. Pits that have constructed berms ten (10) or more feet in height or hold fifty (50) acre-feet or more of fluid must also comply with the dam safety requirements of IDAPA 37.03.06, "Safety of Dams Rules." ()

b. Pits must be designed to hold the maximum volume of fluids being used for drilling or well treatment and the volume of water associated with a one hundred (100) year, twenty-four (24) hour precipitation event. ()

c. Snowmelt events shall be considered in determining the containment capacity. ()

d. Pits that are left over winter must be able to contain one hundred twenty-five percent (125%) of the average annual precipitation that falls from October through May. ()

e. Pits must be designed to maintain a minimum two (2) foot freeboard at all times. Contingency plans for managing excesses of fluids shall be described in the application. At no time shall fluids in a pit be allowed to escape from the impoundment. ()

05. Minimum Plans and Specifications for Reserve, Well Treatment, and Other Short Term Pits. Pits used for one (1) year or less, not including extensions, are short term pits. Construction plans and specifications for short term pits must include the requirements under Subsections 085.02 through 085.04 of this rule and the following: ()

a. A prepared subbase, which shall be free of plus three (3) inch rocks, roots, brush, trash, debris or other deleterious materials, and compacted to ninety-five percent (95%) of Standard Proctor Test ASTM D698-07e1 or ninety-five percent (95%) of Modified Proctor Test ASTM D1557-09; ()

b. Slopes of two (2) feet horizontal to one (1) foot vertical (2H:1V) or flatter for all interior and exterior pit walls. The top of a bermed pit wall must be a minimum of two (2) feet wide; ()

c. A primary liner system consisting of a synthetic liner of at least twenty (20) mils thickness and constructed according to manufacturers' standards with at least four (4) inches of welded seam overlap and complete

coverage on the floor and inside walls of the pit. Seams must run parallel to the line of maximum slope so they do not traverse across the slope. The liner edges shall be anchored in a compacted earth filled trench at least eighteen (18) inches in depth. The liner must be protected against cracking, sun damage, ice, frost penetration or heaving, wildlife and wildfires, and damage that may be caused by personnel or equipment operating in or around these facilities. Liner compatibility shall comply with EPA SW-846 method 9090A. Alternative liner systems with similar standards may be proposed by the owner or operator and approved at the Department's discretion; ()

d. Minimum factors of safety, and the logic behind their selection, for the stability of the earthworks and the lining system of the pit; ()

e. Site-specific methods for excluding people, terrestrial animals, and avian wildlife from the pits; ()

f. Segregation and stockpiling of topsoil in a manner that will support reestablishment of the pre-disturbance land use after pit closure; and ()

g. A closure plan including the following; ()

i. Testing of residual fluids and any accumulated solids if anything other than water based drilling fluid was placed in the pit; ()

ii. Plans for removal and disposal of residual fluids and accumulated solids, with the liner material, at an appropriate facility; ()

iii. Regrading plan, replacement of topsoil, and erosion control measures; and ()

iv. Reseeding and Revegetation. ()

06. Minimum Plans and Specifications for Long Term Pits. Pits used for more than one (1) year, not including extensions, are long term pits. Construction plans and specifications for long term pits must include the requirements under Subsections 085.02 through 085.05 of this rule and the following: ()

a. A quality control/quality assurance construction and installation plan; ()

b. Type of fluids to be contained in the pit; ()

c. Secondary containment synthetic liners, which shall have a minimum thickness of sixty (60) mils consisting of HDPE and a maximum coefficient of permeability of 10^{-9} cm/sec, or comparable liners approved by the Department; ()

d. Leak detection and collection systems. The plans and specifications shall: ()

i. Provide a material between primary and secondary containment synthetic liners to collect, transport and remove all fluids that pass through the primary containment synthetic liner at such a rate as to prevent hydraulic head from developing on the secondary containment synthetic liner to the level at which it may be reasonably expected to result in discharges through the secondary containment synthetic liner; ()

ii. Provide routines and schedules for the evaluation of the efficiency and effectiveness of the removal of fluids from the layer placed between primary and secondary containment synthetic liners. The properly working system shall continually relieve head pressures on the secondary containment synthetic liner; ()

iii. Provide specific triggers for maintenance routines, which shall be initiated in response to inadequate performance of primary or secondary containment synthetic liners; and ()

iv. Specify operation and maintenance procedures, which shall be initiated in response to inadequate performance of primary and secondary containment or leak detection and collection systems. ()

e. All piping, including that contained in the leak detection and collection system, shall have a minimum wall thickness of schedule 80 and be designed to: ()

i. Withstand chemical attack from oil field waste or leachate: ()

ii. Withstand structural loading from stresses and disturbances from cover materials or equipment operation; and ()

iii. Facilitate clean-out and maintenance. ()

f. Protections for the liner from excessive hydrostatic force or mechanical damage at the point of discharge into, or suction from, the pit. External discharge or suction lines shall not penetrate the liner; ()

g. Plans for erosion control during and immediately following construction; and ()

h. Operating and maintenance plans. ()

07. Time Limits for Short Term Pits. Reserve, well treatment, and other short term pits must be closed out and reclaimed within one (1) year of being constructed. The owner or operator may request a one-time extension for up to six (6) months. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for ensuring that the pit is adequately monitored and maintained. ()

a. Fluids may be left in a pit for up to six (6) months after the associated well activities are conducted. The owner or operator may request a one-time extension for up to one (1) year. The Department may grant the request if the owner or operator gives sufficient cause and presents a plan for keeping the fluids in a usable state. ()

b. Notwithstanding the above time limits, the owner or operator may request additional time based upon conditions wholly outside of the owner's or operator's control including, but not limited to, governmental lease requirements and delays related to difficult drilling conditions. The Department may impose additional construction or monitoring requirements prior to granting additional time. ()

08. Emergency Pits. Pits constructed during an emergency situation may be approved by an after-the-fact application submitted to the Department. The requirements in Subsections 085.02 through 085.05 of this rule shall apply, and the pit must be closed out and reclaimed within six (6) months of being constructed. The Department must be notified within twenty-four (24) hours of an emergency situation requiring an emergency pit. ()

09. Operating Requirements. ()

a. Waste oil, hydraulic fluid, transmission fluids, trash, or any other miscellaneous waste products must not be disposed of in a pit. Placement of these materials into a pit may result in the creation of a mixed waste that requires handling and disposal as a hazardous waste. ()

b. If a pit liner's integrity is compromised, or if any penetration of the liner occurs above the liquid's surface, then the owner or operator shall notify the appropriate Department area office within forty-eight (48) hours of the discovery and repair the damage or replace the liner. ()

c. If a pit or closed-loop system develops a leak, or if any penetration of the pit liner occurs below the liquid's surface, then the owner or operator shall remove all liquid above the damage or leak line within forty-eight (48) hours, notify the appropriate Department area office within forty-eight (48) hours of the discovery, and repair the damage or replace the pit liner. ()

d. The owner or operator shall install, or maintain on site, an oil absorbent boom or other device to contain and remove oil from a pit's surface. Visible oil must be removed from short term pits immediately following the cessation of activity for which the pit was constructed. Visible oil must be removed from long term pits as soon as it is discovered. ()

10. Closure of Pits. ()

a. The owner or operator shall remove all liquids from the pit prior to closure and dispose of them at an appropriate facility or reuse them at a different location. If the nature of the fluids has substantially altered during their use, then the fluids must be sampled and tested to determine which disposal facility can accept them. ()

b. Any solids that have been accumulated in the bottom of the pit will be tested to determine which disposal facility can accept the material. The solid material and liner will then be removed and disposed of at an appropriate facility. ()

c. The owner or operator must notify the Department at least forty-eight (48) hours prior to removal of the pit liner so an inspection may be conducted. ()

d. The pit foundation shall be inspected for signs of leakage. If evidence of leakage is observed, the owner or operator must contact the Department and the IDEQ within twenty-four (24) hours and report the type of fluids released and the estimated extent of release. The owner or operator must then remediate the site in conformance with the applicable standards administered by IDEQ in IDAPA 58.01.02," Water Quality Standards," Sections 850 through 852. ()

e. After addressing any pit leakage concerns, the owner or operator shall perform the activities described in Subsections 325.04 through 325.07 of these rules. ()

11. **Condemnation Due to Improper Impoundment.** The Department shall have authority to condemn any pit which does not properly impound fluids and order the disposal of such fluids in conformance with IDAPA 58.01.16, "Wastewater Rules," and other applicable rules. ()

086. -- 089. (RESERVED)

090. WELL COMPLETION/RECOMPLETION REPORT AND WELL LOG REPORT.

Within thirty (30) days after the completion of a well drilled for oil or gas, or the recompletion of a well into a different source of supply, or where the producing interval is changed, a completion report shall be filed with the Commission Department, on a form prescribed by the Commission Department. Such report shall include name, number, and exact location of the well; lease name, date of completion and date of first production, if any; name and depth of hydrocarbon reservoir(s), if a multiple completion, from which well is producing; annulus pressure test; initial production test, including oil, gas, and water, if any; a well log report as defined in Section 010; and such other relevant information as the Commission Department may require. (10-21-92)()

091. DRILLING LOGS.

01. **Minimum Required Logs.** All wells shall have a lithologic log from the bottom of the hole to the top, to the extent practicable. ()

02. **Bottom Hole Survey.** All wells must have a bottom hole location survey. ()

03. **Cement Bond Log.** All wells that are cased and cemented shall have a cement bond log run across the casing. ()

04. **Other Logs.** If other logs are run, including, but not limited to, resistivity, gamma-neutron log, sonic log, etc., then the owner or operator will retain a copy regardless of results. ()

05. **Log Submittal.** The above logs must be submitted to the Department in paper and digital formats within thirty (30) days of the log being run. If logs were run in color, then the submitted copies must also be in color. Digital formats must be Tiff and LAS 2.0 or higher. ()

092. -- 094. (RESERVED)

095. ACTIVE WELLS.

01. Gas Storage Wells. Gas storage wells are to be considered active at all times unless physically plugged. ()

02. Extension of Active Status. An owner or operator may request an extension of active well status for wells that are idled for more than twenty-four (24) continuous months. The owner or operator shall provide a written request to the Department stating the reason for the extension, the length of extension, the method used to close the well to the atmosphere, and the plans for future operation. The Department shall review the request for approval, modification, or denial, and shall set the duration of the extension if approved. An extension shall not exceed five (5) years and may be renewed upon request. ()

03. Annual Reports for Active Wells. The owner or operator shall submit an annual report to the Department describing the current status of the well and the plans for future well operation. Failure to submit the annual report may result in the Department declaring the well inactive. ()

096. INACTIVE WELLS.

01. Determination of Inactive Status. The Department shall declare a well inactive after twenty-four (24) continuous months of inactivity if the owner or operator has not received approval for an extension of active status, or after an owner or operator fails to submit an annual report for an active well. The Department will immediately notify an owner or operator of this determination by certified mail, and the owner or operator may appeal this determination to the Commission. ()

02. Owner's or Operator's Responsibility for Inactive Wells. The owner or operator must plug and abandon an inactive well in accordance with Section 320 of these rules within six (6) months of being notified by the Department unless the owner or operator supplies the following information within the six (6) month time period: ()

a. A written request to extend inactive status; ()

b. An individual bond, as provided for in Subsection 070.03 of these rules, if the well was covered by a blanket bond; and ()

c. A description of how the well is closed to the atmosphere with a swedge and valve, packer, or other approved method, and how the well is to be maintained. ()

03. Inactive Review and Decision. The Department shall review the request for approval, modification, or denial, and shall set the duration of the extension if approved. An extension shall not exceed three (3) years and may be renewed upon request. ()

04. Testing of Inactive Wells. In addition to the requirements of Section 105 of these rules, inactive wells shall have a mechanical integrity test performed within two (2) years after the date of last use in order to retain inactive status. ()

05. Converting Inactive Wells to Active Wells. The owner or operator must apply to the Department to change the status of a well from inactive to active. The Department shall review the request for approval, modification, or denial. A mechanical integrity test may be required by the Department if the well has been worked over or if a test has not been conducted for five (5) years or longer. If approved, the well may again be covered by a blanket bond. ()

~~097.~~ -- 099. (RESERVED)

(BREAK IN CONTINUITY OF SECTIONS)

101. -- ~~104.~~ (RESERVED)

105. MECHANICAL INTEGRITY TESTING.

01. Mechanical Integrity Testing. ()

a. The mechanical integrity test shall include one (1) of the following tests to determine whether leaks are present in the casing, tubing, or packer: ()

i. A pressure test with liquid or gas at a pressure of not less than three hundred (300) psi or the minimum injection pressure, whichever is greater, and not more than the maximum injection pressure; or ()

ii. The monitoring and reporting to the Department, on a monthly basis for sixty (60) consecutive months, of the average casing-tubing annulus pressure, following an initial pressure test; or ()

iii. In lieu of Subsections 105.01.a.i. and 105.01.a.ii. of this rule, any equivalent test or combinations of tests approved by the Department. ()

b. The mechanical integrity test shall include one (1) of the following tests to determine whether there are fluid movements in vertical channels adjacent to the well bore: ()

i. Tracer surveys; ()

ii. Cement bond log or other acceptable cement evaluation log; ()

iii. Temperature surveys; or ()

iv. In lieu of Subsections 105.01.b.i. through 105.01.b.iii. of this rule, any other equivalent test or combination of tests approved by the Department. ()

c. Mechanical integrity tests shall be performed at the rate of not less than one (1) test every five (5) years, regardless of well status. The first five (5) year period shall commence on the date the initial mechanical integrity test is performed. ()

02. Inactive Wells. If, at any time, surface equipment excluding the wellhead is removed or the well becomes incapable of production, a mechanical integrity test must be performed within thirty (30) days. The mechanical integrity test for an inactive well shall be isolation of the wellbore with a bridge plug or similar approved isolating device set one hundred (100) feet or less above the highest perforations and a pressure test with liquid or gas at a pressure of not less than three hundred (300) psi surface pressure or any equivalent test or combination of tests approved by the Department. ()

03. Prior Notification. Not less than ten (10) days prior to the performance of any mechanical integrity test required by this rule, any person required to perform the test shall notify the Department, in writing, of the scheduled date on which the test will be performed. ()

04. Reporting Requirements. Mechanical integrity test results shall be submitted to the Department within thirty (30) days of testing. ()

05. Mechanical Integrity Required. All wells shall maintain mechanical integrity. All wells which fail a mechanical integrity test, or which are determined through any other means to lack mechanical integrity, shall immediately be investigated by the owner or operator. The well shall be repaired or immediately shut down following the investigation. Repairs must be completed within six (6) months, or the well shall be plugged and abandoned. If the repair cannot be completed within six (6) months, the owner or operator may request an extension and provide a plan for the repair. ()

106. -- 109. (RESERVED)

110. DESIGNATION OF AGENT.

A "Designation of Agent" shall be submitted to the ~~director~~ Department in a manner and form approved by the ~~director~~ Department prior to the commencement of operations. A Designation of Agent(s) will be accepted as authority of agent to fulfill the obligations of the owner and to sign any papers or reports required under these oil and gas operating regulations, and all authorized orders or notices given by the ~~director~~ Department when given in the manner hereinafter provided shall be deemed service of such orders or notices upon the owner and the lessee. All changes of address and any termination of the agent's authority shall be immediately reported in writing to the ~~director~~ Department and, in the latter case, the designation of a new agent(s) shall be immediately made. If the designated agent(s) shall at any time be incapacitated for duty or absent from the address provided, the owner shall designate in writing a substitute to serve in his or their stead, and in the absence of such owner or of notice of appointment of a substitute then, in such case, notices may be given by the ~~director~~ Department by delivering a registered letter to the United States Post Office at Boise, Idaho, directed to the agent(s) at the address shown on the current Designation of Agent on file in the ~~director~~ Department's office, and such notice will be deemed service upon the owner and lessee. (10-21-92)()

111. -- 119. (RESERVED)

120. SURFACE EQUIPMENT.

01. General Requirements. Meter fittings of adequate size to measure the gas efficiently for the purpose of obtaining gas-oil ratios shall be installed on the gas vent line of every separator or proper connections made for orifice well tester. Well-head equipment shall be installed and maintained in excellent condition. Valves shall be installed so that pressures can be readily obtained on both casing and tubing. (10-21-92)()

02. Wellhead Production Meters. ()

a. For protection of correlative rights of all parties, the owner or operator of a natural gas well shall meter or caused to be metered all natural gas produced from a well, utilizing a standard industry meter approved by the American Gas Association and capable of recording accurately the volume of natural gas produced at each well, unless another methodology, approved by the director, is utilized to provide for proper production allocation back to the individual well from a central point production meter or central point sales meter, which ever meter occurs first. ()

b. All required meters shall be calibrated at least once per calendar year. The records of such calibration shall be maintained or made available by the owner or operator of the well and shall be available for inspection by the Department. Such records shall be maintained by the owner or operator for a period of at least five (5) years. ()

c. All required meters shall be accessible and viewable by the Department for the purpose of monitoring daily, monthly and/or cumulative production volumes from individual wells. ()

121. -- 129. (RESERVED)

125. LOSS OF TOOL WITH RADIOACTIVE MATERIAL.

01. Recovery or Cementing of Tool. If a gamma ray tool, or some other tool containing radioactive material, becomes lost in a well, the owner or operator will make every reasonable attempt to retrieve the tool from the well. If the tool cannot be recovered, the owner or operator must immediately cover the tool with cement sufficient to secure it in place and prevent it from contacting any fluids in the well. A whipstock or other approved deflection device shall be placed on top of the cement plug to prevent accidental or intentional mechanical disintegration of the radioactive source. ()

02. Sidetracking. If the hole is later sidetracked above the radioactive material, the sidetracked hole must be at least fifteen (15) feet from the original hole with the lost radioactive material. ()

03. Reporting. A report must be sent to the Department and IDEQ within thirty (30) days of cementing the tool. The report must describe the tool that was lost, the depth it was lost at, the specific type and amount of radioactive material in the tool, and an estimate of the length of cement covering the tool. This report may be

included in a plugging report if the well will be plugged. ()

126. -- 129. (RESERVED)

130. FIRE HAZARD.

Any rubbish or debris that might constitute a fire hazard shall be removed to a distance of at least one hundred (100) feet from the well location, tanks, and separator. ~~All waste oil shall be burned or disposed of in a manner to avert creating a fire hazard.~~ (10-21-92)()

(BREAK IN CONTINUITY OF SECTIONS)

160. FIRE PROTECTION.

Dikes or firewalls shall be required where it is deemed necessary by the ~~Commission~~ Department to protect life, health, or property. Such dikes or firewalls must be erected and continuously maintained in good condition around all permanent oil tanks or batteries that are within the corporate limits of any city, town, or village, or where such tanks are closer than one hundred fifty (150) feet to any highway or inhabited dwelling, or closer than one thousand (1,000) feet to any school or church. The capacity of the dike, or firewall, shall be one and one-half (1 1/2) times the capacity of the tank(s) that it surrounds. The reservoir so formed within the dike shall be kept free from vegetation, water, and oil. (10-21-92)()

161. -- 169. (RESERVED)

170. WELL DIRECTIONAL CONTROL.

01. General Restrictions; Allowable Deviation. The maximum point at which a well penetrates the producing formation shall not unreasonably vary from the vertical drawn from the center of the hole at the surface. Deviation is permitted without special permission to remedy blowouts and, for short distances, to straighten the hole, sidetrack junk, or correct other mechanical difficulties. (10-21-92)

02. Controlled Directional Drilling. Except for the purposes recited in Subsection 170.01, no well hereafter drilled may be intentionally directionally deviated from the vertical unless the ~~owner or~~ operator thereof shall first file ~~application and obtain a permit from the Commission~~ an application and application fee to amend the drilling permit and receive approval from the Department. Such application shall contain the following information: (10-21-92)()

- a. Name and address of the ~~owner or~~ operator. (10-21-92)()
- b. Lease name, well number, name of field and reservoir and county. (10-21-92)
- c. Description of surface location and proposed location of the producing interval (footage from lease and section or block and survey lines). (10-21-92)
- d. Reason for intentional deviation. (10-21-92)
- e. List of offset operators and statement that each has been furnished a copy of the application by registered mail. (10-21-92)
- f. Signature of representative of ~~owner or~~ operator. (10-21-92)()
- g. Notification to offset operators that any objection they may have to the proposed intentional deviation of the well must be filed with the ~~Commission~~ Department within fifteen (15) days of receipt of a copy of the application. (10-21-92)()
- h. The application shall be accompanied by a neat, accurate plat or sketch of the lease and all offset

leases showing the names of all offset operators and the surface and proposed producing interval locations of the well. Plat shall be drawn to a scale which will permit facile observation of all pertinent data. (10-21-92)

03. Copy of Application to Offset Operators. At the time the application is filed with the ~~Commission~~ Department, a copy of the application and the plat shall be forwarded by registered mail to all offset operators to the lease on which the well is to be drilled. (~~10-21-92~~)()

04. ~~Commission~~ Department Action. Upon receipt, the ~~Commission~~ Department will hold the application for fifteen (15) days. If objection from any offset operator to the proposed intentional deviation is received within fifteen (15) days of receipt of the application by said operator, or if the ~~Commission~~ Department is not in agreement with the proposed deviation, the application shall be set down for public hearing. If no objection from either an offset operator or the ~~Commission~~ Department is interposed within the fifteen (15) day period, the application shall be approved and permit issued by the ~~Commission~~ Department. If written consent of the offset operator(s) is filed concurrently with the application to drill directionally, the ~~Commission~~ Department may immediately approve the application without waiting fifteen (15) days. (~~10-21-92~~)()

05. Angular Deviation and Directional Survey. Upon completion, a complete angular deviation and directional survey of the well obtained by an approved well surveying company shall be filed with the ~~Commission~~ Department, together with other regularly required reports. (~~10-21-92~~)()

06. Application for Exceptions. In the event the proposed, or final, location of the producing interval of the directionally deviated well is not in agreement with spacing or other rules of the Commission applicable to the reservoir, proper applications shall be made to obtain approval of exceptions to such rules. Such approval shall be granted or denied at the discretion of the ~~Commission~~ Department, and shall be accorded with the same consideration and treatment as if the well had been drilled vertically to the producing interval. (~~10-21-92~~)()

171. -- 179. (RESERVED)

180. VACUUM PUMPS PROHIBITED.

The use of vacuum pumps or other devices for the purpose of placing a vacuum on any gas- or oil-bearing stratum is prohibited; however, the ~~Commission~~ Department may upon application and hearing and for good cause shown permit the use of vacuum pumps. (~~10-21-92~~)()

181. -- 189. (RESERVED)

190. PULLING OUTSIDE STRINGS OF CASING.

Casing shall not be recovered if its recovery will expose any abnormal pressure, lost circulation, oil, gas, or water zone. In pulling outside strings of casing from any oil or gas well, the space outside the casing left in the hole shall be kept and left full of mud-laden fluid of adequate specific gravity to seal off all fresh and saltwater strata and any strata bearing oil or gas which is not producing. Casing may not be pulled without first making application to the Department and receiving approval. The application must describe how fresh waters will be protected. (~~10-21-92~~)()

191. -- 199. (RESERVED)

200. ACCIDENTS AND FIRES.

The owner or operator shall take all reasonable precautions to prevent accidents and fires. shall An emergency response plan will be prepared and available at the well for use or inspection. Coordination with local emergency responders and the Idaho Bureau of Homeland Security is recommended prior to rig set up. The following actions must be taken in event of a release, industrial accident, or fire of major consequence: ()

01. Provide Information to Emergency Response. Emergency workers will be given information on all fluids or chemicals involved in a spill or accident as needed according to OSHA Standard 1910.1200 (Hazard Communication). Nothing in this rule shall authorize any person to withhold information which is required by state or federal law to be provided to a health care professional, a doctor, or a nurse. All information required by a health care professional, a doctor, or a nurse shall be supplied, immediately upon request, by the owner or operator or their contractors directly to the requesting health care professional, doctor, or nurse, including the percent by volume of the

chemical constituents (and associated CAS numbers) in the fluids and the additives: ()

02. Initiate Spill Response and Corrective Actions. Owner or operator must comply with the requirements of IDAPA 58.01.02, "Water Quality Standards," Sections 850 through 852; and ()

03. Notify the Department. ~~Notify the director~~ Department within twenty-four (24) hours ~~of all accidents (other than personal injuries and deaths) or fires of major consequence,~~ and ~~shall~~ submit a full report thereon within fifteen (15) days. (10-21-92)()

201. -- 209. (RESERVED)

210. PRODUCING FROM DIFFERENT POOLS THROUGH THE SAME CASING STRING.

No well shall be permitted to produce either oil or gas from different pools through the same string of casing without first receiving written permission from the ~~director~~ Department. (10-21-92)()

211. -- 219. (RESERVED)

220. MULTIPLE ZONE COMPLETIONS.

01. Requirements of the Owner or Operator; Request for Approval. A multiple zone completion may be approved by the ~~director~~ Department upon application ~~therefor by the owner or operator and payment of an application fee,~~ as herein provided. The application shall be accompanied by an exhibit showing the location of wells on applicant's lease and all offset wells on leases, and shall set forth all material facts involved and the manner and method of completion proposed, including a diagrammatic sketch of the mechanical installation of the proposed well. The application fee may not exceed that required by Subsection 050.02 of these rules. Notice of the filing of such application shall be given by the applicant by mailing to each ~~owner within one half (1/2) mile of the affected well(s)~~ offset operator a notice containing a full description of the proposed completion for which approval is requested, and proof of mailing such notice shall be made by affidavit, which shall be attached to the application showing names and addresses of those to whom notice was mailed. (10-21-92)()

02. Conditions for Approval; Cause for Hearing. In the event the ~~director~~ Department is in agreement with the application and that no ~~owner~~ offset operator files a written objection to the application with the ~~director~~ Department within fifteen (15) days of the date of the ~~owner's~~ offset operator's receipt of application, the application shall be approved as an amendment to the drilling permit. If any ~~owner~~ offset operator shall file in writing with the ~~director~~ Department an objection to such multiple completion, or if the ~~director~~ Department is not in agreement with the application, the matter shall be immediately set for hearing and Notice of Hearing duly given by the ~~Commission~~ Department. (10-21-92)

03. Zone Effectiveness; Requirement for Production Testing. The ~~director~~ Department may require such tests as he determines necessary to determine the effectiveness of the segregation of the different productive zones. (10-21-92)()

04. Commingling Production. The Department may require that oil or gas from multiple zones be produced through different sets of tubing if needed to protect correlative rights or to prevent waste. ()

(BREAK IN CONTINUITY OF SECTIONS)

231. -- ~~239.~~ (RESERVED)

~~240. DISPOSAL OF BRINE OR SALT WATER.~~

~~01. Conditions for Disposal by Earthen Evaporation Pit; Impervious Floor.~~ ~~Brine or salt water may be disposed of by evaporation when impounded in excavated earthen pits, which may only be used for such purpose when the pit is underlaid by tight soil such as heavy clay or hardpan.~~ (10-21-92)

~~02. **Conditions for Disposal by Earthen Evaporation Pit; Porous Floor.** When the soil under the pit is porous and closely overlaid by a gravel or sand stratum, impounding brine or salt water in such earthen pits is hereby prohibited. When such water is impounded in an earthen pit, it shall be constructed and maintained to prevent escape of such water therefrom. (10-21-92)~~

~~03. **Earthen Pits; Condemnation Due to Improper Impoundment.** The Commission shall have authority to condemn any pit which does not properly impound such water and order the disposal of such water into an underground formation as herein provided. (10-21-92)~~

~~04. **Earthen Pits; General Conditions for Operation.** The level of brine or salt water in earthen pits shall at no time be permitted to rise above the lowest point of the ground surface level. All pits shall have a continuous embankment surrounding them sufficiently above the level of the surface to prevent surface water from running into the pit. Such embankment shall not be used to impound brine or salt water. (10-21-92)~~

~~05. **Earthen Pits; Prohibition of Adjacent Land or Stream Pollution.** At no time shall brine or salt water impounded in earthen pits be allowed to escape over adjacent lands or into streams. (10-21-92)~~

~~06. **Disposal Wells; Pollution Prohibited.** Disposal wells shall be cased and the casing cemented in such manner that damage will not be caused to oil, gas, or freshwater sources. See Section 250. (10-21-92)~~

~~241.—249. (RESERVED)~~

250. PROCEDURE FOR UNDERGROUND DISPOSAL OF WATER CLASS II INJECTION WELLS.
Class II injection wells, as described in IDAPA 37.03.03, "Rules and Minimum Standards for the Construction and Use of Injection Wells," are currently not authorized under this rule. Permits for Class II injection wells must be obtained through IDAPA 37.03.03. ()

~~01. **Approval Required.** The underground disposal of salt water, brackish water, or other water unfit for domestic, livestock, irrigation, or other general uses is permitted only upon order of the Commission or upon approval of the director as provided in this rule. (10-21-92)~~

~~02. **Procedures for Application.** The application for underground disposal of salt water, brackish water, or other water unfit for domestic, livestock, irrigation, or other general uses shall be verified by applicant and filed with the director containing: (10-21-92)~~

~~a. A plat showing location of the disposal well(s), including abandoned and drilling wells and dry holes and the names of owners within one half (1/2) mile of the proposed disposal well(s). (10-21-92)~~

~~b. The names, description, and depth of the formation into which water is to be injected, including a mechanical log of the proposed disposal well(s) if one is available. (10-21-92)~~

~~c. A description of the casing in the disposal well(s) or the proposed casing program and the proposed method for testing casing before use of the disposal well(s). (10-21-92)~~

~~d. A statement specifying the source of water to be injected. (10-21-92)~~

~~e. The estimated minimum and maximum amount of water to be injected daily. (10-21-92)~~

~~f. Notice of the filing of such application shall be given by the applicant by mailing to each owner within one half (1/2) mile of the affected well(s) a notice containing a full description of the proposed disposal operation for which approval is required, and proof of mailing such notice shall be made by affidavit which shall be attached to the application showing names and addresses of those to whom notice was mailed. (10-21-92)~~

~~g. **Conditions for Approval; Cause for Hearing.** In the event the director is in agreement with the application and that no owner files a written objection to the application with the director within fifteen (15) days of receipt of the application, the application shall be approved. If any owner shall file in writing with the director an~~

~~objection to such disposal program, or if the director is not in agreement with the application, the matter shall be immediately set for hearing and notice of hearing duly given by the Commission.~~ (10-21-92)

251. -- 259. (RESERVED)

260. MEASUREMENT OF OIL.

The volume of production of oil shall be computed in terms of barrels of clean oil on the basis of meter measurements or tank measurements of oil-level difference made and recorded to the nearest quarter-inch (1/4") of one hundred percent (100%) capacity tables, subject to the following corrections: (10-21-92)

01. Correction for Impurities. The percentage of impurities (water, sand, and other foreign substances, not constituting a natural component part of the oil) shall be determined to the satisfaction of the ~~director~~ Department, and the observed gross volume of oil shall be corrected to exclude the entire volume of such impurities. (10-21-92)()

02. Temperature Correction. The observed volume of oil corrected for impurities shall be further corrected to the standard volume at sixty (60) Degrees F in accordance with ASTM D-1250-08, Table 7, or any revisions thereof and any supplements thereto, or any close approximation thereof approved by the ~~director~~ Department. (10-21-92)()

03. Gravity Determination. The gravity of oil at sixty (60) degrees F shall be determined in accordance with ASTM D-1250-08, Table 5, or any revisions thereof and any supplements thereto approved by the ~~director~~ Department. (10-21-92)()

261. -- 269. (RESERVED)

270. MEASUREMENT OF GAS.

Gas of all kinds shall be measured by meter unless otherwise authorized by the ~~director~~ Department. For computing volume of gas to be reported to the ~~director~~ Department, the standard of pressure shall be fourteen point seventy-three (14.73) psi atmospheric, and the standard of temperature shall be sixty (60) Degrees F. All volumes of gas to be reported to the ~~director~~ Department shall be adjusted by computation to these standards, unless otherwise authorized by the ~~director~~ Department. (10-21-92)()

271. -- 279. (RESERVED)

280. GAS-OIL RATIO LIMITATION.

01. Waste Prevention; Conditions for Emergency Order. To further prevent waste resulting from the production of wells with inefficient gas-oil ratios, the Department may enter an emergency order temporarily prohibiting the production of oil or gas from all wells in a pool producing both oil and gas when the Department believes that waste may be occurring or is imminent in said pool by reason of the operation of wells with inefficient gas-oil ratios. The order must specify a date for the hearing described in Subsection 280.02 of these rules. The Department may use information provided by an offset operator or an owner or operator in a common source of supply to determine if waste is occurring. ()

~~**02. Notice and Cause for Hearing.** *To prevent waste resulting from the operation of wells with inefficient gas-oil ratios, the Commission may upon its own motion, or upon the application of any interested party, if reasonable cause exists, hold a hearing to determine whether waste is occurring or is imminent in a pool by reason of the operation therein of wells with inefficient gas-oil ratios. The Department will notify all offset operators and owners or operators in the common source of supply of the hearing date. A hearing regarding waste due to inefficient gas-oil ratios will be held for any of the following reasons:*~~ (10-21-92)()

i. If an emergency order is issued as described in Subsection 280.01 of these rules. The hearing will be scheduled between five (5) and fifteen (15) days after the effective date of the order. ()

ii. Upon application to the Department from any person with an ownership interest in the common source of supply who believes that waste is occurring due to inefficient oil and gas ratios. The application must

include credible evidence of such waste. The hearing shall be held within thirty (30) days of the Department receiving the application. ()

iii. Prior to an emergency situation and upon its own motion with reasonable cause, the Department may schedule a hearing regarding potential waste due to inefficient gas-oil ratios. ()

023. Determination of Inefficient Ratios; Power to Limit Production. If the ~~Commission~~ Department after notice and hearing, whether held upon its own motion, upon the application of an interested party, or pursuant to an emergency order entered as hereinafter provided for, shall find that a well(s) in the pool are operating with inefficient gas-oil ratios, and that waste is occurring or is imminent as a result thereof, it shall enter an order limiting the production of oil and gas from said pool to that amount which the pool can produce without waste and in accordance with sound engineering practice. The order shall also limit the amount of oil or gas, or both, that may be produced from any well in the pool, so that each owner or operator is given an opportunity to produce his just and equitable share in the pool in accordance with sound engineering practice. (10-21-92)()

~~03. Waste Prevention; Conditions for Emergency Order. To further prevent waste resulting from the production of wells with inefficient gas oil ratios, the Commission will enter an emergency order temporarily prohibiting the production of oil or gas from all wells in a pool producing both oil and gas when: (10-21-92)~~

~~a. The director believes that waste may be occurring or is imminent in said pool by reason of the operation of wells with inefficient gas-oil ratios; or when (10-21-92)~~

~~b. An application is filed by any interested party alleging that a well(s) completed in the pool is producing therefrom at a gas-oil ratio in excess of two thousand (2,000) cubic feet of gas for each barrel of oil produced and that waste is occurring or is imminent as a result thereof. Any such applicant shall also show the name and address of each owner of a well completed in and capable of producing from said pool. (10-21-92)~~

~~04. Emergency Order; Requirement for Hearing. Any emergency order issued under this rule shall provide for a hearing to be held to determine whether waste is occurring or is imminent. The date for the hearing shall be not less than five (5) nor more than fifteen (15) days after the effective date of the emergency order and shall be specified in said order. In addition to any other notice required by the Act, the Commission shall mail a copy of said emergency order to each owner of a well completed in and capable of producing from said pool. (10-21-92)~~

281. -- 289. (RESERVED)

290. GAS-OIL RATIO SURVEYS AND REPORTS.

Within thirty (30) days following the completion or recompletion of each well producing oil and gas and thereafter as the ~~Commission~~ Department may require, the owner or operator of such well shall make a gas-oil ratio test of such well and the results of such test shall be reported to the ~~Commission~~ Department within twenty (20) days after the test is made. Certain wells may be excepted from this rule by the ~~director~~ Department upon written request. Entire fields may be excepted from this rule after notice and hearing. (10-21-92)()

291. -- 299. (RESERVED)

300. GAS UTILIZATION.

After the owner or operator has completed and has had a reasonable opportunity to test a gas well, no gas from such well shall be permitted to escape into the air, and all gas produced therefrom shall be utilized without waste. (10-21-92)()

~~301. -- 309. (RESERVED)~~

~~**310. SECONDARY RECOVERY (INCLUDING WATER FLOODING) AND PRESSURE MAINTENANCE OPERATIONS.**~~

~~01. Applications for Secondary Recovery Projects. (10-21-92)~~

~~a. Applications Required. Applications for water flooding or other secondary recovery operations;~~

~~repressuring, or pressure-maintenance operations, cycling or recycling operations, including the extraction and separation of liquid hydrocarbons from natural gas in connection therewith, shall be filed by one (1) or more of the parties involved, or the operator of said project with the director. (10-21-92)~~

~~**b.** Requirements of the Application. The application for all permits for pressure maintenance or secondary recovery shall contain the following: (10-21-92)~~

~~i. Plat showing the unit, lease, or group of leases included within the proposed project. Plat shall also show the location of the proposed intake well(s) and the location of all oil and gas wells, including abandoned and drilling wells and dry holes, and the names of all operators offsetting the area encompassed within the project; (10-21-92)~~

~~ii. Formations in which all wells are currently completed; (10-21-92)~~

~~iii. Name, description, and depth of the formation (common reservoir or common source of supply) to be affected by injection; (10-21-92)~~

~~iv. Log of any existing intake well(s) or such information as is available; (10-21-92)~~

~~v. Description of the intake well's casing or the proposed casing program, and proposed method for testing casing before use of the input wells; (10-21-92)~~

~~vi. Statement as to the injection medium to be used, its source, and the estimated amounts to be injected daily; (10-21-92)~~

~~vii. Tabulations showing recent oil gas ratios and oil and water production tests for each of the producing oil and gas wells; (10-21-92)~~

~~viii. Statement of the plan of development of the area included within the project; and (10-21-92)~~

~~ix. Names and addresses of the operator(s) of the project. (10-21-92)~~

~~**e.** Notification of Adjacent Property Owners. In addition to the notice required by law, a copy of such application shall be mailed or delivered by the applicant to each owner within three-fourths (3/4) mile of the project as shown on the application. Such copy of application shall be mailed or delivered on or before the date the application is filed with the Commission. A statement shall be attached to the application showing the parties to whom such copies have been mailed or delivered and their addresses. (10-21-92)~~

~~**d.** Conditions for Approval; Cause of Hearing. If the application has requested approval of the operation as a pilot project; if director is in agreement with the application; and if no owner within three-fourths (3/4) mile files a written objection to the application with the director within fifteen (15) days of the date of receipt of the application, the application shall be approved as a pilot project without the necessity of a hearing. In all other cases, the matter shall be immediately set for hearing. Notice of the hearing shall be given by the Commission. At any time after the approval of an operation as a pilot project, if the director or the operator of the project believes that sufficient information has been obtained so that the operation is no longer a pilot project, either of them may request a hearing before the Commission for approval of the operation. (10-21-92)~~

~~**02.** Casing and Cementing of Injection Wells. Wells used for injection of gas, air, or water or other extraneous fluids into the producing formation shall be cased with safe and adequate casing or tubing to prevent leakage or damage to oil, gas, or freshwater sources. (10-21-92)~~

~~**03.** Notice of Commencement and Discontinuance of Injection Operations. The following provisions shall apply to all injection projects: (10-21-92)~~

~~**a.** Immediately upon commencement of injection operations, the operator shall notify the director of the injection date. (10-21-92)~~

~~b. Within fifteen (15) days after the discontinuance of injection operations, the operator shall notify the director of the date of such discontinuance and the reasons therefor. (10-21-92)~~

~~e. Before any intake well shall be plugged, notice shall be served to the director by the owner of said well, and the same procedure shall be followed in the plugging of such well as provided for the plugging of oil and gas wells. (10-21-92)~~

~~04. **Records and Reports.** Each operator of a pressure maintenance or secondary recovery project shall keep accurate records showing oil produced, injected volumes, and injection pressure. Each operator shall file with the director a monthly report which shall show all produced and injected volumes and other data as required by the Commission. (10-21-92)~~

~~310. -- 319. (RESERVED)~~

320. WELL PLUGGING.

01. Plugging Required. The operator or owner shall not permit any well drilled for oil, gas, saltwater disposal or any other purpose in connection with the production of oil and gas, to remain unplugged after such well is no longer used for the purpose for which it was drilled or converted. (10-21-92)

02. Notice of Intention to Abandon Well. Before beginning abandonment work on ~~any well, whether drilling well, an~~ oil or gas well, ~~injection well, or so-called dry hole,~~ a Notice of Intention to Abandon shall be filed with the ~~director~~ Department and approval obtained as to the method of abandonment before the work is started. The notice must show the reason for abandonment and must give a detailed statement of the proposed work, including such information as kind, location, and length of plugs (by depths), and plans for mudding, cementing, shooting, testing, and removing casing as well as any other pertinent information. (10-21-92)()

03. Plugging Dry Holes. If a nonproductive well, or dry hole, is drilled and not needed for any specific purpose, it must be plugged and abandoned prior to removal of the drill rig. A verbal notification and approval may be used for dry holes in lieu of the written notification referenced in Subsection 320.02 of these rules. ()

034. Plugging of Wells. The owner or operator of any well drilled for oil or gas, or any seismic, core, or other exploratory holes, whether cased or uncased, and regardless of diameter shall be responsible for the plugging of said hole in a manner sufficient to properly protect all freshwater-bearing and possible or probable oil- or gas-bearing formations in agreement with the requirements of the director. The material used in plugging, whether cement, mechanical plug, or some other equivalent method approved in writing by the Director, must be placed in the well in a manner to permanently prevent migration of oil, gas, water, or other substance from the formation or horizon in which it originally occurred. The preferred plugging cement slurry is that recommended in API Bulletin E3. Pozzolan, gel, and other approved extenders may be used if the owner or operator can document to the Department's satisfaction that the slurry design will achieve a minimum compressive strength of three hundred (300) psi after twenty-four (24) hours, and eight hundred (800) psi after seventy-two (72) hours measured at ninety-five (95) degrees F and at eight hundred (800) psi. No substances of any nature or description other than those normally used in plugging operations shall be placed in any well at any time during plugging operations. (10-21-92)()

05. Plugged Intervals. The following plugging standards shall be followed for all wells: ()

a. Cement must be placed for a length of at least one hundred (100) feet on either side of each casing shoe, or casing bottom if no shoe is present. If the bottom of the hole is less than one hundred (100) feet from the bottom of the lowest casing, then the entire length of the uncased hole below the casing will be cemented. ()

b. In the uncased portions of a well, cement plugs must be placed to extend from one hundred (100) feet below the bottom up to one hundred (100) feet above the top of any oil, gas, and abnormally high pressure zones, so as to isolate fluids in the strata in which they are found and to prevent them from escaping into other strata. ()

c. A cement plug shall be placed a minimum of one hundred (100) feet above all producing zones in uncased portions of a well. ()

d. A cement plug shall be placed a minimum of fifty (50) feet above and below the following intervals: ()

i. Where the casing is perforated or ruptured. If no cement is present behind the casing, then cement must also be squeezed out the perforations or ruptures and into the annular space between the casing and the borehole. ()

ii. Top and bottom of fresh water zones. If fresh water zone is less than one hundred (100) feet thick, then continuous cement must be placed from fifty (50) feet below the zone upward to fifty (50) feet above the zone. ()

e. The top of all cement plugs will be tagged to verify their depth. ()

f. The owner or operator shall have the option as to the method of placing cement in the hole by: ()

i. Dump bailer; ()

ii. Pumping a balanced cement plug through tubing or drill pipe; ()

iii. Pump and plug; or ()

iv. Equivalent method approved by the Director prior to plugging. ()

g. Unless prior approval is given, all wellbores shall have water based drilling muds, high viscosity pills, or other approved fluids between all plugs. ()

h. All abandoned wells shall have a plug or seal placed at the surface of the ground or the bottom of the cellar in the hole in such manner as not to interfere with soil cultivation or other surface use. The top of the pipe must be sealed with either a cement plug and a screw cap, or cement plug and a steel plate welded in place or by other approved method, or in the alternative be marked with a permanent monument which shall consist of a piece of pipe not less than four (4) inches in diameter and not less than ten (10) feet in length, of which four (4) feet shall be above the general ground level, the remainder to be embedded in cement or to be welded to the surface casing. ()

046. Subsequent Report of Abandonment. If a well is plugged or abandoned, a subsequent record of work done must be filed with the ~~director~~ Department. This report shall be filed separately within thirty (30) days after the work is done. The report shall give a detailed account of the manner in which the abandonment of plugging work was carried out, including the weight of mud, the nature and quantities of materials used in plugging, the location and extent (by depths) of the plugs of different materials, and the records of any tests or measurements made and of the amount, size, and location (by depths) of casing left in the well. If an attempt was made to part any casing, a complete report of the method used and the results obtained must be included. (10-21-92)()

057. Wells Used for Fresh Water (Cold Water < 85 degrees Fahrenheit), Low Temperature Geothermal (85 - 212 Degrees Fahrenheit) or Geothermal Wells (>212 Degrees Fahrenheit). ~~When the well, seismic, core, or other exploratory hole to be plugged may safely be used as a fresh water well, and such utilization is desired by the landowner, the well need not be filled above the required sealing plug set below fresh water; provided that written authority for such use is secured from the landowner and in such written authority, the landowner assumes the responsibility to plug the well upon its abandonment as a water well in agreement with applicable law. Such written authority and assumption of responsibility shall be filed with the director.~~ (10-21-92)()

a. Well Conversion. Oil and gas wells, seismic, core or other exploratory holes no longer being used for their original purpose may not be converted into fresh water, low temperature geothermal, or geothermal wells unless the following actions occur: ()

i. Owner, operator, or surface owner files an application with the IDWR describing the conversion and the proposed use for the water or geothermal resource and any modifications necessary to meet the applicable well construction standards; ()

ii. The surface owner provides written documentation assuming responsibility for the converted well including, should it become necessary, decommissioning (plugging) of the converted well in accordance with applicable law; ()

iii. IDWR issues a permit for a geothermal resource well, a water right, or recognizes a domestic exemption authorizing the withdrawal of water from the converted well; and ()

iv. A licensed driller in Idaho inspects and certifies that the converted well meets all well construction standards for its intended purpose. ()

b. Release by Idaho Department of Lands. The Department's bond may not be released, and the oil and gas permit cancelled, until all requirements in Paragraph 320.07.a of these rules are met. ()

321. -- 324. (RESERVED)

325. SURFACE RECLAMATION.

01. Timing of Reclamation. After the plugging and abandonment of a well or closure of other oil and gas facilities, all reclamation work described in this Section shall be completed within twelve (12) months. The Director may grant an extension where unusual circumstances are encountered, but every reasonable effort shall be made to complete reclamation before the next local growing season. ()

02. General Clean Up. All debris, abandoned gathering line risers and flowline risers, surface equipment, supplies, rubbish, and other waste materials shall be removed within three (3) months of plugging a well. The burning or burial of such material on the premises shall be performed in accordance with applicable local, state, or federal solid waste disposal and air quality regulations. In addition, material may be burned or buried on the premises only with the prior written consent of the surface owner. ()

03. Road Removal. All access roads to plugged and abandoned wells and associated production facilities shall be ripped, regraded, and recontoured unless otherwise specified in a surface use agreement. Culverts and any other obstructions that were part of the access road(s) shall be removed. Roads to be left will be graded to drain and prepared with rolling dips or other best management practices to minimize erosion. ()

04. Regrading. Drill pads, pits, berms, cut and fill slopes, and other disturbed areas will be regraded to approximate the original contour. Where possible, slopes should be reduced to three (3) horizontal feet to one (1) vertical foot (3H:1V) or flatter. ()

05. Compacted Areas. All areas compacted by drilling and subsequent oil and gas operations which are no longer needed following completion of such operations shall be cross-ripped. Ripping shall be undertaken to a depth of eighteen (18) inches or bedrock, whichever is reached first. ()

06. Topsoiling. Stockpiled topsoil shall be replaced in a manner that will support reestablishment of the pre-disturbance land use and contoured to control erosion and provide long-term stability. If necessary, topsoiled areas shall be tilled adequately in order to establish a proper seedbed. ()

07. Revegetation. ()

a. The owner or operator shall select and establish plant species that can be expected to result in vegetation comparable to that growing on the affected lands prior to the oil and gas operations. Certified weed free seed should be used in revegetation. The owner or operator may use available technical data and results of field tests for selecting seeding practices and soil amendments which will result in viable revegetation. ()

b. The disturbed areas shall be reseeded in the first favorable season following rig demobilization, site regrading, and topsoil replacement. ()

c. Unless otherwise specified in the approved permit, the success of revegetation efforts shall be

measured against the existing vegetation on site prior to the oil and gas operations, or against an adjacent reference area supporting similar types of vegetation. Reseeding or replanting is required until the following cover standards are met: ()

i. The ground cover of living plants on the revegetated area should be comparable to the ground cover of living plants on an adjacent reference area for two (2) full growing seasons after cessation of soil amendment or irrigation, if used; ()

ii. Ground cover shall be considered comparable if the planted area has at least seventy percent (70%) of the pre-disturbance, or adjacent reference area, ground cover; ()

iii. For locations with an average annual precipitation of more than twenty-six (26) inches, the Department, in approving a drilling permit or a pit, may set a minimum standard for success of revegetation as follows: Vegetative cover of seventy percent (70%) for two (2) full growing seasons in areas planted to herbaceous species only; or fifty percent (50%) vegetative cover for two (2) full growing seasons and six hundred (600) woody plants per acre in areas planted to a mixture of herbaceous and woody species; ()

iv. As used in this section, "herbaceous species" means grasses, legumes, and other forbs; "woody plants" means woody shrubs, trees, and vines; and "ground cover" means the area of the ground surface covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area measured. Rock surface areas will be excluded from this calculation; and ()

v. In all cases, vegetative cover shall be established to the extent necessary to control erosion. ()

d. Introduced species may be planted if they are known to be comparable to previous vegetation, or if known to be of equal or superior use for the approved post-reclamation land use, or, if necessary, to achieve a quick, temporary cover for soil stabilization purposes. Species classified as poisonous or noxious weed species shall not be used in revegetation. ()

e. By mutual agreement of the Department, the surface owner, and the owner or operator, a site may be converted to a different, more desirable or more economically suitable habitat. ()

f. Planting of grasses and forbs should be done in a manner which promotes rapid stabilization of the soil surface. Wherever terrain permits, grasses and forbs should be drilled or compacted into the ground using agricultural grass planting equipment or other seeders specifically designed for revegetation applications. Broadcast and hydroseeding may be used on areas where other methods are impractical or unavailable. ()

g. The owner or operator should plant shrubs or shrub seed, as required, where shrub communities existed prior to oil and gas operations. Shrub seed may be planted as a portion of a grass seed mix or planted as bare-root transplants after grass seeding. Where the surface owner desires a specific land use such as grazing or cropland, shrubs will not be required in the revegetation species mix. Shrub lands undergoing revegetation with shrubs shall be protected from erosion by vegetation, chemical binders, or other acceptable means during establishment of the shrubs. ()

h. Tree stocking of forestlands should meet the following criteria: ()

i. Trees that are adapted to the site should be planted in a density which can be expected over time to yield a timber stand comparable to pre-disturbance timber stands; ()

ii. Trees shall be established for two (2) full growing seasons after cessation of any soil amendments and irrigation before they are considered to be established; and ()

iii. Forestlands undergoing revegetation with trees should be protected from erosion by vegetation, chemical binders, or other acceptable means during seedling establishment. ()

i. Revegetation is not required on areas that the surface owner wishes to incorporate into an irrigated field and any roads which will be used for other oil and gas operations. ()

i. Mulch should be used on severe sites and may be required by the permit where slopes are steeper than three (3) horizontal feet to one (1) vertical foot (3H:1V) or the mean annual rainfall is less than twelve (12) inches. When used, straw, or hay mulch should be obtained from certified weed free sources. "Mulch" means vegetation residues or other suitable materials to aid in the stabilization of soil and soil moisture conservation which will provide a micro-climate more suitable for germination and growth on severe sites. Annual grains such as rye, oats, and wheat may be used as a substitute for mulch where they will provide adequate protection and will be replaced by permanent species within a reasonable length of time. ()

08. Reclamation Under a Surface Use Agreement. Notwithstanding the requirements of Subsections 325.03 through 325.07 of this rule, reclamation may be superseded by the conditions of a surface use agreement as long as the site is left in a stable, non-eroding condition that will not impact fresh waters. ()

326. -- 329. (RESERVED)

330. WELL SPACING.

In the absence of an order by the Commission setting spacing units for a pool, or a unit operation as described in Section 340, the following rules shall apply: (10-21-92)()

01. Wells Drilled for Oil; Standard Spacing Unit and Well Location. Every well drilled for oil must be located in the center of a forty (40) acre governmental quarter quarter section, lot or tract, or combination of lots or tracts substantially equivalent thereto as shown by the most recent governmental survey, with a tolerance of two hundred (200) feet in any direction from the center location; provided that no oil well shall be drilled less than nine hundred twenty (920) feet from any other well drilling to or capable of producing oil from the same pool, or no oil well shall be completed in a known pool unless it is located more than nine hundred twenty (920) feet from any other well completed in and capable of producing oil from the same pool. (10-21-92)

02. Wells Drilled for Gas; Standard Spacing Unit and Well Location. Every well drilled for gas must be located on a drilling unit consisting of approximately six hundred forty (640) contiguous surface acres, which shall be one governmental section or lot(s) equivalent thereto, upon which there is not located, and of which no part is attributed to, any other well completed in or drilling to the same pool. In areas not covered by United States Public Land Surveys, such drilling unit shall consist of an area which is: 1) bounded by four (4) sides intersecting at angles of not less than eighty five (85) degrees or more than ninety five (95) degrees; 2) the distance between two (2) points farthest apart thereon shall not exceed eight thousand five hundred (8,500) feet; and 3) shall contain at least six hundred (600) contiguous surface acres. In areas covered by United States Public Land Surveys, such drilling unit shall consist of one governmental section containing not less than six hundred (600) surface acres. Each well drilled for gas shall be located within a square, each side of which is one thousand six hundred sixty (1,660) feet in length and parallel to a center line of the section. The center of such square shall coincide with the geometric center of the section. (10-21-92)

03. Well Locations Adjacent to Spaced Areas. The Commission shall have the discretion to determine the pattern location of wells adjacent to an area spaced by the Commission, or under application for spacing where there is sufficient evidence to indicate that the pool or reservoir spaced or about to be spaced may extend beyond the boundary of the spacing order or application, and the uniformity of spacing patterns is necessary to insure orderly development of the reservoir pool. (10-21-92)

04. Exceptions to Location of Wells and Well-Spacing Orders. Upon proper application therefore, the ~~director~~ Department may approve, as an administrative matter, an exception to Subsections 330.01 and 330.02 or any order of the Commission establishing well spacing for a pool. ~~If for any reason the Commission shall fail or refuse to approve such an exception, the director may, after notice and hearing, grant the exception.~~ The application for an exception shall state fully the reasons why such an exception is necessary or desirable and shall be accompanied by a plat showing: (10-21-92)()

a. The location at which an oil or gas well could be drilled in compliance with Subsections 330.01 or 330.02 or the applicable order; (10-21-92)

b. The location at which the applicant requests permission to drill; and (10-21-92)

c. The location at which oil or gas wells have been drilled or could be drilled, in agreement with Subsections 330.01 or 330.02 or the applicable order, directly or diagonally offsetting the proposed exception. No exception shall prevent any owner or operator from drilling an oil or gas well on adjacent lands, directly or diagonally offsetting the exception, at locations permitted by Subsections 330.01 or 330.02 or any applicable order of the Commission establishing oil or gas well-spacing units for the pool involved. ~~(10-21-92)~~(____)

331. -- 339. (RESERVED)

340. UNIT OPERATIONS.

Any person desiring to obtain the benefits of Section 47-323, Idaho Code, relating to any method of unit, cooperative development, or operation of a field or pool or a part of either, shall file an application with the ~~director~~ Department for approval of such agreement which shall have attached a copy of such agreement. Notice of the hearing of such application shall be given by publication of a legal notice in a newspaper of general circulation in Ada County, Idaho, and the county of the unit operation. ~~(10-21-92)~~(____)

341. -- 349. (RESERVED)

350. WRITTEN NOTICES, REQUESTS, PERMITS AND REPORTS.

The ~~Commission~~ Department shall adopt such forms of notices, requests, permits, and reports as it may deem advisable or necessary in carrying out the provisions of law and its rules and regulations. ~~(10-21-92)~~(____)

351. -- 359. (RESERVED)

360. GEOPHYSICAL OPERATIONS.

~~01. Notice to Inhabitants. Before a geophysical contractor conducts surface shooting operations, he shall give notice to an occupant of every inhabited dwelling within a one-mile radius of each shot point. Such notice shall be given in writing or by in person contact. The notice shall tell the occupant of the nature and approximate time period of the seismic surface shooting activity.~~ ~~(10-21-92)~~

021. Permit Required. Before beginning seismic shothole operations in the state of Idaho, a representative of the client company and the seismic contractor shall meet with the staff of the ~~Commission and~~ Department, file an application for a permit to conduct seismic operations, and pay an application fee. No seismic operation shall be conducted without such a permit. The ~~director~~ Department has discretion to waive the requirement of the pre-permit meeting for the client company. The permit for seismic operations may be revoked or suspended or the application for the permit denied by the ~~Commission or director~~ Department for failure to comply with the Commission's rules, statutes, and orders. The ~~director~~ Department may revoke, suspend, or deny the application for a seismic permit without a hearing; provided that the seismic contractor shall be given an opportunity for a hearing at the next regularly scheduled Commission meeting. The fact that a permit is revoked or suspended does not excuse the seismic contractor or client company from properly plugging existing seismic holes but does prohibit the person(s) from drilling any more. The application for a permit for seismic operations must include: ~~(10-21-92)~~(____)

a. The proposed route of the seismic line on a topographic or recent air photo base map at a sufficient scale to show roads, buildings, surface waters, and Section, Township, and Range lines. The map must also show additional area as needed for any alternative routing. The alternative routing must be within at least one-half (1/2) mile of the proposed route. Reapplication must be made if the final route strays from the proposed route and outside the designated alternative routing areas; and (____)

b. The energy sources proposed to be used for the seismic operation, such as vibroseis, shot holes, surface shot, or others. (____)

c. The approximate number, depth, and location of the seismic holes and the size of the explosive charges. The application shall be accompanied by a map with a scale of one inch equaling two (2) miles that shows the depth and location of the shotholes. (10-21-92)

d. The name and permanent address of the client company the ~~Commission or director~~ Department

may contact about the seismic operation. (10-21-92)()

ee. The name, permanent address, and phone number of the seismic contractor and his local representative whom the ~~Commission or director~~ Department may contact about the seismic activity. (10-21-92)()

ff. The name, phone number, and permanent address of the hole plugging contractor, if different from the seismic contractor. (10-21-92)

gg. A detailed description of the hole plugging procedures, and a description of the surface reclamation procedures, if such reclamation is needed. (10-21-92)()

hh. The anticipated starting date of seismic ~~and plugging~~ operations. (10-21-92)()

gi. The anticipated completion date of seismic ~~and plugging~~ operations, and the anticipated date of any required reclamation or hole plugging. (10-21-92)()

hj. A description of the identifying mark that will be on the hat or nonmetallic plug to be used in the plugging of the seismic hole. (10-21-92)

02. Operating Requirements. All geophysical operations must comply with the following requirements: ()

a. All vehicles utilized by the permit holder, or its agents or contractors, shall be clearly identified by signs or markings utilizing letters or numbers, or a combination thereof, a minimum of three (3) inches in height and one-half (1/2) inch wide, indicating the name of such agent. ()

b. No seismic source generation from vibroseis, shot holes, surface shot, or other method shall be conducted within two hundred (200) feet of any residence, water well, oil well, gas well, injection well or other structure without having first secured the express written authority of the owner(s) thereof and the permit holder shall be responsible for any resulting damages. ()

c. Written authority from the owner of a residence, water well, oil well, gas well, injection well or other structure must also be obtained from the owner(s) if any explosive charge exceeds the maximum allowable charge within the scaled distance below:

DISTANCE TO STRUCTURE (Feet)*	MAXIMUM ALLOWABLE CHARGE WEIGHTS (Pounds)*
50	0.5
100	2.0
150	4.5
200	8.0
250	12.0
300	18.0
350	25.0

* Based upon a charge weight of seventy (70) Foot/Pound^{1/2}.

d. The maximum allowable charge weight is twenty-five (25) pounds, unless the permit holder requests and secures the prior written authorization from the Department. ()

e. All seismic sources placed for detonation shall contain additives to accelerate the biodegradation thereof and shall be handled with due care in accordance with industry standards. The cap leads for any seismic sources that fail to detonate shall be buried at least three (3) feet deep. ()

f. All vegetation cleared to the ground shall be cleared in a competent and workmanlike manner in the exercise of due care. ()

g. Unless otherwise consented to by the surface owner in writing, permit holder shall not cut down

any tree measuring six (6) inches or more in diameter, as measured at a height of three (3) feet from the ground surface, unless there are no reasonable alternatives to the removal of such tree(s) available to permit holder. Permit holder shall compensate surface owner the value of all such trees. ()

h. All excessive rutting or soil disturbances shall be repaired or restored to the original condition and contour to the extent reasonable, unless otherwise agreed to by the permit holder and the surface owner in writing. ()

i. All fences removed shall be replaced, unless otherwise agreed to by the permit holder and the surface owner in writing. ()

j. All debris associated with the seismic activity shall be removed and properly disposed. ()

03. Bond Required. ()

a. Before beginning geophysical operations, the geophysical contractor must file and have approved by the ~~director~~ Department a bond in the amount of at least ten thousand dollars (\$10,000). The Department may increase this bonding requirement for geophysical contractors based on the amount of potential damage from the contemplated operation. The condition of such bond shall comply with the ~~Oil and Gas Conservation Law Act~~, the rules and orders of the Commission, and orders of the ~~director and/or his duly authorized representatives~~ Department. The obligation of the bond shall not be discharged until one (1) year from completion of the survey or until the geophysical contractor has complied with the Oil and Gas Conservation Law, the Commission's rules, and the orders of the Commission and ~~director and their agents~~ the Department. ~~Provided, upon verified application, the director may waive or modify this bonding requirement for geophysical contractors based on the amount of potential damage from the contemplated operation.~~ (10-21-92)()

a.b. Persons or other entities who engage in the plugging of seismic holes and are not a regular full-time employee of the seismic company, owner, or operator shall have posted with the director a surety bond in favor of the ~~Commission~~ Department. Said bond shall be on a form prescribed by the ~~Commission~~ Department and in the amount of five thousand dollars (\$5,000). The condition of the bond shall comply with the Oil and Gas Conservation Law and the regulations and orders of ~~this~~ the Commission and the ~~director and their duly authorized agents and employees~~ Department. (10-21-92)()

04. Newspaper Notice. Before a geophysical contractor conducts the geophysical operation, they shall publish a legal notice in a newspaper of general circulation in the county where the survey will be conducted. The notice shall state the nature and approximate time period of the seismic operations. These requirements do not apply to operations conducted within a well or conducted by aerial surveys. ()

05. Owner and Occupant Notification. No entry shall be made by any person to conduct seismic operations, upon the lands where such seismic operations are to be conducted, without the permit holder having first given notice at least thirty (30) calendar days prior to commencement of field seismic operations. ()

a. The notice shall be in writing and given either personally or by certified United States mail to the following persons: ()

i. Surface owners reflected in the tax records of the counties where the lands are located, at the mailing addresses identified for such surface owners in such records; ()

ii. Occupants residing on the lands who are not the surface owners, if it can be reasonably ascertained that there are such occupants; and ()

iii. Owners or operators of oil and gas wells within the seismic survey area, as reflected in Department records. ()

b. The notice shall contain the following: ()

i. Name of the person or entity that is conducting the seismic operations; ()

ii. Proposed location of the seismic operations; and ()

iii. Approximate date the person or entity proposes to commence seismic operations. ()

06. Department Notifications. ()

a. The permit holder shall also notify the Department within five (5) business days of the commencement and completion of each seismic operation. ()

b. Before beginning geophysical operations other than seismic operations, the geophysical contractor shall file a notice of intention to do so with the Department. Said notice shall describe the geophysical method to be used and be accompanied by a map of a scale of one (1) inch equals two (2) miles showing the location of the project. ()

047. Reports and Notices Required. (10-21-92)

a. Activity Report. Upon completion of the seismic activity or at thirty (30) day intervals after the work has commenced, whichever occurs first, the seismic contractor shall file with the ~~director~~ Department a report of the completion or progress of the seismic project. The final completion report shall be in affidavit form and shall include a seven and one-half (7.5) - or fifteen (15) minute United States Geological Survey topographic quadrangle map (at a scale of one (1) inch equals two thousand (2,000) feet or one (1) inch equals four thousand (4,000) feet that shows section, township, and range) and the location of each ~~shothole~~ survey so that the shotholes and other potential impacts can be easily located. The final completion report shall also include a statement that all work has been performed in compliance with the application for a permit to perform seismic activity, Commission Rule 360, and permit provisions. Said maps, applications, and reports shall be kept confidential by the ~~Commission~~ Department for a period of ~~five one (51)~~ years from the date of receipt, subject to the needs of the ~~director~~ Department to use them to enforce these regulations, the ~~Oil and Gas Conservation Law Act~~, and the orders of the Commission or ~~director~~ the Department. Also, the owner of the surface of the land may be advised of the location of seismic lines or seismic holes on his land and of the exploration method used. (10-21-92)()

b. Plugging Notice. Seismic contractors shall give the ~~Commission or director~~ Department at least twenty-four (24) hours advance notice of shothole plugging operations, provided that notice of plugging operations planned for Sunday or Monday may be given on the previous Friday. (10-21-92)()

~~c. Other Notices. Before beginning geophysical operations other than seismic operations, the geophysical contractor shall file a notice of intention to do so with the Commission. Said notice shall describe the geophysical method to be used and be accompanied by a map of a scale of one inch equals two (2) miles showing the location of the project.~~ (10-21-92)

058. Client-Contractor Responsibility. The client company may be held responsible along with the seismic contractor for conducting the operation in compliance with the Commission's rules and orders, the ~~director's~~ Department's orders, and the ~~Idaho Oil and Gas Conservation Law Act~~ for the seismic contractor's failure to comply with such rules, statutes, and orders. The hats used in the plugging of seismic holes shall be imprinted with the name of the contractor responsible for the plugging of the hole. (10-21-92)()

069. Plugging. Unless the seismic contractor can prove to the satisfaction of the ~~director~~ Department that another method will provide better protection to ground water and long-term land stability, seismic shothole operations shall be conducted in the following manner: (10-21-92)()

a. When water is used in conjunction with the drilling of seismic shotholes and artesian flow is not encountered at the surface, seismic holes are to be filled with a high grade bentonite/water slurry mixture. Said slurry shall have a density that is at least four percent (4%) greater than the density of fresh water; said slurry shall also have a Marsh funnel viscosity of at least sixty (60) seconds per quart. Density and viscosity are to be measured prior to adding cuttings to the slurry. Cuttings not added to the slurry are to be disposed of in accordance with Subsections 360.069.f. of this rule. Any other suitable plugging material commonly used in the industry may be substituted for the bentonite/water slurry as long as the physical characteristics of said substitute are at least comparable to those of the

bentonite/water slurry. Between November 1 and May 1, coarse ground bentonite approved by the director Department shall be used as a plugging material. ~~(10-21-92)()~~

b. The hole will be filled with the slurry from the bottom up to a depth of three (3) feet (three (3) feet below ground level). A nonmetallic plug will be set at this depth of three (3) feet, and the remaining hole will be filled and tamped to the surface with cuttings and native soil. (10-21-92)

c. When drilling with air and nonartesian water is encountered, the hole shall be plugged with the slurry mixture, or coarse ground bentonite, as specified in Subsections 360.069.a., supra. ~~(10-21-92)()~~

d. When drilling with air only and in completely dry holes, plugging may be accomplished by returning the cuttings to the hole, tamping the returned cuttings to the above-referenced depth of three (3) feet, and setting the permaplug topped with more cuttings and soil as per Subsection 360.069.b. above. A small mound will be left over the hole for settling allowance. Auger holes twenty (20) feet or less in depth may be plugged in this same manner. ~~(10-21-92)()~~

e. The foregoing seismic holes shall be properly plugged and abandoned as soon as practical after the shot has been fired; however, a shot hole shall not be left unplugged for more than thirty (30) days without approval of the director Department. ~~(10-21-92)()~~

f. Any slurry, drilling fluid, or cuttings which are deposited on the surface around the seismic hole will be raked or otherwise spread out to at least within one (1) inch of the surface, so that the growth of the natural grasses or foliage will not be impaired. (10-21-92)

~~g. Seismic shothole operations will not be conducted within one-quarter (1/4) mile of any building or water well, flowing spring, or stockwater pipeline. (10-21-92)~~

~~h. Guidelines. Subsections~~ The requirements of Paragraphs 360.069.a. through 360.069.g. above may be modified by any reasonable written agreement between the seismic company and the surface owner. ~~(10-21-92)()~~

~~i. If artesian flow (water flowing at the surface) is encountered in the drilling of any seismic hole, cement will be used to seal off the water flow thereby preventing cross-flow, erosion, and/or contamination of freshwater supplies. Said holes shall be cemented immediately, unless severe weather conditions prevent access. Landowners may assume liability for seismic holes that are capable of conversion to water wells by sending a letter assuming such liability to the director and filing an application for appropriation of underground water with the Department of Water Resources. (10-21-92)()~~

~~j. After completing the plugging of seismic shot holes and spreading the cuttings as required by this rule, the seismic contractor shall mark record the exact GPS location of the seismic hole, with a wooden stake that extends approximately two (2) inches above ground. This requirement may be waived by the director if the landowner consents to it and the contractor shall provide the location data to the Department. (10-21-92)()~~

10. Forfeiture of Geophysical Exploration Bond. The Department may forfeit the bond submitted under Subsection 360.03 of these rules upon failure of the owner or operator to conduct the seismic survey and complete reclamation in conformance with Section 360 of this rule. The owner or operator will be given an opportunity to address compliance issues prior to the Department taking action against the bond. ()

361. -- ~~99~~369. (RESERVED)

370. ENFORCEMENT.
The Department shall enforce these rules pursuant to Section 47-325, Idaho Code. ()

371. -- 999. (RESERVED)

IDAPA 21 - DIVISION OF VETERANS SERVICES

21.01.07 - RULES FOR EDUCATION AND TRAINING PROGRAMS FOR VETERANS

DOCKET NO. 21-0107-1101 (NEW CHAPTER)

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 1, 2011.

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 65-202 and 65-204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 Veterans Education Program was transferred to the Division of Veterans Services in 2009. The rules governing the program remained, however, in the rules of the State Board of Education. The changes are necessary to correct this oversight. The changes revise and transfer rules governing the Division of Veterans Services' administration of federal requirements for Veterans Education Programs.

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

The rule changes are necessary to comply with prior changes made to the current law regarding veterans education and training programs.

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 for temporary 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 provisions of 38 U.S.C. chapter 36 and the regulations of the U.S. Department of Veterans' Affairs located at 38 CFR part 21 contain the substantive provisions governing the approval of education and training programs and licensing and certification tests to which veterans education benefits may be applied. As authorized by Section 67-5229(3), Idaho Code, the statutes within 38 U.S.C. chapter 36 and the regulations within 38 CFR part 21, in effect as of August 1, 2011, are incorporated by reference into this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Jim Adams, Administrative Support Manager, (208) 246-8770.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 26th day of August, 2011.

Jim Adams
Administrative Support Manager
Division of Veterans Services
320 Collins Rd.
P. O. Box 83720
Boise, ID 83720-0092
Phone: (208) 246-8770
Fax: (208) 334-2627

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 21-0107-1101

IDAPA 21, TITLE 01, CHAPTER 07

21.01.07 - RULES FOR EDUCATION AND TRAINING PROGRAMS FOR VETERANS

000. LEGAL AUTHORITY.

The Idaho Legislature has given the Administrator of the Division of Veterans Services the authority to promulgate rules governing programs offered by the United States Department of Veterans Affairs for the certification and supervision of educational and training opportunities for veterans pursuant to Sections 65-202 and 65-204, Idaho Code. (8-1-11)T

001. TITLE AND SCOPE.

01. Title. These rules shall be cited as IDAPA 21.01.07, "Rules for Education and Training Programs for Veterans." (8-1-11)T

02. Scope. These rules contain the administrative provisions and state of Idaho requirements applicable to the Division of Veterans Services' approval of education and training programs and licensing and certification tests to which veterans education benefits may be applied. The federal substantive provisions governing the approval of education and training programs and licensing and certification tests are contained in United States Department of Veterans Affairs regulations. (8-1-11)T

002. WRITTEN INTERPRETATIONS.

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretation of the rules of this chapter, or to compliance with the rules of this chapter. Any such documents are available for public inspection and copying at cost at the Idaho Division of Veterans Services office. (8-1-11)T

003. ADMINISTRATIVE APPEALS.

Contested case appeals shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedures of the Attorney General." (8-1-11)T

004. INCORPORATION BY REFERENCE.

Except as set forth herein, the provisions of 38 U.S.C. chapter 36 and the regulations of the U.S. Department of Veterans' Affairs located at 38 CFR part 21 contain the substantive provisions governing the approval of education

and training programs and licensing and certification tests to which veterans education benefits may be applied. As authorized by Section 67-5229(3), Idaho Code, the statutes within 38 U.S.C. chapter 36 and the regulations within 38 CFR part 21, in effect as of August 1, 2011, are incorporated herein and will have the same force and effect as if fully set forth. Copies of the referenced federal regulations may be obtained from the USDVA, the Division of Veterans Services, or the Idaho State Law Library. In the event USDVA regulations are re-designated, it is the intent of the Division of Veterans Services that the references herein incorporate such re-designation. (8-1-11)T

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

The mailing address and the street address of the office of the Division of Veterans Services is 351 Collins Road, Boise, Idaho 83702. The office is open from 8 a.m. to 5 p.m., except Saturday, Sunday, and legal holidays. The telephone number of the Division is (208) 577-2310. The Division's facsimile number is (208) 577-2311. (8-1-11)T

006. PUBLIC RECORDS ACT COMPLIANCE.

The records associated with this chapter are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. (8-1-11)T

007. FILING OF DOCUMENTS -- NUMBER OF COPIES -- FACSIMILE TRANSMISSION (FAX).

Documents in contested cases shall be filed with the Administrator of the Division of Veterans Services. Unless additional copies are specifically requested by the Administrator, parties may file one (1) copy of any document with the Administrator. Documents, not exceeding ten (10) pages in length and documents requiring urgent or immediate action by the Administrator may be filed with the Administrator by facsimile transmission (FAX). Whenever a document is filed by FAX, originals must be delivered to the Administrator by overnight mail or by hand delivery on the next business day. (8-1-11)T

008. -- 009. (RESERVED)

010. DEFINITIONS.

The following words and phrases will have the meanings set forth in Section 010. (8-1-11)T

01. Course. An instructional program, class, on-the-job training activity or similar training or activity subject to approval by the Program under Federal Law. (8-1-11)T

02. Federal Law. The provisions of the United States Code and the Code of Federal Regulations governing Courses and Tests qualified for the application of Veterans Education Benefits. At the time of publication of these rules, such provisions are located at 38 U.S.C. chapter 36 and 38 CFR part 21. (8-1-11)T

03. Program. The Veterans Education Program within the Division of Veterans Services. (8-1-11)T

04. Provider. An organization or entity offering a Test or offering a Course. (8-1-11)T

05. Test. A licensing or certification test subject to approval by the Program under Federal Law. (8-1-11)T

06. USDVA. The United States Department of Veterans' Affairs. (8-1-11)T

07. Veterans Education Benefits. Those benefits provided to veterans and other eligible persons for education and training under Federal Law. (8-1-11)T

011. -- 019. (RESERVED)

020. DIVISION OF VETERANS SERVICES DESIGNATED STATE APPROVAL AGENCY.

As set forth in Section 65-202, Idaho Code, the Division of Veterans Services is the approval agency in the state of Idaho for the purpose of approving Courses and Tests pursuant to Federal Law. The Program is delegated the authority to act on behalf of the Administrator of the Division of Veterans Services as the state approval agency. (8-1-11)T

030. PROGRAM RESPONSIBILITIES.

The Program is responsible for carrying out the duties of a state approval agency concerning Veterans Education Benefits, including the following: (8-1-11)T

01. Additional Requirements. Establishing criteria additional to requirements set forth in Federal Law for approving Courses and Tests. (8-1-11)T

02. Approving Courses and Tests. Approving courses and tests following the criteria set forth in Federal Law or established by the Division of Veterans Services. (8-1-11)T

03. Visiting and Supervising Providers. Regularly visiting and supervising those Providers offering approved Courses and Tests. (8-1-11)T

04. Disapproving Approved Course or Test. Disapproving any approved Course or Test that fails to meet requirements set forth in Federal Law or criteria established by the Division of Veterans Services and notifying the affected Provider and the USDVA of this disapproval. (8-1-11)T

05. Applicable Approval. Providing applicable approval information to Providers and the USDVA. (8-1-11)T

040. APPLICATIONS FOR APPROVAL OF COURSES.

Application for approval. providers desiring to enroll veterans or eligible persons in Courses or conduct Tests to which Veterans Education Benefits may be applied must apply to the Program for approval of such Courses or Tests. Unless otherwise provided in Federal Law, Tests offered by a state or political subdivision are not required to submit an application for approval. (8-1-11)T

01. Application Required For Each Course. The Program grants approval on a Course-by-Course and Test-by-Test basis. The Provider must include in the initial application all Courses or Tests for which it seeks approval by the Program. The Provider must submit an additional application for new or additional Courses or Tests. (8-1-11)T

02. Written Application. All applications for approval must be in writing and on a form or in a format approved by the Program. Applications must contain all information required for the Program to determine if the Course or Test satisfies Federal Law and these rules. (8-1-11)T

03. Applicant and Provider Site Visits. The Program may conduct an on-site visit prior to approval of an application or periodically following approval. Failure to consent to or cooperate with a site visit is a basis for denial of an application or disapproval of a Course or a Test. (8-1-11)T

04. Compliance With Equal Opportunity Laws. Applicants shall provide a signed assurance of compliance with equal opportunity laws satisfying the requirements of Federal Law. (8-1-11)T

050. COURSE AND TEST STANDARDS.

01. General Standards. The Program may deny any Course or Test not in conformance with Federal Law. (8-1-11)T

02. Additional Standards. The Program applies the following standards to Courses and Tests in addition to those set forth in Federal Law: (8-1-11)T

a. Flight training courses. In addition to the requirements in Federal Law, the Program requires that students complete a minimum of thirty (30) hours of instruction per quarter for a flight training course to obtain and maintain approval. (8-1-11)T

03. Precluded Courses and Tests. The Program may deny applications for approval of any Course or Test where the USDVA may deny the enrollment of a veteran under Federal Law or deny the application of Veterans Education Benefits under Federal Law. (8-1-11)T

060. APPROVAL AND DENIAL OF COURSES AND TESTS.

01. Notices of Approval or Denial. (8-1-11)T

a. Notice of approval. Upon determining that a Provider has complied with all the requirements for approval of a Course or Test, the Program will notify the Provider and the USDVA by correspondence complying with Federal Law. (8-1-11)T

b. Notice of denial. Upon determining that a Provider has not complied with all the requirements for approval of a Course or Test, the Program will notify the Provider by correspondence setting forth the Courses and Tests that have not been approved, the legal and factual bases for the decision not to approve, and the applicable appeal rights of the Provider. The Program will furnish the USDVA with an official copy of the letter, attachments and any subsequent amendments. (8-1-11)T

02. Length of Time of Approval. Unless otherwise specified in the notice of approval, approval of a Course or Test is for an indefinite period of time. Continuing approval of a Course or Test is contingent upon the Provider maintaining compliance with Federal Law, these rules, and any conditions of approval specified in the notice of approval. The Program may require that requests for continued approval be submitted on an annual basis and accompanied by documentation supporting continued compliance with Federal Law and these rules. Providers must submit a new application to the Program for an approved Course or Test that is substantively revised or changed from the Course or Test approved by the Program. (8-1-11)T

061. -- 100. (RESERVED)

101. SUSPENSION OR WITHDRAWAL OF APPROVAL.

01. Suspension. If a Course or Test fails to meet the requirements for an approved Course or an approved Test established in Federal Law, these rules, or the notice of approval, the Program may suspend approval of the Course or Test. The Program will comply with the requirements for suspension set forth in Federal Law. (8-1-11)T

02. Withdrawal of Approval. The Program will withdraw approval of a Course or Test if a failure to meet the requirements for an approved Course or an approved Test established in Federal Law, these rules, or the notice of approval: (8-1-11)T

a. Has not been corrected at the time of the expiration date of a suspension period; or (8-1-11)T

b. Substantially deprives a student of the protection afforded by the approval process or is of such a nature that it cannot be corrected within a period of sixty (60) days. (8-1-11)T

03. Notices of Suspension or Withdrawal of Approval. Prior to the effective date of the suspension or withdrawal of approval, the Program will provide notice to the Provider of the suspension and its length or the withdrawal of approval, the legal and factual bases for the suspension or withdraw approval, and the applicable appeal rights of the provider. (8-1-11)T

102. -- 999. (RESERVED)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.01.01 - RULES OF THE BOARD OF ARCHITECTURAL EXAMINERS
DOCKET NO. 24-0101-1101

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 54-312, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 Architectural Examiners is updating the editions of the National Council of Architect Registration Boards (NCARB) Handbook for Interns and Architects and the Rules of Conduct which are incorporated by reference. It is also changing the continuing education required annually to a calendar year basis and increasing the number of hours required from eight (8) to twelve (12) effective January 1, 2014. This change will bring the continuing education up to national standards.

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 changes were discussed 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 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 26, 2011.

DATED this 29th day of August, 2011.

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 OF DOCKET NO. 24-0101-1101

004. INCORPORATION BY REFERENCE (RULE 4).

The document titled 2009~~11~~ -2010~~2~~ NCARB Handbook for Interns and Architects, dated July 2009~~11~~, referenced in Subsection 250.01, is herein incorporated by reference. The document titled NCARB Rules of Conduct as published by the National Council of Architectural Registration Boards, Dated July 2009~~11~~, referenced in Section 750, is hereby incorporated by reference. All documents incorporated by reference can be obtained at the office of the Bureau and on the Board web site. (3-29-10)()

(BREAK IN CONTINUITY OF SECTIONS)

450. CONTINUING EDUCATION (RULE 450).

In order to protect the public health and safety and promote the public welfare, the Board has adopted the following rules for continuing education. (3-20-04)

01. Continuing Education Requirement. Each Idaho licensed architect must successfully complete a minimum of eight (8) hours of continuing education in architectural health, safety and welfare annually for license renewal. Effective January 1, 2014, and for each year thereafter, each Idaho licensed architect must successfully complete a minimum of twelve (12) hours of continuing education in architectural health, safety and welfare in the calendar year prior to license renewal. (3-20-04)()

a. ~~Beginning January 1, 2005, e~~Each licensee shall submit to the Board a license renewal application form, together with the required fees, certifying by signed affidavit that compliance with the annual CE requirements have been met during the previous twelve (12) months. Effective January 1, 2014, and for each year thereafter, each licensee shall submit to the Board a license renewal application form, together with the required fees, certifying by signed affidavit that compliance with the annual CE requirements have been met during the previous calendar year. The Board may conduct such continuing education audits and require verification of attendance as deemed necessary to ensure compliance with the CE requirements. (4-6-05)()

b. A licensee shall be considered to have satisfied their CE requirements for the first renewal of their initial license. Licensees who have failed to meet the annual continuing education requirement may petition the Board for additional time to complete their continuing education requirements. (3-20-04)

c. ~~After January 1, 2005 and p~~Prior to reinstatement of a license lapsed, canceled or otherwise non-renewed for less than five (5) years, the applicant shall provide proof of attendance consisting of eight (8) hours of continuing education for each year the license was lapsed. Effective January 1, 2014, prior to reinstatement of a license lapsed, canceled or otherwise non-renewed for less than five (5) years, the applicant shall provide proof of attendance consisting of twelve (12) hours of continuing education for each year the license was lapsed. A license lapsed, canceled or otherwise not renewed for more than five (5) years may be reinstated in accordance with Section 67-2614, Idaho Code. (4-6-05)()

d. A licensee may carryover a maximum of ~~eight six~~ (86) hours of continuing education to meet the next year's continuing education requirement. (3-20-04)()

e. One (1) continuing education hour shall be equal to one (1) learning unit, as determined by the American Institute of Architects, or one (1) clock hour of education, as determined by the Board. (3-20-04)

02. Architectural Health, Safety and Welfare Requirement. To qualify for continuing education, a course must involve architectural health, safety and welfare, which generally relates to the structural integrity or unimpairedness of a building or building sites and includes the following subject areas: (3-20-04)

a. ~~Architectural planning and pre-design, accessibility, acoustics, building design, code of ethics, codes, acts, laws and rules governing the practice of architecture, construction administration, construction laws, construction functions, materials, methods and systems, environmental issues, energy efficiency, asbestos, lead based paint, toxic emissions, environmental analysis and environmental issues of building materials and systems, fire,~~

~~building fire codes, flames spread, smoke contribution, explosives, fire safety systems, fire detection alarm standards, insurance issues, interior design, material use, functions and features, materials systems, roofing, waterproofing, wall systems, mechanical, plumbing and electrical system concepts, materials and methods, security of buildings, natural hazards related to building design, earthquakes, high wind and floods, preservation, renovation, restoration and adaptive reuse and sustainable design, site and soil analysis, site design, specification writing, structural issues, survey methods and techniques, and such other subjects as determined by the Board. Legal, which includes laws, codes, zoning, regulations, standards, life safety, accessibility, ethics, insurance to protect owners and public.~~
(3-20-04)()

b. Building systems, which includes structural, mechanical, electrical, plumbing, communications, security, and fire protection. ()

c. Environmental, which includes energy efficiency, sustainability, natural resources, natural hazards, hazardous materials, weatherproofing, and insulation. ()

d. Occupant comfort, which includes air quality, lighting, acoustics, ergonomics. ()

e. Materials and methods, which includes construction systems, products, finishes, furnishings, and equipment. ()

f. Preservation, which includes historical, reuse, and adaptation. ()

g. Pre-Design, which includes land use analysis, programming, site selection, site and soils analysis, and surveying. ()

h. Design, which includes urban planning, master planning, building design, site design, interiors, safety and security measures. ()

i. Construction documents, which includes drawings, specifications, and delivery methods. ()

j. Construction contract administration, which includes contracts, bidding, contract negotiations. ()

03. Approved Credit. Continuing education courses must be in the subject of architectural health, safety and welfare and be presented by: (3-20-04)

a. Providers approved by the National Architectural Accreditation Board (NAAB) schools of architecture; or (3-20-04)

b. Providers approved by the National Council of Architect Registration Board (NCARB); or (3-20-04)

c. Providers approved by the American Institute of Architects (AIA); or (3-20-04)

d. Providers as otherwise approved by the Board. All requests for approval or pre-approval of continuing education credits must be made to the Board in writing and must be accompanied by a statement that includes the name of the instructor or instructors, his or her qualifications, the date, time and location of the course, the specific agenda for the course, the number of continuing education hours requested, and a statement of how the course is believed to be in the nature of architectural health, safety and welfare. (3-20-04)

04. Verification of Attendance. It shall be necessary for each licensee to 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. This verification shall be maintained by the licensee for a period of ~~three~~ **five** (35) years and provided to the Board upon request of the Board or its agent. (3-20-04)()

05. Failure to Fulfill the Continuing Education Requirements. The license will not be renewed for

those licensees who fail to certify or otherwise provide acceptable documentation of meeting the CE requirements. Licensees who make a false attestation regarding compliance with the CE requirements shall be subject to disciplinary action by the Board. (3-20-04)

06. Exemptions. A licensed architect shall be deemed to have complied with the CE requirements if the licensee attests in the required affidavit that for not less than ten (10) months of the preceding one (1) year period of licensure, the architect has met one (1) of the following criteria: (3-20-04)

a. Has served honorably on active duty in the military service (exceeding ninety (90) consecutive days). (3-20-04)

~~**b.** *Is a resident of another jurisdiction recognized by the Board having a continuing professional education requirement for registration as an architect and has complied with all requirements of that state or district for practice therein.* (3-20-04)~~

eb. Is a government employee working as an architect and assigned to duty outside the United States. (3-20-04)

dc. 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 architect 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. (3-20-04)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.05.01 - RULES OF THE BOARD OF DRINKING WATER AND WASTEWATER PROFESSIONALS

DOCKET NO. 24-0501-1101

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 54-2406, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 Drinking Water and Wastewater Professionals is amending several sections of its rules to update them to be in line with current national standards and to provide clarification. It is also amending the requirements section and separating the requirements into individual sections of rule to lessen confusion. This amendment will also reduce the length of time it takes to reach various license classes by eliminating the step approach currently in place.

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 changes were discussed 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 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 26, 2011.

DATED this 29th day of August, 2011.

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 OF DOCKET NO. 24-0501-1101

010. DEFINITIONS (RULE 10).

- 01. Board.** The Idaho Board of Drinking Water and Wastewater Professionals. (3-24-05)
- 02. Bureau.** The Idaho Bureau of Occupational Licenses. (3-24-05)
- 03. Class I Restricted License.** Class I restricted license means a water or wastewater license associated with a specific class I system. A restricted license is available for water distribution or treatment or for wastewater collection or treatment. A restricted license is not transferable and does not qualify for endorsement. (3-29-10)
- 04. DEQ.** The Idaho Department of Environmental Quality. (3-24-05)
- 05. Direct Supervision.** Supervision in a way that will ensure the proper operation and maintenance of the public drinking water or public wastewater system. Supervision shall include, but not be limited to, providing written, hands-on, or oral instruction as well as verification that the instructions are being completed. The supervisor has an active on-site ~~and~~ or on-call presence at the specific facility. (~~2-26-08~~)()
- 06. Endorsement.** Endorsement (often referred to as “reciprocity”) is that process by which a person licensed in another jurisdiction may apply for a license in Idaho. (3-24-05)
- 07. EPA.** The United States Environmental Protection Agency. (3-24-05)
- 08. Experience.** One (1) year of experience is equivalent to one thousand six hundred hours (1,600) worked. (2-26-08)
- 09. On-Site Operating Experience.** On-site operating experience means experience obtained while physically present at the location of the system. ()
- ~~09~~**10. Operating Personnel.** Operating personnel means any person who is employed, retained, or appointed to conduct the tasks associated with the day-to-day operation and maintenance of a public drinking water system or a public wastewater system. Operating personnel shall include every person making system control or system integrity decisions about water quantity or water quality that may affect public health. (3-24-05)
- ~~10~~**1. Person.** A human being, municipality, or other governmental or political subdivision or other public agency, or public or private corporation, any partnership, firm, association, or other organization, any receiver, trustee, assignee, agent or other legal representative of the foregoing or other legal entity. (3-24-05)
- ~~11~~**2. Public Drinking Water System or Public Water System.** Public drinking water system or public water system means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days of the year. Such term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Every community and nontransient noncommunity water system, and each transient water system using a surface water source or ground water source directly influenced by surface water, shall be operated by a certified drinking water operator. (3-24-05)
- ~~12~~**3. Public Wastewater System or Wastewater System.** Public wastewater system or wastewater system means those systems, including collection systems and treatment systems, that are owned by a city, county, state or federal unit of government, a nonprofit corporation, district, association, political subdivision or other public entity, or that generate or collect two thousand five hundred (2,500) or more gallons a day; or that have been constructed in whole or in part with public funds. This does not include any wastewater treatment system operated and maintained exclusively by a single family residence or any wastewater system consisting solely of a gravity flow, nonmechanical septic tank and subsurface treatment and distribution system, or industrial wastewater systems under private ownership. (3-24-05)

14. Responsible Charge (RC). Responsible charge means active, daily on-site or on-call responsibility for the performance of operations or active, on-going, on-site and on-call direction of employees and assistants at a public drinking water system or public wastewater system. ()

15. Responsible Charge Operator. An operator of a public drinking water system or wastewater system, designated by the system owner, who holds a valid license at a class equal to or greater than the drinking water system or wastewater classification, who is in responsible charge of the public drinking water system or the wastewater system. ()

136. State. The State of Idaho. (3-24-05)

17. Substitute or Back-Up Responsible Charge Operator. An operator of a public drinking water or wastewater system who holds a valid license at a class equal to or greater than the drinking water or wastewater system classification, designated by the system owner to replace and to perform the duties of the responsible charge operator when the responsible charge operator is not available or accessible. ()

18. Very Small Public Drinking Water System. A community or nontransient noncommunity public water system that serves five hundred (500) persons or less and has no treatment other than disinfection or has only treatment which does not require any chemical treatment, process adjustment, backwashing or media regeneration by an operator (e.g. calcium carbonate filters, granular activated carbon filters, cartridge filters, ion exchangers). ()

19. Very Small Wastewater System. A public wastewater system that serves five hundred (500) connections or less and includes a collection system with a system size of six (6) points or less on the Department of Environmental Quality (DEQ) system classification rating form and is limited to only one (1) of the following wastewater treatment processes: ()

- a. Aerated lagoons:** ()
- b. Non-aerated lagoon(s):** ()
- c. Primary treatment; or** ()
- d. Primary treatment discharging to a large soil absorption system (LSAS).** ()

(BREAK IN CONTINUITY OF SECTIONS)

175. LICENSE TYPES AND CLASSIFICATIONS (RULE 175).

The Board shall issue each of the following licenses under the provisions of Chapter 24, Title 54, Idaho Code. (3-24-05)

- 01. Drinking Water Distribution Operator.** (3-24-05)
 - a.** Class Operator-In-Training. (3-24-05)
 - ~~**b.** Class Very Small Water System.~~ (~~3-24-05~~)
 - ~~**b.**~~ Class I Restricted. (3-29-10)
 - ~~**c.**~~ Class I. (3-24-05)
 - ~~**d.**~~ Class II. (3-24-05)

- ~~fe.~~ Class III. (3-24-05)
- ~~gf.~~ Class IV. (3-24-05)
- 02. Drinking Water Treatment Operator.** (3-24-05)
 - a. Class Operator-In-Training. (3-24-05)
 - b. Class I Restricted. (3-29-10)
 - c. Class I. (3-24-05)
 - d. Class II. (3-24-05)
 - e. Class III. (3-24-05)
 - f. Class IV. (3-24-05)
- 03. Wastewater Treatment Operator.** (3-24-05)
 - a. Class Operator-In-Training. (3-24-05)
 - ~~b. Class Very Small Wastewater System.~~ (~~3-29-10~~)
 - ~~eb.~~ Lagoon. (3-24-05)
 - ~~dc.~~ Class I Restricted. (3-29-10)
 - ~~ed.~~ Class I. (3-24-05)
 - ~~fe.~~ Class II. (3-24-05)
 - ~~gf.~~ Class III. (3-24-05)
 - ~~hg.~~ Class IV. (3-24-05)
 - ~~ih.~~ Land Application. (3-24-05)
- 04. Wastewater Collection Operator.** (3-24-05)
 - a. Class Operator-In-Training. (3-24-05)
 - ~~b. Class Very Small Wastewater System.~~ (~~3-29-10~~)
 - ~~eb.~~ Class I Restricted. (3-29-10)
 - ~~dc.~~ Class I. (3-24-05)
 - ~~ed.~~ Class II. (3-24-05)
 - ~~fe.~~ Class III. (3-24-05)
 - ~~gf.~~ Class IV. (3-24-05)
- 05. Wastewater Laboratory Analyst.** (3-24-05)
 - a. Class I. (3-24-05)

- b. Class II. (3-24-05)
- c. Class III. (3-24-05)
- d. Class IV. (3-24-05)
- 06. **Backflow Assembly Tester.** (3-24-05)
- 07. **Drinking Water Very Small System Operator.** ()
- 08. **Wastewater Very Small System Operator.** ()
- 176. -- 199. (RESERVED)
- 200. **FEES FOR EXAMINATION AND LICENSURE (RULE 200).**
The fees for each license type and classification shall be as follows: (3-24-05)
 - 01. **Application Fee.** Application fee -- twenty-five dollars (\$25). (3-24-05)
 - 02. **Examination Fee.** The examination fees shall be those fees charged by the Association of Boards of Certification (ABC) or other approved examination provider. Fees paid by applicants approved for a scheduled examination are not refundable. New examination fees are required for each scheduled additional examination.
(3-24-05)()
 - 03. **Endorsement Fee.** Endorsement fee -- thirty-five dollars (\$35). (3-29-10)
 - 04. **Original License Fee.** Original license fee -- thirty-five dollars (\$35). (3-29-10)
 - 05. **Annual Renewal Fee.** Annual renewal fee -- thirty-five dollars (\$35). (3-29-10)
 - 06. **Reinstatement Fees.** Reinstatement fee -- twenty-five dollars (\$25). (3-24-05)
 - 07. **Refund of Fees.** No refund of fees shall be made to any person who has paid such fees for application, ~~examination, reexamination, or reinstatement of a license.~~ (3-24-05)()
- 201. -- 249. (RESERVED)
- 250. **LICENSE REQUIRED -- SCOPE OF PRACTICE (RULE 250).**
All water and wastewater operating personnel, including those in responsible charge and those in substitute responsible charge, of public water systems and public wastewater systems, and all backflow assembly testers ~~or inspectors~~, shall be licensed under the provisions of these rules and Chapter 24, Title 54, Idaho Code. (3-24-05)()
 - 01. **Drinking Water Operator Scope.** Operating personnel shall only act in accordance with the nature and extent of their license. Those in responsible charge or substitute responsible charge of a public water system must hold a valid license equal to or greater than the classification of the public water system where the responsible charge or substitute responsible charge operator is in responsible charge. The types of water systems are distribution and treatment. (3-24-05)
 - 02. **Wastewater Operator Scope.** Operating personnel shall only act in accordance with the nature and extent of their license. Those in responsible charge or substitute responsible charge of a public wastewater system shall hold a valid license equal to or greater than the classification of the public wastewater system where the responsible charge or substitute responsible charge operator is in responsible charge. The types of wastewater systems are collection, laboratory analyst, and treatment. Responsible charge duties shall not be included in the scope of the laboratory analyst category. (3-24-05)()

03. Backflow Assembly Tester. Individuals licensed as backflow assembly testers may inspect and test backflow prevention assemblies as defined in Title 54, Chapter 24, Idaho Code. (3-24-05)

04. Operator-in-Training. Operators-in-training shall practice only under the direct supervision of a licensed operator of a type, category, and classification higher than operator-in-training. No operator-in-training shall accept or perform the designated responsible charge duties at any system. (3-24-05)

251. -- 299. (RESERVED)

300. GENERAL REQUIREMENTS FOR LICENSE (RULE 300).

Applicants shall submit an application together with the required fees and such documentation as is required. (3-24-05)

01. Examination Requirement. Applicants must pass a written examination for each individual classification in each type of licensure with a minimum score of seventy percent (70%). ~~For those classifications of Class II through IV, successful completion of the examinations from the immediate lower type and classification shall be a prerequisite to examination eligibility for the next higher classification of the same type, except that applicants for wastewater collection operator or wastewater laboratory analyst or drinking water distribution operator licenses may apply for any classification examination for which they hold the required education and experience.~~ (3-30-06)()

a. The examination will reflect different levels of knowledge, ability and judgment required for the established license type and class. The Board will administer examinations at such times and places as the Board may determine. (3-24-05)

b. The examination for all types and classes of licensure shall be validated and provided by the Association of Boards of Certification (ABC). The American Backflow Prevention Association (ABPA) backflow assembly tester examination is also approved for backflow assembly tester licensure. (5-8-09)

c. Applicants who fail an examination must make application to retake the same type and class examination and pay the required examination fees prior to retaking the examination. (3-24-05)

d. Applicants must take and pass the examination within one (1) year of application approval. After one (1) year a new application and applicable fees must be submitted. (3-30-07)

02. Education and Experience Requirements. ~~Only actual verified on-site operating experience at a treatment, distribution or collection system will be acceptable.~~ Documentation must be provided showing proof of education required for the type and level of license being sought. (3-24-05)()

~~**a.** Each applicant for an Operator-In-Training License must have a high school diploma or GED and pass the Class I exam or pass the very small water system exam.~~ (5-8-09)

~~**b.** To qualify for a Very Small Water System license an operator must have a high school diploma or GED and eighty-eight (88) hours of acceptable operator in training experience at a water system and complete an approved six-hour water treatment or chlorination course and an approved six-hour water distribution course for a combined total of one hundred (100) hours.~~ (3-29-10)

~~**c.** To qualify for a Very Small Wastewater System license, an operator must have a high school diploma or GED and fifty (50) hours of acceptable operator in training experience at a wastewater collection system and fifty (50) hours of acceptable operator in training experience at a wastewater treatment system and complete an approved six-hour pumps and motors course; and an approved six-hour lagoon operation and maintenance course; or an approved six-hour large soil absorption system course for a combined total of one hundred twelve (112) hours.~~ (3-29-10)

~~**d.** To qualify for a Class I Restricted water or wastewater license an operator must have a high school diploma or GED and obtain two hundred sixty (260) hours of acceptable work experience with the system in one (1) year and work a full operating year with the system and complete sixteen (16) hours of continuing education relevant~~

~~to the license and pass the relevant Class I examination. Upon obtaining one thousand six hundred (1,600) hours of supervised operating experience for each license, the operator shall be eligible to apply for an unrestricted Class I license. There is no limit on the amount of time needed to obtain the necessary experience to qualify for the unrestricted license. A restricted license is limited to a specific system. (3-29-10)~~

~~e. To qualify for a Class I license an applicant must have a high school diploma or GED and one (1) year of acceptable experience at a Class I or higher system. To upgrade an OIT license to a Class I the applicant must provide documented proof to the Board of having completed one (1) year of supervised operating experience in a Class I or higher public drinking water or wastewater system, and payment of the required fees. (2-26-08)~~

~~f. To qualify for a Class II treatment or lab analyst license II an applicant must have a high school diploma or GED and three (3) years of acceptable Class I operating experience at a Class I or higher system. (2-26-08)~~

~~g. To qualify for a Class III treatment or lab analyst III license an applicant must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class II operating experience of a Class II or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (2-26-08)~~

~~h. To qualify for a Class IV treatment or lab analyst IV license an applicant must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable Class III operating experience at a Class III or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (2-26-08)~~

~~i. To qualify for a Class II collection or distribution license an operator must have a high school diploma or GED and three (3) years of acceptable operating experience at a Class I or higher system. (3-24-05)~~

~~j. To qualify for a Class III collection or distribution license an operator must have a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience of a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)~~

~~k. To qualify for a Class IV collection or distribution license an operator must have a high school diploma or GED; and four (4) years of post high school education in the environmental control field, engineering or related science; and four (4) years of acceptable operating experience at a Class I or higher system, including two (2) years of experience in daily on-site charge, supervision of personnel, or management of a major segment of a system in the same or next lower class. (3-24-05)~~

~~l. To qualify for a lagoon license, an operator must have a high school diploma or GED and twelve (12) months of acceptable supervised operating experience at a Lagoon system. (3-24-05)~~

~~m. To qualify for a Wastewater Land Application license, an operator must have a high school diploma or GED, a current wastewater treatment license that is at least Class I or higher, and minimum six (6) months of hands on operating experience at a wastewater land application system. The wastewater land application operator that is a responsible charge or substitute responsible charge operator must be licensed at the type and class equal to or greater than the classification of the wastewater system. (3-29-10)~~

~~n. To qualify for a backflow assembly tester license, an applicant must have a high school diploma or GED, and shall document successful completion of a Board-approved backflow assembly tester training program in compliance with the Cross Connection Control Accepted Procedure and Practice Manual and consisting of theory instruction, practical instruction, and a practical examination in compliance with the USC Test procedures. (3-30-06)~~

~~o. To qualify for an original wastewater laboratory analyst license, an applicant must hold a current~~

~~water treatment, wastewater treatment or lagoon license. (3-24-05)~~

03. ~~Substituting Education for Experience Requirement.~~ Applicants may substitute approved education for operating and responsible charge experience as specified below. Only actual verified on-site operating experience at a treatment, distribution or collection system will be acceptable except as may be allowed by substitution as set forth in these rules. Experience as a laboratory analyst can be counted as wastewater operating experience for up to one-half (1/2) of the wastewater operating experience requirement but cannot be counted as responsible charge experience. Experience as a wastewater operator can be counted as laboratory analyst experience for up to one-half (1/2) of the laboratory analyst experience. (3-24-05)()

~~a. No substitution for operating experience shall be permitted for licensure as a very small system operator or a Class I operator. (3-24-05)~~

~~b. For Classes II, III and IV, substitution shall only be allowed for the required experience when fifty percent (50%) of all stated experience (both operating and responsible charge) has been met by actual on-site operating experience. (3-24-05)~~

~~c. For Class II, a maximum of one and one-half (1½) years of post high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1½) years of operating experience. (3-24-05)~~

~~d. For Class III and IV, a maximum of two (2) years of post high school education in the environmental control field, engineering or related science may be substituted for two (2) years of operating experience; however the applicant must still have one (1) year of responsible charge experience. (3-24-05)~~

~~e. Education substituted for operating experience may not be also credited toward the education requirement. (3-24-05)~~

~~f. One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-24-05)~~

04. ~~Substituting Experience for Education.~~ Where applicable, approved operating and responsible charge experience may be substituted for education as specified below: (3-24-05)

~~a. One (1) year of operating experience may be substituted for two (2) years of grade school or one (1) year of high school with no limitation. (3-24-05)~~

~~b. For Class III and IV, additional responsible charge experience (that exceeding the two year class requirements) may be substituted for post high school education on a two (2) for one (1) basis: two (2) years additional responsible charge equal one (1) year post high school education. (3-24-05)~~

05. ~~Substituting Experience for Experience.~~ Related experience may be substituted for experience up to one-half (½) of the operating experience requirement for Class II, III and IV. Experience that may be substituted includes but is not limited to the following: (3-24-05)

~~a. Experience as an environmental or operations consultant; (3-24-05)~~

~~b. Experience in an environmental or engineering branch of federal, state, county, or local government; (3-24-05)~~

~~c. Experience as a wastewater collection system operator; (3-24-05)~~

~~d. Experience as a wastewater treatment plant operator; (3-24-05)~~

~~e. Experience as a water distribution system operator and/or manager; (3-24-05)~~

~~f. One (1) year of post high school education may be substituted for one (1) year experience up to a~~

~~maximum of fifty percent (50%) of the required operating or responsible charge experience. (3-24-05)~~

~~g. Experience in waste treatment operation and maintenance. (3-24-05)~~

~~06. **Equivalency Policy.** Substitutions for education or experience requirements needed to meet minimum requirements for license will be evaluated upon the following equivalency policies: (3-24-05)~~

~~a. High School—High School diploma equals GED or equivalent as approved by the Board equals four (4) years. (3-24-05)~~

~~b. College—Thirty five (35) credits equal one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields as determined by the Board). (3-24-05)~~

~~e. Continuing Education Units (CEU) for operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours equal one (1) CEU; forty five (45) CEUs equal one (1) year of college. (3-24-05)~~

301. -- 309. (RESERVED)

310. REQUIREMENTS FOR OPERATOR-IN-TRAINING LICENSE (RULE 310).

Each applicant for an Operator-In-Training License must meet the following requirements: ()

01. **Education.** Possess a high school diploma or GED; and ()

02. **Examination.** Pass the relevant Class I examination. ()

311. -- 314. (RESERVED)

315. REQUIREMENTS FOR A VERY SMALL WATER SYSTEM LICENSE (RULE 315).

To qualify for a Very Small Water System license an operator must meet the following requirements: ()

01. **Education.** Possess a high school diploma or GED and; ()

02. **Experience.** Document eighty-eight (88) hours of acceptable on-site operating experience at a water system; and ()

a. Complete an approved six-hour water treatment or chlorination course; and ()

b. Complete an approved six-hour water distribution course; and ()

03. **Examination.** Pass the relevant very small water system examination. ()

316. - 319. (RESERVED)

320. REQUIREMENTS FOR A VERY SMALL WASTEWATER SYSTEM LICENSE (RULE 320).

To qualify for a Very Small Wastewater System license, an operator must meet the following requirements: ()

01. **Education.** Possess a high school diploma or GED; and ()

02. **Experience.** Document fifty (50) hours of acceptable on-site operating experience at a wastewater collection system; and ()

a. Fifty (50) hours of acceptable relevant on-site operating experience at a wastewater treatment system or lagoon; and ()

- b.** Complete an approved six-hour pumps and motors course; and ()
- c.** Complete an approved six-hour lagoon operation and maintenance course; or an approved six-hour large soil absorption system course; and ()
- 03.** Examination. Pass the relevant lagoon examination. ()

321. -- 324. (RESERVED)

325. REQUIREMENTS FOR CLASS I RESTRICTED WATER OR WASTEWATER LICENSE (RULE 325).

To qualify for a Class I Restricted water or wastewater license an operator must meet the following requirements: ()

- 01.** Education. Possess a high school diploma or GED; and ()
- 02.** Experience. Document two hundred sixty (260) hours of acceptable relevant on-site operating experience during twelve (12) consecutive months with the system and complete sixteen (16) hours of continuing education relevant to the license; and ()
- 03.** Examination. Pass the relevant Class I examination. ()
- 04.** Restricted License Upgrade. Upon obtaining one thousand six hundred (1,600) hours of supervised on-site operating experience for each license, the operator shall be eligible to apply for an unrestricted Class I license. There is no limit on the amount of time needed to obtain the necessary experience to qualify for the unrestricted license. A restricted license is limited to a specific system. ()

326. -- 327. (RESERVED)

328. REQUIREMENTS FOR A CLASS I OPERATOR LICENSE (RULE 328).

To qualify for a Class I operator license an applicant must meet the following requirements: ()

- 01.** Education. Possess a high school diploma or GED; and ()
- 02.** Experience. Document one (1) year of acceptable relevant on-site operating experience at a Class I or higher system; and ()
- 03.** Examination. Pass the relevant Class I examination. ()
- 04.** Operator-In-Training License Upgrade. To upgrade an operator-in-training (OIT) license to a Class I the applicant must provide documented proof to the Board of having completed one (1) year of supervised on-site operating experience in a Class I or higher public drinking water or wastewater system, and payment of the required fees. ()

329. (RESERVED)

330. REQUIREMENTS FOR A CLASS II OPERATOR LICENSE (RULE 330).

To qualify for a Class II license an applicant must meet the following requirements: ()

- 01.** Education. Possess a high school diploma or GED; and ()
- 02.** Experience. Document three (3) years of acceptable relevant on-site operating experience at a Class I or higher system; and ()
- 03.** Examination. Pass the relevant Class II examination. ()

331. -- 334. (RESERVED)

335. REQUIREMENTS FOR A CLASS III OPERATOR LICENSE (RULE 335).

To qualify for a Class III license an applicant must meet the following requirements: ()

01. Education. Possess a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and ()

02. Experience. Document four (4) years of acceptable relevant on-site operating experience of a Class I or higher system for collection or distribution or Class II or higher system for treatment, including two (2) years of responsible charge of a major segment of a system in the same or next lower class; and ()

03. Examination. Pass the relevant Class III examination. ()

336. -- 339. (RESERVED)

340. REQUIREMENTS FOR A CLASS IV OPERATOR LICENSE (RULE 340).

To qualify for a Class IV license an applicant must meet the following requirements: ()

01. Education. Possess a high school diploma or GED and four (4) years of post high school education in the environmental control field, engineering or related science; and ()

02. Experience. Document four (4) years of acceptable relevant on-site operating experience at a Class I or higher system for collection or distribution or Class III or higher system for treatment, including two (2) years of responsible charge of a major segment of a system in the same or next lower class; and ()

03. Examination. Pass the relevant Class IV examination. ()

341. -- 344. (RESERVED)

345. REQUIREMENTS FOR A LAGOON OPERATOR LICENSE (RULE 345).

To qualify for a lagoon license, an operator must meet the following requirements: ()

01. Education. Possess a high school diploma or GED; and ()

02. Experience. Document twelve (12) consecutive months of acceptable on-site operating experience at a Lagoon system; and ()

03. Examination. Pass the relevant Lagoon examination. ()

346. -- 349. (RESERVED)

350. REQUIREMENTS FOR A WASTEWATER LAND APPLICATION LICENSE (RULE 350).

To qualify for a Wastewater Land Application license, an operator must meet the following requirements: ()

01. Education. Possess a high school diploma or GED; and ()

02. Experience. Document a minimum six (6) months of on-site operating experience at a wastewater land application system; and ()

03. Examination. Pass the relevant Wastewater Land Application examination; and. ()

04. Other. Possess a wastewater Class I or higher operation license. The wastewater land application operator that is a responsible charge or substitute responsible charge operator must be licensed at the type and class equal to or greater than the classification of the wastewater system. ()

351. - 354. (RESERVED)

355. REQUIREMENTS FOR A BACKFLOW ASSEMBLY TESTER LICENSE (RULE 355).

To qualify for a backflow assembly tester license, an applicant must meet the following requirements: ()

01. Education. Possess a high school diploma or GED, and ()

02. Experience. Document successful completion of a Board-approved backflow assembly tester training program in compliance with the Cross Connection Control Accepted Procedure and Practice Manual and consisting of theory instruction, practical instruction, and a practical examination in compliance with the USC Test procedures; and ()

03. Examination. Pass the relevant Backflow Assembly Tester examination. ()

356. -- 359. (RESERVED)

360. REQUIREMENTS FOR WASTEWATER LABORATORY ANALYST LICENSE (RULE 360).

To qualify for a wastewater laboratory analyst license, an applicant must meet the following requirements for the relevant class: ()

01. Class I. ()

a. Possess a high school diploma or GED; and ()

b. Document one (1) year of acceptable lab experience at a class I or higher system; and ()

c. Pass the relevant class I laboratory analyst examination. ()

02. Class II. ()

a. Possess a high school diploma or GED; and ()

b. Document three (3) years of acceptable lab experience at a class I or higher system; and ()

c. Pass the relevant class II laboratory analyst examination. ()

03. Class III. ()

a. Possess a high school diploma or GED and two (2) years of post high school education in the environmental control field, engineering or related science; and ()

b. Document four (4) years of acceptable lab experience at a class II or higher system; and ()

c. Pass the relevant class III laboratory analyst examination. ()

04. Class IV. ()

a. Possess a high school diploma or GED and four (4) years of post high school education in the environmental control field, engineering or related science; and ()

b. Document four (4) years of acceptable lab experience at a class III or higher system; and ()

c. Pass the relevant class IV laboratory analyst examination. ()

361. -- 374. (RESERVED)

375. SUBSTITUTIONS (RULE 375).

01. Substituting Education for Experience. Applicants may substitute approved education for

operating and responsible charge experience as specified below. ()

a. No substitution for on-site operating experience shall be permitted for licensure as a very small system operator or a Class I operator. ()

b. For Classes II, III and IV, substitution shall only be allowed for the required experience when fifty percent (50%) of all stated experience (both on-site operating and responsible charge) has been met by actual on-site operating experience. ()

c. For Class II, a maximum of one and one-half (1½) years of post high school education in the environmental control field, engineering or related science may be substituted for one and one-half (1½) years of operating experience. ()

d. For Class III and IV, a maximum of two (2) years of post high school education in the environmental control field, engineering or related science may be substituted for two (2) years of on-site operating experience; however the applicant for Class III must still have one (1) year of responsible charge experience and the applicant for Class IV must have two (2) years of responsible charge experience. ()

e. Education substituted for on-site operating experience may not be also credited toward the education requirement. ()

f. One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required on-site operating or responsible charge experience. ()

02. Substituting Experience for Education. Where applicable, approved on-site operating and responsible charge experience may be substituted for education as specified below: ()

a. One (1) year of on-site operating experience may be substituted for two (2) years of grade school or one (1) year of high school with no limitation. ()

b. For Class III and IV, additional responsible charge experience (that exceeding the two-year class requirements) may be substituted for post high school education on a one (1) for one (1) basis: one (1) year additional responsible charge equal one (1) year post high school education. ()

c. At least 50% of education is mandatory and cannot be substituted by experience. ()

03. Substituting Experience for Experience. Related experience may be substituted for experience up to one-half (½) of the operating experience requirement for Class II, III and IV. Experience that may be substituted includes but is not limited to the following: ()

a. Experience as an environmental or operations consultant; ()

b. Experience in an environmental or engineering branch of federal, state, county, or local government; ()

c. Experience as a wastewater collection system operator; ()

d. Experience as a wastewater treatment plant operator; ()

e. Experience as a water distribution system operator and/or manager; ()

f. One (1) year of post high school education may be substituted for one (1) year experience up to a maximum of fifty percent (50%) of the required operating or responsible charge experience. ()

g. Experience in waste treatment operation and maintenance. ()

h. Experience as a laboratory analyst can be counted as wastewater operating experience for up to

one-half (1/2) of the wastewater operating experience requirement but cannot be counted as responsible charge experience. ()

i. Experience as a wastewater operator can be counted as laboratory analyst experience for up to one-half (1/2) of the laboratory analyst experience requirement. ()

04. Equivalency Policy. Substitutions for education or experience requirements needed to meet minimum requirements for license will be evaluated upon the following equivalency policies: ()

a. High School - High School diploma equals GED or equivalent as approved by the Board equals four (4) years. ()

b. College - Thirty-five (35) credits equal one (1) year (limited to curricula in environmental engineering, environmental sciences, water/wastewater technology, and/or related fields as determined by the Board). ()

c. Continuing Education Units (CEU) for operator training courses, seminars, related college courses, and other training activities. Ten (10) classroom hours equal one (1) CEU; forty-five (45) CEUs equal one (1) year of college. ()

(BREAK IN CONTINUITY OF SECTIONS)

450. WASTEWATER GRANDPARENT PROVISION (RULE 450).

~~Upon application, the board may issue a grandparent license to a wastewater operator who provides documentation satisfactory to the board of being in responsible charge of an existing public wastewater system on or before April 15, 2003 and to the present.~~ Grandparent licenses for drinking water operators and backflow assembly testers shall not be issued. (3-24-05)()

01. Grandparent License. A ~~license issued under the~~ grandparent ~~provision~~ license shall allow the ~~applicant licensee~~ to ~~continue as~~ operator in responsible charge only of the specific facility identified in the ~~original~~ application. The license shall be site specific and non-transferable and shall not grant authority for the holder to practice at any other system in any capacity as an operator. (3-24-05)()

02. Application Limitations. The board must receive all applications for a grandparent license no later than April 15, 2006. ~~Applicants shall be subject to the application fee and the original license fee. The owner of the system shall attest under oath that the applicant has served as the system operator in responsible charge and shall specify the duties of the applicant and the dates of employment. The provisions for allowing the Board to issue grandfather licenses has expired.~~ (3-24-05)()

03. License Requirements. ~~Upon receiving a~~ grandparent licensed ~~the~~ wastewater operator ~~shall be~~ is required to meet all other requirements including the continuing education and renewal requirements. (3-24-05)()

04. Wastewater System Classification Limitations. The grandparent license shall become invalid any time the classification of the wastewater system changes to a higher classification. (3-24-05)

05. One System Limitation. A wastewater operator who is the wastewater operator in responsible charge of more than one (1) public wastewater system shall not be eligible for more than one (1) grandparent license. (3-24-05)

~~**06. Grandparent Professional Growth Requirement.** In the first license renewal cycle, every holder of a grandparent license must complete and maintain documentation of completing a one-time training requirement. The one-time training shall include all information covered by the qualifying license exam for the license class the operator holds. Following the first renewal cycle, the operator must meet the regular continuing education requirements.~~ (3-24-05)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.11.01 - RULES OF THE STATE BOARD OF PODIATRY

DOCKET NO. 24-1101-1101 (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 54-605, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 State Board of Podiatry has incurred significant legal expenses as a result of certain disciplinary actions, which have increased the Board's expenses. This change will help provide additional revenue. The board's fund balance at the end of fiscal year 2011 was (\$165,635.87).

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

Rule 300 is being amended to increase the annual renewal fee from \$400 to \$500. The anticipated impact is a total positive impact of \$7,100 to the dedicated fund based on 71 current licensees.

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 change was discussed 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 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 26, 2011.

DATED this 19th day of August, 2011.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State St.
Boise, ID 83720-0063
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-1101-1101

300. FEES (RULE 300).

- 01. Application Fee.** A fee shall accompany all applications. The fee shall be two hundred dollars (\$200). (7-1-97)
- 02. Original License Fee.** The original license fee shall be four hundred dollars (\$400). (4-9-09)
- 03. Written Exam Fee.** The fee for examination shall be equal to that charged by the national examining entity, together with an additional twenty-five (\$25) dollar administrative fee. (3-13-02)
- 04. Annual Renewal Fee.** Fee for annual renewal of licenses, ~~four~~ **five** hundred dollars (\$~~400~~**500**). (~~4-9-09~~) ()
- 05. Re-Exam Fee.** For candidates re-examining for the written and practical examinations or written examination only, the fee for re-examination will be four hundred dollars (\$400). For candidates re-examining for the practical only, the fee shall be two hundred dollars (\$200). (3-13-02)
- 06. Fee Non-Refundable.** All fees are non-refundable. (3-13-02)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES
24.13.01 - RULES OF THE PHYSICAL THERAPY LICENSURE BOARD
DOCKET NO. 24-1301-1101
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 19, 2011.

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 amending the continuing education rules to allow for additional credit and courses that may be pre-approved. This change will provide more pre-approved courses to licensees for fulfillment of continuing education 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, negotiated rulemaking was not conducted because the rule changes were discussed 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 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 26, 2011.

DATED this 19th day of August, 2011.

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. 24-1301-1101

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; (4-7-11)
- ix. Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics; ~~and~~ (4-7-11)()
- 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; ~~and~~ (4-7-11)()

xi. Completion and awarding of Board Certification or recertification by American Board of Physical Therapy Specialists (ABPTS). The licensee shall receive sixteen (16) hours for the year the certification or recertification was received. ()

07. Course Approval. Courses of study relevant to physical therapy and sponsored or provided by the following entities or organizations shall be approved for continuing education credits: ()

- a. The American Physical Therapy Association (APTA) or any of its sections or local chapters; or ()
- b. The Federation of State Boards of Physical Therapy (FSBPT); or ()
- c. Commission on Accreditation in Physical Therapy Education (CAPTE); or ()
- d. National Athletic Trainers Association (NATA); or ()
- e. A College or University which is accredited or a candidate for accreditation by the Northwest Association of Secondary and Higher Schools or any similar accrediting body; or ()

f. Otherwise approved by the Board. ()

078. **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)

089. **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. 24-1401-1101

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 19, 2011.

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 amending Rule 100 to clarify approved colleges and universities and to clarify an approved social work program. This change brings the training in line with national standards.

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 changes were discussed 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 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 26, 2011.

DATED this 19th day of August, 2011.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 24-1401-1101

100. APPROVED COLLEGES AND UNIVERSITIES (RULE 100).

Any college, university, or school of social work that is accredited or is a candidate for accreditation by the Northwest ~~Association of Secondary and Higher Schools~~ Commission on Colleges and Universities or any similar accrediting body, and that offers a social work program that is accredited by the Council on Social Work Education (CSWE) or that is otherwise approved by the Board. The social work program must be a recognizable, coherent organizational entity within the institution. (4-7-11)()

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.15.01 - RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-1101

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 54-3404, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 Professional Counselors and Marriage and Family Therapists is amending several sections of its rules to update them to current standards, to provide clarification, and to simplify licensure by endorsement.

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 changes were discussed 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 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 26, 2011.

DATED this 19th day of August, 2011.

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 OF DOCKET NO. 24-1501-1101

004. INCORPORATION BY REFERENCE (RULE 4).

01. ACA Code of Ethics. “ACA Code of Ethics ~~and Standards of Practice~~,” as published by the American Counseling Association (ACA), effective 2005 and referenced in Subsections 200, 241.02, 350, and 450.01, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-30-07)()

02. AAMFT Code of Ethics. The document titled “AAMFT Code of Ethics,” as published by the American Association for Marriage and Family Therapy (AAMFT), effective July 1, 2001 and referenced in Subsections 350, and 450.01, is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-30-06)

~~**03. ACES Guidelines.** The document titled “ACES” that provides supervision guidelines for supervisors, as published by the Association for Counselor Education and Supervision (ACES), dated March 1993 referenced in Subsection 200.03.a., is herein incorporated by reference and is available from the Board’s office and on the Board web site. (4-2-03)~~

~~**043. Guidelines.** The document titled “Approved Supervision Designation Handbook” that provides supervision guidelines for supervisors, as published by the American Association for Marriage and Family Therapy (AAMFT), dated October 2002~~7~~ referenced in Subsection 240.03.a., is herein incorporated by reference and is available from the Board’s office and on the Board web site. (3-20-04)()~~

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (RULE 10).

01. Board. The Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists as prescribed in Section 54-3401, Idaho Code. (3-13-02)

02. Bureau. The Bureau of Occupational Licenses as prescribed in Sections 54-3404 and 67-2602, Idaho Code. (3-13-02)

03. Registered Intern. A registered intern shall be defined as a person who is obtaining required supervised experience for licensure in a course of study provided by an institution of higher education or a person who is in a private-practice setting acting under direct supervision. (3-13-02)()

04. Accredited University or College. An accredited university or college shall be a college or university accredited by one (1) of the following: ()

a. The Middle States Association of Colleges and Schools; ()

b. The New England Association of Schools and Colleges; ()

c. The North Central Association of Colleges and Schools; ()

d. The Northwest Association of Schools and of Colleges and Universities; ()

e. The Southern Association of Colleges and Schools; or ()

f. The Western Association of Schools and Colleges. ()

011. -- 099. (RESERVED)

100. ORGANIZATION AND MEETINGS (RULE 100).

Board meetings will be held ~~during the months of February, May, July, and October of~~ not less than four (4) times each year and at such other times as the Board deems necessary. ~~(3-13-02)~~()

(BREAK IN CONTINUITY OF SECTIONS)

150. QUALIFICATIONS FOR PROFESSIONAL COUNSELOR LICENSURE (RULE 150).

Licensure as a "professional counselor" shall be restricted to persons who have successfully completed the required examination and each of the following requirements: (3-30-06)

01. Graduate Program Requirement. A planned graduate program of sixty (60) semester hours which is primarily counseling in nature, six (6) semester hours of which are earned in an advanced counseling practicum, and including a graduate degree in a counseling field from an accredited university or college offering a graduate program in counseling. (7-1-93)

a. A planned graduate program in a counseling field shall be defined as completion of one (1) of the following: (7-1-93)

i. A counseling program approved by the Council for Accreditation of Counseling and Related Educational Programs; or (7-1-93)

ii. A counseling program approved by the Council on Rehabilitation Education; or (7-1-93)

iii. A counseling program approved by the Board which shows evidence of education in the following areas: Counseling Theory, Counseling Techniques and Supervised Counseling Experience (this practicum must be supervised at the ratio of at least one (1) hour of one-to-one supervision for every ten (10) hours of experience in the setting). Applicant must show completion of one (1) graduate level course unique to each of the following eight (8) areas: (3-29-10)

(1) Human growth and development: Includes studies that provide a broad understanding of the nature and needs of individuals at all developmental levels. Emphasis is placed on psychological, sociological, and physiological approaches. Also included are areas such as human behavior (normal and abnormal), personality theory, and learning theory. (7-1-93)

(2) Social and cultural foundations: Includes studies of change, ethnic groups, subcultures, changing roles of women, sexism, urban and rural societies, population patterns, cultural mores, use of leisure time, and differing life patterns. (7-1-93)

(3) The helping relationship: Includes philosophic bases of the helping relationship: Consultation theory and/or an emphasis on the development of counselor and client (or consultee) self-awareness and self-understanding. (7-1-93)

(4) Groups: Includes theory and types of groups, as well as descriptions of group practices, methods dynamics, and facilitative skills. It includes either a supervised practice and/or a group experience. (7-1-93)

(5) Life-style and career development: Includes areas such as vocational-choice theory, relationship between career choice and life-style, sources of occupational and educational information, approaches to career decision-making processes, and career-development exploration techniques. (7-1-93)

(6) Appraisal of the individual: Includes the development of a framework for understanding the individual, including methods of data gathering and interpretation, individual and group testing, case-study approaches and the study of individual differences. Ethnic, cultural, and sex factors are also considered. (7-1-93)

(7) Research and evaluation: Includes areas such as statistics, research design, and development of

research and demonstration proposals. It also includes understanding legislation relating to the development of research, program development, and demonstration proposals, as well as the development and evaluation of program objectives. (7-1-93)

(8) Professional orientation: Includes goals and objectives of professional counseling organizations, codes of ethics, legal consideration, standards of preparation, certification, and licensing and role of identity of counselors. (7-1-93)

b. A total of at least sixty (60) graduate semester hours or ninety (90) graduate quarter hours shall be required. (7-1-93)

c. Advanced counseling practicum shall be practica taken at the graduate school level. (7-1-93)

d. A graduate degree shall be one of the following beyond the baccalaureate level: The master's degree, the educational specialist certificate or degree, or the doctor's degree. (7-1-93)

~~e. An accredited university or college shall be a college or university accredited by one (1) of the following: the Middle States Association of Colleges and Schools, the New England Association of Schools and Colleges, the North Central Association of Colleges and Schools, the Northwest Association of Schools and Colleges and Universities, the Southern Association of Colleges and Schools, or the Western Association of Schools and Colleges. (3-26-08)~~

02. Supervised Experience Requirement. One thousand (1,000) hours of supervised experience in counseling acceptable to the Board. (7-1-93)

a. One thousand (1,000) hours is defined as one thousand (1,000) clock hours of experience working in a counseling setting, four hundred (400) hours of which shall be direct client contact. Supervised experience in practica and/or internships taken at the graduate level may be utilized. The supervised experience shall include a minimum of one (1) hour of face-to-face or one-to-one (1/1) or one-to-two (1/2) ~~consultation~~ supervision with the supervisor for every twenty (20) hours of job/internship experience. Face-to-face may include a face-to-face setting provided by a secure live ~~video~~ electronic connection between the supervisor and supervisee. As stated under Subsection 150.01.a.i+ii. counseling practicum experience as opposed to job or internship experience shall be supervised at a ratio of one (1) hour of supervision for every ten (10) hours in the settings. For example: ~~(3-30-06)~~ ()

i. A person in a twenty (20) hour per week job/internship who is receiving one (1) hour of individual supervision each week would accumulate one thousand (1,000) supervised hours in fifty (50) weeks to equal the twenty to one (20/1) ratio. (7-1-93)

ii. A person in a forty (40) hour per week setting with one (1) hour of supervision per week would still require fifty (50) weeks to equal the twenty to one (20/1) ratio. (7-1-93)

iii. A person in a forty (40) hour per week setting with two (2) hours of supervision per week would accumulate the one thousand (1,000) hours at the twenty to one (20/1) supervision ratio in twenty-five (25) weeks. (7-1-93)

b. Until July 1, 2004, the supervision must be provided by a Professional Counselor or a Clinical Professional Counselor licensed by the state of Idaho. Effective July 1, 2010, supervision must be provided by a counselor education faculty member at an accredited college or university, ~~or a~~ Professional Counselor, registered with the Board as a supervisor, a Clinical Professional Counselor, registered with the Board as a supervisor, ~~or a~~ Marriage and Family Therapist, registered with the Board as a supervisor, a Clinical Social Worker registered as a supervisor with the Board of Social Work, a licensed Psychologist, or a licensed Psychiatrist, licensed by the state of Idaho ~~and registered with the Board as a Supervisor~~. If the applicant's supervision was provided in another state, it must have been provided by a counseling professional licensed by that state, provided the requirements for licensure in that state are substantially equivalent to the requirements of Title 54, Chapter 34, Idaho Code. If supervision was obtained prior to July 1, 1988, or in a state that does not regulate counseling, that supervision must have been provided by a qualified counselor educator as a part of a planned graduate program or by a person who holds a

graduate degree beyond the baccalaureate level who is certified and/or licensed as a counselor, social worker, psychologist, or psychiatrist. Supervision by an administrative superior who is not in a counseling related profession is not acceptable to the Board. Supervision by a professional counseling peer, however, may be acceptable to the Board if the peer/supervisory relationship includes the same controls and procedures expected in an internship setting. (See Subsection 150.02.a.) For example, the relationship should include the staffing of cases, the critiquing of counseling tapes and this supervision must be conducted in a formal, professional, consistent manner on a regularly scheduled basis. (3-29-10)()

c. Experience in counseling is defined as assisting individuals or groups, through the counseling relationship, to develop an understanding of personal problems, to define goals, and to plan action reflecting interests, abilities, aptitudes, and needs as related to persona-social concerns, educational progress, and occupations and careers. Counseling experience may include the use of appraisal instruments, referral activities, and research findings. (7-1-93)

d. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)

e. Supervision must be provided in compliance with the ACA code of ethics for counseling supervision, evaluation, remediation, and endorsement. ()

151. -- 199. (RESERVED)

200. COUNSELOR SUPERVISOR REQUIREMENTS (RULE 200).

Effective July 1, 2004, Idaho licensed counselors shall be registered with the Board in order to provide postgraduate supervision for those individuals pursuing licensure in Idaho as a counselor. (4-2-03)()

01. Requirements for Registration. (4-2-03)

a. Document at least two (2) years experience as a licensed counselor. (3-30-07)

b. Document at least one thousand five hundred (1,500) hours of direct client contact as a counselor. (4-2-03)

c. Document fifteen (15) contact hours of education in supervisor training as approved by the Board. (4-2-03)

d. Have not been the subject of any disciplinary action for five (5) years prior to application for registration. (4-2-03)

02. Registration. A supervisor applicant shall submit to the Bureau a completed application form as approved by the Board. (4-2-03)

a. Upon receipt of a completed application verifying compliance with the requirements for registration as a supervisor, the applicant shall be registered as a supervisor. The applicant shall include a copy of the informed consent form used to ensure clients are aware of the roles of the supervisor and supervisee. (4-2-03)()

b. A supervisor's registration shall be valid only so long as the individual's counselor license remains current and in good standing. (4-2-03)

03. Supervision. (4-2-03)

a. A Registered Counselor Supervisor shall provide supervision in conformance with the guidelines for supervisors dated March 1993, adopted by the Association for Counselor Education and Supervision set forth in the ACA Code of Ethics. (4-2-03)()

b. A Unless the primary work role of an individual is as a clinical supervisor a Registered Counselor Supervisor shall not provide supervision to more than six (6) individuals supervisees concurrently. (3-30-06)()

201. -- 224. (RESERVED)

225. CLINICAL PROFESSIONAL COUNSELOR LICENSURE (RULE 225).

Licensure as a "clinical professional counselor" shall be restricted to persons who have successfully completed passed the required examination and have met the following requirements: (3-30-06)()

~~01.~~ Requirements. The following requirements must be met: (3-13-02)

~~a01.~~ License. Hold a valid licensed professional counselor license; and (4-2-03)()

~~b02.~~ Experience. Document two thousand (2,000) hours of direct client contact experience under supervision accumulated in no less than a two (2) year period after licensure in any state. (4-2-03)()

~~ia.~~ All applicants for Clinical Professional Counselor license must provide verification of meeting at least one thousand (1,000) hours of supervised experience under the supervision of a licensed Clinical Professional Counselor registered as a supervisor with the Board. The remainder of the supervision may be provided by licensed Psychiatrists, Counseling/Clinical Licensed Psychologists, Licensed Clinical Social Workers registered as supervisors with the Board of Social Work Examiners, or Marriage and Family Therapists registered as supervisors with the Board. (3-30-07)()

~~ib.~~ The ratio for supervision will consist of One (1) hour of clinical supervision for every thirty (30) hours of direct client contact is required. Individual supervision is defined as one (1) hour of face-to-face, one-on-one (1:1) or one-to-two (1:2) supervision to every thirty (30) hours of direct client contact. (7-1-97)()

~~ic.~~ No more than one-half (1/2) of group supervision shall be allowed. (3-30-07)

~~e03.~~ Examination. Successful completion passage of the required written examination. (3-30-06)()

~~a04.~~ Recommendation of the Supervisor(s). The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)()

~~02.~~ Supervisors. A supervisor may supervise no more than six (6) licensed professional counselors. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

238. MARRIAGE AND FAMILY THERAPISTS (RULE 238).

The following requirements must be met for marriage and family therapist licensure: (3-13-02)

01. Graduate Degree. Possess a graduate degree as outlined in Section 54-3405C(1), Idaho Code. (3-13-02)

02. Practicum. Must meet the requirements as outlined in Section 54-3405C(2), Idaho Code. (3-13-02)

03. Supervised Marriage and Family Therapy Experience. Must meet the three thousand (3,000) hour requirement as outlined in Section 54-3405C(3), Idaho Code. Effective July 1, 2004, a Idaho Marriage and Family Therapist must be registered with the Board to provide post graduate supervision for those pursuing marriage and family therapist licensure in Idaho. (4-2-03)()

a. A minimum of two thousand (2,000) postgraduate direct client contact hours, in no less than a two (2) year time period shall include; (3-13-02)

- i. A minimum one thousand (1,000) direct client contact hours with couples and families; and (3-13-02)
- ii. Two hundred (200) hours of supervision. (3-13-02)
- b. ~~Supervision may~~ Effective July 1, 2014 a minimum of one hundred (100) hours post-graduate supervision must be obtained from a registered marriage and family therapist supervisor. The remaining one hundred (100) hours of ~~S~~supervision may also be obtained from a licensed clinical professional counselor registered as a supervisor with the Board, licensed psychologist, licensed clinical social worker registered as a supervisor with the Board of Social Work Examiners, or licensed psychiatrist who documents: (~~3-26-08~~)()
 - i. A minimum of five (5) years of experience providing marriage and family therapy; and (3-20-04)
 - ii. Fifteen (15) contact hours of education in supervisor training; and (3-20-04)
 - iii. Has not been the subject of any disciplinary action for five (5) years immediately prior to providing supervision. (3-20-04)
- c. No more than one hundred (100) hours of group supervision shall be allowed. Group supervision shall be defined as ~~no more than~~ up to six (6) supervisees ~~per each~~ and one (1) supervisor; and (~~3-13-02~~)()
- d. Individual supervision is defined as up to two (2) supervisees per supervisor; and (3-13-02)
- e. Supervision must employ observation of client contact such as the use of audio technologies or video technologies or co-therapy, or live supervision; and (~~3-13-02~~)()
- f. In accordance with the adopted Codes of Ethics prohibiting dual relationships, a supervisor shall not act as an applicant's personal Professional Counselor/Therapist. (3-13-02)
- g. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)
- h. Supervision obtained in another state must conform with the state's requirements provided they are substantially equivalent to Idaho's requirements. ()

04. Examination. (3-13-02)

- a. The Board requires successful passage of the National Marital and Family Therapy Examination as approved by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB). (3-13-02)
- b. The examination will be conducted at a time and place specified by the Board. (3-13-02)
- c. Successful passage of the examination is defined by the Board as achievement of the passing score set by the AMFTRB. Reexamination shall consist of the entire examination. (3-13-02)

239. MARRIAGE AND FAMILY THERAPIST SUPERVISOR REQUIREMENTS (RULE 239).
Effective July 1, 2004, licensed marriage and family therapists in Idaho shall be registered with the board to provide supervision for those individuals pursuing licensure in the state of Idaho as a marriage and family therapist.(3-20-04)

01. Requirements for Registration. (3-20-04)

- a. Possess two (2) years experience as a licensed marriage and family therapist and document at least two thousand (2,000) hours of direct client contact with couples and families. (3-20-04)
- b. Document fifteen (15) contact hours of education in supervisor training as approved by the Board. (3-20-04)

- c. Have not been subject to discipline for five (5) years prior to registration. (3-20-04)
- 02. Registration.** A marriage and family therapist shall fully complete the application form as established by the board and submit the designated fee as adopted by board rule. (3-20-04)
- 03. Supervision.** (3-20-04)
 - a. A registered marriage and family therapist shall provide supervision in conformance with the guidelines for supervisors adopted by the American Association for Marriage and Family Therapists. (3-20-04)
 - b. Unless the primary work role of an individual is as a clinical supervisor A registered marriage and family therapist shall not supervise more than six (6) individuals supervisees, either in one-to-one or group supervision, at any time regardless of the modality (individual, dyad, or group) of supervision. ~~(3-20-04)~~()
 - c. Face-to-face may include a face-to-face setting provided by a secure live electronic connection between the supervisor and supervisee. ()

(BREAK IN CONTINUITY OF SECTIONS)

245. REGISTERED INTERNS (RULE 245).

An individual pursuing Idaho licensure as a Professional Counselor may register with the Board as an Intern. An individual pursuing Idaho licensure as a Marriage and Family Therapist shall be ~~licensed as an~~ Licensed Associate Marriage and Family Therapist or Licensed Professional Counselor, or register prior to commencement of supervised experience with the Board as an Intern in compliance with Section 54-3402, Idaho Code. If the Marriage and Family Therapist applicant's supervised experience was obtained out of state, such applicant must meet the requirements of Rule 238.03, except that applicant's supervisor need not be registered with the Board. ~~(3-29-10)~~()

- 01. Requirements for Registration.** (4-2-03)
 - a. Possess a graduate degree in counseling, marriage and family therapy, or a closely related field from an accredited university or college. (4-2-03)
 - b. Be actively pursuing postgraduate supervised experience. (4-2-03)
 - c. Designate a supervisor who is registered with the board as a supervisor as set forth in these rules or who is otherwise approved to provide marriage and family therapy supervision as defined in Section 54-3405C, Idaho Code, and who shall be responsible to provide supervision. ~~(3-20-04)~~()
- 02. Registration.** An individual applying for registration as a Counselor Intern or Marriage and Family Therapist Intern shall fully complete the application form as established by the Board and submit the designated fee as adopted by Board rule. (4-2-03)
- 03. Practice.** (4-2-03)
 - a. A Registered Intern may only practice counseling or marriage and family therapy under the direct supervision of a Counselor Supervisor, registered with the Board or Marriage and Family Therapist Supervisor, registered with the Board who shall be responsible to ensure that a Registered Intern is competent to practice such counseling or marriage and family therapy as may be provided. ~~(4-2-03)~~()
 - b. Only a Registered Intern may use the title Registered Counselor Intern or Registered Marriage and Family Therapist Intern. Registered interns must explicitly state that they are interns in their documentation and advertising, such as business cards, informed consent forms, and other disclosures. ~~(4-2-03)~~()
 - c. An individual shall not practice as an intern for more than four (4) years from the original date of

registration.

(4-2-03)

(BREAK IN CONTINUITY OF SECTIONS)

300. ENDORSEMENT (RULE 300).

The Board may grant a license to any person who submits a completed application on a form approved by the Board together with the required fees and who: (3-13-02)

01. Holds a Current License. The applicant must be the holder of a current active license, in the profession and at the level for which a license is being sought, issued by the authorized regulatory entity in another state or foreign country. The state or foreign country must have substantially similar requirements for licensing as is provided for new applicants in Idaho. The certification of licensure must be received by the Board from the issuing agency; and (3-29-10)()

02. Has Not Been Disciplined. The applicant must have not been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity and has never voluntarily surrendered a license; and (3-29-10)

03. Is of Good Moral Character. The applicant must be of good moral character and have not been convicted, found guilty, or received a withheld judgment or suspended sentence for any felony; and (3-29-10)

04. Has Documented Experience. The applicant must provide a documented record of at least five (5) years actual practice under licensure in the seven (7) years immediately prior to application in the profession for which a license is being sought, or can demonstrate hardship or extenuating circumstances that prohibited practice during a portion of the five seven (57) year period as determined by the Board; and (3-13-02)()

05. Will Abide by Laws, Rules and Code of Ethics. The applicant must certify under oath to abide by the laws and rules governing the practice of counseling and marriage and family therapy in Idaho and the applicable code of ethics as adopted; and either (3-30-07)()

~~**06. National Credential Registry.** If applicant has been granted credentials by the American Association of State Counseling Boards as qualifying for Category II of the national credential registry or any such similar qualification granted by a national credentialing entity otherwise approved by the Board; or (3-30-07)~~

~~**07. Provides Information.** The applicant must document at least three (3) of the following during the five (5) years immediately prior to application: (3-13-02)~~

~~**a.** A minimum of one thousand (1,000) hours client contact; (3-13-02)~~

~~**b.** Service as an officer of a state or national counseling or marriage and family therapy organization, or a member of a state or national counseling or marriage and family therapy board or committee, or other leadership positions as may be approved by the Board; (3-13-02)~~

~~**c.** Teaching at least three (3) graduate courses for credit at an accredited college or university; (3-13-02)~~

~~**d.** A certificate to supervise issued by the NBCC or AAMFT; (3-13-02)~~

~~**e.** Providing at least twelve (12) months of supervision to each of no less than three (3) persons seeking licensure; (3-13-02)~~

~~**f.** Maintained professional liability insurance for the previous five (5) years with proof of no claims filed; (3-13-02)~~

~~g. Obtained a post graduate degree in a field of study related to counseling or marriage and family therapy that is in addition to the minimum licensure requirements; (3-13-02)~~

~~h. Current certification by a national credentialing entity as approved by the Board in the discipline for which licensure is sought; (3-13-02)~~

~~i. A total of one hundred (100) hours of continuing education completed in the five (5) years immediately prior to application. (3-26-08)~~

301. -- 349. (RESERVED)

350. CODE OF ETHICS (RULE 350).

The Board adopts the American Counseling Association (ACA) Code of Ethics and the American Association for Marriage and Family Therapy (AAMFT) Code of Ethics as referenced in Section 004. ~~All applicants will receive a copy of both the ACA Code of Ethics and the AAMFT Code of Ethics.~~ All licensees shall be required to adhere to the appropriate Code of Ethics pertaining to their licensure. (3-13-02)()

351. -- 359. (RESERVED)

360. INACTIVE STATUS (RULE 360).

01. Request for Inactive Status. Each person requesting an inactive status during the renewal of their active license must submit a written request and pay the established fee. (3-26-08)

02. Inactive License Status. (3-26-08)

a. 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. (3-26-08)

b. Inactive license renewal notices and licenses will be marked "Inactive." (3-26-08)

c. When the licensee desires active status, the licensee must show acceptable fulfillment of continuing education requirements for the previous twelve (12) months and submit a fee equivalent to the difference between the inactive and active renewal fee. (3-26-08)()

d. Licensees shall not practice in Idaho as a Professional Counselor, Clinical Professional Counselor, Associate Marriage and Family Therapist, or a Marriage and Family Therapist while on inactive status. (3-26-08)()

(BREAK IN CONTINUITY OF SECTIONS)

425. CONTINUING EDUCATION (RULE 425).

Every person holding an Idaho license as a Professional Counselor, Clinical Professional Counselor, Associate Marriage and Family Therapist, or a Marriage and Family Therapist must complete in each twelve-month period preceding the renewal of a license, twenty (20) contact hours of continuing education. A contact hour is one (1) hour of actual participation in a continuing education activity, exclusive of breaks. (3-29-10)

01. Contact Hours. The contact hours of continuing education must be obtained in areas of study germane to the practice for which the license is issued as approved by the Board. No less than three (3) contact hours for each renewal period must be in ethics, which must be specific to legal issues, law, or ethics. Ethics contact hours must be obtained in a face-to-face setting where you can interact with the instructor and students. Therapeutic workshops, retreats and other self-help activities are not considered continuing education training unless specific parts of the experience are applicable to counseling or therapy practice. (3-29-10)()

02. Documentation of Attendance. It shall be necessary for the licensee to maintain 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 provided to the Board upon request by the Board or its agent. (3-29-10)

03. Approved Contact Hours, Limitations, and Required Documents. (3-29-10)

a. College or University Courses for Credit or Audit. There is no limit to the contact hours that a licensee may obtain in this category during each reporting period. However, all courses are subject to Board approval. For college or university courses, one (1) semester credit equals fifteen (15) contact hours; one (1) quarter credit equals ten (10) contact hours. The licensee must provide the Board with a copy of the licensee's transcript substantiating any hours attended by the licensee. (3-29-10)

b. Seminars, Workshops, Conferences. There is no limit to the contact hours that a licensee may obtain in this category during each reporting period. Teleconferences must feature an interactive format in order to qualify for contact hour credit. Interactive conferences are those that provide the opportunity for participants to communicate directly with the instructor. The licensee must provide the Board with a copy of the certificate, or letter signed by course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. (3-29-10)

c. Publications. A maximum of four (4) contact hours may be counted in this category during each reporting period. Publication activities are limited to articles in journals, a chapter in an edited book, or a published book or professional publication. The licensee must provide the Board with a copy of the cover page or the article or book in which the licensee has been published. For a chapter in an edited book the licensee must submit a copy of the table of contents. (3-29-10)

d. Presentations. A maximum of four (4) contact hours may be counted in this category during each reporting period. Class, conference, or workshop presentations may be used for contact hour credit if the topic is germane to the field. A specific presentation given repeatedly can only be counted once. A particular presentation will qualify for contact hour credit one (1) time in a five (5) year period. Only actual presentation time may be counted; preparation time does not qualify for contact hour credit. The licensee must provide the Board with a copy of the conference program or a letter from the sponsor, host organization, or professional colleague. ~~(3-29-10)~~()

e. Clinical Supervision and Case Consultation. A maximum of five (5) contact hours of received supervision/consultation may be counted in this category during each reporting period. In order to qualify for contact hour credit, supervision/consultation must be received on a regular basis with a set agenda. No credit will be given for the licensee's supervision of others. The licensee must provide the Board with a letter from the supervisor or consultant listing periods of supervision, where the supervision occurred, and the name of the supervisor. (3-29-10)

f. Dissertation. A maximum of five (5) contact hours may be counted in this category during each reporting period. The licensee must provide the Board with a copy of the licensee's transcript and the title of the dissertation. (3-29-10)

g. Leadership. A maximum of four (4) contact hours may be counted in this category during each reporting period. The licensee must provide the Board with a letter from a professional colleague listing the position of leadership, periods of leadership, and the name of the organization under which the leadership took place. The following leadership positions qualify for continuing education credits: (3-29-10)

- i. Executive officer of a state or national counseling or therapy organization; ~~(3-29-10)~~()
- ii. Editor or editorial board service of a professional counseling or therapy journal; ~~(3-29-10)~~()
- iii. Member of a national ethics disciplinary review committee rendering licenses, certification, or professional membership; (3-29-10)
- iv. Active member of a counseling or therapy working committee producing a substantial written product; (3-29-10)

v. Chair of a major counseling or therapy conference or convention; or (3-29-10)

vi. Other leadership positions with justifiable professional learning experiences. (3-29-10)

h. Home Study and On-line Education. A maximum of ten (10) contact hours may be counted through self-study during each reporting period. In order for a home study or on-line course to qualify for contact hours, the course must be provided by a Board-approved continuing education provider or a course pre-approved by the Board. ~~Ethics contact hours cannot be earned through self-study or on-line education.~~ (3-29-10)()

i. Copy of Certification Required. A licensee applying for home study or on-line credit must provide the Board a copy of the certification that is verified by the authorized signatures from the course instructors, providers, or sponsoring institution and substantiates any hours completed by the licensee. A licensee seeking contact credit for reading a publication must submit results from a test on the information contained within the publication and administered by an independent third-party. (3-29-10)

j. Continuing Education Credit. Continuing education credit may be granted for a maximum of two (2) hours each renewal period for time spent attending one (1) Board meeting. Members of the Board are not entitled to continuing education credit for Board service. (3-29-10)

04. Excess Hours. Continuing education hours accumulated during the twelve (12) months immediately preceding the license ~~expiration~~ **renewal** date may be applied toward meeting the continuing education requirement for the next license renewal. No more than ~~five~~ **ten** (~~5~~**10**) hours in excess of the required twenty (20) hours shall 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. (4-2-03)()

05. 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 in accordance with section 54-3407, Idaho Code. (4-2-03)

06. 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 request such exemption prior to renewal and provide any information requested by the Board to assist in substantiating hardship cases. This exemption is granted at the sole discretion of the Board. There is no continuing education required of those holding a current inactive license. (3-29-10)

426. -- 449. (RESERVED)

450. GENERAL SCOPE OF THE LICENSEE'S APPROPRIATE PRACTICE (RULE 450).

~~01-~~ **Board Recommendation of Generic Scope of Practice.** While a license to practice as a counselor or therapist could be considered generic in nature, it should not be viewed as an authorization to provide counseling or therapy services to every client population in every possible professional setting. Counselors and marriage and family therapists shall practice only within the boundaries of competence (see the applicable Code of Ethics). (3-13-02)()

~~02-~~ **Submission of Additional Information for Scope of Practice.** ~~A licensed counselor or marriage and family therapist who considers the Board's recommended guidelines to be too restrictive may wish to submit additional information to acquaint the Board with new, possibly more expansive qualifications.~~ (3-13-02)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.17.01 - RULES OF THE STATE BOARD OF ACUPUNCTURE

DOCKET NO. 24-1701-1101

NOTICE OF RULEMAKING - TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is August 5, 2011.

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 54-4705, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 2011 legislature passed House Bill 46 which amended multiple sections of Title 54, Chapter 47 replacing the technician certificate with the acupuncture trainee permit. This new rule complies with the statute.

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

The 2011 legislature passed House Bill 46 which amended multiple sections of Title 54, Chapter 47 replacing the technician certificate with the acupuncture trainee permit. This new rule complies with the statute. There is no change to fees currently collected. The technician certification designation is being changed to acupuncture trainee permit due to the passage of House Bill 46.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: There is no change to fees currently collected.

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 rule proposal was discussed in a noticed open meeting and implements changes to the Statute.

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 26, 2011.

DATED this 19th day of August, 2011.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses

700 W State St.
Boise, ID 83720-0063
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE TEMPORARY RULE & PROPOSED TEXT OF DOCKET NO. 24-1701-1101

010. DEFINITIONS (RULE 10).

- 01. Board.** The State Board of Acupuncture as prescribed in Section 54-4704, Idaho Code. (3-10-00)
- 02. Technician Certificate.** The category of license granted to an ~~qualified applicant who meets the requirements pursuant to~~ individual as set forth in Section 54-4708A, Idaho Code. ~~(3-30-01)~~(8-5-11)T
- 03. Certification.** The category of license granted to a qualified applicant who meets the requirements pursuant to Section 54-4707, Idaho Code. (3-30-01)
- 04. License.** Any license, certification or technician certificate issued to a qualified applicant pursuant to ~~IDAPA 24-17-01, "Rules of the State Board of Acupuncture," promulgated by~~ the laws and rules of the Board, permitting said applicant to practice acupuncture in the state of Idaho. ~~(3-10-00)~~(8-5-11)T
- 05. Practitioner.** A person to whom a license, certification, ~~or~~ technician certificate, or acupuncture trainee has been issued pursuant to Title 54, Chapter 47, Idaho Code. ~~(3-30-01)~~(8-5-11)T
- 06. Licensure/Licensed.** The category of license granted to a qualified applicant who meets the requirements pursuant to Section 54-4706, Idaho Code. (3-30-01)
- 07. Approved Acupuncture Program.** A formal full-time acupuncture educational program that has met the standards of the Accreditation Commission for Acupuncture and Oriental Medicine or an equivalent educational body. An acupuncture program may be established as having satisfied this requirement by obtaining: (3-30-01)
- a.** Accreditation; or (3-30-01)
- b.** Candidacy for accreditation; or (3-30-01)
- c.** An equivalent evaluation performed by a private, state government, or foreign government agency recognized for that purpose by the NCCAOM (National Certification Commission for Acupuncture and Oriental Medicine) Eligibility Committee. (3-30-01)
- 08. Didactic Course Work.** Educational instruction in acupuncture that is physically obtained in a classroom or laboratory setting, and when such instruction is obtained from, and in the presence of, a person credentialed as a qualified educator of acupuncture. (3-30-01)
- 09. Clinical Practice.** Practical experience in acupuncture that is physically obtained in a health care facility in order to meet the minimum requirements for licensure or certification. (3-30-01)
- 10. Bureau.** The Bureau of Occupational Licenses as prescribed in Sections 54-4705 and 67-2602, Idaho Code. (5-3-03)
- 11. Accredited College or University.** An accredited college or university is a college or university accredited by an accrediting organization approved by the U.S. Department of Education. (4-2-08)
- 12. Acupuncture Trainee Permit.** The authorization granted to an individual as set forth in Section 54-4708, Idaho Code. (8-5-11)T
- 011. -- 099. (RESERVED)**

100. APPLICATIONS (RULE 100).

Applications for licensure, certification and ~~technician certificate~~ acupuncture trainee permit shall be on forms approved by the Board. ~~(5-3-03)~~(8-5-11)T

101. -- 199. (RESERVED)

200. QUALIFICATIONS FOR LICENSURE (RULE 200).

01. Requirements for Licensure. Applicants for licensure shall submit a complete application, required fee, and official certified documentation of either: (3-30-01)

- a. Certification from NCCAOM; or (5-3-03)
- b. Graduation from an approved formal full-time acupuncture program of at least one thousand seven hundred twenty-five (1,725) hours of entry-level acupuncture education which includes a minimum of one thousand (1000) hours of didactic course work and five hundred (500) clinical hours practice; and (3-30-01)
- c. Successful completion of an acupuncture internship, or other equivalent experience as approved by the Board; and (3-30-01)
- d. Receipt of a passing grade on an NCCAOM Acupuncture certification examination; or (3-30-01)
- e. Other demonstration of proficiency as uniformly required by the Board for other similarly qualified applicants for licensure; and (3-30-01)
- f. Successful completion of a Blood Borne Pathogen course and comprehensive examination that incorporates clean needle techniques and OSHA procedures and requirements. (3-30-01)

02. Requirements for Certification. Applicants for certification shall submit a complete application, required fee and official certified documentation of either: (3-30-01)

- a. Successful passage of an examination or other demonstration of proficiency as approved by the board; and (4-2-08)
- b. Successful completion of the requirements for full membership of the American Academy of Medical Acupuncture; or (4-2-08)
- c. Possess a doctoral degree in chiropractic, dentistry, podiatric medicine, or naturopathic medicine from a college or university accredited by an organization approved by the U.S. Department of Education or Idaho State Board of Education; and (4-2-08)
- d. Successful completion of a minimum of one hundred (100) hours of didactic course work in acupuncture taught by an NCCAOM certified acupuncturist who has been practicing acupuncture for at least five (5) years and is currently licensed, two hundred (200) hours of practice as a certified technician or as an acupuncture trainee permit holder over a one (1) year period, twenty-five (25) case studies; and ~~(3-30-01)~~(8-5-11)T

e. Receipt of a passing grade on a board approved examination that measures minimum competency; and (4-2-08)

f. Successful completion of a Blood Borne Pathogen course and comprehensive examination that incorporates clean needle techniques and OSHA procedures and requirements. (3-30-01)

03. Requirements for Acupuncture ~~Technician Certificate~~ Trainee Permit. Applicants for Acupuncture ~~technician Certificate~~ trainee permit shall submit a complete application, required fee, and official certified documentation of either: ~~(3-30-01)~~(8-5-11)T

- a. ~~Successful completion of the requirements for clinical technician certificate from the International~~

~~Academy of Medical Acupuncture, Inc.~~ Current enrollment in an Approved Acupuncture Program and actively pursuing completion of the program; or ~~(3-10-00)~~(8-5-11)T

b. ~~Successful completion of a minimum of~~ Must meet the requirement for certification as set forth in Subsection 200.02.c. and complete the one hundred (100) hours of didactic course work ~~within one (1) academic year; and~~ as set forth in Subsection 200.02.d. ~~(3-30-01)~~(8-5-11)T

c. ~~Successful completion of a Blood Borne Pathogen course and comprehensive examination that incorporates clean needle techniques and OSHA procedures and requirements; and~~ Permit holders must work under the board approved supervision of a licensed or certified acupuncturist. ~~(3-30-01)~~(8-5-11)T

d. ~~Receipt of a passing grade on a board approved examination leading to an Acupuncture Technician Certificate, or other demonstration of proficiency as may be uniformly required for other similarly qualified applicants as approved by the Board. The permit will expire one (1) year from date of issue. The permit may be extended in accordance with Section 54-4708, Idaho Code.~~ The permit will expire one (1) year from date of issue. The permit may be extended in accordance with Section 54-4708, Idaho Code. ~~(3-30-01)~~(8-5-11)T

201. -- 225. (RESERVED)

226. REQUEST FOR APPROVAL OF QUALIFICATION (RULE 226).

01. Course Review. A person or entity may request approval of a course of study in acupuncture that will be offered to qualify applicants for a credential to practice acupuncture. The request shall include a complete description of the required hours, scope and extent of academic and other training and clinical experience offered through the course along with appropriate supporting documentation and course materials. The request shall also designate whether approval is sought for compliance with standards for licensure; or certification ~~or technician certificate.~~ ~~(3-10-00)~~(8-5-11)T

02. Individual Qualification. An applicant may request approval of his individual qualification for licensure or certification in acupuncture. The request shall include a complete description of the number of hours, scope and extent of academic and other training and clinical experience the individual has received along with available supporting documentation. The request shall also designate whether qualification is sought for licensure; or certification ~~or technician certificate.~~ A demonstration of proficiency or examination may be required as a part of the determination of the individual's qualification. ~~(3-10-00)~~(8-5-11)T

227. -- 299. (RESERVED)

300. FEES (RULE 300).

01. Application Fee. Application fee for any original license, ~~or~~ certification, or acupuncture trainee permit - one hundred dollars (\$100). ~~(3-29-10)~~(8-5-11)T

02. Original License Fee. (3-30-01)

a. Original license fee - two hundred dollars (\$200). (3-21-07)

b. Original fee for certification - two hundred dollars (\$200). (3-21-07)

c. Original fee for ~~technician certification~~ acupuncture trainee permit - one hundred fifty dollars (\$150). ~~(3-30-01)~~(8-5-11)T

03. Annual Renewal Fee. (3-10-00)

a. Annual renewal fee for licensure - one hundred twenty-five dollars (\$125). (3-29-10)

b. Annual renewal fee for certification - one hundred twenty-five dollars (\$125). (3-29-10)

c. Annual renewal fee for technician certification or acupuncture trainee permit - seventy-five dollars

(\$75).

~~(3-29-10)~~(8-5-11)T

- 04. Inactive License.** Inactive license or certification fee - fifty dollars (\$50). (3-30-01)
- 05. Non-Refundable.** All fees are non-refundable. (3-10-00)
- 06. Yearly Fees.** With the exception of Subsection 300.01 and 300.02, all fees provided under these rules are yearly fees. (3-10-00)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.18.01 - RULES OF THE REAL ESTATE APPRAISER BOARD

DOCKET NO. 24-1801-1101 (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 54-4106, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 Real Estate Appraisers is amending its rules to comply with Federal Law and to provide clarification. The edition of the Uniform Standards of Professional Appraisal Practice (USPAP) is being updated; clarifying definitions; establishing the CE provider fee; increasing the license fees to be in compliance with the Appraisal Qualifications Board (AQB); updating the application section; clarifying the qualifications for license; clarifying and amending the registered trainee section and allowing continuing education in a two year cycle; clarifying requirements for certified residential appraisers; clarifying the qualifications for certified general appraisers; amending the continuing education section to allow CE in a two year cycle; and finally amending the temporary practice to require applicants to be listed on the National Registry as proof of licensure.

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

The fees for licenses are being increased to equal the annual registry fee required by the Appraisal Subcommittee. This fee increase will have no impact on the dedicated fund since it is passed through to the Appraisal Qualifications Board. The fee rule is also being amended to set a fee for provider applications as allowed by passage of HB-82 in the 2011 session.

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 fees for licenses are being increased to equal the annual registry fee required by the Appraisal Subcommittee. This fee increase will have no impact on the dedicated fund since it is passed through to the Appraisal Qualifications Board. The fee rule is also being amended to set a fee for provider applications as allowed by passage of HB-82 in the 2011 session. The fee for provider application could increase the dedicated fund by approximately \$12,000 based on the number of provider applications received last year.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(2), Idaho Code, negotiated rulemaking was not conducted because the rule changes were discussed in a noticed open meeting with interested parties in attendance.

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 26, 2011.

DATED this 29th day of August, 2011.

Tana Cory
Bureau Chief
Bureau of Occupational Licenses
700 W State St.
Boise, ID 83720-0063
(208) 334-3233 Ph. (208) 334-3945, fax

THE FOLLOWING IS THE PROPOSED TEXT OF FEE DOCKET NO. 24-1801-1101

004. INCORPORATION BY REFERENCE (RULE 4).

The document titled "Uniform Standards of Professional Appraisal Practice (USPAP)," 2010~~2~~-2014~~3~~ Edition published by the Appraisal Foundation and effective ~~April~~ **January 31, 2009¹² as referenced in Subsection 700, is herein incorporated by reference and is available for review at the Board's office and may be purchased from the Appraisal Foundation, Distribution Center, P. O. Box 381, Annapolis Junction, MD 20701-0381. ~~(3-29-10)()~~**

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS (RULE 10).

The definitions numbered one through sixteen (1-16), appearing at Section 54-4104, Idaho Code are incorporated herein by reference as if set forth in full. (3-29-10)

01. Advisory Committee. A committee of state certified or licensed real estate appraisers appointed by the board to provide technical assistance relating to real estate appraisal standards and real estate appraiser experience, education and examination requirements that are appropriate for each classification of state certified or licensed real estate appraiser. (7-1-93)

02. Appraisal Foundation. The Appraisal Foundation means the Appraisal Foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois. (7-1-97)

03. Appraiser Qualifications Board. Appraiser Qualifications Board of the Appraisal Foundation establishes the qualifications criteria for licensing, certification and recertification of appraisers. (7-1-97)

04. Appraisal Standards Board. The Appraisal Standards Board of the Appraisal Foundation develops, publishes, interprets and amends the Uniform Standards of Professional Appraisal Practice (USPAP) on behalf of appraisers and users of appraisal services. (7-1-97)

05. Bureau. The Bureau means the Bureau of Occupational Licenses, as prescribed in Sections 54-4106(2)(a) and 67-2601, Idaho Code. (3-13-02)

06. Chief. The Bureau Chief of the Bureau of Occupational Licenses as established by Section 67-2602, Idaho Code. (7-1-93)

07. Classroom Hour. Fifty (50) minutes out of each sixty (60) minute hour in a setting that is ~~a face-to-face exchange of ideas and may include on-line virtual classrooms that allows real-time interaction between the instructor and students~~ set forth in these rules. ~~(3-29-10)()~~

08. Field Real Estate Appraisal Experience. Personal inspections of real property, assembly and analysis of relevant facts, and by the use of reason and the exercise of judgement, formation of objective opinions as

to the market or other value of such properties or interests therein and preparation of written appraisal reports or other memoranda showing data, reasoning, and conclusion. Professional responsibility for the valuation function is essential. (4-6-05)

09. FIRREA. Title XI, Financial Institutions Reform, Recovery and Enforcement Act of 1989 was designed to ensure that more reliable appraisals are rendered in connection with federally related transactions. (7-1-93)

10. Nationally Recognized Appraisal Organization. An appraisal organization which is a sponsor of The Appraisal Foundation. (4-2-08)

11. Real Estate. In addition to the previous definition in Section 54-4104(11), Idaho Code, will also mean an identified parcel or tract of land, including improvements, if any. (3-29-10)

12. Real Property. In addition to the previous definition in Section 54-4104(11), Idaho Code, will also mean one or more defined interests, benefits, or rights inherent in the ownership of real estate. (3-29-10)

13. Residential Unit. Real estate with a current highest and best use of a residential nature. A residential unit includes a kitchen and a bathroom. (3-29-10)

14. Specialized Appraisal Services. Services which include situations in which an appraiser is employed or retained to provide appraisal services that do not fall within the defined term "appraisal assignments." Specialized appraisal services relate to the employer's or client's individual needs or investment objectives and commonly include specialized marketing and financing studies as well as analysis, opinions, and conclusions rendered in connection with activities such as real estate brokerage, mortgage banking, and real estate counseling, including real estate tax counseling. (7-1-97)

15. Uniform Standards of Professional Appraisal Practice or USPAP. Those uniform standards adopted by the Appraisal Foundation's Appraisal Standards Board. These standards may be altered, amended, interpreted, supplemented, or repealed by the Appraisal Standards Board (ASB) from time to time. (3-13-02)

16. USPAP Course. For the purposes of licensure and license renewal, any reference to the approved USPAP course shall mean the National USPAP Course provided by Appraisal Qualifications Board Certified USPAP Instructors and Educational Providers. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

150. FEES (RULE 150).

Fees are established in accord with Section 54-4113, Idaho Code as follows: (7-1-93)

01. Application. Application fee for License - two hundred fifty dollars (\$250). (4-11-06)

02. Original License. Original License - one hundred ~~twenty-five~~ forty dollars (\$~~250~~40*).
(~~4-11-06~~)()

03. License Renewal. License renewal - three hundred ~~fifty~~ sixty-five dollars (\$~~350~~65*).
(~~3-29-10~~)()

04. Reinstatement. Reinstatement fees are as provided in Section 67-2614, Idaho Code - twenty-five dollars (\$25). (7-1-93)

05. Application for Reciprocity. Application for reciprocity - two hundred fifty dollars (\$250*). (3-30-01)

06. Original License Via Reciprocity. Original License via reciprocity - one hundred ~~twenty-five~~ twenty-five dollars (\$~~2500~~*). (4-11-06)()

07. Temporary Permit. Temporary permit - one hundred dollars (\$100). (7-1-93)

08. Trainee Registration Fee. Trainee registration fee - fifty dollars (\$50). (3-13-02)

09. Examination and Reexamination Fees. Examination and Reexamination fees will be calculated based on the actual cost of the examination. Successful applicants will be notified of the fees at the time they are scheduled for examination. (7-1-97)

10. Continuing Education Provider Application Fee. Continuing Education Provider Application fee - one hundred dollars (\$100). ()

101. Fees are Non-Refundable. Fees are non-refundable. (7-1-93)

112. Fees Followed By Asterisk (*) Means. Proposed fees for these categories marked with an asterisk (*) include ~~twenty-five~~ forty dollars (\$~~2540~~) to be submitted by the state to the federal government. Title XI, Section 1109 of the FIRREA as amended requires each state to submit a roster listing of state licensed appraisers to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council "no less than annually." The state is also required to collect from such individuals who perform appraisals in federally related transactions an annual registry fee of "not more than ~~twenty-five~~ eighty-five dollars (\$~~285~~)," such fees to be transmitted by the state to the federal government on an annual basis. This fee is subject to change by the Appraisal Subcommittee. (4-11-06)()

151. -- 199. (RESERVED)

200. APPLICATION (RULE 200).

01. Filing Application with Supporting Documents and Fees. Any person desiring to apply for licensure must submit a completed application with required supporting documents and appropriate fees to the Bureau at its official address. After the qualifications have been reviewed, verified and approved by the Board, the applicant will receive the pre-approved examination application card and must submit the appropriate fees to the examining entity. (4-11-06)()

02. Application Deadline Date. Completed applications must be received by the Bureau at least thirty (30) days prior to the next scheduled board meeting in order to be reviewed by the Board. Applications received less than thirty (30) days in advance will be held until a subsequent meeting. (3-13-02)

03. Eligibility for Examination. The qualified applicant will be assigned to the first available sent notification on how to register for the examination subsequent to the determination of eligibility based on documentation that the applicant has met the required education and experience requirements. (4-11-06)()

04. Trainee Registration Application. Any person desiring registration as a trainee must submit a completed application with required supporting documents and appropriate fees to the Bureau at its official address. Completed applications must be received by the Bureau at least thirty (30) days prior to the next scheduled Board meeting in order to be reviewed by the Board. (3-13-02)

05. Lack of Activity. If an applicant fails to respond to a Board request or an application has lacked activity for twelve (12) consecutive months, the application on file with the Board will be deemed denied and will be terminated upon thirty (30) days written notice, unless good cause is established to the Board. (3-29-10)

201. -- 249. (RESERVED)

250. REQUIREMENTS FOR LICENSURE (RULE 250).

All applicants for licensure in any real estate appraiser classification must comply with the following education, experience and examination requirements in addition to meeting those requirements set forth in Sections 275, 300,

350, and 400 below. (4-11-06)

01. Education. If an individual has completed the education requirements on or before December 31, 2007, the individual must submit a complete application to the board before January 1, 2011. If an individual has not completed their educational requirement on or before December 31, 2007, or submits an application on January 1, 2011 or later, the individual must complete the educational requirements which became effective January 1, 2008 and any subsequent requirements adopted prior to the individual's application date. Hours will be credited only for courses with content that follows the Required Core Curriculum as outlined by the Appraisal Qualification Board.

(4-2-08)

a. Credit toward the classroom hour requirement may only be granted where the length of the educational offering is at least fifteen (15) hours, and the individual successfully completes a closed-book examination pertinent to the educational offering. (4-11-06)

b. Credit for the classroom hour requirement may be obtained from the following: (7-1-97)

i. Colleges or Universities. (7-1-97)

ii. Community or Junior Colleges. (7-1-97)

iii. Courses approved by the Appraisal Qualifications Board. (4-2-08)

iv. State or Federal Agencies or Commissions. (7-1-97)

v. Other providers approved by the Board. (7-1-97)

c. Only those courses completed preceding the date of application will be accepted for meeting educational requirements. (3-18-99)

d. Course credits that are obtained from the course provider by challenge examination without attending the course will not be accepted. (4-11-06)

e. Prior to January 1, 2008, various appraisal courses may be credited toward the classroom hour education requirement. Applicants must demonstrate that their education involved coverage of those topics listed in Subsection 250.01.e. that are required for the license classification for which application is being made. Licensed Residential and Certified Residential must include emphasis in one (1) to four (4) unit residential properties; Certified General must include emphasis in nonresidential properties. (3-29-10)

i. Basic appraisal principles. (4-11-06)

ii. Basic appraisal procedures. (4-11-06)

iii. The fifteen (15) hour national USPAP course. (4-11-06)

iv. Market analysis and highest and best use. (4-11-06)

v. Appraiser site valuation and cost approach. (4-11-06)

vi. Sales comparison approach. (4-11-06)

vii. Sales income approach. (4-11-06)

viii. Report writing and case studies. (4-11-06)

ix. Statistics, modeling and finance. (4-11-06)

x. Advanced applications and case studies. (4-11-06)

- xi. Appraisal subject matter electives. (4-11-06)
- f. Advanced courses will be those courses for which an introductory or basic course is required as a prerequisite. Typically classes titled "Introductory," "Basic," or "Principles" will not be accepted for advanced requirements. (4-11-06)
- 02. Experience.** (7-1-97)
- a. The work product claimed for experience credit must be in conformity with ~~the USPAP or shall be in compliance with generally accepted standards which were in effect at the time those appraisals were prepared.~~ (3-13-02)()
- b. All appraisal experience must be obtained as a registered trainee or as a licensed appraiser. (4-11-06)
- c. Only experience gained during the five (5) years immediately preceding application will be considered for evaluation. (4-11-06)
- d. Acceptable non field appraisal experience includes, but is not limited to the following: Fee and Staff appraisal analysis, ad valorem tax appraisal, condemnation appraisal, technical review appraisal, appraisal analysis, review appraisal, real estate counseling, highest and best use analysis, and feasibility analysis/study. (4-11-06)
- e. Each applicant applying for licensure must verify completion of the required experience via affidavit, under oath subject to penalty of perjury, and notarized on a form provided by the Board. (4-11-06)
- i. The Board requires submission of a log that details hours claimed for experience credit. The log must include the following: (3-29-10)
- (1) Type of property; (3-29-10)
 - (2) Address of the property; (3-29-10)
 - (3) Report date; (3-29-10)
 - (4) Description of work performed; (3-29-10)
 - (5) Number of work hours; (3-29-10)
 - (6) Complexity; (3-29-10)
 - (7) Approaches to value; (3-29-10)
 - (8) Appraised value; (3-29-10)
 - (9) Scope of supervising appraiser's review; and (3-29-10)
 - (10) Supervision. (3-29-10)
- ii. The Board reserves the right to contact an employer for confirmation of length and extent of experience claimed. This may require an employer to submit appraisal reports and/or an affidavit. (7-1-97)
- iii. The Board may request submission of written reports or file memoranda that substantiate an applicant's claim for experience credit. (4-11-06)
- f. Ad valorem tax appraisers must demonstrate the use of techniques to value properties similar to

those used by appraisers and effectively use the process as defined in Subsection 010.08, Field Real Estate Appraisal Experience in order to receive experience credit. (3-29-10)

03. Examination. Successful completion of an examination appropriate to the license classification being applied for and approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. (4-11-06)

251. -- 274. (RESERVED)

275. REGISTERED TRAINEE REAL ESTATE APPRAISER (RULE 275).

01. Qualification. Each applicant for registration as an appraiser trainee must meet the following requirements: (4-11-06)

a. Education. Beginning July 1, 2006, all applicants for registration as a trainee must document completion of at least seventy-five (75) classroom hours of courses in subjects related to real estate appraisal as follows: (4-11-06)

i. Basic Appraisal Principles - not less than thirty (30) hours specifically including Real Property Concepts and Characteristics, Legal Considerations, Influences on Real Estate Values, Types of Value, Economic Principles, Overview of Real Estate Markets and Analysis, and Ethics and How They Apply in Appraisal Theory and Practice; and (4-11-06)

ii. Basic Appraisal Procedures - not less than thirty (30) hours specifically including Overview of Approaches to Value, Valuation Procedures, Property Description, and Residential Applications; and (4-11-06)

iii. National USPAP Course - not less than fifteen (15) hours. (4-11-06)

b. Experience. All applicants for registration as a trainee must retain and identify at least one (1) licensed real estate appraiser who agrees to provide the supervision required by law and rule. The supervising appraiser shall: (4-11-06)

i. Hold a current and unrestricted Idaho license as a Certified Residential Appraiser or a Certified General Appraiser; and (4-11-06)

ii. Submit evidence of completion of an approved four-hour continuing education course regarding the role of a supervising appraiser. (3-29-10)

iii. Not have been disciplined by the Board within the previous four (4) years ~~from acting as a supervisor~~; and (4-11-06) ()

iv. Not be registered to provide supervision responsibilities to more than three (3) appraiser trainees at any one (1) time; and (4-11-06)

v. Be responsible for the training and direct supervision of the appraiser trainee; and (4-11-06)

vi. Accept responsibility for all appraisal reports by signing and certifying that the report is in compliance with USPAP; and (4-11-06)

vii. Review all appraiser trainee appraisal report(s); and (4-11-06)

viii. Personally inspect each appraised property with the appraiser trainee until the supervising appraiser determines the appraiser trainee is competent in accordance with the Competency Provision of USPAP for the property type. (4-11-06)

c. Examination. Each trainee applicant shall document successful passage of examinations in each of the prerequisite courses required for registration as a trainee. (4-11-06)

02. Scope and Practice. An Appraiser Trainee shall not be involved in the appraisal of any property that exceeds the lawful scope of practice of the supervising appraiser. The appraiser trainee shall be subject to USPAP. (4-11-06)

a. Each appraiser trainee is permitted to have more than one (1) supervising appraiser provided a supervising appraiser is not registered to more than three (3) trainees at any one (1) time. (4-11-06)

b. An appraisal log shall be maintained for each supervising appraiser by the appraiser trainee and shall include no less than the following for each appraisal: (4-11-06)

i. Type of property. (4-11-06)

ii. Date of report. (4-11-06)

iii. Address of subject property. (4-11-06)

iv. Description of work performed by the trainee and the scope of review and supervision of the supervisor. (4-11-06)

v. Number of work hours. (4-11-06)

vi. Signature and license number of the supervising appraiser. (4-11-06)

c. An appraiser trainee shall be entitled to obtain copies of all appraisal reports prepared by the trainee. (4-11-06)

03. Continuing Education. Prior to the second renewal and for each renewal continuing education cycle thereafter as provided in Section 275 of this rule, an appraiser trainee shall be required to obtain: ~~(3-29-10)~~()

a. The equivalent of ~~fifteen~~ thirty (~~15~~30) classroom hours of instruction in approved courses or seminars during the ~~twelve~~ twenty-four (~~12~~24) month period preceding the renewal. Once every twenty-four (24) months, registered appraiser trainees will be required to attend an approved seven-hour USPAP update course or the equivalent. The course must cover the most recent USPAP edition. ~~(3-29-10)~~()

b. All continuing education shall be in compliance with Subsections 401.01 through 401.05. (3-29-10)

c. Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities that are determined to be equivalent to obtaining continuing education. (4-11-06)

d. The purpose of continuing education is to ensure that the appraiser trainee participates in a program that maintains and increases skill, knowledge and competence in real estate appraising. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

350. CERTIFIED RESIDENTIAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 350).

The State Certified Residential Real Estate Appraiser classification applies to the appraisal of residential properties of four (4) or less units without regard to transaction value or complexity. Applicants must meet the following education, experience and examination requirements in addition to complying with Section 250. Subsequent to being

certified every licensee must annually meet the continuing education requirement. (4-11-06)

01. Education. Prior to January 1, 2008, as a prerequisite to taking the examination for licensure as an Idaho Certified Residential Real Estate Appraiser, each applicant shall present evidence satisfactory to the board of having successfully completed not less than one hundred twenty (120) classroom hours of courses in subjects related specifically to real estate appraisal that have been approved by the board. Each applicant must have successfully completed not less than ninety (90) classroom hours of study related to those topics outlined under Subsection 250.01.e., the basic principles of real estate appraising and thirty (30) classroom hours of advanced residential or non-residential specialized courses relating to the topics specified at Subsection 250.01.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics; will be credited to the classroom hour requirement. Beginning on January 1, 2008, as a prerequisite to taking the examination for licensure as an Idaho Certified Residential Real Estate Appraiser, each applicant shall: (3-30-07)

a. Hold an Associate Degree or higher from an accredited college or university or document successful completion of no less than twenty-one (21) college semester credit hours in English Composition, Principles of Economics (micro or macro), Finance, Algebra, Geometry or higher mathematics, Statistics, Computer Science, and Business or Real Estate Law; and (4-2-08)

b. Document registration as an Appraiser Trainee and completion of the education required for licensure as a Licensed Residential Real Estate Appraiser or hold a current license as a Licensed Residential Real Estate Appraiser; and (4-11-06)

c. Document the successful completion of not less than fifty (50) classroom hours of courses in subjects related to real estate appraisal as follows: (4-11-06)

i. Statistics, Modeling and Finance - not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and (4-11-06)

ii. Advanced Residential Applications and Case Studies - not less than fifteen (15) hours specifically including Complex Property, Ownership and Market Conditions; Deriving and Supporting Adjustments; Residential Market Analysis; and Advanced Case Studies; and (4-11-06)

iii. Appraisal Subject Matter Electives - not less than twenty (20) hours and may include hours over the minimum shown in Subsection 350.01.c. (4-11-06)

02. Experience. Experience is a prerequisite to sit for the licensure examination: (4-11-06)

a. Document two thousand five hundred (2,500) hours of appraisal experience in no less than twenty-four (24) months (see Subsection 250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (4-11-06)

b. Two thousand (2,000) hours of the experience shall be from residential field appraisal experience. The balance of five hundred (500) hours may include non field experience, refer to Subsection 250.02.d. (4-11-06)

c. Examination. Successful completion of the Certified Residential Appraiser examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. ()

351. -- 399. (RESERVED)

400. CERTIFIED GENERAL REAL ESTATE APPRAISER CLASSIFICATION APPRAISER QUALIFICATION CRITERIA (RULE 400).

The State Certified General Real Estate Appraiser classification applies to the appraisal of all types of real property. Applicants must meet the following examination, education, and experience requirements in addition to complying with Section 250. Subsequent to being certified, an individual must meet the continuing education requirement. (4-2-08)

01. Education. Prior to January 1, 2008, as a prerequisite to taking the examination for licensure as an Idaho State Certified General Real Estate Appraiser, each applicant shall present evidence satisfactory to the board of having successfully completed not less than one hundred eighty (180) classroom hours of courses in subjects related specifically to real estate appraisal approved by the board. Each applicant must have successfully completed not less than one hundred sixty (160) classroom hours of study related to those topics outlined under Subsection 250.01.e. Not less than fifteen (15) and no more than twenty (20) classroom hours of studies within the last five (5) years specifically relating to the USPAP, and Code of Ethics; and one hundred (100) classroom hours of advanced non residential specialized courses relating to the topics specified at Subsection 250.01.e. Beginning on January 1, 2008, as a prerequisite to taking the examination for licensure as an Idaho Certified General Real Estate Appraiser, each applicant shall: (3-30-07)

a. Hold a Bachelors Degree or higher from an accredited college or university or document successful completion of no less than thirty (30) college semester credit hours in English Composition, Micro Economics, Macro Economics, Finance, Algebra, Geometry or higher mathematics, Statistics, Computer Science, and Business or Real Estate Law, and two (2) elective courses in accounting, geography, ag economics, business management, or real estate; and (4-2-08)

b. Document registration as an Appraiser Trainee and document the successful completion of not less than two hundred twenty-five (225) classroom hours of courses in subjects related to real estate appraisal as follows: (3-29-10)

i. Statistics, Modeling and Finance: not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; (3-29-10)

ii. General Appraiser Market Analysis and Highest and Best Use: not less than thirty (30) hours; (3-29-10)

iii. General Appraiser Sales Comparison Approach: not less than thirty (30) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; (3-29-10)

iv. General Appraiser Site Valuation and Cost Approach: not less than thirty (30) hours; (3-29-10)

v. General Appraiser Income Approach: not less than sixty (60) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; (3-29-10)

vi. General Appraiser Report Writing and Case Studies: not less than thirty (30) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and (3-29-10)

vii. Appraisal Subject Matter Electives: not less than thirty (30) hours and may include hours over the minimum shown in Subsection 400.01.b.; or (3-29-10)

c. Document licensure as a Licensed Residential Real Estate Appraiser and the successful completion of not less than one hundred fifty (150) classroom hours of courses in subjects related to real estate appraisal as follows: (3-29-10)

i. Statistics, Modeling and Finance: not less than fifteen (15) hours specifically including Statistics; Valuation Models (AVM's and Mass Appraisal); and Real Estate Finance; and (4-11-06)

ii. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and (3-29-10)

iii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case

Studies; and (3-29-10)

iv. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and (3-29-10)

v. General Appraiser Income Approach: not less than forty-five (45) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and (3-29-10)

vi. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies; and (3-29-10)

vii. Appraisal Subject Matter Electives: not less than thirty (30) hours and may include hours over the minimum shown in Subsection 400.01.c.; or (3-29-10)

d. Document licensure as a Certified Residential Real Estate Appraiser and the successful completion of not less than one hundred five (105) classroom hours of courses in subjects related to real estate appraisal as follows: (3-29-10)

i. General Appraiser Market Analysis and Highest and Best Use: not less than fifteen (15) hours; and (3-29-10)

ii. General Appraiser Sales Comparison Approach: not less than fifteen (15) hours specifically including Value Principles, Procedures, Identification and Measurement of Adjustments, Reconciliation, and Case Studies; and (3-29-10)

iii. General Appraiser Site Valuation and Cost Approach: not less than fifteen (15) hours; and (3-29-10)

iv. General Appraiser Income Approach: not less than forty-five (45) hours specifically including Overview, Compound Interest, Lease Analysis, Income Analysis, Vacancy and Collection Law, Estimating Operating Expenses and Reserves, Reconstructed Income and Expense Statement, Stabilized Net Operating Income Estimate, Direct Capitalization, Discounted Cash Flow, Yield Capitalization, Partial Interest, and Case Studies; and (3-29-10)

v. General Appraiser Report Writing and Case Studies: not less than fifteen (15) hours specifically including Writing and Reasoning Skills, Common Writing Problems, Report Options and USPAP Compliance, and Case Studies. (3-29-10)

02. Experience. Experience is a prerequisite to sit for the licensure examination: (4-11-06)

a. Document three thousand (3,000) hours of appraisal experience in no less than thirty (30) months (See Subsection 250.02). Experience documentation in the form of reports or file memoranda should be available to support the claim for experience. (4-11-06)

b. One thousand five hundred (1,500) hours of the experience must be nonresidential appraisal experience. The balance of one thousand five hundred (1,500) hours may be solely residential experience or can include up to five hundred (500) hours of nonfield experience as outlined in Subsection 250.02.d. (4-11-06)

c. Examination. Successful completion of the Certified General Appraiser examination approved by the Board pursuant to the guidelines of the Appraisal Qualifications Board. ()

401. CONTINUING EDUCATION (RULE 401).

All certified/licensed appraisers must comply with the following continuing education requirements: (7-1-97)

01. Purpose of Continuing Education. The purpose of continuing education is to ensure that the

appraiser participates in a program that maintains and increases his skill, knowledge and competency in real estate appraising. (7-1-97)

02. Hours Required. The equivalent of ~~fifteen~~ ~~thirty~~ ~~(1530)~~ classroom hours of instruction in courses or seminars during ~~each year~~ the twenty-four (24) months prior to renewal is required. If the licensee completes two (2) or more courses having substantially the same content during any one (1) ~~renewal period~~ continuing education cycle, the licensee only will receive continuing education credit for one (1) of the courses. ~~(3-29-10)~~()

a. A classroom hour is defined as fifty (50) minutes out of each sixty (60) minute segment. (7-1-93)

b. Credit toward the classroom hour requirement may be granted only where the length of the educational offering is at least two (2) hours. (7-1-97)

c. Credit for the classroom hour requirement may be obtained by accredited courses which have been approved by the Appraisal Qualification Board and by courses approved by Real Estate Appraiser Boards of states with reciprocity with Idaho. All other courses must have approval of the Board, which shall require documentation including the instructors and their qualifications, course content, length of course, and its location. Courses shall be approved for a period of four (4) years. (4-6-05)

d. Once every twenty-four (24) months, Idaho State Certified/Licensed Real Estate Appraisers and registered trainees will be required to attend an approved seven (7) hour USPAP update course or the equivalent. The course must cover the most recent USPAP edition. ~~(3-29-10)~~()

03. Credit for Appraisal Educational Processes and Programs. Continuing education credit may also be granted for participation, other than as a student, in appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, program development, authorship of textbooks, or similar activities which are determined to be equivalent to obtaining continuing education. Credit for educational processes and programs continuing education shall not exceed one-half (1/2) of the total continuing education credits required for a renewal period. (4-2-08)

04. Credit for Attending the Licensure Board Meetings. Continuing education credit may be granted for a maximum of two (2) hours each ~~renewal period~~ continuing education cycle for time spent attending one (1) Board meeting. Members of the board shall not be entitled to continuing education credit for board service. ~~(4-2-08)~~()

05. Requirement When a Certificate/License Is Cancelled. For each year (less than five (5)) in which a license is lapsed, canceled, or otherwise non-renewed, fifteen (15) hours of continuing education must be documented, including a seven (7) hour USPAP update course, prior to reinstatement. The course must cover the most recent USPAP edition. ~~(3-30-07)~~()

06. Special Exemption. The Board shall have authority to make exceptions for reasons of individual hardship, including health, when certified by a medical doctor, or other good cause. The appraiser 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. (3-29-10)

(BREAK IN CONTINUITY OF SECTIONS)

500. TEMPORARY PRACTICE (RULE 500).

01. Requirements for Issuance. A permit to temporarily practice may be issued to individuals coming to Idaho who are certified/licensed in another state and are either transferring to Idaho or have a temporary assignment in Idaho. (7-1-93)

02. Provide Proof of Current Certification or Licensure. The applicant ~~must~~ ~~provide proof of~~

~~current certification or licensure in good standing in another state or meet the requirements as set forth in these rules,~~
be listed on the National Registry, maintained by the Appraisal Subcommittee, as current and in good standing and
comply with Section 54-4115(3), Idaho Code, regarding irrevocable consent. (7-1-93)()

03. Assignments and Length of Time Permit Will Be Issued. Permit to temporarily practice will be issued on a per appraisal assignment basis for a period not to exceed six (6) months. A temporary permit may be extended one (1) time only. (3-18-99)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1101 (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 54-1717, Idaho Code.

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

Wednesday, October 26th, at 1:00 p.m. MST

**Hilton Garden Inn - Les Bois Room
7699 West Spectrum Street, 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:

It is necessary to repeal the Board's existing rules and to promulgate new and reorganized rules to provide Board licensees and registrants, subject to regulation under the Idaho Pharmacy Act and the Uniform Controlled Substances Act, the Out-of-State Mail Service Pharmacy Act, and the Wholesale Drug Distribution Act, an updated and more comprehensive set of rules governing the practice of pharmacy in Idaho. This action repeals this chapter in its entirety. The rewritten rule is being published in the Bulletin immediately following this notice under Docket No. 27-0101-1102.

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 Notices of Intent to Promulgate Rules - Negotiated Rulemaking were published in the [May 4, 2011, Vol. 11-5, page 74](#); [June 1, 2011, Vol. 11-6, page 38](#); and [August 3, 2011, Vol. 11-8, page 225](#), Idaho Administrative Bulletins.

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 repeal of this rule, contact Mark Johnston, R.Ph., Executive Director, (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 26, 2011.

DATED this 31st day of August, 2011.

Mark Johnston, R.Ph., Executive Director
Idaho State Board of Pharmacy
P. O. Box 83720

Boise, ID 83720-0067
3380 Americana Terrace, Ste. 320
Phone: (208) 334-2356 - Fax: (208)334-3536

IDAPA 27.01.01 IS BEING REPEALED IN ITS ENTIRETY

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-1102 (REWRITE - 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 54-1717, Idaho Code.

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

**Wednesday, October 26th, 2011
at 1:00 p.m. MST**

**Hilton Garden Inn - Les Bois Room
7699 West Spectrum Street, 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:

It is necessary to repeal the Board's existing rules and to promulgate new and reorganized rules to provide Board licensees and registrants, subject to regulation under the Idaho Pharmacy Act and the Uniform Controlled Substances Act, the Out-of-State Mail Service Pharmacy Act, and the Wholesale Drug Distribution Act, an updated and more comprehensive set of rules governing the practice of pharmacy in Idaho. The proposed re-write reorganizes the Board's rules, provides a more comprehensive list of definitions and fee schedules, and provides new rules affecting the practice of pharmacy and controlled substance registrants not previously addressed, including the provisions of a waiver or variance to rule, mandated electronic record keeping systems, automated dispensing and storage systems, sterile product preparation, pharmacy closing procedures, and drug manufacturer rules. Several areas of existing rule have been expanded, such as limited service pharmacy, remote dispensing site registration, unprofessional conduct, student pharmacist practice standards, and institutional pharmacy practice standards. Other existing rules have been clarified or slightly changed, including parental admixture pharmacy, registration and licensure, records retention, labeling, technicians, controlled substance inventory, pharmacy security, durable medical equipment outlets, and veterinary drug orders. Many sections have been reduced, including therapeutic equivalents, pharmacy minimum standards, space and fixtures, home health care nursing, and pharmacy advertising. Some rules have been eliminated, including many overlapping rules with Idaho Code or federal law, student pharmacist experience hours, preceptor site registration, poison control, and many paper reports.

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

The proposed rules contain small changes to fees collected by the Board, including "a reasonable administrative fee may be charged for a dishonored check or other form of payment;" "refunds issued will be reduced by a reasonable processing fee;" "duplicate certificates of registration: ten dollars (\$10)," which matches the existing duplicate pharmacist certificate of licensure; and "prescriber drug outlet: thirty-five dollars (\$35)," which replaces "clinic: thirty-five dollars (\$35)," thus this category is expanded somewhat, pursuant to 2011 changes to Idaho Code. 2011 changes to Section 54-1705(9), Idaho Code, allow the registration of a drug outlet that dispenses or distributes drugs. These proposed rules clarify that a prescriber drug outlet that only distributes, need not register, however one that dispenses does. Previously, just clinics were subject to registration in statute and imposed a thirty-five dollar (\$35) registration fee in rule. These proposed rules maintain the thirty-five dollar (\$35) fee, while expanding the number of outlets that may be registered.

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 of Pharmacy is a self-governing agency, funded mainly by license and registration fees, that utilizes no general fund appropriation. Increases or changes to fees will therefore not affect the general fund.

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was conducted. The Notices of Intent to Promulgate Rules - Negotiated Rulemaking were published in the [May 4, 2011, Vol. 11-5, page 74](#); [June 1, 2011, Vol. 11-6, page 38](#); and [August 3, 2011, Vol. 11-8, page 225](#), Idaho Administrative Bulletins.

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. (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 26, 2011.

DATED this 31st day of August, 2011.

Mark Johnston, R.Ph., Executive Director
Idaho State 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 OF FEE DOCKET NO. 27-0101-1102

IDAPA 27
TITLE 01
CHAPTER 01

27.01.01. - RULES OF THE IDAHO STATE BOARD OF PHARMACY.

SUBCHAPTER A -- STANDARD PROVISIONS
(Rules 0 through 9 -- Standard Provisions)

000. LEGAL AUTHORITY.

This chapter is adopted under the legal authority of the Uniform Controlled Substances Act, Title 37, Chapter 27, Idaho Code; the Idaho Pharmacy Act, the Idaho Wholesale Drug Distribution Act, and the Idaho Legend Drug Donation Act, Title 54, Chapter 17, Idaho Code; and specifically pursuant to Sections 37-2702, 37-2715, 54-1717, 54-1753, 54-1755, and 54-1763, Idaho Code. ()

001. TITLE AND SCOPE.

01. Title. The title of this chapter is “Rules of the Idaho State Board of Pharmacy,” IDAPA 27, Title 01, Chapter 01. ()

02. Scope. The scope of this chapter includes, but is not limited to, provision for, and clarification of, the Board’s assigned responsibility to: ()

a. Regulate and control the manufacture, distribution, and dispensing of controlled substances within or into the state, pursuant to the Uniform Controlled Substances Act, Section 37-2715, Idaho Code; ()

b. Regulate and control the practice of pharmacy, pursuant to the Idaho Pharmacy Act, Section 54-1718, Idaho Code; and ()

c. Carry out its duties in regard to drugs, devices and other materials used in the diagnosis, mitigation and treatment, or prevention of injury, illness, and disease, pursuant to Section 54-1719, Idaho Code, or in regard to professionals or other individuals licensed or registered by the Board or otherwise engaged in conduct subject to regulation under these Acts. ()

002. WRITTEN INTERPRETATIONS.

Written interpretations, explanatory comments that accompanied a notice of proposed rulemaking, comments submitted in a rulemaking process, or written statements that the Board may have or prepare that pertain to the interpretation of the rules of this chapter may be obtained through submission of a public records request pursuant to Idaho Code 3-337, *et seq.* ()

003. ADMINISTRATIVE PROCEEDINGS AND APPEALS.

Administrative proceedings and appeals are administered by the Board in accordance with the Idaho Rules of Administrative Procedure of the Attorney General, IDAPA 04.11.01, Subchapter B -- Contested Cases, Rules 100 through 800. ()

01. Place and Time for Filing. Documents in rulemakings or contested cases must be filed with the executive director of the Board at the Board office between the hours of 8 a.m. and 5 p.m., Mountain Time, Monday through Friday, excluding state holidays. ()

02. Manner of Filing. One (1) original of each document is sufficient for filing; however, the person or officer presiding over a particular rulemaking or contested case proceeding may require the filing of additional copies. A document may be filed with the Board by e-mail or fax if legible, complete, and received during the Board’s office hours. The filing party is responsible for verifying with Board staff that an e-mail or fax was successfully and legibly received. ()

004. INCORPORATION BY REFERENCE.

No documents have been incorporated by reference into these rules. ()

005. BOARD OFFICE INFORMATION.

01. Street Address. The office is located at 1199 Shoreline Lane, Suite 303, Boise, Idaho. ()

02. Mailing Address. The mailing address is P.O. Box 83720, Boise, Idaho 83720-0067. ()

03. Telephone Number. The telephone number is (208) 334-2356. ()

04. Fax Number. The fax number is (208) 334-3536. ()

05. Electronic Address. The website address is <http://bop.accessidaho.org>. ()

06. Office Hours. The office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, ()

excluding state holidays. ()

006. PUBLIC RECORDS ACT COMPLIANCE.

Board of Pharmacy records and filings are subject to compliance with the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

007. OFFICIAL BOARD JOURNAL.

The official journal of the Board is the Idaho Board of Pharmacy Newsletter. A link to recent versions of the newsletter is posted on the Board's website and copies may be obtained from the Board office. Board licensees and registrants are presumed to have knowledge of the contents of the newsletter on the date of publication. The newsletter may be used in administrative hearings as proof of notification. ()

008. MAINTENANCE, RETENTION, AND INSPECTION OF RECORDS.

01. Records Maintenance and Retention Requirement. Unless an alternative standard is stated for a specified record type, form, or format, records required to evidence compliance with statutes or rules enforced by the Board must be maintained as required and retained in a readily retrievable form and location for at least three (3) years. ()

02. Records Subject to Board Inspection. Records created, maintained, or retained by Board licensees or registrants in compliance with statutes or rules enforced by the Board must be made available for inspection upon request by Board inspectors or authorized agents. It is unlawful to refuse to permit or to obstruct a Board inspection. ()

009. POLICIES AND PROCEDURES.

Policies and procedures required by this chapter must be written and maintained onsite or immediately retrievable in electronic form, operationally implemented and enforced, and updated or revised as necessary to maintain compliance with these rules. ()

010. DEFINITIONS AND ABBREVIATIONS (A -- I).

01. Accredited School or College of Pharmacy. A school or college that meets the minimum standards of the ACPE and appears on its list of accredited schools or colleges of pharmacy. ()

02. ACPE. Accreditation Council for Pharmacy Education. ()

03. Acute Care Hospital. A facility in which concentrated medical and nursing care is provided by, or under the supervision of, physicians on a twenty-four (24) hour basis to inpatients experiencing acute illnesses. ()

04. ADS -- Automated Dispensing and Storage. A mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, dispensing, or distribution of drugs and that collects, controls, and maintains transaction information. ()

05. CDC. United States Department of Health and Human Services, Centers for Disease Control and Prevention. ()

06. Central Pharmacy. A pharmacy within the state or a registered telepharmacy across state lines with which centralized pharmacy services have been contracted. ()

07. Centralized Pharmacy Services. The processing by a pharmacy of a request from another pharmacy to fill, refill, or dispense a prescription drug order or to perform processing functions such as prospective drug review. ()

08. Change of Ownership. A change of majority ownership or controlling interest of a drug outlet licensed or registered by the Board. ()

- 09. Charitable Clinic or Center -- Authorized Personnel.** A person designated in writing and authorized by the qualifying charitable clinic or center's medical director or consultant pharmacist to perform specified duties within the charitable clinic or center under the supervision of a pharmacist, physician, dentist, optometrist, physician assistant, or an advanced practice professional nurse with prescriptive authority. ()
- 10. Chart Order.** A lawful drug order for a drug or device entered on the chart or a medical record of an inpatient or resident of an institutional facility. ()
- 11. CME.** Continuing medical education. ()
- 12. COE -- Central Order Entry.** A pharmacy that processes information related to the practice of pharmacy, engages solely in centralized prescription processing but from which drugs are not dispensed, is physically located outside the institutional pharmacy of a hospital, and is part of a hospital system. ()
- 13. Collaborative Pharmacy Practice.** A pharmacy practice whereby one (1) or more pharmacists jointly agree to work under a protocol authorized by one (1) or more prescribers to provide patient care and DTM services not otherwise permitted to be performed by a pharmacist under specified conditions or limitations. ()
- 14. Collaborative Pharmacy Practice Agreement.** A written agreement between one (1) or more pharmacists and one (1) or more prescribers that provides for collaborative pharmacy practice. ()
- 15. Continuous Quality Improvement Program.** A system of standards and procedures to identify and evaluate quality-related events and to constantly enhance the efficiency and effectiveness of the structures and processes of a pharmacy system. ()
- 16. CPE.** Continuing pharmacy education. ()
- 17. CPEU.** Continuing pharmacy education unit. ()
- 18. DEA.** United States Drug Enforcement Administration. ()
- 19. Distributor.** A supplier of drugs manufactured, produced, or prepared by others to persons other than the ultimate consumer. ()
- 20. DME.** Durable medical equipment. ()
- 21. Drug Order.** A prescription drug order issued in the unique form and manner permitted for a patient or resident of an institutional facility or as permitted for other purposes by these rules. Unless specifically differentiated, rules applicable to a prescription drug order are also applicable to a drug order. ()
- 22. Drug Product Selection.** The act of selecting either a brand name drug product or its therapeutically equivalent generic. ()
- 23. Drug Product Substitution.** Dispensing a drug product other than prescribed without the express permission of the prescriber and patient. ()
- 24. DTM -- Drug Therapy Management.** Selecting, initiating, or modifying drug treatment. ()
- 25. Emergency Drugs.** Drugs required to meet the immediate therapeutic needs of one (1) or more patients that are not available from any other authorized source in sufficient time to avoid risk of harm due to the delay that would result from obtaining the drugs from another source. ()
- 26. Executive Director.** The Idaho State Board of Pharmacy executive director created by Sections 54-1713 and 54-1714, Idaho Code. ()
- 27. FDA.** United States Food and Drug Administration. ()

- 28. Flavoring Agent.** An additive used in food or drugs when the additive: ()
- a.** Is used in accordance with the principles of good pharmacy practices and in the minimum quantity required to produce its intended effect; ()
 - b.** Consists of one or more ingredients generally recognized as safe in food and drugs; ()
 - c.** Is not greater than five percent (5%) of the total weight of the product. ()
- 29. Floor Stock.** Drugs or devices not labeled for a specific patient that are maintained at a nursing station or other department of an institutional facility, excluding the pharmacy, for the purpose of administering to patients of the facility. ()
- 30. HIPAA.** Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191). ()
- 31. Hospital System.** A hospital or hospitals and at least one (1) on-site institutional pharmacy under common ownership. A hospital system may also include a hospital or hospitals and one (1) or more COE pharmacies under common ownership. ()
- 32. Idaho State Board of Pharmacy or Idaho Board of Pharmacy.** The terms Idaho State Board of Pharmacy, Idaho Board of Pharmacy, State Board of Pharmacy, and Board of Pharmacy are deemed synonymous and are used interchangeably to describe the entity created under the authority of Title 54, Chapter 17, Idaho Code. Unless specifically differentiated, “the Board” or “Board” also means the Idaho State Board of Pharmacy. ()
- 33. Individually Identifiable Health Information.** Information that is a subset of health information, including demographic information, collected from an individual and that: ()
- a.** Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and ()
 - b.** Relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual that:
 - i.** Identifies the individual; or ()
 - ii.** With respect to which there is a reasonable basis to believe the information can be used to identify the individual. ()
- 34. Institution Engaged in The Practice of Telepharmacy Across State Lines.** An institutional facility engaged in the practice of telepharmacy into Idaho that is an out-of-state hospital with an institutional pharmacy licensed or registered in another state or a COE pharmacy licensed or registered in another state that is part of a hospital system. ()
- 35. Institutional Pharmacy.** A pharmacy located in an institutional facility. ()

011. DEFINITIONS AND ABBREVIATIONS (J -- R).

- 01. LTCF -- Long-Term Care Facility.** An institutional facility that provides extended health care to resident patients. ()
- 02. MPJE.** Multistate Pharmacy Jurisprudence Exam. ()
- 03. MTM -- Medication Therapy Management.** A distinct service or group of services that optimize therapeutic outcomes for individual patients. MTM services are independent of, but can occur in conjunction with, the provision or administration of a drug or a device and encompass a broad range of activities and responsibilities. The MTM service model in pharmacy practice includes the following five core elements: ()

- a. Medication therapy review; ()
- b. Personal medication record; ()
- c. Medication-related action plan; ()
- d. Intervention or referral, or both; ()
- e. Documentation and follow-up. ()
- 04. **NABP.** National Association of Boards of Pharmacy. ()
- 05. **NAPLEX.** North American Pharmacists Licensure Examination. ()
- 06. **NDC.** National Drug Code. ()
- 07. **Non-Institutional Pharmacy.** A pharmacy located in a drug outlet that is not an institutional facility. ()
- 08. **Parenteral Admixture.** The preparation and labeling of sterile products intended for administration by injection. ()
- 09. **Pharmaceutical Care Services.** A broad range of pharmacist-provided cognitive services, activities and responsibilities intended to optimize drug-related therapeutic outcomes for patients. Pharmaceutical care services may be performed independent of, or concurrently with, the dispensing or administration of a drug or device and encompasses services provided by way of MTM, pharmacotherapy, clinical pharmacy practice, pharmacist independent practice, and DTM under a collaborative practice agreement. Pharmaceutical care services are not limited to, but may include one (1) or more of the following, according to the individual needs of the patient: ()
 - a. Performing or obtaining necessary assessments of the patient's health status; ()
 - b. Reviewing, analyzing, evaluating, formulating or providing a drug utilization or treatment plan; ()
 - c. Monitoring and evaluating the patient's response to therapy, including safety and effectiveness; ()
 - d. Performing a comprehensive drug review to identify, resolve, and prevent drug-related problems, including adverse drug events; ()
 - e. Documenting the care delivered; ()
 - f. Communicating essential information or referring the patient to other care providers when necessary or appropriate; ()
 - g. Providing counseling education, information, support services, and resources applicable to a drug, disease state, or a related condition or designed to enhance patient compliance with therapeutic regimens; ()
 - h. Conducting a drug therapy review consultation with the patient or caregiver; ()
 - i. Preparing or providing information as part of a personal health record; ()
 - j. Identifying processes to improve continuity of care and patient outcomes; ()
 - k. Providing consultative drug-related intervention and referral services; ()

- l.** Coordinating and integrating pharmaceutical care services within the broader health care management services being provided to the patient; and ()
- m.** Other services as allowed by law. ()
- 10. Pharmacist Extern.** A person enrolled in an accredited school or college of pharmacy who is pursuing a professional degree in pharmacy and is obtaining practical experience under the supervision of a pharmacist. ()
- 11. Pharmacist Intern.** A person who has successfully completed a course of study at an accredited school or college of pharmacy, has received a professional degree in pharmacy, and is obtaining practical experience under the supervision of a pharmacist. ()
- 12. Pharmacy Operations.** Activities related to and including the preparation, compounding, distributing, or dispensing of drugs or devices from a pharmacy. ()
- 13. PHI -- Protected Health Information.** Individually identifiable health information that is: ()
- a.** Transmitted by electronic media (as defined by the HIPAA Privacy Rule at 45 CFR 160.103); ()
- b.** Maintained in electronic media; and ()
- c.** Transmitted or maintained in any other form or medium. ()
- d.** PHI excludes individually identifiable health information in: ()
- i.** Education records covered by the Family Education Right and Privacy Act, as amended (20 U.S.C. Section 1232g); ()
- ii.** Records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv); and ()
- iii.** Employment records held by a covered entity (as defined by the HIPAA Privacy Rule at 45 CFR 160.103) in its role as an employer. ()
- 14. PIC.** Pharmacist-in-charge. ()
- 15. PMP.** Prescription Monitoring Program. ()
- 16. Prepackaging.** The act of transferring a drug, manually or using an automated system, from a manufacturer's original container to another container prior to receiving a prescription drug order. ()
- 17. Prescriber.** An individual currently licensed, registered, or otherwise authorized to prescribe and administer drugs in the course of professional practice. ()
- 18. Prescriber Drug Outlet.** A drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples. ()
- 19. Readily Retrievable.** Records are considered readily retrievable if they are able to be completely and legibly produced upon request within seventy-two (72) hours. ()
- 20. Relative Contraindication.** A condition that renders a particular treatment or procedure inadvisable, but not prohibitive. ()
- 21. Remote Dispensing Site.** A licensed pharmacy staffed by one or more certified technicians at

which telepharmacy services are provided through a supervising pharmacy. ()

22. Retail Non-Pharmacy Drug Outlet. A retail outlet that sells non-prescription drugs or devices that is not a pharmacy. ()

23. Retail Pharmacy. A community or other pharmacy that sells prescription drugs at retail and is open to the public for business. ()

24. R.N. Registered nurse. ()

012. DEFINITIONS AND ABBREVIATIONS (S -- Z).

01. Sample. A unit of a drug that is not intended to be sold and is intended to promote the sale of the drug. ()

02. Secured Pharmacy. The area of a drug outlet where prescription drugs are prepared, compounded, distributed, dispensed, or stored. ()

03. Skilled Nursing Facility. An institutional facility or a distinct part of an institutional facility that is primarily engaged in providing daily skilled nursing care and related services. ()

04. Student Pharmacist. A term inclusive of pharmacist intern and pharmacist extern if differentiation is not needed. ()

05. Technician. Unless specifically differentiated, a term inclusive of pharmacy technician, certified pharmacy technician, and technician-in-training to indicate an individual authorized by registration with the Board to perform routine pharmacy support services under the supervision of a pharmacist. ()

06. Telepharmacy. The use of telecommunications and information technologies in the practice of pharmacy to provide pharmaceutical care services to patients at a distance. ()

07. Therapeutic Equivalent Drugs. Products assigned an "A" code by the FDA in the Approved Drug Products with Therapeutic Equivalence Evaluations (Orange Book). ()

08. Unit Dose. Drugs packaged in individual, sealed doses with tamper-evident packaging (for example, single unit-of-use, blister packaging, unused injectable vials, and ampules). ()

09. USP. United States Pharmacopeia. ()

10. USP-NF. United State Pharmacopeia-National Formulary. ()

11. VAWD -- Verified Accredited Wholesale Distributor. An accreditation program for wholesale distributors offered through NABP. ()

12. VDO -- Veterinary Drug Outlet. A registered establishment that employs a qualified VDT to distribute prescription veterinary drugs pursuant to lawful orders of a veterinarian. ()

13. VDT -- Veterinary Drug Technician. A non-pharmacist qualified by registration with the Board to distribute prescription veterinary drugs in a VDO. ()

14. Veterinary Drug Order. A lawful order by a veterinarian issued pursuant to the establishment of a veterinarian-patient-client relationship as recognized by the American Veterinary Medical Association. ()

15. VIS. Vaccine Information Statement. ()

013. WAIVERS OR VARIANCES.

01. Criteria. The Board may grant or deny, in whole or in part, a waiver of, or variance from, specified Board rules based on consideration of the following: ()

a. The application of a certain rule or rules is unreasonable and would impose an undue hardship or burden on the petitioner; ()

b. The waiver or variance requested would not allow conduct specifically prohibited by, or otherwise contrary to, state or federal law; ()

c. The granting of the waiver or variance is consistent with the Board's mandate to promote, preserve, and protect public health, safety, and welfare; and ()

d. The granting of the waiver or variance will afford substantially equal protection of public health, safety, and welfare intended by the particular rule for which the waiver or variance is requested. ()

02. Content and Filing of a Waiver or Variance Petition. A petition for waiver or variance must be submitted in writing and must include at least the following: ()

a. The name, address, and telephone number of the petitioner; ()

b. A specific reference to the rule or rules from which a waiver or variance is requested; ()

c. A statement detailing the waiver or variance requested, including the precise scope and duration; ()

d. The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of the waiver or variance; and ()

e. The name, address, and telephone number of any known person who would be adversely affected by the granting of the waiver or variance. ()

03. Additional Information. Prior to granting or denying the waiver or variance, the executive director may request additional information from the petitioner and may require the petitioner to appear before the Board at an upcoming Board meeting. ()

04. Granting or Denying the Petition for Waiver or Variance. The decision to grant or deny the petition for waiver or variance will be at the discretion of the Board or, pursuant to Board authorization, its executive director based upon consideration of relevant factors. ()

05. Administrative Deadlines. A waiver or variance request that delays or cancels an administrative deadline will not be granted by the Board. ()

06. Conditions. Waivers or variances may be granted subject to binding conditions, limitations, or restrictions determined necessary to protect the public health, safety, and welfare. ()

07. Time Period of Waiver or Variance. Waivers or variances may be granted on a permanent or temporary basis. Temporary waivers or variances have no automatic renewal, but may be renewed if the Board finds that sufficient grounds to allow the waiver or variance continue to exist. ()

08. Cancellation or Modification of a Waiver or Variance. A waiver or variance granted by the Board may be cancelled or modified if the Board finds any of the following: ()

a. The petitioner or other person who was the subject of the waiver or variance withheld or misrepresented material facts; ()

b. The alternative means for ensuring adequate protection of public health, safety, or welfare are demonstrated to be insufficient after issuance of the waiver or variance; or ()

c. The subject of the waiver or variance has failed to comply with the prescribed conditions, limitations, or restrictions of the waiver or variance. ()

09. Violations. Violation of a condition, restriction, or limitation of a waiver or variance will be deemed a violation of the particular rule or rules for which the waiver or variance was granted. ()

014. BOARD-RECOGNIZED EXAMINATIONS, CERTIFICATIONS, AND PROGRAMS.

A specific reference in these rules to a named examination or examining body, certification or certifying body, or other item or program indicates the Board's review and determination that the referenced item or entity meets the Board's objectives or desired criteria and has thus been granted Board recognition. Nevertheless, a specific reference in these rules is not intended to, and does not, indicate exclusivity, and alternative equivalents may also be accepted upon prior Board consideration and approval. ()

015. BOARD INSPECTIONS AND INVESTIGATIONS.

01. Inspections. Prior to the commencement of business, if required, and thereafter at reasonable times, in a reasonable manner, to the extent authorized by law, and upon presentation of appropriate identification, registrants and licensees must permit the Board or its compliance officers to enter and inspect the premises and to audit the records of each drug outlet for compliance with laws enforced by or under the Board's jurisdiction. ()

02. Inspection Deficiencies. Deficiencies noted must be promptly remedied, and if requested, the Board office notified of corrective measures. If required, one (1) follow-up inspection may be performed by the Board at no cost. Additional follow-up inspections will be at the expense of the drug outlet. Charges for additional inspections will be actual travel and personnel costs incurred in the inspection and must be paid within ninety (90) days of inspection. ()

03. Inspection Reports. Inspection reports must be reviewed with the Board inspector and signed by an agent of the drug outlet upon completion of the exit interview. The licensee or registrant must retain a copy of the inspection report issued by the inspector or investigator in an immediately retrievable manner. ()

04. Investigations. Licensees or registrants must also fully cooperate with Board investigations conducted to confirm compliance with laws enforced by the Board, to gather information pertinent to a complaint received by the Board, or to enforce disciplinary actions. ()

05. Prosecution of Violations -- Reporting Discretion Reserved. The executive director will report violations of law to proper prosecuting authorities as required by law or otherwise ordered by the Board. These rules should not be construed as requiring the Board, through its executive director, to report violations for the initiation of formal proceedings when not required by law and if the Board believes, under the circumstances, that public interest will be adequately served through administrative disciplinary processes. ()

016. BOARD OF PHARMACY LICENSURE AND REGISTRATION.

The Board is responsible for the control and regulation of the practice of pharmacy in or into the state of Idaho, which includes the licensure or registration of professional, supportive, and ancillary personnel who engage in or support the practice. The Board is also responsible for the control, regulation, and registration of persons or drug outlets that manufacture, distribute, or dispense controlled substances within or into the state. Licenses or registrations required by state or federal law, or both, must be obtained prior to engaging in these practices or their supportive functions. ()

01. Pharmacy Practice Act Licenses and Registrations. The Board will issue or renew a license or a certificate of registration upon application and determination that the applicant has satisfied the requirements of the Idaho Pharmacy Act and any additional criteria specified by these rules for the license or registration classification. Licenses and certificates of registration issued pursuant to Title 54, Chapter 17, Idaho Code, expire annually on June 30 unless an alternate expiration term or date is specifically stated in these rules. ()

02. Idaho Controlled Substances Act Registrations. The Board will issue or renew controlled substance registrations upon application and determination that the applicant has satisfied the requirements of the

Idaho Controlled Substances Act and any additional criteria specified by state or federal law applicable to applicants that manufacture, distribute, or dispense, or conduct research with, controlled substances. Registrations issued pursuant to Title 37, Chapter 27, Idaho Code, expire annually on June 30 for pharmacists and on December 31 for all other registrants. ()

a. Unless a wholesaler, an applicant for an Idaho controlled substance registration must hold a valid, unrestricted Idaho license to prescribe, dispense, or administer controlled substances and, unless a pharmacist or certified euthanasia technician, a valid federal DEA registration. ()

b. A registrant engaging in more than one (1) group of independent activities, as defined by federal law, must obtain a separate Idaho controlled substance registration for each group of activities if not exempted from separate DEA registration by federal law. ()

017. LICENSURE AND REGISTRATION APPLICATION AND RENEWAL.

01. Board Forms. Initial licensure and registration applications, annual renewal applications, and other forms used for licensure, registration, or other purposes must be in such form as designated by the Board. ()

02. Incomplete Applications. Information requested on the application or other form must be provided and submitted to the Board office with the applicable fee or the submission will be considered incomplete and will not be processed. ()

03. On-Time Annual Renewal Application. Licenses and registrations must be renewed annually to remain valid. Applications for renewal must be completed and submitted to the Board office prior to the license or registration expiration. Timely submission of the renewal application is the responsibility of each licensee or registrant. ()

04. Late Application. Failure to submit a renewal application prior to the expiration date will cause the license or registration to lapse and will result in the assessment of a late fee and possible disciplinary action. A lapsed license or registration is invalid until renewal is approved by the Board and if not renewed within thirty (30) days after its expiration will require reinstatement. ()

05. Exemption. New licenses and registrations issued ten (10) weeks or less prior to the renewal due date are exempt from the renewal requirements that year only. ()

06. Reporting Information Changes. Changes to required information provided on or with the initial or renewal application must be reported to the Board within ten (10) days of the change. ()

018. LICENSE OR REGISTRATION REINSTATEMENT.

The Board may, at its discretion, consider reinstatement of a license or registration upon receipt of a written petition and payment of the reinstatement and other fees due or delinquent at the time reinstatement is requested. ()

01. Satisfactory Evidence. If applicable, reinstatement applicants must also provide satisfactory evidence of completion of continuing education requirements and compliance with any direct orders of the Board. ()

02. Additional Requirements. A pharmacist reinstatement applicant must provide evidence of completion of a minimum of thirty (30) CPEUs within the twenty-four (24) months prior to reinstatement application and may be required to appear before the Board. The Board may also, at its discretion, impose additional requirements on a pharmacist reinstatement applicant who has not practiced as a pharmacist for the preceding twelve (12) months or longer that may include taking and passing an examination, completion of forty (40) intern hours for each year away from the practice of pharmacy, completion of additional CPEUs, or other requirements determined necessary to acquire or demonstrate professional competency. ()

019. LICENSE AND REGISTRATION POSTING.

Licenses and registrations issued under the Idaho Pharmacy and the Uniform Controlled Substances Acts must be

conspicuously posted at the licensed or registered location or at the drug outlet where the licensee or registrant is employed. ()

01. Application Pending. Pending receipt of the current registration or license from the Board, the confirmation of successful submission of an online application must be printed and posted. ()

02. Temporary Locations. A licensee or registrant engaged in professional practice at a temporary or alternate location or in training must be able to produce written proof of licensure or registration immediately upon request. ()

020. BOARD FEES.

01. Fee Determination and Collection. Pursuant to the authority and limitations established by Sections 37-2715 and 54-1720(5)(a), Idaho Code, the Board has determined and will collect fees for the issuance, annual renewal, or required reinstatement of licenses and certificates of registration to persons and drug outlets engaged in acts or practices regulated by the Board. The Board may also charge reasonable fees for specified administrative services or publications. ()

02. Time and Method of Payment. Fees are due and must be paid by cash, credit card, or by personal, certified, or cashier's check or money order payable to the "Idaho State Board of Pharmacy" at the time of application, submission, or request. Fees are nonrefundable and will not be prorated. ()

03. Fee For Dishonored Payment. A reasonable administrative fee may be charged for a dishonored check or other form of payment. If a license or registration application has been approved or renewed by the Board and payment is subsequently dishonored, the approval or renewal is immediately revoked on the basis of the submission of an incomplete application. The board may require subsequent payments to be made by cashier's check, money order, or other form of guaranteed funds. ()

04. Overpayment of Fees. "Overpayment" refers to the payment of any fee in excess of the required amount. Refunds issued will be reduced by a reasonable processing fee that will not exceed one hundred dollars (\$100). ()

05. Fee Exemption for Controlled Substance Registrations. Persons or drug outlets exempt pursuant to federal law from fee requirements applicable to controlled substance registrations issued by the DEA are also exempt from fees applicable to controlled substance registrations issued by the Board. ()

021. FEE SCHEDULE.

01. Licenses -- Professionals. ()

a. Original pharmacist license: one hundred dollars (\$100). ()

b. Licensure by reciprocity: two hundred fifty dollars (\$250). ()

c. Pharmacist license annual renewal. ()

i. Active: ninety dollars (\$90). ()

ii. Inactive: fifty dollars (\$50). ()

d. Late payment processing: fifty dollars (\$50). ()

e. License reinstatement fee: seventy-five dollars (\$75). ()

02. Certificates of Registration -- Professionals. ()

a. Pharmacist engaged in telepharmacy across state lines -- registration or annual renewal: two

- hundred fifty dollars (\$250). ()
- b.** Pharmacist intern - registration or annual renewal: fifty dollars (\$50). ()
 - c.** Pharmacist extern registration and annual renewal: fifty dollars (\$50) due upon enrollment in an accredited school or college of pharmacy and renewed annually at no charge. ()
 - d.** Technician - registration or annual renewal: thirty-five dollars (\$35). ()
 - e.** Veterinary drug technician - registration or annual renewal: thirty-five dollars (\$35). ()
 - f.** Registration reinstatement: one-half (1/2) the amount of the annual fee. ()
- 03. Certificates of Registration and Licensure - Facilities.** ()
- a.** Retail pharmacy - registration or annual renewal: one hundred dollars (\$100). ()
 - b.** Institutional facility - registration or annual renewal. ()
 - i.** Hospital pharmacy: one hundred dollars (\$100). ()
 - ii.** Nursing home: thirty-five dollars (\$35). ()
 - iii.** Hospital without a pharmacy: thirty-five dollars (\$35). ()
 - c.** Manufacturer (including a repackager that is a manufacturer's authorized distributor of record) - registration or annual renewal: one hundred dollars (\$100). ()
 - d.** Wholesaler. ()
 - i.** License or annual renewal: one hundred thirty dollars (\$130); or ()
 - ii.** Registration or annual renewal: one hundred dollars (\$100). ()
 - e.** Veterinary drug outlet - registration or annual renewal: one hundred dollars (\$100). ()
 - f.** Telepharmacy across state lines - registration or annual renewal: one hundred dollars (\$100). ()
 - g.** Mail service pharmacy. ()
 - i.** Initial license: five hundred dollars (\$500). ()
 - ii.** License annual renewal: two hundred fifty dollars (\$250). ()
 - h.** Limited service outlet - registration or annual renewal. ()
 - i.** Limited service pharmacy: one hundred dollars (\$100). ()
 - ii.** Parenteral admixture pharmacy: one hundred dollars (\$100). ()
 - iii.** Remote dispensing pharmacy: one hundred dollars (\$100). ()
 - iv.** Facility operating a narcotic treatment program: one hundred dollars (\$100). ()
 - v.** Durable medical equipment outlet: fifty dollars (\$50). ()

- vi. Prescriber drug outlet: thirty five dollars (\$35). ()
- i. Analytical or research lab -- registration or annual renewal: forty dollars (\$40). ()
- j. Retail non-pharmacy outlets - registration or annual renewal. ()
- i. "A" (Stocks more than fifty (50) drug items): sixty dollars (\$60). ()
- ii. "B" (Stocks fifty (50) or fewer drug items): twenty-five dollars (\$25). ()
- iii. "V" (Vending machines): ten dollars (\$10) per machine. ()
- k. Supplemental facility registrations or annual renewals. ()
- i. Laminar flow or other hood, biological safety cabinet, or barrier isolator -- single registration required for one (1) or more hoods: no charge. ()
- ii. ADS system -- single registration required for one (1) or more systems: no charge. ()
- l. Reinstatement: one-half (1/2) the amount of the annual fee. ()
- 04. Controlled Substance Registration.** ()
- a. Controlled substance - registration or annual renewal: sixty dollars (\$60). ()
- b. Wholesaler or distributor controlled substance - registration or annual renewal: one hundred dollars (\$100). ()
- c. Controlled substance registration reinstatement: seventy-five dollars (\$75). ()
- 05. Administrative Services and Publications.** ()
- a. Experiential hours certification: twenty-five dollars (\$25). ()
- b. Controlled substance inventory book: fifteen dollars (\$15). ()
- c. Duplicate pharmacist certificate of licensure: thirty-five dollars (\$35). ()
- d. Duplicate registration or license card: ten dollars (\$10). ()
- e. Commercial lists. ()
- i. Pharmacy list: fifty dollars (\$50). ()
- ii. Pharmacist list: fifty dollars (\$50). ()
- iii. Controlled Substances Act ("CSA") registrant list: one hundred fifty dollars (\$150). ()
- f. Official Idaho Register: fifteen dollars (\$15). ()
- g. Idaho Pharmacy Laws and Rules book: thirty-five dollars (\$35). ()
- h. Hearing transcript: five dollars (\$5) per page. ()

022. -- 029. (RESERVED)

SUBCHAPTER B -- PROFESSIONAL AND DRUG OUTLET LICENSURE

AND REGISTRATION PROVISIONS
(Rules 30 Through 99 -- Professional And Drug Outlet Licensure
And Registration Provisions)

030. PHARMACIST LICENSURE BY EXAMINATION -- ACCREDITED SCHOOL OR COLLEGE OF PHARMACY GRADUATES.

To be considered for licensure, a graduate of an accredited school or college of pharmacy within the United States must satisfy the requirements of Section 54-1722(1)(a) through (e), Idaho Code, and submit to the Board a complete application for licensure by examination. ()

031. PHARMACIST LICENSURE BY EXAMINATION -- FOREIGN PHARMACY GRADUATES.

01. Licensure Submission Requirements. To be considered for licensure, a graduate of a school or college of pharmacy located outside of the United States must submit an application for licensure by examination, certification by the Foreign Pharmacy Graduate Examination Committee (FPGEC), and certification of completion of a minimum of fifteen hundred (1500) experiential hours. ()

02. Affidavit. An Idaho State Board of Pharmacy Employer's Affidavit certifying the experiential hours of a foreign pharmacy graduate must be signed by a pharmacist licensed and practicing in the United States and submitted to the Board. The Board may also request verifiable business records to document the hours. ()

032. PHARMACIST LICENSURE EXAMINATIONS.

Qualified applicants may sit for and to obtain licensure must pass the NAPLEX and the MPJE in accordance with NABP standards. ()

033. PHARMACIST LICENSURE BY RECIPROCITY.

An applicant for pharmacist licensure by reciprocity must satisfy the requirements of Section 54-1723, Idaho Code, and this rule to obtain an Idaho license. The Board will issue a reciprocal license only to a pharmacist licensed in good standing in another state at the time of application and issuance of the Idaho license. ()

01. Transfer Application. The applicant must submit a preliminary application for licensure transfer through NABP. ()

02. MPJE. The applicant must pass the Idaho-based MPJE. ()

03. Intern Hours. An applicant not actively engaged in the practice of pharmacy during the year preceding the date of application may also be required to complete up to forty (40) intern hours for each year away from the practice of pharmacy. ()

034. PHARMACIST INACTIVE STATUS LICENSE.

01. Required Criteria. Upon Board approval, an inactive status pharmacist license may be issued if an applicant: ()

a. Is a pharmacist in the state of Idaho licensed in good standing; ()

b. Is unable or unwilling to practice pharmacy due to physical limitations or changes in circumstance; and ()

c. Has submitted the required application. ()

02. Exemptions and Restrictions. Inactive status licensees are exempt from CPE requirements and are prohibited from engaging in the practice of pharmacy while on inactive status. ()

03. Return to Active Status. If an inactive status licensee wishes to return to active status, the licensee must complete a minimum of thirty (30) CPEUs and comply with the reinstatement requirements of these rules. ()

035. PHARMACIST REGISTRATION FOR TELEPHARMACY ACROSS STATE LINES.

A pharmacist not licensed to practice pharmacy in the state of Idaho must satisfy the requirements of Section 54-1723A, Idaho Code, and be registered by the Board to lawfully engage in the practice of telepharmacy across state lines into the state of Idaho. ()

036. STUDENT PHARMACIST REGISTRATION.

Unless revoked or suspended by the Board, a pharmacist extern registration must be renewed annually on July 15; however, the renewal fee will be waived for the duration of the extern's enrollment in the school or college of pharmacy and until July 15 following graduation. ()

037. -- 039. (RESERVED)

040. CERTIFIED PHARMACY TECHNICIAN REGISTRATION.

To be approved for registration as a technician, a person must satisfy the following requirements: ()

01. Age. Be at least eighteen (18) years of age unless a waiver is granted by the Board's executive director; ()

02. Education. Be a high school graduate or the recipient of a high school equivalency diploma unless a waiver is granted by the Board's executive director; ()

03. Personal Characteristics. Be of good moral character and temperate habits; and ()

04. Certification. Have obtained and maintained certified pharmacy technician (CPhT) status through the Pharmacy Technician Certification Board (PTCB), the Institute for Certification of Pharmacy Technicians (ICPT), or their successors unless qualified for a continuous employment exemption. ()

041. TECHNICIAN-IN-TRAINING REGISTRATION.

A person who has not obtained or maintained technician certification may apply for registration as a technician-in-training if the person satisfies all other requirements for registration as a technician. ()

01. Duties. Upon registration, a technician-in-training may perform any of the duties allowed by statute or rule to be delegated to a registered technician under the supervision of a pharmacist. ()

02. Renewal. The registration of a technician-in-training expires on June 30 and is renewable two times. ()

03. Registration Expiration. Upon the final expiration of a technician-in-training registration, a person must satisfy the technician certification and registration requirements of these rules to be lawfully employed as, or otherwise perform the duties of, a technician. ()

042. PHARMACY TECHNICIAN CERTIFICATION -- CONTINUOUS EMPLOYMENT EXEMPTION.

A technician registered with the Board and employed as a technician on June 30, 2009, is not required to obtain or maintain certification as a condition of registration renewal after June 30, 2009, as long as the registrant remains continuously employed as a technician by the same employer. If a registrant that qualifies for this exemption disrupts continuous employment as a technician with one employer, the technician registration will correspondingly terminate on the date of employment termination. The person must thereafter satisfy the registration requirements of these rules to be lawfully employed as, or otherwise perform the duties of, a technician. ()

043. -- 044. (RESERVED)

045. VETERINARY DRUG TECHNICIAN REGISTRATION.

A person must have a valid, active Board registration to be employed as, or perform the duties of, a VDT. To qualify for registration as a VDT, a person must: ()

01. Age. Be at least eighteen (18) years of age; ()

02. Education. Be a high school graduate or the recipient of a high school equivalency diploma; and ()

03. Examination. Score at least seventy-five percent (75%) on a Board examination designed to measure knowledge of these rules. ()

046. -- 049. (RESERVED)

050. CPE PROGRAM CRITERIA.

01. Board Approval of CPE Programs. The Board recognizes CPE program accreditation by ACPE and CME. CPE programs not accredited by either ACPE or CME must be approved by the Board. Application for approval will require provision of the following information: ()

a. The name of provider or sponsor; ()

b. The type of program offered; ()

c. A description of the subject matter; ()

d. The number of clock hours offered; ()

e. The method of evaluating satisfactory completion of program; ()

f. The dates and location of program; and ()

g. The names and qualifications of instructors or other persons responsible for the delivery and content of the program. ()

02. Postgraduate Education. A CPE program must consist of postgraduate education in one or more of the following general areas: ()

a. The socioeconomic and legal aspects of health care; ()

b. The properties and actions of drugs and dosage forms; or ()

c. The etiology, characteristics, and therapeutics of a disease state. ()

03. Evidence of Satisfactory Completion. A CPE program must provide evidence of satisfactory completion by participants. ()

04. Qualified Instruction. The program presenter must be qualified in the subject matter by education or experience. ()

051. CPE INSTRUCTION CREDITS.

01. Pharmacists. A pharmacist, whose primary responsibility is not the education of health professionals, who leads, instructs, or lectures to groups of nurses, physicians, pharmacists, or others on pharmacy-related topics in organized CPE or in-service programs will be granted CPE credit for time expended during actual presentation upon the provision of adequate documentation to the Board. ()

02. Educators. A pharmacist whose primary responsibility is the education of health professionals will be granted CPE credit only for time expended in leading, instructing, or lecturing to groups of physicians, pharmacists, nurses, or others on pharmacy-related topics outside his formal course responsibilities in a learning institution. ()

052. CPE REQUIREMENTS.

Each pharmacist applicant for license renewal must annually complete the equivalent of one and one-half (1.5) CPE units (CPEU). One (1) CPEU is the equivalent of ten (10) clock hours of participation in programs approved by the Board. ()

01. ACPE or CME. At a minimum, eight (8) clock hours (0.8 CPEU) must be all or a combination of ACPE or CME accredited programs. ACPE accredited activities must have a participant designation of "P" (for pharmacist) as the suffix of the ACPE universal program number. ()

02. Pharmacy Law. One (1) clock hour (0.1 CPEU) must be ACPE accredited or Board approved jurisprudence (pharmacy law) programs. ()

03. Board Approved. A maximum of six (6) clock hours (0.6 CPEU) may be Board-approved programs not accredited through ACPE or CME. ()

04. Live Attendance. Three (3) clock hours (0.3 CPEU) must be obtained by attendance at live or synchronous online CPE programs. ()

05. Carryover of Certain Unused Units. Clock hours of CPEU accrued during June of a licensing period may be carried over into the next licensing period to the extent that a pharmacist's total clock hours of CPEU for the current licensing period exceed the total CPEUs required by these rules. ()

06. New Pharmacist Exemption. Recent pharmacist graduates applying for the first license renewal are not required to complete or certify the annual CPE requirements. ()

053. CPE REQUIREMENTS FOR DUAL LICENSEES.

01. Idaho Licensee. An Idaho-licensed pharmacist residing in another state must meet Idaho CPE requirements to be granted an Idaho license renewal. ()

02. Approval. CPE programs attended by an Idaho-licensed pharmacist for purposes of satisfying licensing requirements of another state must be accredited by either ACPE or CME or must be approved by the Board to also be recognized for purposes of renewal of the pharmacist's Idaho license. ()

054. -- 059. (RESERVED)

060. DRUG OUTLET LICENSURE AND REGISTRATION.

A license or a certificate of registration, as applicable, is required for drug outlets doing business in or into Idaho. A license or certificate of registration will be issued by the Board to drug outlets pursuant to, and in the general classifications defined by, Section 54-1729, Idaho Code. ()

01. New Drug Outlet Inspections. Prior to approving the issuance of a new license or registration, each drug outlet may be inspected to confirm that the facility is appropriately equipped and has implemented proper procedures and minimum standards necessary for compliance with applicable law. Prescription drugs may not be delivered to a new drug outlet location and the drug outlet may not open for business prior to satisfactory completion of the opening inspection, if required. ()

02. Licenses and Registrations Nontransferable. Drug outlet licenses and registrations are location specific and are nontransferable as to person or place. If the ownership or location of an outlet changes, any registration or license issued to it by the Board is void. ()

03. Reciprocity. The Board may license by reciprocity a drug outlet licensed under the laws of another state if the other state's licensing standards are comparable to those in Idaho and acceptable to the Board, evidenced by an inspection report, and if the other state extends reciprocal licensure to Idaho drug outlets. ()

061. -- 069. (RESERVED)

070. LIMITED SERVICE OUTLET REGISTRATION.

Pursuant to Section 54-1729(3), certificates of registration may be limited, conditioned, or restricted based upon the outlet type and the specialized or limited products or services provided. Examples of limited service outlet registrations include, but are not limited to: sterile product, nuclear, remote dispensing, cognitive service, and COE pharmacies and DME outlets. ()

01. Required Waivers. An applicant for a limited service outlet registration must submit a registration application and a request for waiver of applicable Board rules that are unfeasible or impractical for the specialized or limited products or services offered, if any. ()

02. Compliance Standards. A limited service outlet registration will be subject to continuous compliance with any required policies and procedures, applicable law, any of these rules applicable to the practice setting unless specifically waived in writing by the Board, and any limitations, conditions, or restrictions established by the Board. ()

03. Inspection and Review. If required, policies and procedures must be available for review and approval during the initial inspection and thereafter retained on the outlet premises. ()

071. TELEPHARMACY AND REMOTE DISPENSING SITE REGISTRATION.

01. Telepharmacy Practice Registration. Each location where drugs are dispensed through the practice of telepharmacy must be registered with the Board. ()

02. Remote Dispensing Site Registration. A limited service outlet registration must be obtained by a remote dispensing site prior to participating in the practice of telepharmacy. ()

03. Supplemental Registration Application Requirements. Prior to construction, an applicant for registration of a remote dispensing site must submit and obtain Board approval of a registration application. The application must include: ()

- a.** An attached description of the telepharmacy communication, electronic recordkeeping, and ADS systems; ()
- b.** The operating specifications; and ()
- c.** An accurate scale drawing of the facility that illustrates: ()
 - i.** The layout and location of the systems; ()
 - ii.** The location of a patient counseling area; and ()
 - iii.** All access points to the electronic recordkeeping system and the ADS system. ()

072. STERILE PRODUCT DRUG OUTLET REGISTRATION.

A separate registration that requires an onsite Board inspection must be obtained prior to engaging in sterile product preparation. ()

01. Floor Plan Approval. Floor plans for construction of a new sterile product preparation area must be submitted along with the registration application and must be approved by the Board prior to commencement of construction. ()

02. Hood or Aseptic Environment Control Device Registration. A drug outlet engaged in sterile product preparation must obtain a single registration for one or more hood or aseptic environmental control devices. ()

073. -- 079. (RESERVED)

080. WHOLESALER LICENSURE AND REGISTRATION.

01. Wholesaler Licensure. In addition to the information required pursuant to Section 54-1753, Idaho Code, the following information must be provided under oath by each applicant for wholesaler licensure as part of the initial licensing procedure and for each renewal. ()

- a.** The name of the owner and operator of the applicant, including: ()
 - i.** If a person, the name of the person; ()
 - ii.** If a partnership, the name of each partner, and the name of the partnership; ()
 - iii.** If a corporation, the name and title of each corporate officer and director, the corporate names, and the name of the state of incorporation, and the name of the parent company, if any; or ()
 - iv.** If a sole proprietorship, the full name of the sole proprietor and the name of the business entity. ()

b. Any felony conviction or any conviction of the applicant relating to wholesale or retail prescription drug distribution or distribution of controlled substances. ()

c. Any discipline of the applicant by a regulatory agency in any state for violating any law relating to wholesale or retail prescription drug distribution or distribution of controlled substances. ()

02. Wholesaler Licensure -- Other Eligibility Factors. The Board will consider at least the following factors in determining the applicant's eligibility for licensure as a wholesaler: ()

- a.** The qualifications of the wholesaler's designated representative; ()
- b.** Any convictions of the applicant, including those relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances; ()
- c.** The applicant's past experience in the manufacture or distribution of drugs, including controlled substances; ()
- d.** The provision by the applicant of false or fraudulent material in an application made in connection with drug manufacturing or distribution; ()
- e.** Suspension or revocation by a local, state, or federal government of a registration or license currently or previously held by the applicant for the manufacture or distribution of drugs, including controlled substances; ()
- f.** Compliance with licensing requirements under previously granted licenses, if any; and ()
- g.** Compliance with the requirements to maintain and make available to the state licensing authority or to local, state, or federal law enforcement officials those records required to be maintained by wholesale drug distributors. ()

03. Controlled Substance Registration. All wholesalers distributing controlled substances must register with both the Board and the DEA. ()

04. VAWD Accreditation. The Board will recognize a wholesaler's VAWD accreditation by NABP for purposes of reciprocity and satisfying the new drug outlet inspection requirements of these rules. ()

05. Wholesaler Registration. Except when licensed pursuant to the Idaho Wholesale Drug Distribution Act and these rules, a wholesaler that engages in wholesale distribution of DME supplies, prescription medical devices, or non-prescription drugs in or into Idaho must be registered by the Board. ()

081. -- 089. (RESERVED)

090. MANUFACTURER REGISTRATION.

A manufacturer located in Idaho must be inspected and registered by the Board prior to engaging in drug manufacturing. Non-resident manufacturers that ship, mail, or deliver dispensed prescription drugs or devices to an Idaho resident must be registered by the Board as an out-of-state mail service pharmacy pursuant to 54-1743, Idaho Code. ()

091. -- 099. (RESERVED)

SUBCHAPTER C -- GENERAL PRACTICE STANDARDS
(Rules 100 through 299 -- General Practice Standards)

100. ELECTRONIC RECORDKEEPING SYSTEM.

Unless specifically exempted by these rules, an electronic recordkeeping system must be used to establish and store patient medication records and prescription drug order, refill, and transfer information. ()

01. Real-time Online Retrieval of Information. The electronic recordkeeping system must be capable of real-time, online retrieval of information stored therein for a minimum of fifteen (15) months from the date of entry. ()

02. Immediately Retrievable Refill Data. The electronic recordkeeping system must have functionality that allows required refill data to be immediately retrievable and produced upon request; for example, a refill-by-refill audit trail for a specified strength and dosage form of a drug. ()

03. Audit Trail Documentation. The electronic recordkeeping system must also have audit trail functionality that documents for each prescription drug order the identity of each individual involved at each step of its processing, filling, and dispensing or, alternatively, the identity of the pharmacist or pharmacists responsible for the accuracy of these processes. Systems that automatically generate user identification without requiring an entry by the responsible individual are prohibited. ()

04. System Security. The electronic recordkeeping system must include security features to protect the confidentiality and integrity of patient records including: ()

a. Safeguards designed to prevent and detect unauthorized access, modification, or manipulation of prescription drug order information and patient medication records; and ()

b. Functionality that documents any alteration of prescription drug order information after a prescription drug order is dispensed, including the identification of the individual responsible for the alteration. ()

05. System Downtime. Pharmacies must have an auxiliary procedure for documentation of refills of prescription drug orders in the event of a system downtime that ensures: ()

a. That refills are authorized by the original prescription drug order; ()

b. That the maximum number of refills is not exceeded; and ()

c. That the required data is retained for data entry as soon as the electronic recordkeeping system is restored. ()

06. System Backup and Recovery. The drug outlet must implement routine system backup, maintenance, and recovery procedures to protect its data and provide reasonable continuity of service in the event of human error, power failure, system malfunction, accident, or catastrophe resulting in the loss, destruction, or corruption of data. ()

07. Board Approval. The Board reserves the right to approve and revoke approval of the use of an electronic recordkeeping system. ()

08. Exemption. Recordkeeping systems in use as of the effective date of this rule may continue to be used as long as the information required by these rules for an electronic recordkeeping system is collected and retained in an immediately retrievable manner for a minimum of fifteen (15) months. ()

101. ELECTRONIC RECORDKEEPING SYSTEM -- PATIENT MEDICATION RECORDS.

A patient medication record must be created and maintained for each patient who has a prescription drug order filled or refilled, and a reasonable effort must be made to obtain and record in it the following: ()

01. Patient Personal Information. The patient's name, address, telephone number, date of birth (or age), and gender; ()

02. Prospective Drug Review Information. Information relevant to a prospective drug review; ()

03. Prescriber-Provided Information. Relevant information provided by the prescriber; and ()

04. Other Information. Any other information that the pharmacist deems appropriate. ()

102. ELECTRONIC RECORDKEEPING SYSTEM -- PRESCRIPTION DRUG ORDER INFORMATION.

01. Original Prescription Drug Order Information. For each original prescription drug order, the information entered into the electronic recordkeeping system must include at least the following: ()

a. The serial number, if any; ()

b. The date of issuance; ()

c. The date filled; ()

d. The identity of each pharmacist involved in or, alternatively, the pharmacist ultimately responsible for its processing, filling, or dispensing; ()

e. The drug name, strength, dosage form, quantity prescribed (and quantity dispensed if different from the quantity prescribed); ()

f. The directions for use; ()

g. The total number of refills authorized by the prescriber, if applicable; ()

h. The name of the prescriber; and ()

i. For controlled substances, the prescriber's address and DEA registration number. ()

02. Prescription Drug Order Refill Information. For each prescription drug order refill, at least the following information must be added to the original prescription drug order information in the electronic recordkeeping system: ()

a. The date of dispensing of each refill; ()

b. The quantity dispensed; ()

c. Unless dispensed in a hospital, the identification of the dispensing pharmacist for each refill; and ()

- d. The total number of refills dispensed to date. ()

03. Refill Verification of Controlled Substances. Written verification of the accuracy of the refill information entered into the electronic recordkeeping system for controlled substances must be provided by pharmacists utilizing the system. Verification must be documented in a bound log book or separate file in which each pharmacist involved in the dispensing of controlled substance refills signs a statement attesting to the fact that the refill information entered into the electronic recordkeeping system each day has been reviewed and is correct as shown. ()

103. -- 104. (RESERVED)

105. PATIENT COUNSELING DOCUMENTATION.

Documentation must be created and retained sufficient to evidence compliance with the offer to counsel and counseling requirements of the Idaho Pharmacy Act. ()

106. -- 109. (RESERVED)

110. PRESCRIPTION DRUG ORDER -- VALIDITY.

Prior to filling or dispensing a prescription drug order, a pharmacist must verify its authenticity and validity. ()

- 01. Invalid Prescription Drug Orders.** A prescription drug order is invalid if not issued: ()

a. In good faith; ()

b. For a legitimate medical purpose; ()

c. By a licensed prescriber; ()

d. Within the course and scope of the prescriber's professional practice and prescriptive authority; ()

e. Pursuant to a prescriber-patient relationship; and ()

f. In the form and including the elements required by law. ()

- 02. Antedating or Postdating.** A prescription drug order is invalid if antedated or postdated. ()

03. Tampering. A prescription drug order is invalid if it shows evidence of alteration, erasure, or addition by any person other than the person who wrote it. ()

04. Prescriber Self-Use. A prescription drug order written for a controlled substance is invalid if written for the prescriber's own use. ()

05. Family Members. A prescription drug order written for a prescriber's family member is invalid if inconsistent with the scope of practice and prescriptive authority of the prescriber's profession. ()

111. PRESCRIPTION DRUG ORDER -- MINIMUM REQUIREMENTS.

A prescription drug order must comply with applicable requirements of federal law and, except as differentiation is permitted for a drug order, must include at least the following: ()

- 01. Patient's Name.** The patient's name and: ()

a. If for a controlled substance, the patient's full name and address; and ()

b. If for an animal, the species. ()

- 02. Date.** The date issued. ()
- 03. Drug Information.** The drug name, strength, quantity, and if for a controlled substance, the dosage form. ()
- 04. Directions.** The directions for use. ()
- 05. Prescriber Information.** The name and, if for a controlled substance, the address and DEA registration number of the prescriber. ()
- 06. Signature.** If paper, the pre-printed, stamped, or hand-printed name and written signature of the prescriber, and if electronic, the prescriber's electronic signature. ()

112. DRUG ORDER -- MINIMUM REQUIREMENTS.

A drug order must comply with applicable requirements of federal law and must include at least the following: ()

- 01. Patient's Name.** The patient's name. ()
- 02. Date.** The date issued. ()
- 03. Drug Information.** The drug name, strength, and route of administration. ()
- 04. Directions.** The directions for use. ()
- 05. Prescriber Information.** The name of the prescriber. ()
- 06. Signature.** If written, the signature of the prescriber or the prescriber's agent. ()

113. PRESCRIPTION DRUG ORDER -- CONTROLLED SUBSTANCES.

01. Schedule II Faxed Prescription Drug Order Documentation. A Schedule II prescription must not be dispensed pursuant to a faxed prescription drug order, with the faxed copy serving as the original, except as follows: ()

- a.** To be compounded for direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion; ()
- b.** For a resident of an LTCF; and ()
- c.** For a patient enrolled in a hospice care program, if so indicated on the prescription drug order. ()

02. Schedule II Multiple Prescription Drug Orders. A prescriber may issue and a pharmacy may fill multiple prescription drug orders, written on and dated with the same date, that allow the patient to receive up to a ninety-day supply of a Schedule II controlled substance if the prescriber provides written instructions on each prescription drug order indicating the earliest date on which a pharmacy may fill each prescription, except instructions may be omitted from the first prescription drug order if it is to be filled immediately. ()

114. PRESCRIPTION DRUG ORDER -- PARTIAL FILLING.

01. Partial Filling of Schedule II Prescriptions. A Schedule II controlled substance prescription drug order may be partially filled and dispensed if the pharmacist is unable to supply the full quantity ordered. ()

- a.** The remaining portion of the prescription drug order may be filled if within seventy-two (72) hours of the first partial filling. If the remaining portion is not or cannot be filled within seventy-two (72) hours, the

pharmacist must notify the prescriber. ()

b. Additional quantities must not be dispensed beyond seventy-two (72) hours without a new prescription drug order. ()

02. Partial Filling of Schedule II Prescriptions for LTCF or Terminally Ill Patients. A Schedule II controlled substance prescription drug order for a patient in an LTCF or for a patient with a documented terminal illness may be filled in partial quantities and individual dosage units. The pharmacist must record that the patient is either “terminally ill” or an “LTCF patient.” ()

03. Schedule II Partial-Fill Documentation. For each partially filled prescription drug order, the following information must be recorded: ()

a. The date; ()

b. The quantity dispensed; ()

c. The remaining quantity authorized for dispensing; and ()

d. The identification of the dispensing pharmacist. ()

04. Partial Filling of Schedule III, IV, and V Prescriptions. The partial filling of a prescription drug order for a controlled substance listed in Schedules III, IV, or V is permissible if: ()

a. Each partial fill is recorded in the same manner as a refill; ()

b. The total quantity dispensed in partial fillings does not exceed the total quantity prescribed; and ()

c. Dispensing does not occur after six (6) months from the date on which the prescription drug order was issued. ()

115. PRESCRIPTION DRUG ORDER TRANSFERS.

01. Communicating Prescription Drug Order Transfers. Except prescription drug orders for Schedule II controlled substances, a pharmacist may transfer prescription drug order information for the purpose of filling or refilling if the information is communicated from pharmacist to pharmacist verbally, electronically, or via fax. ()

a. Prescription drug order information may also be communicated verbally by a student pharmacist, under the supervision of a pharmacist, to another pharmacist as long as one (1) of the parties involved in the communication is a pharmacist. ()

b. If transferring by fax transmission, the transfer document used must be signed by the transferring pharmacist. ()

02. Documentation Required of the Transferring Pharmacy. The pharmacist transferring prescription drug order information must void or otherwise indicate that the original prescription drug order has been transferred and record the following information: ()

a. The name of the transferring pharmacist; ()

b. The name of the receiving pharmacist; ()

c. The name of the receiving pharmacy; ()

d. The date of the transfer; ()

- e. The number of authorized refills available; and ()
- f. If written for a controlled substance, the address and DEA registration number of the receiving pharmacy. ()

03. Documentation Required of the Receiving Pharmacy. The pharmacist receiving a transferred prescription drug order must document that the prescription drug order is a “transfer” and record the following information: ()

- a. The name of the receiving pharmacist; ()
- b. The name of the transferring pharmacist; ()
- c. The name of the transferring pharmacy; ()
- d. The date of issuance of the original prescription drug order; ()
- e. The number of refills authorized by the original prescription drug order; ()
- f. The number of authorized refills available; and ()
- g. If written for a controlled substance: ()
- i. The dates and locations of the original dispensing and previous refills; and ()
- ii. The name, address, DEA registration number, and assigned prescription number of the transferring pharmacy for each dispensing and of the pharmacy that originally filled the prescription, if different. ()

04. Electronic Prescription Drug Order Transfers. For electronic prescription drug orders that are transferred electronically, the transferring pharmacist must provide all of the information required to be recorded by the receiving pharmacist in addition to the original electronic prescription data. The receiving pharmacist must create an electronic record for the prescription drug order that includes the receiving pharmacist’s name and all of the information transferred with the prescription. ()

05. Pharmacies Using Common Electronic Files. Pharmacies may establish and use a common electronic file to maintain required dispensing information. ()

- a. Pharmacies using a common electronic file are not required to transfer prescription drug order information for dispensing purposes between or among other pharmacies sharing the common electronic file. ()
- b. Common electronic files must contain complete and accurate records of each prescription and refill dispensed. ()

06. Transferring Prescription 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. ()

07. Transferring Prescription Drug Order Refills. Prescription drug orders for non-controlled substances may be transferred more than one (1) time if there are refills remaining and other legal requirements are satisfied. ()

116. PRESCRIPTION DRUG ORDER REFILLS.

- 01. Refill Authorization.** A prescription drug order may be refilled when permitted by state and

federal laws and only as specifically authorized by the prescriber. ()

a. A pharmacist, utilizing his best professional judgment, may dispense a prescription drug that is not a controlled substance up to the total amount authorized by the prescriber including refills. ()

b. Refills exceeding those authorized by the prescriber on the original prescription drug order may only be authorized through issuance of a new and separate prescription drug order. ()

02. Emergency Prescription Refills. A pharmacist may refill a prescription for a patient when the prescriber is not available for authorization if, in the professional judgment of the pharmacist, a situation exists that threatens the health or safety of the patient should the prescription not be refilled. Only sufficient medication may be provided, consistent with the dosage instructions, to maintain the prescribed treatment until, at the earliest possible opportunity, the issuing or an alternative prescriber is contacted for further renewal instructions. ()

117. PRESCRIPTION DRUG ORDER EXPIRATION.

A prescription drug order expires no later than fifteen (15) months after its date of issue. ()

01. Schedule II Prescription Drug Orders. A prescription drug order for a Schedule II controlled substance must not be filled or dispensed more than ninety (90) days after its date of issue. ()

02. Schedule III, IV, and V Prescription Drug Orders. A prescription drug order for a controlled substance listed in Schedules III, IV, or V must not be filled or refilled more than six (6) months after its date of issue. ()

118. PRESCRIPTION DRUG ORDER -- PRESCRIBER CHANGE OF STATUS.

01. Change of Status. A prescription drug order is invalid after a period reasonably necessary to allow the patient to maintain continuity of care, which must not exceed ninety (90) days, from the date the pharmacist learns of a change of status that precludes a continued prescriber-patient relationship such as death, incapacity, suspension or revocation of the prescriber's license, or permanent relocation. ()

02. Patient Notification. A pharmacist who becomes aware of a prescriber's change of status that precludes a continued patient-prescriber relationship must advise the patient of the resultant change to the status of the prescription drug order, advise the patient that a new prescriber will be required, and unless otherwise prohibited by law, provide a sufficient amount of prescribed drug to allow for continuity of care for a period that considers the healthcare needs of the patient but does not exceed ninety (90) days. ()

119. PRESCRIPTION DRUG ORDER -- INSPECTION AND COPYING.

01. Prescriber Inspection. A prescription drug order must be made available for inspection by the issuing prescriber upon request. ()

02. Prescription Drug Order Copies. A copy of a prescription drug order may only be provided as allowed or required by law, and the copy must be marked across its face: "Copy for Information Only. Not to be Filled." ()

120. VETERINARY DRUG ORDERS.

01. Veterinary Drug Order Forms. Veterinary drug orders for prescription drugs must be written or documented by a veterinarian licensed to practice veterinary medicine in this or any state sharing an Idaho border on an official, numbered, three (3) part drug order form available through the Idaho Department of Agriculture. For purposes of this rule, the top copy of the official order form is considered the original order, the middle copy (the first duplicate) is "copy one (1)" and the bottom copy (the second duplicate) is "copy two (2)." ()

02. Veterinary Drug Order Handling. Copy two (2) of a veterinary drug order must be retained by the prescribing veterinarian. The original and copy one (1) of a veterinary drug order must be presented to a VDO for product preparation and for completion and handling by a VDT as follows: ()

a. The VDT must complete the bottom portion of the veterinary drug order with the date filled, the serial number assigned, and the VDT's signature. The serial number must also appear on the copy one (1) that accompanies the order. ()

b. Upon completion, the VDT must file the original and attach the copy one (1) to the prepared order. ()

03. Veterinary Drug Order -- Required Information. A veterinary drug order must include at least the following information: ()

a. The client's name and address; ()

b. The animal species; ()

c. The date issued; ()

d. The name, strength, and quantity of product; ()

e. The product instructions or directions for use and any applicable cautionary statements; and ()

f. The name, license number, and signature of the prescribing veterinarian. ()

04. Verbal Veterinary Drug Orders. Verbal veterinary drug orders must be issued directly by a prescribing veterinarian, received directly by a VDT, and are subject to the following additional requirements: ()

a. The verbal order must be promptly reduced to writing on an official, unnumbered, three (3) part telephone drug order form available through the Idaho Department of Agriculture. ()

b. If the issuing veterinarian is unknown by the VDT, the VDT must make a reasonable effort to determine the validity of the order. ()

c. The verbal order must be otherwise handled and processed as required for written orders. ()

d. Written confirmation of the verbal order must be documented on the original of an official, numbered order form, signed by the prescribing veterinarian, and provided to the VDO within seven (7) days. Upon receipt, the VDT must attach the original, verbal order to the original, official, numbered order. ()

05. Veterinary Drug Order Processing. Veterinary drug orders must be processed exactly as written and never for more than the original quantity indicated by the prescribing veterinarian. ()

a. Refilling or reprocessing of veterinary drug orders is prohibited. ()

b. For a split shipment, the VDT must indicate on the back of the original order the date, quantity, and initials of the person supplying the partial order. The remaining quantity must be delivered within ninety (90) days. ()

c. Substitution is prohibited. Supplying a different brand or product, including a generic, is prohibited. ()

d. Only original manufacturers' containers bearing the entire label intact may be delivered (no partial containers). ()

e. Compounding by a VDT is prohibited. ()

121. -- 129. (RESERVED)

130. DRUG PRODUCT SUBSTITUTION.

Drug product substitutions are allowed only in situations requiring compliance with a formulary or drug list prepared by the pharmacy and therapeutics committee of a hospital or the quality assessment and assurance committee of a skilled nursing facility consisting of the director of nursing services, a physician designated by the facility, and at least three (3) other members of the facility's staff. ()

131. DRUG PRODUCT SELECTION.

Drug product selection is allowed only between therapeutic equivalent drugs. ()

01. Method of Drug Product Selection. A branded product must be dispensed only if "BRAND ONLY" is specified by the prescriber on the electronic prescription drug order or on the face of a paper prescription drug order by a "BRAND ONLY" check box or a handwritten notation. ()

02. Drug Product Selection Documentation. If a generic is selected by a non-institutional pharmacy, the name of the drug and the manufacturer or the NDC number must be documented in the patient medication record. ()

132. -- 134. (RESERVED)

135. DRUG PRODUCT FLAVORING.

A flavoring agent may be added to a drug product on request by the prescriber, the patient, or the patient's agent. ()

136. -- 139. (RESERVED)

140. STANDARD PRESCRIPTION DRUG LABELING.

Unless otherwise directed by these rules, a prescription drug must be dispensed in an appropriate container that bears the following information: ()

01. Dispenser Information. The name, address, and telephone number of the dispenser (person or business); ()

02. Prescription Number. The prescription serial number; ()

03. Date. The date the prescription is filled; ()

04. Prescriber. The name of the prescriber; ()

05. Patient. The name of the patient, and if the patient is an animal, the species; ()

06. Drug Name and Strength. Unless otherwise directed by the prescriber, the name and strength of the drug (the generic name and its manufacturer's name or the brand name); ()

07. Quantity. The quantity of item dispensed; ()

08. Directions. The directions for use; ()

09. Cautionary Information. Cautionary information as required or deemed appropriate for proper use and patient safety; ()

10. Expiration. An expiration date that is the lesser of: ()

a. One (1) year from the date of dispensing; ()

b. The manufacturer's original expiration date; ()

c. The appropriate expiration date for a reconstituted suspension or beyond use date for a

compounded product; or ()

d. A shorter period if warranted; and ()

11. Refills. The number of refills remaining, if any, or the last date through which the prescription is refillable. ()

141. INSTITUTIONAL FACILITY -- DRUG LABELING.

01. Labeling for Patient Use While in the Facility. Except if dispensed in unit dose packaging, a drug dispensed for patient use while in an institutional facility must be dispensed in an appropriate container that bears at least the following information: ()

a. The date filled; ()

b. The name of the patient; ()

c. The name and strength of the drug; ()

d. The quantity of item dispensed; ()

e. The directions for use, including the route of administration; ()

f. Cautionary information as required or deemed appropriate for proper use and patient safety; ()

g. The expiration or beyond use date, if appropriate; and ()

h. The initials or other unique identifier of the dispensing pharmacist. ()

02. Labeling for Patient Use Outside of the Facility. A drug dispensed for patient use outside of the facility must be labeled pursuant to the standard prescription drug labeling requirements. ()

142. PARENTERAL ADMIXTURE LABELING.

If one or more drugs are added to a parenteral admixture the admixture's container must include a distinctive, supplementary label with at least the following information: ()

01. Ingredient Information. The name, amount, strength, and if applicable, the concentration of the drug additive and the base solution or diluent; ()

02. Date and Time. The date and time of the addition, or alternatively, the beyond use date and time; ()

03. Preparer Identification. The initials or other unique identifier of the person who added the drug or drugs; ()

04. Prescribed Administration Regimen. The rate or appropriate route of administration or both, as applicable; and ()

05. Special Instructions. Any special handling, storage, or device-specific instructions. ()

143. PREPACKAGED PRODUCT LABELING.

The containers of prepackaged drugs prepared for ADS systems or other authorized uses must include a label with at least the following information: ()

01. Drug Name and Strength. The name and strength of the drug; ()

02. Expiration Date. An expiration date that is the lesser of: ()

- a. The manufacturer's original expiration date; ()
- b. One (1) year from the date the drug is prepackaged; or ()
- c. A shorter period if warranted (A prepackaged drug returned unopened from an institutional facility and again prepackaged must be labeled with the expiration date used for the initial prepackaging.); ()

03. Conditional Information. If not maintained in the records of the pharmacy, the manufacturer's name and lot number and the identity of the pharmacist responsible for the prepackaging. ()

144. (RESERVED)

145. PRESCRIPTION DRUG PACKAGING.

Prescription drugs must be dispensed in packaging materials that preserve the integrity, cleanliness, and potency of commercially available and compounded drug products. ()

146. -- 199. (RESERVED)

200. CONTROLLED SUBSTANCES -- POSITIVE IDENTIFICATION REQUIRED.

A potential recipient of a filled controlled substance prescription must first be positively identified or the controlled substance must not be dispensed. ()

01. Positive Identification Presumed. Positive identification is presumed and presentation of identification is not required if dispensing directly to the patient and if: ()

- a. The prescription will be paid for, in whole or in part, by an insurer; or ()
- b. The pharmacy is part of the institutional facility where the patient is being treated. ()

02. Personal Identification. Presentation of identification is also not required if the individual receiving the controlled substance is personally and positively known by a pharmacy or prescriber drug outlet staff member who is present and identifies the individual and the personal identification is documented by recording: ()

- a. The recipient's name (if other than the patient); ()
- b. A notation indicating that the recipient was known to the pharmacy staff; and ()
- c. The identity of the pharmacy staff member making the personal identification. ()

03. Acceptable Identification. The identification presented must include an unaltered photograph and signature and acceptable forms include a valid state or military driver's license or identification card and a valid passport. ()

04. Identification Documentation. Documentation of the recipient's identification must be permanently linked to the record of the dispensed prescription and must include: ()

- a. A copy of the identification presented; or ()
- b. A record that includes: ()
 - i. The recipient's name; ()
 - ii. A notation of the type of identification presented; ()
 - iii. The state, military branch, or other government entity that issued the identification; and ()

- iv. The identification number of the driver's license, identification card, or passport. ()

201. CONTROLLED SUBSTANCES -- SCHEDULE II EMERGENCY DISPENSING.

In an emergency situation, as defined, a pharmacist may dispense a Schedule II controlled substance in accordance with a verbal prescription drug order issued by a prescriber. ()

01. Emergency Situation Defined. For purposes of this rule, an emergency situation is one in which the prescriber determines: ()

a. That immediate administration of the controlled substance is necessary for proper treatment of the intended ultimate user; ()

b. That no appropriate alternative treatment is available, including administration of a drug that is not a Schedule II controlled substance; and ()

c. That it is not reasonably possible for the prescriber to provide a written prescription drug order prior to the dispensing. ()

02. Limited Quantity. The quantity prescribed and dispensed must be limited to the amount adequate to treat the patient during the emergency situation. ()

03. Verbal Prescription Drug Order. The verbal prescription drug order must be immediately reduced to writing by the pharmacist and must include all required prescription drug order information except the signature of the prescriber. ()

04. Paper Prescription Drug Order. Within seven (7) days after issuing an emergency verbal prescription drug order, the prescriber must provide a written prescription drug order for the emergency quantity prescribed. ()

a. The prescription drug order must conform to the requirements for a written prescription drug order and also have written on its face "Authorization for Emergency Dispensing" and the date the verbal prescription drug order was issued. ()

b. A paper prescription drug order may be delivered by mail if postmarked within the seven-day period. ()

05. Verbal Order Attachment or Annotation. Either a paper prescription drug order must be attached to the documented emergency verbal prescription drug order or an electronic prescription drug order must be annotated by a pharmacist with the original authorization and date of the verbal order. ()

06. Board Notification. The pharmacist must notify the Board if the prescriber fails to provide a written prescription drug order within the seven-day period. ()

202. CONTROLLED SUBSTANCES -- NON-PRESCRIPTION DISPENSING.

A Schedule V non-prescription controlled substance may be dispensed to a retail purchaser as permitted or restricted by these rules. ()

01. Dispensing by a Technician Prohibited. Technicians are prohibited from dispensing a non-prescription controlled substance even if under the direct supervision of a pharmacist, but may transact the sale and deliver the product after the pharmacist has fulfilled his professional and legal responsibilities. ()

02. Restricted Quantity. No more than two hundred (200) milligrams of codeine per one hundred (100) milliliters or per one hundred (100) grams may be distributed at retail to the same purchaser in any forty-eight (48) hour period. ()

03. Purchaser's Age. A purchaser of a non-prescription controlled substance must be at least eighteen

(18) years of age. ()

04. Identification Required for Purchase. The pharmacist must obtain positive identification as required by these rules that, if appropriate, includes proof of age of the purchaser of a non-prescription Schedule V controlled substance. ()

05. Bound Record Book and Patient Signature Required. A bound record book must be used to document sales of non-prescription Schedule V controlled substances and must record the following: ()

- a. The name and address of the purchaser; ()
- b. The name and quantity of the controlled substance purchased; ()
- c. The date of the purchase; ()
- d. The name or initials of the pharmacist who dispensed the substance to the purchaser; and ()
- e. The signature of the purchaser. ()

203. CONTROLLED SUBSTANCES -- PRESCRIBER ADMINISTRATION AND DELIVERY. Prescribing, dispensing, or delivering a controlled substance for oneself or prescribing, dispensing, administering, or delivering a controlled substance to an immediate family member when contrary to the prescriber's scope of practice or prescriptive authority is prohibited. ()

204. CONTROLLED SUBSTANCES -- PMP. Specified data on controlled substances must be reported weekly, or more often as required by the Board, by all pharmacies holding a DEA retail pharmacy registration that dispense controlled substances and prescribers that dispense controlled substances. Data on controlled substance prescription drug samples does not need to be reported. ()

01. Online Access to PMP. Online access to the Board's PMP is limited to licensed prescribers and pharmacists for treatment purposes. To obtain online access, a prescriber or pharmacist must: ()

- a. Complete and submit a registration application and a written agreement to adhere to the access restrictions and limitations established by law; ()
- b. Obtain Board approval for access; and ()
- c. Be issued a user account, login name, and password. ()

02. Use Outside Scope of Practice Prohibited. Information obtained from the PMP must not be used for purposes outside the prescriber's or pharmacist's scope of professional practice. ()

03. Profile Requests. Authorized persons without online access may obtain a profile by completing the required form and submitting it to the Board office with proof of identification and other credentials required to confirm the requestor's authorized status pursuant to Section 37-2726, Idaho Code. ()

04. Suspension, Revocation, or Restriction of PMP Access. Violation of this rule provides grounds for suspension, revocation, or restriction of the prescriber's or pharmacist's authorization for online access to the PMP. ()

205. CONTROLLED SUBSTANCES -- CURRENT, COMPLETE, AND ACCURATE RECORDS. Each controlled substance registrant must maintain a current, complete, and accurate record of each substance manufactured, imported, received, ordered, sold, delivered, exported, dispensed, or otherwise disposed of by the registrant, except that a registrant is not required by this rule to maintain a perpetual inventory. ()

206. CONTROLLED SUBSTANCES -- INVENTORIES.

01. Annual Inventory of Stocks of Controlled Substances. Each registrant must conduct an inventory of controlled substances on hand at least every twelve (12) months in a form and manner that satisfies the inventory requirements of federal law. ()

02. Separate Inventories for Each Location. A separate controlled substances inventory must be taken and retained at each registered location. ()

03. Inventory on PIC Change. A complete controlled substance inventory must be conducted in the event of a PIC change on or by the first day of employment of the incoming PIC. ()

04. Inventory After Discovery of Theft or Loss. 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. ()

05. Inventory on Addition to Schedule of Controlled Substances. On the effective date of an addition of a substance to a schedule of controlled substances, each registrant that possesses that substance must take an inventory of the substance on hand, and thereafter, include the substance in each inventory. ()

06. Annual Inventory Compliance. Complete inventories conducted as otherwise required by these rules may also be considered in complying with the annual inventory requirement. ()

207. CONTROLLED SUBSTANCES -- INVENTORIES AND RECORDS MAINTENANCE.
Each controlled substance registrant must maintain inventories and records of controlled substances as follows: ()

01. Inventories and Records for Schedules I and II. Inventories and records of controlled substances listed in Schedules I and II must be maintained separately from all other records of the registrant. ()

02. Inventories and Records for Schedules III, IV, and V. Inventories and records of controlled substances listed in Schedules III, IV, and V must be maintained separately from all other records or in a manner that the information required is readily retrievable. ()

03. Controlled Substance Prescription Drug Orders. Each registered pharmacy must maintain prescription drug orders for controlled substances listed in Schedules II through V as follows: ()

a. Paper prescription drug orders for Schedule II controlled substances must be maintained at the registered location in a separate prescription file. ()

b. Paper prescription drug orders for Schedules III, IV, and V controlled substances must be maintained at the registered location either in a separate prescription file for Schedules III, IV, and V controlled substances only or in a readily retrievable manner from other prescription records as required by federal law. ()

c. Electronic prescription drug orders for controlled substances must be maintained in a system that meets the requirements of federal law. The records may be maintained at another location if readily retrievable at the registered location. The electronic application must be capable of printing or otherwise converting the records into a readily understandable format at the registered location and must allow the records to be sortable by prescriber name, patient name, drug dispensed, and date filed. ()

04. Central Records Storage. Financial and shipping records including invoices, but excluding controlled substance order forms and inventories, may be retained at a central location if the registrant has provided DEA notification of central recordkeeping as required by federal law. ()

05. Rebuttal Presumption of Violation. Evidence of an amount of a controlled substance that differs from the amount reflected on a record or inventory required by state or federal law creates a rebuttable presumption that the registrant has failed to keep records or maintain inventories in conformance with the recordkeeping and inventory requirements of state and federal law. ()

208. CONTROLLED SUBSTANCES --THEFT OR LOSS REPORTING.

A registrant must report to the Board on the same day reported to the DEA a theft or loss of a controlled substance that includes the information required by federal law. ()

209. CONTROLLED SUBSTANCES -- PRESCRIBER DISCIPLINE.

A prescriber who issues a prescription drug order for a controlled substance that does not comply with the requirements of Section 37-2725, Idaho Code, is subject to discipline by the Board as follows: ()

01. Discipline of First Offense. A letter with a copy of the prescription drug order or orders issued in noncompliance with the law will be sent to the prescriber at the registered address. The letter will describe the offense and the basis for required action. A copy of the letter and its attachments will be sent to the prescriber's licensing board. The prescriber will have thirty (30) days from the date postmarked on the letter to comply with the requirements of Section 37-2725, Idaho Code. If the prescriber fails to comply within thirty (30) days, the prescriber's licensing board will be notified of the failure to comply and requested to initiate corrective or disciplinary action within thirty (30) days and to immediately notify the Board if action is taken. If not so notified, the Board may initiate disciplinary action pursuant to Board rules. ()

02. Discipline of Second Offense. Pursuant to Sections 37-2718 and 2719, Idaho Code, the prescriber's controlled substance registration will be suspended for a period of one (1) week and an administrative fine assessed equal to the prosecution and administrative costs of bringing the action including, but not limited to, attorney's fees and costs and costs of hearing transcripts. A notice of the offense and of the Board's intention to initiate registration suspension proceedings will be mailed to the prescriber at the registered address. To avoid the suspension action, the prescriber may submit to the Board a written explanation and plan of correction, including details of how the prescriber will avoid future offenses, and payment of one hundred dollars (\$100) within thirty (30) days of the date postmarked on the notice. If the prescriber fails to comply with the requirements of this rule and Section 37-2725, Idaho Code, within thirty (30) days, the Board may initiate disciplinary action pursuant to Board rules. ()

03. Discipline of Third Offense. Pursuant to Sections 37-2718 and 2719, Idaho Code, the prescriber's controlled substance registration will be suspended for a period of thirty (30) days and an administrative fine assessed equal to the prosecution and administrative costs of bringing the action including, but not limited to, attorney's fees and costs and costs of hearing transcripts. A notice of the offense and of the Board's intention to initiate registration suspension proceedings will be mailed to the prescriber at the registered address. To avoid the suspension action, the prescriber may submit to the Board a written explanation and plan of correction, including details of how the prescriber will avoid future offenses, and a payment of five hundred dollars (\$500) within thirty (30) days of the date postmarked on the notice. If the prescriber fails to comply with the requirements of this rule and Section 37-2725, Idaho Code, within thirty (30) days, the Board may initiate disciplinary action pursuant to Board rules. ()

04. Discipline of Fourth Offense. Pursuant to Sections 37-2718 and 2719, Idaho Code, the prescriber's controlled substance registration will be suspended or revoked, as the Board may determine based on the circumstances, and an administrative fine assessed equal to the prosecution and administrative costs of bringing the suspension or revocation action including, but not limited to, attorney's fees and costs and costs of hearing transcripts. A notice of the offense and of the Board's intention to initiate registration suspension or revocation proceedings will be mailed to the prescriber at the registered address. ()

05. Cumulative Discipline. Offenses subject to discipline under this rule will accumulate for each subsequent offense that occurs within six (6) months of the date the prescriber is sent notice of the prior offense. An offense occurring more than six (6) months after the date the prescriber receives notice of any immediately prior offense will be deemed a first offense. ()

06. Separate Offense. Prescribing or dispensing controlled substances by a prescriber whose registration has been suspended or revoked pursuant to this rule will be deemed a separate offense. ()

210. -- 219. (RESERVED)

220. EPHEDRINE PRESCRIPTION DRUG PRODUCTS.

01. Designated Prescription Drugs. The Board includes preparations containing ephedrine or salts of ephedrine as designated prescription drugs. ()

02. Qualified Product Exemption. A qualified product that meets the following criteria is exempt from designation as a prescription drug: ()

a. A product containing a formula with a ratio of twelve and one half (12.5) milligrams ephedrine to two hundred (200) milligrams guaifenesin or twenty-five (25) milligrams ephedrine to four hundred (400) milligrams guaifenesin, not exceeding a maximum of twenty-five (25) milligrams of ephedrine per tablet, capsule, or dose, and in addition to the formula, may include only inert or inactive ingredients or substance; and ()

b. A hemorrhoidal ointment containing not more than two tenths percent (0.2%) ephedrine sulfate and suppositories not exceeding four (4) milligrams ephedrine sulfate per suppository. ()

03. Disqualified Product Exemption. An ephedrine-containing product that is an immediate precursor to amphetamine or methamphetamine and considered a Schedule II controlled substance pursuant to Section 37-2707(g), Idaho Code, is disqualified from the prescription drug exemption provided by this rule even if otherwise qualified. ()

221. -- 229. (RESERVED)

230. INVESTIGATIONAL DRUGS.

Investigational drugs must be properly labeled and administered only under the supervision of a principal physician-investigator or an authorized clinician. ()

01. Administration of Investigational Drugs. Nurses may administer investigational drugs only after completion of appropriate education and training by the clinician on relevant pharmacologic information about investigational drugs. ()

02. Information on Investigational Drugs. Essential information resources regarding investigational drugs must be readily available. ()

231. -- 239. (RESERVED)

240. STERILE PRODUCT PREPARATION.

01. Environmental Controls. The environment for the preparation of sterile products must be in an isolated area, designed to avoid unnecessary traffic and airflow disturbances, and equipped to accommodate aseptic techniques and conditions. ()

a. Hoods and aseptic environmental control devices must be certified for operational efficiency as often as recommended by the manufacturer or at least every twelve (12) months or if relocated. ()

b. Prefilters must be inspected and replaced in accordance with the manufacturer's recommendations. ()

02. Sterile Product Preparation Equipment. A drug outlet in which sterile products are prepared must be equipped with at least the following: ()

a. Protective apparel including non-vinyl gloves, gowns, and masks; ()

b. A sink with hot and cold water in close proximity to the hood; ()

c. A refrigerator for proper storage of additives and finished sterile products prior to delivery when necessary; ()

d. An appropriate laminar airflow hood or other aseptic environmental control device such as a laminar flow biological safety cabinet; ()

e. A separate vertical flow biohazard safety hood, if hazardous materials are prepared; and ()

f. Supplies necessary for handling both hazardous and biohazardous spills and disposal of wastes must be available and maintained in the area at all times. ()

03. Cytotoxic Drugs. A drug outlet in which cytotoxic drugs are prepared must also: ()

a. Be equipped with and prepare the drugs in a vented class II biological safety cabinet or a barrier isolator of appropriate design to meet the personnel exposure limits described in product material safety data sheets; ()

b. Require appropriate containment techniques; ()

c. Clearly identify prepared doses of cytotoxic drugs, label them with proper precautions, and dispense them in a manner to minimize risk of cytotoxic spills; ()

d. Comply with applicable local, state, and federal laws in the disposal of cytotoxic waste; and ()

e. Include procedures for handling cytotoxic spills in the policies and procedures manual. ()

04. Documentation Requirements. The following documentation must also be maintained by a drug outlet in which sterile products are prepared: ()

a. Justification of expiration dates chosen; ()

b. Employee training records; ()

c. Technique audits; and ()

d. Equipment inspection, monitoring, and maintenance. ()

05. Policies and Procedures. Policies and procedures appropriate to the practice setting must be adopted by a drug outlet compounding sterile pharmaceutical products and must: ()

a. Be designed and sufficiently detailed to protect the health and safety of persons preparing or receiving sterile products; and ()

b. Include a continuous quality improvement program for monitoring personnel qualifications and training in sterile technique, product storage, stability standards, and infection control. ()

241. -- 259. (RESERVED)

260. DRUG PRODUCT STORAGE.

Prescription drugs, controlled substances, or other items restricted to sale, dispensing, or administration by, or under the supervision of, a pharmacist or other registrant must be stored in accordance with USP-NF requirements in an area maintained and secured appropriately to safeguard product integrity and protect against product theft or diversion. ()

261. EXPIRED, ADULTERATED, DAMAGED, OR CONTAMINATED DRUGS.

01. Removal and Isolation of Damaged Drugs Required. Expired, deteriorated, adulterated, damaged, or contaminated drugs must be removed from stock and isolated for return, reclamation, or destruction. ()

02. Sale or Distribution of Damaged Drugs Prohibited. Dispensing, delivering, or placing in saleable stock damaged or contaminated drugs is prohibited without first obtaining written Board approval. ()

03. Adulterated Drug Reporting Required. A licensee or registrant must report to the Board any adulteration of a prescription drug. ()

262. RESTRICTED RETURN OF DRUGS OR DEVICES.

Once removed from the premises from which it was dispensed, a drug or prescription device must only be accepted for return under the conditions permitted by this rule or pursuant to the Legend Drug Donation Act and rules. ()

01. Qualifying Returns. Unless dispensed in any manner inconsistent with the prescriber's instructions and returned for quarantine for destruction purposes only, a drug or prescription device that has been received from or delivered to the patient or the patient's representative is ineligible for return. Drugs or devices that may qualify for return include: ()

a. Those intended for inpatients of an institutional facility that have been maintained in the custody and control of the institutional facility or dispensing pharmacy; and ()

b. That are liquid or in unit dose or unit-of-use packaging and, if a controlled substance, returned from a hospital daily delivery system; and ()

c. Those for which the following conditions are satisfied: ()

i. The drug was delivered by the dispensing pharmacy directly to the institutional facility or its authorized agent and subsequently stored in a suitable drug storage area that is inaccessible to patients; ()

ii. The drug is returned in an unopened manufacturer-sealed container or with other tamper-evident packaging intact; ()

iii. In the professional judgment of the pharmacist, the safety and efficacy of the drug has not been compromised; and ()

iv. A system is in place to track the restocked drug for purposes of a recall. ()

02. Marking Ineligible Returns. Drugs or devices otherwise eligible for return that are or will become ineligible for any reason must be clearly marked "Not Eligible for Return" prior to leaving the institutional facility or upon discovery and before storing in an area with other eligible returns. ()

03. Consulting Pharmacy and PIC Responsibilities. The pharmacy and its PIC are responsible for consulting with an institutional facility from which returns will be accepted and must ensure that the institutional facility has an employee trained and knowledgeable in the proper storage, use, and administration of drugs and devices at the institutional facility. ()

263. -- 264. (RESERVED)

265. LEGEND DRUG DONATION -- STANDARDS AND PROCEDURES.

01. Drug Donation Criteria. A drug considered for donation to a qualifying charitable clinic or center must meet the following eligibility criteria or it must not be accepted for donation. ()

a. The drug name, strength, lot number, and expiration date must appear on the package or label. ()

b. The drug must be FDA-approved and: ()

i. Be in the original unit dose packaging; or ()

- ii. Be an oral or parenteral drug in a sealed, single dose container approved by the FDA; or ()
- iii. Be a topical or inhalant drug in a sealed, unit-of-use container approved by the FDA; or ()
- iv. Be a parenteral drug in a sealed, multiple dose container approved by the FDA from which no doses have been withdrawn. ()

c. The drug must not be the subject of a mandatory recall by a state or federal agency or of a voluntary recall by a drug wholesaler or manufacturer. ()

d. The drug must not require storage temperatures other than normal room temperature as specified by the manufacturer or the USP. ()

e. The drug must not be subject to an FDA-restricted drug distribution program such as and including, but not limited to, thalidomide and lenalidomide. ()

02. Donation Standards. ()

a. A pharmacist, physician, physician assistant, or an advanced practice professional nurse with prescriptive authority at the qualifying charitable clinic or center must be designated as responsible for defining the drugs included in the qualifying charitable clinic or center's formulary. ()

b. Donating nursing homes may only donate drugs that appear on the formulary. ()

c. Prior to the delivery of donated drugs to the qualifying charitable clinic or center, a pharmacist, nurse, physician, or physician assistant from the donating nursing home must sign and date a manifest that: ()

i. Attests that the donated drugs have been maintained in a secure and temperature-controlled environment that meets the drug manufacturers' recommendations and the USP standards; ()

ii. Attests that the drugs have been continuously under the control of a healthcare professional and have never been in the custody of a patient or other individual; ()

iii. Attests that the donated drugs are those qualified for donation by their inclusion in the qualifying charitable clinic or center's formulary; ()

iv. Attests that the donation is fully compliant with these rules; ()

v. Attests that all PHI has been removed or redacted from the package; ()

vi. Lists the name of the donating nursing home and the name of the receiving qualifying charitable clinic or center; and ()

vii. Lists the name, strength, expiration date, lot number, and quantity of each prescription drug donated. ()

d. A copy of the manifest must be delivered to the qualifying charitable clinic or center with the donated drugs. ()

03. Receipt and Handling of Donated Drugs. Donated drugs may be received and handled at a qualifying charitable clinic or center by a pharmacist, physician, physician assistant, advanced practice professional nurse with prescriptive authority, dentist, optometrist, or other authorized clinic or center personnel. ()

04. Verification of Received Drugs. ()

a. Each donated drug must be verified against the donation manifest by an individual authorized to receive the drugs. ()

b. If all PHI has not been removed by the donating entity, the information must be removed or redacted prior to dispensing. ()

c. Before donated drugs are placed with a qualifying charitable clinic or center's regular stock, a pharmacist, physician, physician assistant, or an advanced practice professional nurse with prescriptive authority must: ()

i. Using a current drug identification book, a computer program, or an online service, verify that each donated drug unit meets the criteria specified by these rules; ()

ii. Verify that the name and strength indicated on the label of each donated drug unit is correct; and ()

iii. Determine for each donated drug that it is not adulterated or misbranded and is safe to dispense. ()

d. Donated drugs that do not meet the criteria of these rules must be destroyed and documentation of the destruction retained. ()

05. Storage of Donated Drugs. ()

a. Donated drug storage must have proper environmental controls to ensure the integrity of the drug in accordance with the manufacturer's recommendations and USP standards. ()

b. Donated drugs may be commingled with the qualifying charitable clinic or center's regular stock of drugs only if the packaging on the donated drug has been labeled to indicate that the drug was obtained from a nursing home and otherwise must be segregated. ()

c. The drug storage area must be secured at all times and accessible only to persons authorized to handle donated drugs. ()

06. Dispensing Donated Drugs. ()

a. Donated drugs that are expired, adulterated, misbranded, recalled, deteriorated, or not stored in appropriate conditions must not be re-dispensed, must be destroyed, and their destruction must be appropriately documented. ()

b. A pharmacist, physician, physician assistant, dentist, optometrist, or an advanced practice professional nurse with prescriptive authority at a qualifying charitable clinic or center who re-dispenses donated drugs to a patient must: ()

i. Use an appropriate container; ()

ii. Label the container as required by these rules except that the expiration date must be the same as on the original container; and ()

iii. Initial the prescription label. ()

c. A qualifying charitable clinic or center must retain records for each donated drug dispensed. ()

d. Pharmacists, physicians, physician assistants, dentists, optometrists, and advanced practice professional nurses with prescriptive authority dispensing donated drugs must perform prospective drug review and provide patient counseling. ()

07. Miscellaneous. ()

a. The qualifying charitable clinic or center must maintain a list of the names of authorized clinic or center personnel, their individual duties, and a summary of their qualifications. ()

b. A qualifying charitable clinic or center that receives donated drugs must adopt policies and procedures requiring and with sufficient detail to ensure that authorized clinic or center personnel will comply with applicable local, state, and federal laws. ()

c. Drugs donated pursuant to these rules must not be sold, resold, offered for sale, traded, or transferred to another qualifying charitable clinic or center. ()

d. Nothing in these rules precludes a qualifying charitable clinic or center from charging a dispensing fee. ()

266. -- 269. (RESERVED)

270. EMERGENCY DRUG DISTRIBUTION BY A DISPENSER.

For an emergency medical reason, pursuant to Section 54-1752(16), Idaho Code, a dispenser may distribute (without obtaining a wholesale distribution registration) a drug to another dispenser, as follows: ()

01. Emergency. For purposes of this rule, an emergency medical reason is a situation where a quantity of a drug is needed by a dispenser without an alternative source for the drug reasonably available and the drug is unavailable through a normal distribution channel in sufficient time to prevent risk of harm to a patient that would result from a delay in obtaining the drug. ()

02. Allowable Amount. The amount of drug distributed must not reasonably exceed the amount required for immediate dispensing. ()

03. Controlled Substance Distribution. For controlled substances, each dispenser must retain a signed receipt of the distribution that includes at least: ()

a. The date of the transaction; ()

b. The name, address, and DEA registration number of the distributing dispenser; ()

c. The name, address, and DEA registration number of the receiving dispenser; ()

d. The drug name, strength, and quantity for each product distributed; and ()

e. The signature of the person receiving the drugs. ()

271. -- 289. (RESERVED)

290. ADS SYSTEM -- MINIMUM STANDARDS.

This rule establishes the minimum standards for the use of an ADS system to dispense and store drugs and devices. ()

01. System Registration and Approved Utilization Locations. One or more ADS systems may be utilized by the following drug outlets if registered as required by the Board: ()

a. In a pharmacy, remote dispensing site, or other ambulatory healthcare setting where utilization of the ADS system is under the adequate personal or electronic supervision of a pharmacist, as defined by these rules; ()

b. In a prescriber drug outlet; and ()

c. In an institutional facility. ()

02. Multiple System Documentation. At least the following documentation must be maintained for each ADS system by the supervising pharmacy or prescriber drug outlet utilizing multiple ADS systems: ()

- a. The manufacturer's name and model of the ADS system; ()
- b. The state and, if applicable, federal ADS system registrations; and ()
- c. The name, address, and specific location where the ADS system is operational. ()

03. System Access, Monitoring, and Control. Access to the ADS system must be controlled as follows: ()

- a. Proper identification controls, including electronic passwords or other coded identification, must be utilized and access control must be limited and authorized by the prescriber, PIC, or director; ()
- b. The prescriber, PIC, or director must be able to stop or change access at any time; ()
- c. The prescriber, PIC, or director must maintain a current and immediately retrievable list of persons who have access and the limits of that access; and ()
- d. Review of user access reports must be conducted periodically to ensure that access by persons no longer employed has been appropriately disabled. ()

04. System Security and Patient Confidentiality. The ADS system must have adequate system security and safeguards to prevent and detect unauthorized access or use, maintain the integrity of patient records and prescription drug orders, and protect patient privacy. ()

05. System Filling, Stocking, Replenishing. The filling, stocking, or replenishing of drugs into the ADS system must be accomplished by a pharmacist, technician, prescriber, or authorized prescriber drug outlet personnel. Timely pharmacist or prescriber verification of the accuracy of the filling, stocking, or replenishing of the ADS system must occur through a manual process, bar coding, or other electronic technology used for item identification. ()

06. Stocked Drug Documentation. The ADS system must be able to generate a record on demand of drugs filled into the system that includes at least: ()

- a. The date; ()
- b. The drug name; ()
- c. The dosage form; ()
- d. The strength; ()
- e. The quantity; ()
- f. The drug expiration; ()
- g. The identity of the ADS system; and ()
- h. The name or initials of the authorized individual filling the ADS system and, if applicable, the verifying pharmacist or prescriber. ()

07. System Access and Transaction Documentation. The ADS system must automatically document transactions and other events involving access to system contents that is immediately retrievable in written or electronic form and includes at least the following: ()

- a. The identity of the system and, if applicable, the component accessed; ()
 - b. The name or other identification (e.g., electronic signature or unique identifier) of the person conducting the transaction; ()
 - c. The type of transaction; ()
 - d. The date and time of transaction; ()
 - e. The name, strength, dosage form, and quantity of the drug or description of the medical device accessed; and ()
 - f. If applicable, the name of the patient for whom the drug was ordered. ()
- 08. Supervising Pharmacy Documentation.** The supervising pharmacy of a remote dispensing site must retain separate records of transactions and prescriptions processed by each ADS system utilized. ()
- 09. ADS System Used for Tablets or Capsules.** The lot number of each drug contained in an ADS system used to store in bulk and to count tablets or capsules for dispensing must be retained in an immediately retrievable manner or posted on the device. ()
- 10. Prepackaged Bulk Drug Cartridges or Containers.** If the ADS system uses removable cartridges or containers to hold bulk drugs, the prepackaging of the cartridges or containers must occur at the pharmacy where the original inventory is maintained unless provided by an FDA-approved repackager that is licensed as a wholesaler. The prepackaged cartridges or containers may be sent to a remote dispensing site to be loaded into the ADS system by a pharmacist or a technician if: ()
- a. A pharmacist has verified the proper filling and labeling of the cartridge or container; ()
 - b. The individual cartridges or containers are transported to the ADS system in a secure, tamper-evident container; and ()
 - c. The ADS system utilizes technologies to ensure that the cartridges or containers are accurately loaded. ()
- 11. Self-Service ADS System.** An ADS system may be used for self-service delivery of prescriptions if in compliance with this rule. ()
- a. Products that are temperature sensitive must not be provided unless the system is able to maintain required storage conditions. ()
 - b. Controlled substances and products that require additional preparation to be ready for patient use must not be provided. ()
 - c. The system must be physically attached to the pharmacy or prescriber drug outlet in a manner that access to areas used to stock the device are only accessible through the pharmacy or prescriber drug outlet by authorized personnel. ()
 - d. The system must be operational only during the operating hours of the pharmacy or prescriber drug outlet. ()
 - e. A self-service ADS system must not be used to deliver new prescriptions outside of a prescriber drug outlet. ()
 - f. Prescribers utilizing a self-service ADS system to deliver new prescriptions must provide patient counseling on all new medications. ()

g. The use of a self-service ADS system for prescription refills must comply with laws applicable to the provision of refills by a pharmacy and must provide a patient notification with information about how counseling may be obtained. ()

12. Vending Machines. Only non-prescription medical supplies and drugs that are unrestricted for over-the-counter sale may be stored and sold in vending machines and are subject to inspection by the Board upon reasonable notice. ()

291. ADS SYSTEMS -- INSTITUTIONAL FACILITIES.

Institutional facilities utilizing one or more ADS systems must ensure compliance with the ADS system minimum standards, as applicable, and the requirements of this rule. ()

01. Product Packaging and Labeling. Except as provided herein, drugs stored in the ADS system must be contained in the manufacturers' sealed, original packages or in prepackaged unit-of-use containers (e.g., unit dose tablet/capsule, tube of ointment, inhaler, etc.) and must be labeled as required by these rules. Exceptions to these packaging requirements include: ()

a. Injectable drugs stored in a multi-dose vial (e.g., heparin) from which the drug may be withdrawn into a syringe or other delivery device for single patient use; or ()

b. OTC products stored in a manufacturers' sealed, multi-dose container (e.g., antacids, analgesics) from which the drug may be withdrawn and placed into an appropriate container for single patient use. ()

02. Pharmacist Review. A pharmacist must review the drug order prior to any removal from the system of a drug intended for immediate patient administration except if: ()

a. The system is being used as an after-hours cabinet for drug dispensing in the absence of a pharmacist. ()

b. The system is being used in place of an emergency kit. ()

c. The system is being used to provide access to emergency drugs and only a quantity sufficient is removed to meet the immediate need of the patient. ()

d. The drug is a subsequent dose from a previously reviewed drug order. Any change made to the drug order requires a new approval by a pharmacist prior to removing the drug. ()

03. Product Returns. The ADS system must provide a mechanism for securing and accounting for drugs removed from and subsequently returned to the system (e.g., a return bin). ()

a. A drug removed but not administered to a patient must be returned to the pharmacy immediately or maintained in a manner that prevents access to the returned drug except to return it to the pharmacy and except: ()

i. Items that are too large or bulky to be inserted into the system's return bin; ()

ii. Items requiring refrigeration; or ()

iii. Limited critical care items for which inaccessibility would compromise patient care. ()

b. A removed drug or device must not be returned directly to the system for immediate reissue or reuse. ()

c. Once removed, a drug or device must not be reused or reissued except: ()

i. Drugs stored after dispensing under the drug storage conditions required by these rules; ()

- ii. As supervised by the pharmacist; and ()
- iii. In unopened, sealed, intact, and unaltered containers. ()

04. Wasted and Discarded Drugs. The ADS system must provide a mechanism for securing and accounting for wasted or discarded drugs. Waste documentation must include at least the following: ()

- a. Date and time of transaction; ()
- b. Patient name and location; ()
- c. Drug and dose; ()
- d. Quantity of transaction; ()
- e. Wasted amount; ()
- f. Beginning and ending count (for controlled substances only); ()
- g. Nurse identification; and ()
- h. Witness identification, if needed. ()

05. Supervising Pharmacy Identification. If used in a nursing home, the ADS system must be clearly marked with the name, address, and phone number of the supervising pharmacy and pharmacist-in-charge. ()

292. -- 299. (RESERVED)

SUBCHAPTER D -- PROFESSIONAL PRACTICE STANDARDS
(Rules 300 through 599 -- Professional Practice Standards)

300. PIC QUALIFICATIONS.

A pharmacist may neither be designated nor function as the PIC of a pharmacy unless the designee spends a substantial part of the designee's working time each month at the pharmacy in which designated as the PIC. ()

301. PIC RESPONSIBILITIES.

The PIC is responsible for the management, and must maintain full and complete control, of every part of the pharmacy and its regulated operations. ()

302. PIC REPORTING REQUIREMENTS.

01. PIC Change. Both an outgoing and incoming PIC must report to the Board a change in a PIC designation within ten (10) days of the change. ()

02. Annual Personnel Report. Coinciding with the annual renewal of the drug outlet registration, the PIC must annually report on the renewal application the names of the designated PIC, each employee pharmacist and technician, and each student pharmacist currently training in the pharmacy. ()

03. Employment Changes. Changes in employment of pharmacists, technicians, or student pharmacists must be reported to the Board by the PIC within ten (10) days of the change. ()

303. PHARMACIST -- ASSIGNMENT OF FUNCTIONS.

01. Assignment to Licensed or Registered Persons Only. A pharmacist must neither delegate to, nor permit performance by, a person other than a pharmacist, student pharmacist, or technician any function related to pharmacy operations. ()

02. Assignment of Functions to a Technician. A pharmacist may assign to and allow performance by a technician only those functions performed in pharmacy operations that meet the following criteria: ()

- a. The function is routine; ()
- b. The function is one for which the technician is adequately trained; ()
- c. The function is performed under a pharmacist's supervision; and ()
- d. The function does not require the use of a pharmacist's professional judgment. ()

03. Pharmacist Supervision. If a student pharmacist or a technician performs one (1) or more functions in connection with pharmacy operations, the student pharmacist or technician must be under the supervision of a pharmacist who, in addition to the pharmacy and the PIC, is responsible for every element of the filled prescription. ()

304. PHARMACIST -- AUTHORIZED PHARMACY ENTRANCE.

A pharmacist must not permit a person other than a pharmacist, student pharmacist, or technician to enter or work in the secured pharmacy, except that a pharmacist may authorize other persons to be present temporarily in the pharmacy for legitimate business purposes if under the direct supervision of a pharmacist at all times. ()

305. -- 309. (RESERVED)

310. PHARMACIST COLLABORATIVE PHARMACY PRACTICE.

Pharmacists and prescribers may enter into collaborative pharmacy practice through a written collaborative pharmacy practice agreement that defines the nature and scope of authorized DTM or other patient care services to be provided by a pharmacist. ()

- 01. Agreement Elements.** The collaborative pharmacy practice agreement must include: ()
- a. Identification of the parties to the agreement; ()
 - b. The establishment of each pharmacist's scope of practice authorized by the agreement, including a description of the types of permitted activities and decisions; ()
 - c. The drug name, class, or category and protocol, formulary, or clinical guidelines that describe or limit a pharmacist's authority to perform DTM; ()
 - d. A described method for a prescriber to monitor compliance with the agreement and clinical outcomes of patients and to intercede where necessary; ()
 - e. A provision documenting a prescriber's right to override a collaborative practice decision made by a pharmacist whenever deemed necessary or appropriate; ()
 - f. A provision allowing any party to cancel the agreement by written notification; ()
 - g. An effective date; and ()
 - h. Signatures of the parties to the agreement and dates of signing. ()
 - i. Amendments to a collaborative pharmacy practice agreement must be documented, signed, and dated. ()

02. Board Review. The original collaborative pharmacy practice agreement and any subsequent revisions must be made available to the Board upon request. ()

03. Agreement Review. The collaborative pharmacy practice agreement must be reviewed and

renewed annually and revised when necessary or appropriate. ()

04. Documentation of Pharmacist Activities. The patient care provided pursuant to the agreement must be documented in the patient's permanent record in a manner that allows it to be readily available to other healthcare professionals providing care to the patient. ()

311. -- 319. (RESERVED)

320. PHARMACIST INDEPENDENT PRACTICE.

A pharmacist may provide pharmaceutical care services outside of a pharmacy or institutional facility if the following conditions are met: ()

01. Access to Relevant Information. The pharmacist has access to prescription drug order records, patient profiles, or other relevant medical information and appropriately reviews the information; ()

02. Information Protected from Unauthorized Use. Access to the information required by these rules is protected from unauthorized access and use; and ()

03. Records Maintained in Electronic Recordkeeping System. The pharmacist maintains the records or other patient-specific information created, collected, or used in an electronic recordkeeping system that complies with the requirements of these rules. ()

321. -- 329. (RESERVED)

330. PHARMACIST ADMINISTERED IMMUNIZATIONS.

01. Patient Eligibility. A pharmacist may administer an immunization to a healthy patient without immunization contraindications pursuant to the latest recommendations by the CDC or other qualified government authority or to any patient pursuant to a prescription drug order issued by another prescriber. ()

02. Pharmacist Qualifications. To qualify to administer immunizations, a pharmacist must first: ()

a. Successfully complete an ACPE-accredited or comparable course that meets the standards for pediatric, adolescent, and adult immunization practices recommended and approved by the CDC's Advisory Committee on Immunization Practices and includes at least the following: ()

i. Basic immunology, vaccine, and immunization protection; ()

ii. Diseases that may be prevented by vaccination or immunization; ()

iii. Current recommended immunization schedules; ()

iv. Vaccine and immunization storage and management; ()

v. Informed consent; ()

vi. Physiology and techniques for administration of immunizations; ()

vii. Pre-immunization and post-immunization assessment and counseling; ()

viii. Immunization reporting and records management; and ()

ix. Identification response, documentation, and reporting of adverse events. ()

b. Hold a current certification in basic life support for healthcare providers offered by the American Heart Association or a comparable Board-recognized certification program that includes cardiopulmonary

resuscitation (CPR) and automated electronic defibrillator (AED) training and requires a hands-on skills assessment by an authorized instructor. ()

03. Maintaining Qualification. To maintain qualification to administer immunizations, a pharmacist must annually complete a minimum of one (1) clock hour (0.1 CPEU) of ACPE-approved CPE related to vaccines, immunizations, or their administration, which may also be applied to the general CPE requirements of these rules. ()

04. Student Pharmacist Administration. A pharmacist may not delegate authority to administer immunizations; however, a student pharmacist who has satisfied the qualifications may administer immunizations under the direct supervision of a qualified immunizing pharmacist. ()

05. Waste Disposal. An immunizing pharmacist must properly dispose of used or contaminated supplies. ()

06. Required Reports. An immunizing pharmacist must report: ()

a. Adverse events to the healthcare provider identified by the patient, if any, and to the Vaccine Adverse Event Reporting System (VAERS); and ()

b. Administration of immunizations to the Idaho Immunization Reminder Information System (IRIS), as required. ()

07. Required Resources. A pharmacist must have a current copy of, or on-site access to, the CDC's Epidemiology and Prevention of Vaccine-Preventable Diseases. ()

08. Vaccine Information Statements. A corresponding, current CDC-issued VIS must be provided to the patient or the patient's representative for each administered immunization. ()

09. Recordkeeping. For each administered immunization, the following information must be collected and maintained in the patient profile: ()

a. The patient's name, address, date of birth, and known allergies; ()

b. The date of administration; ()

c. The product name, manufacturer, dose, lot number, and expiration date of the vaccine; ()

d. Documentation identifying the VIS provided; ()

e. The site and route of administration and, if applicable, the dose in a series (e.g. one (1) of three (3)); ()

f. The name of the patient's healthcare provider, if any; ()

g. The name of the immunizing pharmacist and of the student pharmacist, if any; ()

h. Adverse events observed or reported, if any, and documentation including at least the dates of any subsequent required reporting; and ()

i. Completed informed consent forms. ()

10. Emergencies. ()

a. An immunizing pharmacist must maintain an 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, intramuscular diphenhydramine, or oral diphenhydramine to treat an acute allergic reaction to an immunization pursuant to guidelines issued by the American Pharmacy Association. ()

331. -- 349. (RESERVED)

350. STUDENT PHARMACIST UTILIZATION AND PRACTICE LIMITATIONS.

01. Activities. A student pharmacist may engage in the practice activities of a pharmacist if: ()

a. The activity is not specifically required to be performed only by a pharmacist; ()

b. The activity is commensurate with the education and skill of the student pharmacist and performed under the supervision of a pharmacist; ()

c. Any activity of a compounding, dispensing, or interpretive nature is checked by a pharmacist; and ()

d. Any recording activity that requires the initial or signature of a pharmacist is countersigned by a pharmacist. ()

02. Unlawful Acceptance of Assignment. A student pharmacist must not accept assignment of, or perform, any task or function connected with pharmacy operations unless the student pharmacist is authorized by the assigning pharmacist and the task or function meets the criteria set forth in this rule. ()

03. Identification of Student Pharmacists. ()

a. Each student pharmacist must be identified by a clearly visible name badge designating the individual as a student pharmacist. The name badge must contain the individual's printed first name and the title of student pharmacist, pharmacist intern, pharmacist extern, or another title that conveys the same meaning. ()

b. Student pharmacists must identify themselves as a student pharmacist, pharmacist intern, or pharmacist extern on any phone calls initiated or received while on duty. ()

351. -- 399. (RESERVED)

400. TECHNICIAN -- UTILIZATION AND PRACTICE LIMITATIONS.

01. Unlawful Acceptance of Assignment. A technician must not accept assignment of, or perform, any task or function connected with pharmacy operations unless the technician is authorized by the assigning pharmacist and the task or function meets the criteria set forth in this rule. ()

02. Unlawful Performance. A technician must not perform tasks or functions connected with pharmacy operations that: ()

a. Are not routine; ()

b. The technician is not adequately trained to perform; ()

c. The technician has inadequate pharmacist supervision to perform; or ()

d. Requires the use of a pharmacist's professional judgment. ()

03. Prohibited Tasks or Functions by a Technician. A technician must not do any of the following which, without limiting the scope of the term "professional judgment," is a non-exclusive list of actions requiring a pharmacist's professional judgment: ()

- a. Receive a new verbal prescription drug order from a prescriber or other person authorized by law and, either manually or electronically, reduce the order to writing; ()
- b. Consult with the prescriber prior to filling if clarification of information is needed regarding a patient or the prescription drug order; ()
- c. Perform prospective drug review or interpret clinical data in a patient's medication record (e.g., contraindications, drug interactions, etc.); ()
- d. Perform professional consultation with a prescriber, nurse, or other healthcare professional; ()
- e. Supervise the packaging of drugs and check the completed procedure and product, unless checked in compliance with the verification technician procedures allowed in institutional facilities; ()
- f. Provide patient consultation on a new or refilled prescription or on over-the-counter drugs or supplements; and ()
- g. Supervise the pharmacy operations activities of student pharmacists and technicians. ()

04. Technician Identification. ()

- a. Each technician must be identified by a clearly visible name badge designating the individual as a technician. The name badge must contain the individual's printed first name and the title of technician. ()
- b. Technicians must identify themselves as a technician on any phone calls initiated or received while on duty. ()

401. -- 409. (RESERVED)

410. VERIFICATION TECHNICIAN PROGRAM.

Only institutional pharmacies located within acute care hospitals may utilize a verification technician program. A verification technician program allows qualified technicians to verify the work of other technicians in the filling of floor and ward stock and unit dose distribution systems for patients whose orders have previously been reviewed and approved by a pharmacist. ()

01. Written Program Filing. Prior to initiating a verification technician program, an institutional pharmacy must prepare a written program description that includes at least the following: ()

- a. The name of the pharmacist assigned as the coordinator of the verification technician program; ()
- b. A description of the duties of the coordinator sufficient to ensure and demonstrate compliance by the institutional pharmacy with these verification technician program rules; ()
- c. A description of the duties of technicians designated to perform the functions of verifying the work of other technicians; ()
- d. Identification of the types of drugs verification technicians are authorized to verify; ()
- e. A description of the specialized and advanced training that must be provided to each verification technician; and ()
- f. A description of the monitoring and evaluation processes used by the institutional pharmacy to ensure the ongoing competency of each verification technician. ()

02. Program Requirements. Each institutional pharmacy utilizing a verification technician program must comply with the following requirements: ()

a. A technician must neither be designated to perform, nor may the technician perform, verification functions without competently completing the required training. ()

b. A verification technician may verify only manufacturer prepared or robotically prepared unit dose drugs identified in the written program description for floor or ward stock or unit dose distribution systems of pharmacist reviewed and approved drug orders for hospital patients. If either the alteration of a unit dose or the combination of unit doses is required, a pharmacist must verify the resulting unit dose alteration or combination of unit doses. ()

c. The institutional pharmacy must conduct ongoing monitoring and evaluation of each verification technician to ensure the ongoing competency of the technician. ()

d. For each verification technician, an institutional pharmacy utilizing a verification technician program must maintain records containing: ()

i. The date the technician was designated; ()

ii. The date the technician completed the required training; ()

iii. The dates and results of each competency evaluation; and ()

iv. The dates of, and reasons for, any suspension or revocation of the technician's designation or other disciplinary action against the verification technician connected with the performance of the technician's duties in the verification technician program. ()

e. While on duty, each verification technician must wear identification that includes the title, "Verification Technician." ()

f. The duties of the verification technician program coordinator must include the supervision of verification technicians to ensure their duties are performed competently in a manner that protects patient safety. ()

411. -- 499. (RESERVED)

500. UNPROFESSIONAL CONDUCT.

The following acts or practices by a pharmacist, student pharmacist, or technician are declared to be specifically, but not by way of limitation, unprofessional conduct and conduct contrary to the public interest. ()

01. Unethical Conduct. Conduct in the practice of pharmacy or in the operation of a pharmacy that may reduce the public confidence in the ability and integrity of the profession of pharmacy or endangers the public health, safety, and welfare. A violation of this section includes committing fraud, misrepresentation, negligence, concealment, or being involved in dishonest dealings, price fixing, or breaching the public trust with respect to the practice of pharmacy. ()

02. Lack of Fitness. A lack of fitness for professional practice due to incompetency, personal habits, drug or alcohol dependence, physical or mental illness, or for any other cause that endangers public health, safety, or welfare. ()

03. On-Duty Intoxication or Impairment. Intoxication, impairment, or consumption of alcohol or drugs while on duty, including break periods after which the individual is expected to return to work, or prior to reporting to work. ()

04. Diversion of Drug Products and Devices. Supplying or diverting drugs, biologicals, and other medicines, substances, or devices legally sold in pharmacies that allows the circumvention of laws pertaining to the legal sale of these articles. ()

05. Unlawful Possession or Use of Drugs. Possessing or using a controlled substance without a lawful prescription drug order. A failed drug test creates a rebuttable presumption of a violation of this rule. ()

06. Prescription Drug Order Noncompliance. Failing to follow the instructions of the person writing, making, or ordering a prescription as to its refills, contents, or labeling. ()

07. Failure to Confer. Failure to confer with the prescriber when necessary or appropriate or filling a prescription if necessary components of the prescription drug order are missing or questionable. ()

08. Excessive Provision of Controlled Substances. Providing a clearly excessive amount of controlled substances. Evidentiary factors of a clearly excessive amount include, but are not limited to, the amount of controlled substances furnished and previous ordering patterns (including size and frequency of orders). ()

09. Failure to Counsel or Offer Counseling. Failing to counsel or offer counseling, unless specifically exempted or refused. The failure to retain appropriate documentation evidencing compliance with patient counseling requirements creates a rebuttable presumption of a violation of this rule. ()

10. Substandard, Misbranded, or Adulterated Products. Manufacturing, compounding, delivering, dispensing, or permitting to be manufactured, compounded, delivered, or dispensed substandard, misbranded, or adulterated drugs or preparations or those made using secret formulas. ()

11. Prescriber Incentives. Allowing a commission or rebate to be paid, or personally paying a commission or rebate, to a person writing, making, or otherwise ordering a prescription. ()

12. Exclusive Arrangements. Participation in a plan or agreement that compromises the quality or extent of professional services or limits access to provider facilities at the expense of public health or welfare. ()

13. Failure to Report. Failing to report to the Board any violation of statutes or rules pertaining to the practice of pharmacy or any act that endangers the health, safety, or welfare of patients or the public. ()

14. Failure to Follow Board Order. Failure to follow an order of the Board. ()

501. GROUNDS FOR DISCIPLINE.

The Board may refuse to issue or renew or may suspend, revoke, or restrict the registration of an individual on one (1) or more of the grounds provided in section 54-1726, Idaho Code. ()

502. USE OF FALSE INFORMATION PROHIBITED.

Use of false information in connection with the prescribing, delivering, administering, or dispensing of a controlled substance or other drug product is prohibited. ()

503. PRESCRIPTION DELIVERY RESTRICTIONS.

A pharmacist must not participate in any arrangement or agreement whereby filled prescriptions may be left at, picked up from, accepted by, or delivered to any place of business not registered as a pharmacy except that a pharmacist or a pharmacy, by means of its agent, may deliver filled prescriptions to the patient, the patient's residence, or to the hospital or other institutional facility in which the patient is convalescing. ()

504. UNLAWFUL ADVERTISING.

01. Unlawful Advertising or Inducements. A licensee or registrant may not promote or induce, directly or indirectly, the provision of professional services or products through the dissemination of a public communication that contains a false, misleading, or deceptive statement or claim. ()

02. Advertising Controlled Substances Prohibited. A person must not advertise to the public controlled substances, Schedules I through V, in any manner, and a pharmacy must not display these products to their patrons or members of the public. ()

505. -- 599. (RESERVED)

SUBCHAPTER E -- DRUG OUTLET PRACTICE STANDARDS
(Rules 600 through 699 -- Drug Outlet Practice Standards)

600. PHARMACY REGISTRANT AND PIC OR DIRECTOR.

01. Designated PIC or Director Required. A pharmacy must not be without a designated PIC or director for more than thirty (30) sequential days. ()

02. Corresponding and Individual Responsibility. The pharmacy registrant and the PIC or director each have corresponding and individual responsibility for compliance with the law and these rules in all aspects of the sale and the dispensing of drugs, devices, and other materials at the drug outlet, including the safe, accurate, secure, and confidential handling and storage and the preparation, compounding, distributing, or dispensing of drugs and PHI. ()

601. PHARMACY SPACE AND FIXTURES.

01. Preparation Area Standards. A pharmacy must be well-lit, ventilated, temperature controlled, and have sufficient floor and counter space to avoid overcrowding and to allow the pharmacy to be maintained in a clean and sanitary condition appropriate for the safe preparation and compounding of prescriptions. ()

02. Equipment and Fixture Standards. A pharmacy must be equipped with a sink with hot and cold water, appropriate fixtures for waste disposal, and refrigerated storage equipment of reasonable capacity. ()

03. Additional Retail Pharmacy Requirements. A retail pharmacy that is new or remodeled after the effective date of this rule must: ()

a. Provide and maintain a patient consultation area that affords the patient auditory and visual privacy, is accessible through an entrance and exit that does not require the patient to enter or traverse any part of the prescription preparation or drug storage areas, and is compliant with the Americans with Disabilities Act; and ()

b. Include a lavatory facility in the pharmacy restricted to pharmacy staff. ()

602. PHARMACY TECHNICAL EQUIPMENT.

01. Technical Equipment. A pharmacy must have appropriate technical equipment to maintain the electronic recordkeeping requirements of these rules and any additional equipment and supplies required by its scope of practice to ensure public safety. ()

02. PHI Transmission Equipment Location. A non-institutional pharmacy that uses a fax machine or other equipment to electronically send or receive PHI must locate and maintain the equipment within the secured pharmacy. ()

03. Separate Telephone. A pharmacy must have a separate and distinct telephone line from that of the business that must not be answerable by non-pharmacy personnel. If a pharmacy uses an automatic answering system, messages must not be retrieved or pharmacy services performed by non-pharmacy personnel. ()

603. PHARMACY REFERENCES.

Required pharmacy references include the latest hard copy or electronic editions and supplements of the following: ()

01. Pharmacy Laws and Rules. Idaho Pharmacy Laws and Rules. ()

02. Current Pharmacy Reference. One (1) of the following current pharmacy references: ()

a. Facts and Comparisons; ()

- b. Clinical Pharmacology; ()
- c. Micromedex; or ()
- d. Lexicomp. ()

03. Additional Current Pharmacy Reference. One (1) additional current pharmacy reference relevant to the practice setting. ()

604. PHARMACY PRODUCT STORAGE AND REMOVAL.

Prescription drugs, devices, and other products restricted to sale or dispensing by, or under the supervision of, a pharmacist must be stored in the pharmacy and must not be sold, delivered, or otherwise removed from a pharmacy unless a pharmacist is present, except as allowed by these rules for emergency access to an institutional pharmacy. In an institutional facility these restricted products may also be stored in an alternative designated area that is appropriately equipped to ensure compliance with drug product storage requirements, to provide adequate security and protection from diversion, and that otherwise complies with applicable requirements of these rules. ()

605. PHARMACY SECURITY.

01. Basic Security Standards. A pharmacy must be constructed and equipped with adequate security, and at least while closed, utilize an alarm or other comparable monitoring system to protect its equipment, records, and supply of drugs, devices, and other restricted sale items from unauthorized access, acquisition, or use. Pharmacies without an alarm or other monitoring system as of the effective date of this rule must comply with this rule upon completion of a structural remodel. ()

02. Non-Institutional Pharmacy Security During Pharmacist Absence. A non-institutional pharmacy must be closed for business and secured during all times a pharmacist is not present except for temporary pharmacist absences for on-premises rest breaks or to perform professional services in the peripheral areas immediately outside of the pharmacy. ()

03. Structural Security Requirements. If a pharmacy is located within an establishment that is open to the public for business at times when a pharmacist is not present, the pharmacy must be totally enclosed in a manner sufficient to provide adequate security for the pharmacy, as required by this rule and approved by the Board. ()

a. Pharmacy walls must extend to the roof or the pharmacy must be similarly secured from unauthorized entry. ()

b. Solid core or metal doors are required. ()

c. Doors and other access points must be constructed in a manner that the hinge hardware is accessible only from inside of the pharmacy and must be equipped with locking devices. ()

d. If used, a “drop box” or “mail slot” allowing delivery of prescription drug orders to the pharmacy during hours closed must be appropriately secured against theft, and the pharmacy hours must be prominently visible to the person depositing the prescription drug order. Prescriptions must not be accepted for delivery to the pharmacy or for depositing in the drop box by non-pharmacy employees of a retail establishment. ()

04. Restricted Access to the Pharmacy. No one must be allowed entrance to the closed and secured pharmacy unless under the direct supervision of a pharmacist or except as permitted by these rules for an institutional pharmacy. ()

606. PHARMACY NOTIFICATION AND ADVERTISING OF HOURS OPEN FOR BUSINESS.

01. Notification of Business Hours. A pharmacy must notify the Board and prominently display the hours open to the public for business, if applicable, on or adjacent to its entrance and the entrance of the business establishment in which it is located if the open hours are different. ()

02. Notification of Change of Business Hours. The Board must be notified of changes to the hours that a pharmacy is open to the public for business, including changes resulting in differential hours, at least seven (7) days prior to the change except changes of hours in recognition of state holidays set forth in Section 73-108, Idaho Code. A change of hours for a holiday must be prominently posted for public notice at least seven (7) days in advance. ()

607. PHARMACY STAFFING AND RATIO.

01. Staffing. A pharmacy must be staffed sufficiently to allow for appropriate supervision, to otherwise operate in compliance with the law, and if applicable, to remain open during the hours posted as open to the public for business. ()

02. Ratio. The ratio of pharmacists to student pharmacists and technicians may not exceed one (1) pharmacist for every six (6) student pharmacists and technicians in total in any practice setting. A pharmacist must not operate a pharmacy, allow the operation of a pharmacy, or be required to operate a pharmacy with a ratio that results in, or would reasonably be expected to result in, an unreasonable risk of harm to public health, safety, or welfare. ()

608. PHARMACY STRUCTURAL REMODEL APPROVAL.

Prior to the commencement of structural remodeling that impacts the periphery or security of an existing pharmacy, a floor plan must be submitted to, and approved by, the Board. The prescription preparation area (including the patient consultation, merchandising, and waiting areas, if applicable), storeroom, restroom, partitions (including, but not limited to, walls, doors, and windows), trade fixtures, and appropriate elevations must be indicated on the submitted floor plan. ()

609. PHARMACY CHANGE OF OWNERSHIP OR PERMANENT CLOSING.

01. Board Notification. The registrant must notify the Board of a pharmacy's change of ownership or permanent closure at least ten (10) days prior to the event. The notice must include: ()

a. The name and address of the pharmacy to be sold or closed; ()

b. The date of sale or closure; ()

c. The name and address of the business acquiring the prescription inventory; and ()

d. The name and address of the pharmacy acquiring the prescription files and patient profiles in compliance with the records retention requirement. ()

02. Public Notice. A registrant must notify the general public of the pharmacy's permanent closing at least ten (10) days prior to closing. The notice must include the date of closure and the new location of the prescription files. Notice must be provided by prominent posting in a public area of the pharmacy. ()

03. Pharmacy Signs. Unless sold and transferred to another pharmacy operator, a registrant must remove or completely cover each sign and other exterior indication that the premises was a pharmacy within thirty (30) days after the date a pharmacy permanently ceases operations. ()

04. Transfer or Other Disposition of Drugs and Prescription Files. The PIC of a pharmacy that ceases operation must adequately secure and protect the drug product inventory from diversion, deterioration, or other damage until lawful transfer or disposition and must retain a closing inventory of controlled substances. ()

05. Pharmacy Change of Ownership. A change of ownership of a currently registered pharmacy will require the submission and approval of a new pharmacy registration application but will not require an onsite inspection prior to issuance of a pharmacy registration unless structural remodeling occurs. ()

610. -- 619. (RESERVED)

620. INSTITUTIONAL FACILITY -- PRACTICE OF PHARMACY AND ADMINISTRATION AND CONTROL OF DRUGS AND DEVICES.

These institutional facility rules are applicable to the practice of pharmacy and the administration and control of drugs and devices within institutional facilities or by persons employed by them. ()

621. INSTITUTIONAL FACILITY WITH ONSITE PHARMACY -- MINIMUM RESPONSIBILITIES.

01. Institutional Pharmacy Staffing. The director must be assisted by a sufficient number of additional pharmacists, student pharmacists, and technicians as may be required to operate the pharmacy competently, safely, and adequately to meet the needs of the patients of the facility. ()

02. Inventory Management. The professional staff of the institutional facility must cooperate with the director to manage the responsibilities of ordering, administering, and accounting for drugs, devices, and other pharmaceutical materials. ()

03. Prescribers Authorized by Institutional Facility. The institutional facility must designate and notify the pharmacy of the prescribers authorized to issue drug orders for facility patients. ()

04. Approved Use of Abbreviations and Chemical Symbols. A listing of acceptable, or alternatively unacceptable, abbreviations and chemical symbols used by prescribers on drug orders must be developed and distributed by the appropriate committee of the institutional facility. ()

05. Director Participation in Patient Care Evaluation Program. The director must participate in the aspects of the institutional facility's patient care evaluation program that relate to pharmaceutical utilization and effectiveness. ()

622. INSTITUTIONAL PHARMACY DIRECTOR -- MINIMUM RESPONSIBILITIES.

Each institutional pharmacy must be supervised and directed by an Idaho-licensed pharmacist (referred to herein as "the director") who is knowledgeable in, and thoroughly familiar with, the specialized functions of institutional pharmacies. The director is responsible for ensuring compliance with applicable law and for each activity of the institutional pharmacy, including at least the following: ()

01. Policies and Procedures. In coordination with the appropriate institutional facility personnel, the adoption of policies and procedures with sufficient specificity regarding the handling, storage, and dispensing of drugs within the institution to protect public health and safety and ensure compliance with these rules and other applicable law. ()

02. Formulary or Drug List Development. The participation in any development of a formulary or drug list for the facility. ()

03. Product Procurement. The procurement of drugs, chemicals, biologicals, devices, or other products used by the institutional facility for patient pharmaceutical care services or for which a drug order is required. ()

04. Drug Use, Storage, and Accountability. The safe and efficient dispensing, distribution, control, and secured storage of, and accountability for, drugs within the facility, including at least the following: ()

a. Ensuring that drugs stored within the institutional pharmacy or in alternative secured storage areas have proper sanitation, temperature, light, ventilation, moisture control, segregation and security; ()

b. Ensuring that outdated or other unusable drugs are identified and stored in a manner that prevents their distribution or administration prior to disposition; ()

c. Ensuring that emergency drugs are in adequate and proper supply at designated locations; ()

d. Ensuring that requirements applicable to the purchasing, storing, distribution, dispensing,

recordkeeping, and disposal of controlled substances are met throughout the institution, including but not limited to, ensuring that controlled substances stored in surgery or emergency departments, nursing stations, ambulatory clinics, diagnostic laboratories or other locations outside of the pharmacy are inaccessible to unauthorized personnel; ()

e. Ensuring accurate filling and labeling of containers from which drugs are to be administered or dispensed; ()

f. Ensuring appropriate admixture of parenteral products, including serving in an advisory capacity for nursing personnel concerning incompatibility and the provision of proper incompatibility information; and ()

g. Ensuring appropriate provision and maintenance, in both the pharmacy and patient care areas, of a sufficient inventory of antidotes and other emergency drugs, current antidote information, telephone numbers of regional poison control centers and other emergency assistance organizations, and other materials and information determined necessary by the appropriate institutional facility personnel. ()

05. Emergency Drug Access Protocol. In coordination with the appropriate institutional facility personnel, the development of an emergency drug access protocol and related training of R.N.s to ensure appropriate knowledge of the proper methods of access, removal of drugs, documentation, and other required procedures prior to the R.N.'s designation for access to emergency drug supplies. ()

06. Suspected Adverse Drug Reaction Reporting. The reporting in a timely manner of a suspected adverse drug reaction to the ordering physician and to the appropriate institutional facility personnel. The director may use discretion and, if deemed necessary or advisable for public health or safety, report a suspected reaction to others such as MedWatch, the manufacturer, and the USP. ()

07. Records Maintenance. The maintenance of records of institutional pharmacy transactions required by law. ()

08. Teaching, Research, and Patient Care Evaluation Programs. The cooperation with any teaching and research programs and the participation in any patient care evaluation programs relating to pharmaceutical utilization and effectiveness within the institutional facility. ()

09. Continuous Quality Improvement Program. The development and implementation of a continuous quality improvement program to review and evaluate pharmaceutical services and recommend improvements. ()

623. -- 629. (RESERVED).

630. INSTITUTIONAL FACILITY -- GENERAL STANDARDS FOR ADMINISTRATION AND CONTROL OF DRUGS AND DEVICES.

01. Drugs and Devices Dispensed for Administration or Use Within an Institutional Facility. Within an institutional facility, drugs and devices may be dispensed for administration to, or for self-administration or use by, a patient while in the institutional facility only as permitted by applicable law and these rules consistent with usual and customary standards of good medical practice, as follows: ()

a. Upon the drug orders of licensed facility prescribers; ()

b. Pursuant to an emergency protocol for the administration of drugs without an order in life or death situations; and ()

c. By self-administration or use if specifically authorized by the treating or ordering prescriber, the patient has been appropriately educated and trained to perform self-administration, and there is no risk of harm. ()

02. Drugs and Devices Dispensed for Administration or Use Outside an Institutional Facility. A drug or device prepared for self-administration or use by a patient while outside the confines of the institutional

facility must comply with the standard prescription drug labeling requirements. ()

03. Controlled Substances Reporting and Documentation. Distribution, dispensing, delivery, or administration of controlled substances within an institutional facility or by facility personnel must be properly and adequately documented and reported in the time and manner required by the appropriate committee of the institutional facility and the director. ()

04. Patient's Personal Drug Supplies. If an admitted patient brings a drug into the institutional facility, the drug must not be administered or used except pursuant to a drug order and only if it can be precisely identified and the quantity and quality of the drug visually evaluated by a pharmacist. ()

a. If a patient's drug will not be administered or used, the pharmacy must package, seal, and return the drug to an adult member of the patient's immediate family or store and return it to the patient upon discharge. ()

b. Drugs not returned to the patient or the patient's family may be disposed of after a reasonable number of days following discharge or death. ()

05. Suspected Adverse Drug Reaction Reporting. Suspected adverse drug reactions must be communicated in a timely manner to the pharmacy. ()

06. Required Pharmacy Returns. Discontinued, expired, and damaged drugs and containers with worn, illegible, or missing labels must be returned to the pharmacy for proper handling. ()

631. INSTITUTIONAL FACILITY -- EMERGENCY DRUG ACCESS AND PHARMACIST ABSENCE. The director must make advance arrangements necessary to facilitate continuity of patient care and for the provision of drugs to the medical staff and other authorized personnel of the institutional facility in emergencies and during the absences of a pharmacist in compliance with this rule. ()

01. Emergency Pharmacy Access. If a drug is unavailable from any other authorized emergency source in sufficient time to prevent risk of harm to a patient that would result from a delay in obtaining the drug and in the absence of a pharmacist from the premises of the institutional facility, it may be retrieved from an institutional pharmacy by an R.N. as follows: ()

a. One (1) R.N. may be designated per shift for emergency access to the pharmacy; ()

b. Access may only occur if controlled substances are secured in a locked cabinet or other appropriate means to prevent unauthorized access; and ()

c. Only a non-controlled substance may be removed and only in an amount necessary to treat a patient's immediate need until the pharmacy is again attended by a pharmacist. ()

02. Emergency Cabinets. A cabinet or similar enclosure located outside an institutional pharmacy may be used for emergency access of drugs by an R.N. as follows: ()

a. The emergency cabinet must be accessible only by key, combination, or otherwise sufficiently secured to deny access to unauthorized persons; and ()

b. Drugs stocked in the emergency cabinet must be approved, prepared, stored, and handled as specified by these rules for emergency drug supplies. ()

03. Emergency Drug Access Conditions and Documentation. Emergency access by an R.N. to an institutional pharmacy or an emergency cabinet or similar enclosure must be documented as follows: ()

a. Removal of a drug must be pursuant to a valid drug order; ()

b. Removal of a drug must be documented in a record that includes at least: ()

- i. The patient's name and location; ()
 - ii. The name and strength of the drug; ()
 - iii. The amount; ()
 - iv. The date and time; and ()
 - v. The signature of the designated nurse. ()
- c. The removal record and a copy of the drug order must be left conspicuously in the pharmacy, emergency cabinet, or alternative location to facilitate prompt accuracy verification and initialing by a pharmacist. ()

04. Temporary Pharmacist Absence. To accommodate periods of temporary absence of a pharmacist from the institutional pharmacy, pharmacy students and technicians may remain within the pharmacy under the following conditions: ()

- a. No other person may be allowed access or entrance to the pharmacy; ()
- b. Drugs or devices may not leave the pharmacy except if requested by, and immediately delivered to, the pharmacist; and ()
- c. Neither student pharmacists nor technicians may remain in the pharmacy during periods of pharmacist absence from the institutional facility. ()

632. INSTITUTIONAL FACILITY -- EMERGENCY DRUG SUPPLY PREPARATION AND MONITORING.

The director or PIC and the appropriate institutional facility personnel must jointly approve and develop a listing of drugs, by identity and quantity, for inclusion in an emergency cabinet, emergency kit, crash cart, or other similar resource that is specifically approved for use by that type of institutional facility and for delivery to patients receiving emergency treatment. In addition to other applicable provisions of these rules, approved drugs are subject to the following limitations, restrictions, and requirements: ()

01. Prepackaged Amounts. The drugs must be prepackaged in amounts sufficient to satisfy immediate therapeutic requirements only; ()

02. Content Labeling. The drugs must be labeled as required by these rules for prepackaged products and with any additional information as may be required to prevent misunderstanding or risk of harm to patients; ()

03. Access Documentation. Access to the emergency drugs must be documented by drug orders and, if applicable, proofs of use; ()

04. Drug Expiration Monitoring. Drug expiration dates must be monitored and the drugs replaced as needed to ensure the emergency drug supply contains no outdated products; and ()

05. Regular Inventory and Inspection. Emergency drug supplies must be regularly inventoried and inspected to ensure that they are properly stored and secured against pilferage or tampering. ()

633. INSTITUTIONAL FACILITY -- EMERGENCY KITS AND CRASH CARTS -- GENERAL RULES.

Emergency drugs prepared and packaged as required by these rules may be approved for inclusion in emergency kits or crash carts for use by personnel with authority granted by state or federal law to administer prescription drugs. ()

01. Storage and Security. Emergency kits or crash carts must be sealed in a tamper-evident manner and stored in limited access areas to prevent unauthorized access and to ensure a proper environment for preservation

of the drugs within them. ()

02. Exterior Kit Labeling. The exterior of emergency kits must be clearly labeled as an emergency drug kit to be used only in emergencies. Additionally, an immediately retrievable list of the drugs contained therein must include: ()

a. The name, strength, and quantity of each drug; ()

b. The expiration date of the first expiring drug; and ()

c. The name, address, and telephone number of the supplying pharmacist, if applicable. ()

03. Drug Removal. Drugs must only be removed from emergency kits or crash carts by persons with authority granted by state or federal law to administer prescription drugs, pursuant to a valid drug order, or by a pharmacist. ()

04. Notification of Authorized Use. Whenever an emergency kit or crash cart is opened, the pharmacy must be notified and the kit or cart must restocked and resealed within a reasonable time. ()

05. Notification of Unauthorized Use. If an emergency kit or crash cart is opened in an unauthorized manner, the pharmacy and other appropriate personnel of the institutional facility must be promptly notified. ()

634. INSTITUTIONAL FACILITY -- NURSING HOME EMERGENCY KITS.

In nursing homes without an institutional pharmacy, drugs may be provided by a licensed pharmacy, retained by the facility, in emergency kits located at the facility. ()

01. Provider Pharmacy Documentation. The nursing home must document the pharmacy retained in writing. ()

02. Provider Pharmacy Ownership of Prescription Drug. Prescription drugs included in a nursing home emergency kit must remain the property of, and under the responsibility of, the supplying pharmacy. ()

635. HOME HEALTH OR HOSPICE EMERGENCY KITS.

A pharmacy may supply emergency kits for state licensed or Medicare certified home health or hospice agencies, or both, as follows: ()

01. Storage and Security. Emergency kits used by home health or hospice agencies must be stored in locked areas suitable for preventing unauthorized access and for ensuring a proper environment for the preservation of the drugs, except that nurses licensed by the Idaho Board of Nursing and employed by state-licensed or Medicare-certified home health or hospice agencies may carry emergency kits on their person while on duty and in the course and scope of their employment for the agency. While not on duty or working within the course and scope of their employment, the nurses must return the emergency kits to a locked storage area. ()

02. Prescription Drugs. Prescription drugs included in a home health or hospice agency emergency kit must remain the property of, and under the responsibility of, the Idaho-registered supplying pharmacy. ()

03. Controlled Substances. Emergency kits supplied to home health or hospice agencies must not include controlled substances. ()

636. INSTITUTIONAL FACILITY -- HOSPITAL FLOOR STOCK.

Hospitals may use floor stock drugs if limited to a formulary of drugs and routinely used items developed and approved by the director in coordination with the appropriate institutional facility personnel. ()

01. Pharmacist Routine Monitoring. Floor stock drugs must be routinely monitored by a pharmacist to ensure appropriate use and storage. ()

02. Prescription Drugs. Prescription drugs included in floor stock must be in unit dose or unit-of-use

packaging. ()

03. Controlled Substances. For controlled substances included in the floor stock formulary, the director must ensure that: ()

a. The floor stock contains appropriate controlled substances that are prepackaged in amounts sufficient for only immediate therapeutic requirements; ()

b. Controlled substances maintained as floor stock are accessible only by key, combination, or otherwise sufficiently secured to deny access to unauthorized persons; ()

c. Controlled substances removed from floor stock are documented by appropriate written drug orders and proofs of use, if applicable, and in a record that includes at least: ()

i. The patient's name and location; ()

ii. The name and strength of the drug; ()

iii. The amount; ()

iv. The date and time; and ()

v. The signature or electronic personal verification of the person delivering the drug; and ()

d. Controlled substances are inventoried at least weekly. ()

637. INSTITUTIONAL FACILITY -- EMERGENCY OUTPATIENT DRUG DELIVERY BY HOSPITAL EMERGENCY ROOMS.

A limited supply of drugs, not including Schedule II controlled substances, may be approved for delivery to outpatients receiving hospital emergency room treatment if stored in the emergency room pursuant to applicable law and these rules pertaining to emergency drug product storage and if accessed and delivered as permitted or restricted by this rule. ()

01. Limitations. No more than one (1) prepackaged container of the same drug may be delivered unless more than one (1) package is required to sustain the patient until the first available pharmacist is on duty in the community except that the full course of therapy for anti-infective medications may be provided. ()

02. Documentation. Delivery must occur only pursuant to a valid drug order and must be documented as required by these rules for institutional facility emergency drug access. ()

03. Labeling. A label must be affixed to the container with the information required by these rules for outpatient dispensing. ()

04. R.N. Staff Personnel Only. This rule does not authorize any person other than an R.N. on a hospital's emergency room staff to prepare or deliver prescription drugs to outpatients receiving emergency treatment. ()

638. -- 639. (RESERVED)

640. INSTITUTIONAL FACILITY -- OFFSITE PHARMACY PRACTICE STANDARDS.

01. Offsite Pharmacy Services. If an institutional facility without an institutional pharmacy obtains drugs, devices, or other pharmacy services from outside the institutional facility, arrangements must be made to ensure that the offsite pharmacy provides services with sufficient professionalism, quality, and availability to adequately protect the safety of the patients and properly serve the needs of the facility. ()

02. Written Agreement. The arrangements must be made in writing and must, at a minimum, specify

- that: ()
- a. An offsite pharmacist will act in the capacity of a part-time director; ()
 - b. For nursing homes, on-call services by a pharmacist will be available at all times; ()
 - c. The pharmacy will provide adequate storage facilities for drugs; and ()
 - d. Drugs housed in an LTCF must be labeled as required by the general provisions of these rules and, unless maintained in an electronic record, must include a lot number for administration of recalls. ()

641. INSTITUTIONAL FACILITY -- OFFSITE SERVICES -- FIRST DOSE PHARMACY.

A contracted offsite pharmacy that provides prescription processing or filling services for an institutional facility without an institutional pharmacy or for patients of a home health or hospice agency may centralize these services to another pharmacy if in compliance with these rules. ()

642. -- 649. (RESERVED)

650. INSTITUTIONAL FACILITY -- CENTRALIZED PHARMACY SERVICES.

An institutional pharmacy may centralize prescription drug order processing or filling services if: ()

01. Limited Purpose. The centralizing of prescription drug order processing or filling services is for the limited purpose of ensuring that drugs or devices are attainable to meet the immediate needs of patients and residents of the institutional facility or if the originating pharmacy cannot provide services for the institutional facility on an ongoing basis; ()

02. Institutional Facility Approval. The originating pharmacy obtains approval from the institutional facility to centralize prescription drug order processing or filling services for its patients and residents; ()

03. Written Contract. The originating pharmacy has a written contract with the central pharmacy outlining the services to be provided and the responsibilities and accountabilities of each party in fulfilling the terms of the contract; and ()

04. Drug or Chart Orders. The originating pharmacy provides a valid verbal, electronic, or paper drug order to the contracted central pharmacy. A single drug order may be shared by an originating pharmacy and a central pharmacy with no transfer required. ()

651. INSTITUTIONAL FACILITY -- PRACTICE OF TELEPHARMACY.

01. Contracted Telepharmacy Services. An institutional pharmacy may centralize pharmacy services through the practice of telepharmacy if: ()

a. The central pharmacy provides a training and orientation program that ensures that pharmacists who are providing telepharmacy services are competent to review and approve drug orders; ()

b. Appropriate video, telecommunications, or other systems allow the pharmacist within the central pharmacy to readily communicate with the prescribers within the institutional facility; ()

c. The parties share a common electronic file or utilize other technology that allows access by the central pharmacy to information required to fill or refill a prescription drug order; and ()

d. The parties implement and maintain a continuous quality improvement program for telepharmacy services designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems. ()

02. Policies and Procedures. An institutional pharmacy and its contracted central pharmacy that provides telepharmacy services must adopt policies and procedures and retain documentation that evidences at least

- the following: ()
- a. A copy of the approval required by these rules; ()
 - b. A copy of the contract required by these rules; ()
 - c. Identification of the director of the central pharmacy and of the institutional pharmacy; ()
 - d. The maintenance of appropriate records to identify the pharmacists providing centralized prescription drug order processing or filling services; ()
 - e. The protocol for ensuring that the central pharmacy maintains sufficient Board licensed or registered pharmacists to meet the centralized pharmacy services needs of the institutional facility; ()
 - f. The maintenance of a mechanism for tracking the prescription drug order during each step in the dispensing process; ()
 - g. The documentation and protocols demonstrating adequate security to protect the privacy of PHI; ()
 - h. The protocol for accessing prescription drugs in the institutional pharmacy contracting with the central pharmacy and for maintaining the security of the drugs; ()
 - i. Essential information utilized by the institutional facility, such as its therapeutic interchange list, formulary, standard drip concentrations, standard medication administration times, standardized or protocol orders, pharmacokinetic dosing policies, and renal dosing policies, as well as protocols for ensuring timely and complete communication of changes to the information; and ()
 - j. The protocol for the central pharmacy to perform a review of the patient's profile, including but not limited to performing a prospective drug review. ()

652. -- 669. (RESERVED)

670. VDO -- OWNER AND MANAGER RESPONSIBILITIES.

Owners and managers of VDOs each have corresponding and individual responsibility for unauthorized drug distribution from, or other unlawful conduct in, the registered outlet and must have sufficient understanding of the regulated activities to detect improper conduct. ()

671. VDO -- POLICIES AND PROCEDURES.

Owners or managers must adopt policies and procedures for the handling of veterinary drug orders, managing product inventory, and other topics as needed to ensure compliance with applicable law and Board rules. ()

672. VDO -- REQUIRED REFERENCES.

The current Board rules applicable to the practice setting must also be made readily available to VDTs and other employees of the VDO for reference purposes. ()

673. VDO STAFFING.

01. Sufficient Staffing. VDOs must employ sufficient VDTs to ensure that one (1) VDT is on duty at all times the establishment is open to the public for business. ()

02. Notification of Personnel Changes. Notification of VDT personnel changes must be provided to the Board within ten (10) days of the change and must include the names and addresses of both the resigning and the newly hired VDTs. ()

674. VDO -- DRUG PRODUCT INVENTORY AND MANAGEMENT.

01. Authorized Prescription Drugs. VDOs are authorized to stock, and VDTs are authorized to prepare and deliver, prescription veterinary drugs except the following: ()

a. Controlled substances listed in Schedules I through V of either the state or federal Controlled Substances Acts; ()

b. Euthanasia drugs or products; ()

c. Tranquilizer drugs or products; ()

d. Curare, succinylcholine, or other neuromuscular paralyzing drugs; and ()

e. General anesthesia drugs or products. ()

02. Prescription Drug Storage and Security. Prescription drugs must be separated from other drugs and stored in an area equipped with adequate security to prevent diversion, and only VDTs and authorized government inspectors or agents may have access to prescription drug areas. ()

03. Returned Prescription Drugs. Prescription drugs returned to a VDO from a client must be treated as damaged or outdated drugs. Returned drugs may not be returned to stock or dispensed, distributed, or resold. ()

04. Product Maintenance. The complete product inventory must be reviewed on at least a semi-annual basis to identify and remove from stock outdated, deteriorated, or damaged products for proper reclamation, destruction, or return. ()

675. -- 679. (RESERVED)

680. TELEPHARMACY ACROSS STATE LINES.

The practice of telepharmacy across state lines is permitted only for institutions engaged in the practice of telepharmacy across state lines, as defined, and their pharmacists if both are registered or licensed as required by the Board. ()

681. -- 699. (RESERVED)

SUBCHAPTER F -- LIMITED SERVICE OUTLET PRACTICE STANDARDS
(Rules 700 through 799 -- Limited Service Outlet Practice Standards)

700. LIMITED SERVICE PHARMACY.

A limited service outlet with a pharmacy must adopt policies and procedures that are sufficiently detailed to ensure the protection of public health, safety, and welfare and that include at least the following: ()

01. Description of Services. A description of the type and method of specialized services to be provided; ()

02. Times of Operation. The days and hours of operation; ()

03. Drug Information. The types and schedules of drugs to be stored, distributed, or dispensed; and ()

04. Equipment and Supplies. The equipment and supplies to be used. ()

701. -- 709. (RESERVED)

710. RETAIL TELEPHARMACY WITH REMOTE DISPENSING SITES.

Pharmacies and pharmacists commencing retail telepharmacy operations with a remote dispensing site after August 23, 2011, must comply with the following requirements: ()

01. Telepharmacy Practice Sites and Settings. Prior to engaging in the practice of telepharmacy with a remote dispensing site, the supervising pharmacy must demonstrate that there is limited access to pharmacy services in the community in which the remote site is located. ()

a. Information justifying the need for the remote dispensing site must be submitted with the initial registration application. ()

b. The Board will consider the availability of pharmacists in the community, the population of the community to be served by the remote dispensing site, and the need for the service. ()

c. The remote dispensing site must be located in a medical care facility operating in areas otherwise unable to obtain pharmaceutical care services on a timely basis. ()

d. The Board will not approve a remote dispensing site if a retail pharmacy that dispenses prescriptions to outpatients is located within the same community as the proposed remote dispensing site. ()

02. Independent Entity Contract. Unless jointly owned, a supervising pharmacy and a remote dispensing site must enter into a written contract that outlines the services to be provided and the responsibilities and accountability of each party in fulfilling the terms of the contract. ()

a. A copy of the contract must be submitted to the Board with the initial registration application and at any time there is a substantial change in a contract term. ()

b. The contract must be retained by the supervising pharmacy. ()

03. PIC Responsibility. Unless an alternative PIC from the supervising pharmacy is specifically designated in writing, the PIC of the supervising pharmacy is also considered the responsible PIC for the remote dispensing site. ()

04. Remote Dispensing Site Limitations. The Board may limit the number of remote dispensing sites under the supervision and management of a single pharmacy. ()

05. Technician Staffing. A remote dispensing site must be staffed by one or more certified technicians under the supervision of a pharmacist at the supervising pharmacy at all times that the remote site is open. Supervision does not require the pharmacist to be physically present at the remote dispensing site, but the pharmacist must supervise telepharmacy operations electronically. ()

06. Common Electronic Recordkeeping System. The remote dispensing site and the supervising pharmacy must utilize a common electronic recordkeeping system that must be capable of the following: ()

a. Electronic records must be available to, and accessible from, both the supervising pharmacy and the remote dispensing site; and ()

b. Prescriptions dispensed at the remote dispensing site must be distinguishable from those dispensed from the supervising pharmacy. ()

07. Records Maintenance. Controlled substance records must be maintained at the registered location unless specific approval is granted for central storage as permitted by, and in compliance with, federal law. ()

08. Video and Audio Communication Systems. A supervising pharmacy of an ADS system used in a remote dispensing site must maintain a video and audio communication system that provides for effective communication between the supervising pharmacy and the remote dispensing site personnel and consumers. The system must facilitate adequate pharmacist supervision and allow the appropriate exchanges of visual, verbal, and written communications for patient counseling and other matters involved in the lawful transaction or delivery of drugs. ()

a. Adequate supervision by the pharmacist in this setting is maintaining constant visual supervision and auditory communication with the site and full supervisory control of the automated system that must not be delegated to another person or entity. ()

b. Video monitors used for the proper identification and communication with persons receiving prescription drugs must be a minimum of twelve inches (12") wide and provided at both the pharmacy and the remote location for direct visual contact between the pharmacist and the patient or the patient's agent. ()

c. Each component of the communication system must be in good working order. Unless a pharmacist is present onsite, the remote dispensing site must be, or remain, closed if any component of the communication system is malfunctioning until system corrections or repairs are completed. ()

09. Access and Operating Limitations. Unless a pharmacist is present, a remote dispensing site must not be open or its employees allowed access to it during times the supervising pharmacy is closed. The security system must allow for tracking of entries into the remote dispensing site, and the PIC must periodically review the record of entries. ()

10. Delivery and Storage of Drugs. If controlled substances are maintained or dispensed from the remote dispensing site, transfers of controlled substances from the supervising pharmacy to the remote dispensing site must comply with applicable state and federal requirements. ()

a. Drugs must only be delivered to the remote dispensing site in a sealed container with a list identifying the drugs, drug strength, and quantities included in the container. Drugs must not be delivered to the remote dispensing site unless a technician or pharmacist is present to accept delivery and verify that the drugs sent were actually received. The technician or pharmacist who receives and checks the order must verify receipt by signing and dating the list of drugs delivered. ()

b. If performed by a technician, a pharmacist at the supervising pharmacy must ensure, through use of the electronic audio and video communications systems or bar code technology, that a technician has accurately and correctly restocked drugs into the ADS system or cabinet. ()

c. Drugs at the remote dispensing site must be stored in a manner to protect their identity, safety, security, and integrity and comply with the drug product storage requirements of these rules. ()

d. Drugs, including previously filled prescriptions, not contained within an ADS system must be stored in a locked cabinet within a secured area of a remote dispensing site and access must be limited to pharmacists from the supervising pharmacy and the technicians authorized in writing by the PIC. ()

11. Wasting or Discarding of Drugs Prohibited. Wasting or discarding of drugs resulting from the use of an ADS system in a remote dispensing site is prohibited. ()

12. Returns Prohibited. The technician at a remote dispensing site must not accept drugs returned by a patient or patient's agent. ()

13. Patient Counseling. A remote dispensing site must include an appropriate area for patient counseling. ()

a. The area must be readily accessible to patients and must be designed to maintain the confidentiality and privacy of a patient's conversation with the pharmacist. ()

b. Unless onsite, a pharmacist must use the video and audio communication system to counsel each patient or the patient's caregiver on new medications. ()

14. Remote Dispensing Site Sign. A remote dispensing site must display a sign, easily visible to the public, that informs patients that: ()

- a. The location is a remote dispensing site providing telepharmacy services supervised by a pharmacist located in another pharmacy; ()
- b. Identifies the city or township where the supervising pharmacy is located; and ()
- c. Informs patients that a pharmacist is required to speak with the patient using audio and video communication systems each time a new medication is delivered or if counseling is accepted at a remote dispensing site. ()

15. Pharmacist Inspection of Remote Dispensing Site. A pharmacist must complete and document a monthly in-person inspection of a remote dispensing site and inspection reports must be retained. ()

711. RETAIL TELEPHARMACY WITH REMOTE DISPENSING SITES -- PRESCRIPTION DRUG ORDERS.

Prescription drug orders dispensed from a remote dispensing site must be previously filled by the supervising pharmacy or, unless a pharmacist is present, must only be filled on the premises of a remote dispensing site through the use of an ADS system and as follows: ()

01. Pharmacist Verification of New Prescription Drug Order Information. If a technician at the remote dispensing site enters original or new prescription drug order information into the automated pharmacy system, the pharmacist at the supervising pharmacy must, prior to approving, verify the information entered against a faxed, electronic, or video image of the original prescription. ()

a. The technician may transmit the prescription drug order to the pharmacist by scanning it into the electronic recordkeeping system if the means of scanning, transmitting, or storing the image does not obscure the prescription information or render the prescription information illegible. ()

b. Alternatively, the technician may make the original prescription available to the pharmacist by placing the prescription in an appropriate position to facilitate viewing of the original prescription via video communication systems between the remote dispensing site and the supervising pharmacy. Using the video communication, the pharmacist must verify the accuracy of the drug dispensed and must check the prescription label for accuracy. ()

c. Except when prohibited by law for controlled substances, the technician may also transmit the prescription drug order to the supervising pharmacist by fax. ()

d. A technician at a remote dispensing site must not receive oral prescription drug orders from a prescriber or a prescriber's agent. Oral prescription drug orders must be communicated directly to a pharmacist. ()

02. Pharmacist and Technician Identification. The initials or other unique identifiers of the pharmacist and technician involved in the dispensing must appear in the prescription record. ()

03. Pharmacist Verification of Drug Product and Label. A pharmacist must compare, via video communication, the drug stock, the drug dispensed, and the label including the beyond use date. ()

04. Electronic Verification System. The remote dispensing site must use an electronic verification system that confirms the drug stock selected to fill the prescription is the same as indicated on the prescription label. The technician must electronically verify each prescription prepared for dispensing. ()

712. RETAIL TELEPHARMACY WITH REMOTE DISPENSING SITES -- POLICIES AND PROCEDURES.

A supervising pharmacy commencing telepharmacy operations with a remote dispensing site after August 23, 2011, must adopt policies and procedures that address each of the following areas prior to engaging in the practice of telepharmacy. ()

01. Minimum Standards. The establishment of minimum standards and practices necessary to ensure

safety, accuracy, security, sanitation, recordkeeping, and patient confidentiality, including at least: ()

a. Identification of personnel authorized to have access to drug storage and dispensing areas at the remote dispensing site and to receive drugs delivered to the remote dispensing site; ()

b. Procedures for the procurement of drugs and devices to the remote site and into any ADS systems used; and ()

c. The criteria for monthly in-person pharmacist inspections of the remote dispensing site and appropriate documentation. ()

02. Training Standards. The adoption of standards and training required for remote dispensing site technicians and pharmacists to ensure the competence and ability of each person that operates the ADS system, electronic recordkeeping, and communication systems and a requirement for retention of training documentation. ()

03. Written Recovery Plan. A written plan for recovery from an event that interrupts or prevents pharmacist supervision of, or otherwise compromises, the dispensing of drugs from the remote dispensing site that includes at least the following: ()

a. Procedures for response while the communication or electronic recordkeeping systems are experiencing downtime or for an ADS system malfunction; and ()

b. Procedures for the maintenance and testing of the written plan for recovery. ()

713. -- 749. (RESERVED)

750. DME OUTLET STANDARDS.

01. Policies and Procedures. A DME outlet must adopt policies and procedures that establish: ()

a. Operational procedures for the appropriate provision and delivery of equipment; ()

b. Operational procedures for maintenance and repair of equipment; and ()

c. Recordkeeping requirements for documenting the acquisition and provision of products. ()

02. DME Outlet Sale of Specified Prescription Drugs. Registered DME outlets may hold for sale at retail the following prescription drugs: ()

a. Pure oxygen for human application; ()

b. Nitrous oxide; ()

c. Sterile sodium chloride; and ()

d. Sterile water for injection. ()

03. Prescriber's Order Required. Prescription drugs and devices may only be sold or delivered by a DME outlet upon the lawful order of a prescriber. DME outlets may hold drugs that are not prescription drugs for sale. ()

751. -- 799. (RESERVED)

SUBCHAPTER G -- WHOLESALE AND MANUFACTURER PRACTICE STANDARDS
(Rules 800 through 999 -- Wholesaler and Manufacturer Practice Standards)

800. WHOLESALER STANDARDS.

These wholesaler rules establish the minimum standards for the storage and handling of drugs by wholesalers and their officers, designated representative, agents, and employees and for the establishment and maintenance of records required for persons engaged in wholesale drug distribution. ()

801. WHOLESALER FACILITY REQUIREMENTS.

Facilities where drugs are stored, warehoused, handled, held, offered, marketed, or displayed for wholesale distribution must: ()

01. Minimum Physical Standards. Be of suitable size, construction, and location to accommodate cleaning, maintenance, and proper operations; ()

02. Minimum Environmental Standards. Have adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions; ()

03. Quarantine Area Required. Have a quarantine area for storage of drugs that are outdated, damaged, deteriorated, misbranded, or adulterated or that are in immediate or sealed secondary containers that have been opened; ()

04. Maintenance Requirements. Be maintained in a clean and orderly condition; and ()

05. Pest Controls. Be free from infestation by insects, rodents, birds, or vermin of any kind. ()

802. WHOLESALER FACILITY SECURITY.

Facilities used for wholesale drug distribution must be secure from unauthorized entry, as follows: ()

01. Access from Outside. Access from outside the premises must be kept to a minimum and well controlled; ()

02. Perimeter Lighting. The outside perimeter of the premises must be well lighted; ()

03. Authorized Entry. Entry into areas where drugs are held must be limited to authorized personnel; ()

04. Alarm Systems. Facilities must be equipped with an alarm systems to detect entry after hours; and ()

05. Security Systems. Facilities must be equipped with security systems sufficient to protect against theft, diversion, and record tampering. ()

803. WHOLESALER DRUG STORAGE REQUIREMENTS.

Drugs must be stored at temperatures and under conditions required by the labeling of the drugs, if any, or by current requirements of the USP-NF, to preserve product identity, strength, quality, and purity. Temperature and humidity recording equipment, devices, or logs must document proper storage of drugs. ()

804. WHOLESALER DRUG SHIPMENT INSPECTION REQUIREMENTS.

01. Examination on Receipt. Each shipping container must be visually examined on receipt for identity and to avoid acceptance of drugs that are contaminated or otherwise unfit for distribution. ()

02. Outgoing Shipment Inspections. Outgoing shipments must be inspected to verify the accuracy and product integrity of the shipment contents. ()

805. WHOLESALER QUARANTINE.

Drugs that are outdated, damaged, deteriorated, misbranded, or adulterated must be physically separated from other drugs in a designated quarantine area until destroyed or returned to the original manufacturer or third party returns processor. ()

01. Container Adulteration. Used drugs and those whose immediate or sealed outer or sealed secondary containers have been opened are adulterated and must be quarantined. ()

02. Other Conditions Requiring Quarantine. Drugs must be quarantined under any condition that causes doubt as to a drug's safety, identity, strength, quality, or purity unless under examination, testing, or other investigation the drug is proven to meet required standards. ()

806. WHOLESALER RECORDKEEPING REQUIREMENTS.

Wholesalers and other entities engaged in wholesale drug distribution must establish and maintain inventories and records of transactions pertaining to the receipt and distribution or other disposition of drugs. ()

01. Record Contents. The records must include at least: ()

a. The source of the drugs, including the name and principal address of the seller or transferor, and the address of the location from which the drugs were shipped; ()

b. The identity and quantity of the drugs received and distributed or disposed of; and ()

c. The dates of receipt and distribution or other disposition of the drugs. ()

02. Records Maintenance. Records may be maintained in an immediately retrievable manner at the inspection site or in a readily retrievable manner at a central location. ()

807. WHOLESALER PERSONNEL.

01. Responsible Person Designees. A wholesaler must establish and maintain a list of officers, directors, managers, a designated representative, and other persons responsible for wholesale drug distribution, storage, and handling and must include a description of each individual's duties and a summary of their qualifications. ()

02. Adequate Personnel. A wholesaler must employ personnel in sufficient numbers and with adequate education, training, and experience to safely and lawfully engage in wholesale drug distribution activities. ()

03. Designated Representative Continuing Education. A wholesaler's designated representative must complete training and continuing education on state and federal laws pertaining to wholesale distribution of prescription drugs provided by qualified in-house specialists, outside counsel, or consulting specialists with capabilities to help ensure compliance. ()

808. WHOLESALER POLICIES AND PROCEDURES.

Wholesalers must adopt policies and procedures for the receipt, security, storage, inventory, and distribution of drugs, including policies and procedures for identifying, recording, and reporting losses or thefts, for correcting errors and inaccuracies in inventories, and as necessary to ensure compliance with the following: ()

01. Distribution of Oldest Approved Stock First. The oldest approved stock of a drug product must be distributed first except if extraordinary circumstances require a temporary deviation. ()

02. Recalls and Withdrawals. Drugs must be recalled or withdrawn upon: ()

a. A request by the FDA or other local, state, or federal law enforcement or other government agency, including the Board; ()

b. A voluntary action by a manufacturer to remove defective or potentially defective drugs from the market; or ()

c. An action undertaken to promote public health and safety by replacing existing merchandise with

an improved product or a new package design. ()

03. Crisis Preparation. Wholesalers must prepare for, protect against, and competently handle a crisis affecting the security or operation of a facility, including a fire, flood, or other natural disaster, a strike, or other situations of local, state, or national emergency. ()

809. PRESCRIPTION DRUG PEDIGREES.

Each person, including repackagers but excluding the original manufacturer of the finished form of the prescription drug, engaged in wholesale distribution of prescription drugs that leave or have left the normal distribution channel must tender a pedigree to the person receiving the drug upon delivery. A retail pharmacy or chain pharmacy warehouse must comply with these pedigree requirements only if engaging in wholesale distribution. ()

01. Pedigree Contents. A pedigree for each prescription drug must contain the following information: ()

- a. The proprietary and established name of the drug; ()
- b. The container size; ()
- c. The number of containers; ()
- d. The dosage form; ()
- e. The dosage strength; ()
- f. The lot number with expiration dates and the NDC; ()
- g. The name of the manufacturer and repackager, if applicable, of the finished product; ()
- h. The name, address, telephone number, and, if available, the e-mail address, of each owner and each wholesale distributor of the drug; ()
- i. The name and address of each location from which the drug was shipped, if different from the owner's; ()
- j. The dates of each transaction; ()
- k. A certification that each recipient has authenticated the pedigree; and ()
- l. The name and address of each recipient. ()

02. Authentication. Each person engaged in wholesale distribution who is provided a pedigree must affirmatively verify each listed transaction before further wholesale distribution may occur. ()

03. Availability of Records for Inspection. Pedigrees must be retained and made available to the Board upon request. ()

810. -- 849. (RESERVED)

850. DRUG MANUFACTURER OR WHOLESALER TRANSACTION RESTRICTION.

A manufacturer or wholesaler may furnish non-prescription drugs only to a person or drug outlet licensed or registered by the Board. Before furnishing non-prescription drugs to a person or drug outlet, the manufacturer or wholesaler must affirmatively verify that the recipient is legally authorized to receive the non-prescription drugs. ()

851. -- 899. (RESERVED)

900. DRUG MANUFACTURERS.

These rules are applicable to drug manufacturers located within the state of Idaho. Non-resident manufacturers engaged in wholesale drug distribution in or into Idaho must comply with the Idaho Wholesale Drug Distribution Act and rules, as applicable. ()

901. DRUG MANUFACTURER STANDARDS.

A manufacturer must ensure compliance with the federal “Current Good Manufacturing Practice” requirements. ()

902. DRUG MANUFACTURER RECORDS.

A manufacturer must adopt policies and procedures for maintaining records pertaining to production, process control, labeling, packaging, quality control, distribution, complaints, and any information required by state or federal law. ()

903. -- 999. (RESERVED)

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. 31-1101-1101

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 Section 61-515, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 Rules currently adopt by incorporation various national safety codes applicable to electric, telephone and natural gas utilities and federal safety regulations applicable to natural gas and pipeline utilities. Currently, Rule 101 adopts the 2007 edition of the National Electric Safety Code (NESC) published by the Institute of Electrical and Electronic Engineers, Inc. Rule 201 adopts the 2010 edition of 49 Code of Federal Regulations (CFR) Parts 191-193, 195 and 199 addressing the construction and operation of natural gas pipelines. Next, Rule 202 incorporates by reference the 2009 edition of the International Fuel Gas Code (IFGC) published by the International Code Council. Finally, Rule 203 incorporates by reference the 2009 edition of the International Mechanical Code (IMC) for natural gas or gas-burning appliances. The Commission proposes to update these four safety rules by adopting the 2012 edition of the NESC, the 2012 edition of the IMC, and the 2012 edition of the IFGC. The Commission also proposes to adopt the October 1, 2011 edition of the pipeline safety CFRs and 18 C.F.R. Part 260.9.

1. Rule 101. There are several revisions to the 2007 edition of the NESC contained in the 2012 edition of the NESC. First, Section 91 has been clarified concerning the procedures for effectively grounding conductors and equipment. Second, Sections 94.B.(7) and 99.B. have been revised concerning the length and thickness requirements for using a directly embedded metal pole as a grounding electrode and changing the grounding conductor for communication equipment. Third, Section 110.A.(2) and Table 111-1 have been revised to reduce clearances between fences and electric apparatus and the illumination levels for generating stations and substations. Fourth, Section 214.A.(5) was revised to add consistency to the application of the terms "grounded" and "effectively grounded." Fifth, Section 261.H.(1) was revised to address the "tensions" standards for overhead supply conductors and shield wires. Next, Sections 441 and 410.A.(3) were revised concerning the calculation of minimum approach distances and arc flash exposure. Finally, Section 410.A.(3) was revised to establish arc energy thresholds for different equipment at voltage levels below 1,000 volts.

2. Rule 201. There are four revisions included in the 2011 edition of the federal pipeline safety regulations contained in the CFRs. First, in October 2010, the Pipeline and Hazardous Material Safety Administration (PHMSA) amended 49 C.F.R. Part 192, 193, and 195 by adopting various technical standards. Adoption of these technical standards allows pipeline operators to use current technologies, improved materials, and improve their management practices. Adoption of these technical standards does not require pipeline operators to take on any significant new pipeline safety initiatives. Second, in November 2010, PHMSA revised its pipeline safety regulations to improve the reliability of data collected from operators of natural gas pipelines. These amendments affect 49 C.F.R. Parts 191, 192, 193, and 195.

Third, in February 2011, PHMSA amended 49 C.F.R. Parts 191 and 192 to clarify the types of pipeline fittings involved in the reporting of compression coupling failures. These changes require the operators of pipelines to report the failures of mechanical fittings and clarify the reporting requirements for "excess flow valves." These changes became effective in April 2011. Finally, in June 2011, PHMSA amended 49 C.F.R. Parts 192 and 195 to require pipeline operators to implement procedures for the operation of their system "control rooms." These operating

procedures include shift lengths, maximum hours-of-service, and responses to alarms. These changes became effective August 15, 2011.

3. Rule 202. There are three revisions included in the 2012 edition of the International Fuel Gas Code. First, the International Code Council has revised Section 301.11 regarding the location of mechanical equipment and systems located in flood hazard areas except for equipment specifically designed and installed to be waterproof. Second, Sections 406.7.1 through 406.7.3 have been revised to improve the procedures and requirements for purging fuel gas lines. Finally, Section 410.5 requires that a flashback arrester and backflow check valve be installed on both fuel supply and oxygen lines when fuel gas is used in combination with oxygen.

4. Rule 203. There are three major revisions included in the 2012 edition to the International Mechanical Code. First, Section 301.16 requires all mechanical equipment and systems for structures located in flood hazard areas to be elevated above flood level unless such equipment is specifically designed to be waterproof. Second, Section 401.4 adopts new provisions concerning the locations of air intake openings. In particular, intake openings must be located a minimum of 10 feet from property lot lines. Air intakes may be located less than 10 feet horizontally from a street, alley, parking lot, or loading zone as long as they are located not less than 25 feet vertically from the surface below. Finally, Section 501 has been revised to require that single or combined environmental exhaust systems must be independent of all other exhaust systems.

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 national safety codes and federal regulations necessary for the safety of utility employees and the public during the installation, operation, or maintenance of natural gas pipelines, fuel gas systems and natural gas-fired appliances.

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

Adoption of the current national safety codes and the CFRs will make these rules consistent with federal safety regulations concerning natural gas and pipeline utilities. In addition, incorporation of the three national safety codes will promote the safety of utility employees, utility customers, and the public. Finally, incorporation by reference will mitigate the need to publish hundreds of pages of safety codes.

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 26, 2011. Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 25th day of August, 2011.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
PO Box 83720
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-1101-1101

101. NATIONAL ELECTRICAL SAFETY CODE (NESC) (RULE 101).

The Commission adopts by reference the American National Standards Institute (ANSI) C2-2007~~12~~ National Electrical Safety Code (NESC), 2007~~12~~ Edition. The National Electrical Safety Code, 2007~~12~~ Edition, is published by the Institute of Electrical and Electronics Engineers, Inc., and is available from the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997 and may be ordered by calling 1-800-678-IEEE. All electrical and telephone corporations subject to the Commission's jurisdiction are required to abide by applicable provisions of the NESC. (3-30-07)()

(BREAK IN CONTINUITY OF SECTIONS)

201. FEDERAL NATURAL GAS SAFETY REGULATIONS (RULE 201).

The Commission incorporates by reference Part 260.9, Title 18 (April 1, 2010~~1~~) and Parts 191, 192, 193, 195, and 199, Title 49, the Code of Federal Regulations (October 1, 2010~~1~~), 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 Bookstore, <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. (4-7-11)()

202. INTERNATIONAL FUEL GAS CODE (IFGC) (RULE 202).

01. Incorporation by Reference. The Commission incorporates by reference the International Fuel Gas Code, 2009~~12~~ Edition except for Part 2 of Chapter 1. The International Fuel Gas Code is published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington D.C. 20001-2070. The Code is available from the Code Council and may be ordered online at www.iccsafe.org/Store/Pages/default.aspx. Telephone orders may be placed by calling toll-free 800-786-4452. (3-29-10)()

02. Utility Compliance. All gas corporations subject to the jurisdiction of this Commission are required to abide by applicable provisions of the International Fuel Gas Code and to connect for service and light only those installations that: (3-20-04)

a. Have been inspected and approved by authorized agencies; or (4-1-98)

b. When inspecting agencies do not exist, to require their customers to abide by applicable provisions of the International Fuel Gas Code as a condition of receiving service or continuing to receive service. (3-20-04)

203. INTERNATIONAL MECHANICAL CODE (IMC) (RULE 203).

01. Incorporation by Reference. The Commission incorporates by reference those portions of the 2009~~12~~ International Mechanical Code explicitly referring to gas or gas-burning appliances except Part 2 of Chapter 1. The International Mechanical Code is published by the International Code Council, 500 New Jersey Avenue, NW, 6th Floor, Washington D.C. 20001-2070 and may be ordered by calling toll-free 800-786-4452 or online at www.iccsafe.org/Store/Pages/default.aspx. (3-29-10)()

02. Utility Compliance. Gas corporations subject to the jurisdiction of this Commission are required to abide by applicable provisions of the International Mechanical Code and to connect for service and light only those installations that: (3-20-04)

a. Have been inspected and approved by authorized agencies; or (4-1-98)

b. When inspecting agencies do not exist, to require their customers to abide by applicable provisions of the International Mechanical Code as a condition of receiving service or continuing to receive service. (3-20-04)

IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION

31.71.03 - RAILROAD SAFETY AND ACCIDENT REPORTING RULES

DOCKET NO. 31-7103-1101

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 Section 61-515, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 Rule 103 adopts the 2010 edition of the Code of Federal Regulations (CFR). The Commission proposes to adopt the 2011 edition of the CFR.

There are two major revisions included in the 2011 edition of the federal hazardous material safety regulations. First, in January 2011, PHMSA amended 49 C.F.R. Parts 107 and 171 revising procedures regarding the issuance of special permits when a hazardous material rail car has a defect. The special permit issued by PHMSA would allow a shipper to move the hazardous car to a repair facility. This change became effective on March 7, 2011. Second, PHMSA amended 49 C.F.R. Part 172 to remove saccharin and its salts from the list of hazardous substances and reportable quantities. This change was effective June 27, 2011.

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), Idaho Code, the following is a brief synopsis of why the materials cited are being incorporated by reference into this rule:

The two revisions to be adopted in the 2011 edition of the federal hazardous material safety regulations are explained in detail in the descriptive summary above. Adoption of the 2011 federal safety regulations will provide uniformity between state and federal rail safety provisions.

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 26, 2011.

Persons desiring to comment are encouraged to submit written comments at their earliest convenience rather than wait until the comment deadline.

DATED this 4th day of August, 2011.

Jean D. Jewell
Commission Secretary
Idaho Public Utilities Commission
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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 31-7103-1101

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, 2010¹). 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. (~~4-7-11~~)()

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)

IDAPA 35 - STATE TAX COMMISSION

35.01.01 - INCOME TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0101-1102

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 19, 2011.

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 001 is being amended to add the reference to Idaho Code section 63-3039 and subsections 001.03 through 001.05, which address the effective date, closed years or issues, and transactions before an effective date of the rules in this chapter.

Rule 030 is being amended to include the reference to Rule 032 with regard to the safe harbor exception and military servicemembers and their spouses.

Rule 032 is being amended to conform to changes to the Servicemembers Civil Relief Act (Act). The Act now changes the Idaho terminology to match the federal terminology used.

Rule 033 is being amended so the exemption for income earned on an Indian reservation matches the federal law as determined in *Washington v. Confederated Tribes of Colville Indian Reservation*, 447 U.S. 134. Subsection 02 is being corrected so that income earned by an enrolled member living on a reservation working off the reservation is subject to tax only if the income is earned in Idaho. Information is added to clarify other issues not currently addressed such as how filing requirements are determined.

Rule 075 is being amended to add the tax brackets for calendar year 2011, and remove the information for calendar year 2006 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.

Rules 105, 120, 125, 253 & 254 are being amended consistent with House Bill 102, which was passed by the 2011 Idaho Legislature. The bill amended Idaho Code section 63-3022O to end the conformity to bonus depreciation for property placed in service after 2009. Rules 105, 120, 125, 253 & 254 are modified to indicate the additional years to which the bonus depreciation adjustments apply.

Rule 121 is being amended to remove information related to the standard deduction for tax year 1999.

Rule 171 is being amended to clarify that real property must be held 12 months to qualify as required by the statute. The amendment also addresses the difference in computing the holding period of property received in liquidating versus nonliquidating distributions from partnerships and S corporations.

Rule 250 is being amended to address when interest and dividend income is received by a part-year resident.

Rule 263 is being amended to specifically address the sourcing of guaranteed payments and distributions in excess of basis that a nonresident individual partner would report to Idaho.

Rule 266 is being amended consistent with House Bill 8, which was passed by the 2011 Idaho Legislature. The bill amended Idaho Code section 63-3022L to change when a nonresident is ineligible to make the election to have a

pass-through entity pay his tax on such income. It also modified section 63-3026A to change what a nonresident who sells an interest in a publicly traded partnership must report as Idaho source income. Rule 266 is modified since it addresses the gains or losses from the sale of a partnership interest.

Rule 267 is being promulgated to address the amount of a suspended passive activity loss a part-year resident is allowed to deduct on their Idaho return, which would be based on the proportion of the year the individual resided in Idaho.

Rule 270 is being amended to provide more information on what constitutes an Idaho work day.

Rule 275 is being amended to provide clarification as to what does and doesn't qualify as investment income for nonresidents.

Rule 290 is being amended consistent with House Bill 8, which was passed by the 2011 Idaho Legislature. The bill amended the Idaho Code section 63-3022L to change when a nonresident is ineligible to make the election to have a pass-through entity pay his tax on such income. It also modified section 63-3026A to change what a nonresident who sells an interest in a publicly traded partnership must report as Idaho source income. Rule 290 is modified to conform to changes to Idaho Code section 63-3022L since it lists who can make the election.

Rule 570 is being amended to address how the receipts from the sale of stock in another corporation will be sourced for purposes of the sales factor numerator when it represents the sale of operational assets of a business.

Rule 582 is being amended to eliminate the "presumption" language included in the rule and state unequivocally that the entities listed are financial institutions, consistent with the definition in other states and the recommended definition by the Multistate Tax Commission.

Rule 705 is being amended consistent with House Bill 630, which was passed by the 2011 Idaho Legislature. The bill amended Idaho Code section 63-3029A to limit the qualifying contributions to monetary donations. Rule 705 is modified to correct the types of contributions that qualify for the credit consistent with the law change.

Rule 711 is being amended to address how the investment tax credit may be shared in the year a corporation with ITC is acquired.

Rules 712 & 713 are being repealed because the maximum carryover period on the years covered in these rules has expired.

Rules 745-748 are being amended consistent with House Bill 297, which was passed by the 2011 Idaho Legislature. The bill repealed Idaho Code section 63-3029E and amended Idaho Code section 63-3029F to revise the income tax credit allowed for qualifying new employees. Rules 745-748 are modified to indicate the applicable years for earning the previous credit and using the carryover.

Rules 755-759 are being promulgated consistent with House Bill 297, which was passed by the 2011 Idaho Legislature. The bill repealed Idaho Code section 63-3029E and amended Idaho Code section 63-3029F to revise the income tax credit allowed for qualifying new employees. Rules 755-759 are being promulgated to clarify new provisions of the law.

Rules 761 & 762 are being repealed because the statute of limitations has expired on the tax years covered in these rules.

Rule 771 is being amended to add tax year 2011 and the applicable grocery credit amounts to the table.

Rule 815 is being amended consistent with S1079, which was passed by the 2011 Idaho Legislature. The bill amended Idaho Code section 63-3033 to provide an individual serving in the Armed Forces or in support of the Armed Forces serving in a combat zone or contingency operation with an extension of time to pay tax without interest if an extension of time to file was allowed under Internal Revenue Code section 7508. Rule 815 is modified since it addresses the accrual of interest with extensions.

Rule 877 is being amended consistent with House Bill 8, which was passed by the 2011 Idaho Legislature. The bill amended Idaho Code section 63-3036B to modify the base on which backup withholding is computed from actual distributions to distributive or pro rata income. Rule 877 is modified to conform to the statutory changes and change the due date for filing the backup withholding from January 31 to April 15.

Rule 880 is being amended consistent with S1079, which was passed by the 2011 Idaho Legislature. The bill amended Idaho Code section 63-3072 to provide individuals who receive an extension of time to file a tax return with additional time to receive a refund of withholding. Rule 880 is modified since it addresses the limitations on refunds of withholding and estimated payments.

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 Cynthia Adrian 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 26, 2011.

DATED this 31st day of August, 2011.

Cynthia Adrian
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 OF DOCKET NO. 35-0101-1102

001. TITLE AND SCOPE (RULE 001).

Section 63-3039, Idaho Code. ()

01. Title. These rules shall be cited as IDAPA 35.01.01.000, et seq., Idaho State Tax Commission Rules IDAPA 35.01.01, "Income Tax Administrative Rules." ()

02. Scope. ~~They shall~~ These rules will be construed to reach the full jurisdictional extent of the state of Idaho's authority to impose a tax on income of all persons who derive income from Idaho sources or who enjoy benefits of Idaho residence. (~~3-20-97~~)()

03. Effective Date. To the extent allowed by statute, rules in this chapter will be applied on their effective date to all taxable years open for determining tax liability. ()

04. Closed Years or Issues. Taxable years closed by the statute of limitations remain closed and are not reopened by the promulgation, repeal or amendment of any rule. Issues resolved by the expiration of appeal time, a notice of deficiency determination, or a final decision of the Tax Commission will not be reopened by the promulgation, repeal, or amendment of any rule. ()

05. Transactions Before an Effective Date. A rule will not be applied to transactions occurring before its effective date in a case where, in the opinion of the Tax Commission, to do so would create an obvious injustice. ()

(BREAK IN CONTINUITY OF SECTIONS)

030. RESIDENT (RULE 030).

Section 63-3013, Idaho Code. (3-20-97)

01. Resident. The term resident applies to individuals, estates, and trusts. (3-20-97)

a. An individual is a resident if he meets either of the tests set forth in Section 63-3013, Idaho Code. For the rules relating to the residency status of aliens, see Rule 031 of these rules. For the rules relating to the residency status of servicemembers of the Armed Forces and their spouses, see Rule 032 of these rules. For the rules relating to Native Americans, see Rule 033 of these rules. (~~3-20-97~~)()

b. For the rules relating to the residency status of estates, see Rule 034 of these rules. (3-20-97)

c. For the rules relating to the residency status of trusts, see Rule 035 of these rules. (3-20-97)

02. Domicile. The term domicile means the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has the intention of returning whenever he is absent. An individual can have several residences or dwelling places, but he legally can have but one domicile at a time. (3-20-97)

a. Domicile, once established, is never lost until there is a concurrence of a specific intent to abandon an old domicile, an intent to acquire a specific new domicile, and the actual physical presence in a new domicile. (3-20-97)

b. All individuals who have been domiciled in Idaho for the entire taxable year are residents for Idaho income tax purposes, even though they have actually resided outside Idaho during all or part of the taxable year, except as provided in Section 63-3013(2), Idaho Code. (7-1-98)

c. An individual meeting the safe harbor exception set forth in Section 63-3013(2), Idaho Code, is not considered a resident of Idaho. Any individual meeting the safe harbor exception to residency status is either a nonresident or part-year resident. (7-1-98)

d. The safe harbor exception to being a resident of Idaho does not apply to a servicemember or a servicemember's spouse domiciled in Idaho if the Servicemembers Civil Relief Act applies to the individual. ()

03. Place of Abode. See Rule 040 of these rules for information as to what constitutes a place of abode. (7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

032. MEMBERS OF THE UNIFORMED SERVICES (RULE 032).

01. 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. (4-7-11)

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: (4-7-11)

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)

03. Idaho Residency Status. (4-7-11)

a. A servicemember ~~is not a~~ does not become an Idaho resident ~~of or domiciled for income tax purposes by reason of being present~~ in Idaho solely ~~as a result of being stationed in Idaho~~ compliance with military orders. (4-7-11)()

b. ~~The safe harbor exception to being a resident of Idaho set forth in Section 63-3013(2), Idaho Code, does not apply to a~~ A servicemember does not lose his status as an Idaho resident for income tax purposes by reason of being absent from Idaho solely in compliance with military orders. The safe harbor exception to being a resident as provided in Section 63-3013(2), Idaho Code, does not apply to a servicemember covered by the federal law. (4-7-11)()

c. ~~A~~ If a servicemember is ~~an Idaho resident only if he is domiciled in~~ present in or absent from Idaho for ~~the entire taxable year. The domicile of a servicemember is presumed to be that member's military home of record until the servicemember establishes a new domicile~~ reasons other than compliance with military orders, the standard analysis of residency under Sections 63-3013, 63-3013A, and 63-3014, Idaho Code, applies. (4-7-11)()

~~d.~~ A servicemember who is domiciled in Idaho for less than the entire taxable year is a part year resident. (4-7-11)

~~e.~~ A servicemember who is not domiciled in Idaho anytime during the taxable year is a nonresident. (4-7-11)

~~f.~~ d. See Subsection 032.057 of this rule for information relating to a spouse of a servicemember. (4-7-11)()

04. Military Service Compensation. (4-7-11)

a. Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. App. Section 571) provides that the military service compensation of a servicemember who is not domiciled in Idaho is not considered income from Idaho sources. (4-7-11)

b. The military 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 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. (4-7-11)

05. Military Separation Pay. Military separation pay received for voluntary or involuntary separation from active military service is not considered military service compensation. Therefore, Subsection 032.04 of this rule does not apply. (4-7-11)

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)

06. Nonmilitary Income. All Idaho source income earned by a servicemember is subject to Idaho taxation except as expressly limited by the Idaho Income Tax Act and these rules. (4-7-11)

07. Spouses of Servicemembers. 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:~~ (4-7-11)()

a. ~~The Idaho residency status of the~~ If a spouse will not change as a result of residing in another state solely to be with the ~~of a~~ servicemember has the same domicile or state of residency for tax purposes as the servicemember, the spouse of the servicemember does not become an Idaho resident for income tax purposes by reason of being present in Idaho solely to be with the servicemember who is stationed in Idaho. (4-7-11)()

b. ~~If the a spouse is domiciled in~~ of a servicemember and the servicemember are both ~~Idaho, all the spouse's residents for income is subject to tax by~~ tax purposes, the spouse of the servicemember does not lose his status as an Idaho resident for income tax purposes by reason of being absent from Idaho solely to be with the servicemember who is stationed outside of Idaho. (4-7-11)()

c. ~~If the spouse is not domiciled in~~ a resident of ~~Idaho for income tax purposes because of the reason stated in Paragraph 032.07.a. of this rule,~~ income for services performed in Idaho by the spouse will not be deemed to be income from Idaho sources. (4-7-11)()

033. NATIVE AMERICANS INDIANS (RULE 033).

01. Definitions. For purposes of this rule: ()

a. Enrolled member means an enrolled member of a federally recognized Indian tribe. ()

b. Indian reservation means a federally recognized Indian reservation. ()

012. Idaho Residency Status. ~~An~~ Native ~~American shall~~ Indian must determine his Idaho residency status using the tests set forth in Sections 63-3013, 63-3013A, and 63-3014, Idaho Code. Membership in an Indian tribe does not affect that individual's Idaho residency status. (3-20-97)()

023. Certain Income Exempt from Idaho Income Taxation. An enrolled member ~~of a federally recognized Indian tribe~~ who lives on ~~a federally recognized~~ the ~~Indian reservation of which he is a member~~ is not ~~subject to~~ taxed by Idaho on income derived within ~~the~~ at reservation. Rules 260 through 275 of these rules generally must be used to determine if income is derived within the reservation. (3-20-97)()

a. ~~Income derived outside a federally recognized Indian reservation is not exempt. An enrolled member who lives on his tribe's reservation in Idaho must treat income earned as follows:~~ (3-20-97)()

i. Income derived within his tribe's reservation is not taxable by Idaho. ()

ii. Income derived off his tribe's reservation in Idaho is subject to Idaho tax unless otherwise exempt under Idaho or federal law. ()

iii. Income derived outside Idaho is not subject to Idaho tax. ()

b. An enrolled member who lives in Idaho off his tribe's reservation is subject to Idaho tax on all income earned regardless of whether it was earned on the Indian reservation, off the Indian reservation in Idaho, or outside of Idaho, unless such income is otherwise exempt under Idaho or federal law. ()

c. An enrolled member who lives off the Indian reservation outside of Idaho must treat income earned as follows: ()

i. Income derived within an Indian reservation in Idaho is not subject to tax by Idaho. ()

ii. Income derived off an Indian reservation in Idaho is subject to Idaho tax unless otherwise exempt under Idaho or federal law. ()

iii. Income derived outside Idaho is not subject to tax by Idaho. ()

~~bd.~~ Income derived within an ~~federally recognized~~ Indian reservation by an individual who is not an enrolled member ~~of a federally recognized Indian tribe~~ is not exempt. (3-20-97)()

04. Filing Requirements. An enrolled member must determine his Idaho filing requirement based on income earned from sources taxable by Idaho as identified in Subsection 033.03. If the enrolled member is an Idaho resident and the amount of income earned from sources taxable by Idaho meets the federal filing requirements, the individual is required to file an Idaho income tax return. If the enrolled member is a part-year resident or nonresident of Idaho, the member's Idaho filing requirement must be determined based on gross income amounts from income subject to Idaho tax. ()

05. Community Property Laws. ()

a. Income subject to the community property laws retains its character as taxable or tax-exempt by Idaho based on the tribal status, source or situs of performance of the services giving rise to the income, and residence of the individual who earned the income. Income does not become tax-exempt by Idaho solely because an enrolled member is attributed one-half (1/2) of the income earned by his spouse due to community property laws unless such income was tax-exempt to the spouse. ()

b. For example, a married couple lives and works on an Indian reservation. The wife is an enrolled member, the husband is not an enrolled member. The income earned by the husband on the reservation is subject to Idaho tax since he is not an enrolled member. The one-half (1/2) of his income attributed to his wife due to community property laws is also subject to Idaho tax since the income was earned by the husband who was not an enrolled member rather than by the wife who was an enrolled member. Any income earned by the wife on the reservation that is attributed to her husband under the community property laws will retain its character as tax-exempt by Idaho. ()

06. Gambling Winnings. ()

a. Amounts received from gambling on an Indian reservation by an enrolled member who lives on the Indian reservation are not subject to Idaho tax. ()

b. Amounts received from gambling on an Indian reservation by an enrolled member who lives off the Indian reservation in Idaho are subject to Idaho tax. ()

07. Per Capita Distributions. ()

a. Per capita distributions paid by an Indian tribe to an enrolled member who lives on the Indian

reservation are tax-exempt by Idaho. ()

b. Per capita distributions paid by an Indian tribe to an enrolled member who resides off the reservation in Idaho are subject to Idaho tax. ()

(BREAK IN CONTINUITY OF SECTIONS)

075. TAX ON INDIVIDUALS, ESTATES, AND TRUSTS (RULE 075). (3-20-04)
Section 63-3024, Idaho Code.

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. The maximum tax rate as listed for the applicable taxable year in Subsection 075.03 of this rule applies in computing the tax attributable to the S corporation stock held by an electing small business trust. See Rule 078 of these rules. (4-7-11)

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 is twice the tax that would be imposed on one-half (1/2) of the total Idaho taxable income of a single individual. (4-7-11)

c. For example, if a married couple filing a joint return reports Idaho taxable income of thirty thousand dollars (\$30,000), the tax is computed as if they had taxable income of fifteen thousand dollars (\$15,000). The tax amount is multiplied by two (2). (4-7-11)

03. Tables Identifying the Idaho Tax Rates and Income Tax Brackets. (3-20-04)

~~a. For taxable years beginning in 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.~~

(4-7-11)

ba. For taxable years beginning in 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.

(4-7-11)

eb. For taxable years beginning in 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.

(4-7-11)

dc. For taxable years beginning in 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

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
\$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.

(4-7-11)

ed. 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
\$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.

(4-7-11)

e. For taxable years beginning in 2011:

IF IDAHO TAXABLE INCOME IS		IDAHO TAX		
At least	But less than	Is	Plus	
<u>\$1</u>	<u>\$1,338</u>	<u>\$0</u>	<u>±</u>	<u>1.6% of taxable income</u>
<u>\$1,338</u>	<u>\$2,676</u>	<u>\$21.41</u>	<u>±</u>	<u>3.6% of the amount over \$1,338</u>
<u>\$2,676</u>	<u>\$4,014</u>	<u>\$69.58</u>	<u>±</u>	<u>4.1% of the amount over \$2,676</u>
<u>\$4,014</u>	<u>\$5,352</u>	<u>\$124.44</u>	<u>±</u>	<u>5.1% of the amount over \$4,014</u>
<u>\$5,352</u>	<u>\$6,690</u>	<u>\$192.68</u>	<u>±</u>	<u>6.1% of the amount over \$5,352</u>
<u>\$6,690</u>	<u>\$10,035</u>	<u>\$274.30</u>	<u>±</u>	<u>7.1% of the amount over \$6,690</u>

\$10,035	\$26,760	\$511.80	±	7.4% of the amount over \$10,035
\$26,760 or more		\$1,749.45	±	7.8% of the amount over \$26,760
Tax and bracket amounts were calculated using consumer price index amounts published on May 24, 2011.				

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(BREAK IN CONTINUITY OF SECTIONS)

105. ADJUSTMENTS TO TAXABLE INCOME -- ADDITIONS REQUIRED OF ALL TAXPAYERS (RULE 105).

Section 63-3022, Idaho Code. The following items must be added by all taxpayers in computing Idaho taxable income. (3-20-97)()

01. State and Local Income Taxes. As provided in Section 63-3022(a), Idaho Code, ~~add~~ state and local income taxes ~~that were~~ deducted in computing taxable income must be added. This includes taxes paid to states other than Idaho and their political subdivisions, and amounts paid by an S corporation on capital gains, built-in gains, and excess net passive income. (3-15-02)()

02. Net Operating Loss Deduction. As provided in Section 63-3022(b), Idaho Code, ~~add any the amount of the~~ net operating loss deduction included in taxable income must be added. (7-1-99)()

03. Capital Loss Carryover Deduction. As provided in Section 63-3022(i), Idaho Code: (3-30-01)

a. A corporation ~~shall~~ must add a capital loss ~~that was~~ deducted in computing taxable income if the capital loss occurred during a taxable year when the corporation did not transact business in Idaho, unless the corporation was part of a unitary group with at least one (1) member of the group taxable by Idaho for that taxable year. (7-1-99)()

b. An individual ~~shall~~ must add a capital loss ~~that was~~ deducted in computing taxable income if the capital loss was incurred in an activity not taxable by Idaho at the time it was incurred. (5-3-03)()

04. Interest and Dividend Income Exempt From Federal Taxation. As provided in Section 63-3022M, Idaho Code, ~~add~~ certain interest and dividend income that is exempt from federal income tax must be added. For example, ~~add~~ interest income from state and local bonds that is exempt from federal income tax pursuant to Section 103, Internal Revenue Code, must be added. (7-1-99)()

a. Interest from bonds issued by the state of Idaho or its political subdivisions is exempt from Idaho income tax and, therefore, is not required to be added to taxable income. (3-20-97)

b. If a taxpayer has both Idaho and non-Idaho state and municipal interest income, expenses not allowed pursuant to Sections 265 and 291, Internal Revenue Code, ~~shall~~ must be prorated between the Idaho and non-Idaho interest income as provided in Subsections 105.04.b.i. and 105.04.b.ii. The addition to taxable income required for non-Idaho state and municipal interest income ~~shall~~ must be offset by the expenses prorated to that interest income. The allowable offset may not exceed the reportable amount of interest income. An unused offset may not be carried back or carried over. A schedule showing the interest and related offsets ~~shall~~ must be attached to the return. (4-5-00)()

i. Expenses prorated to Idaho state and municipal interest income ~~shall be~~ are based on the ratio of Idaho state and municipal interest income to total state and municipal interest income. (7-1-98)()

ii. Expenses prorated to non-Idaho state and municipal interest income ~~shall be~~ are based on the ratio of non-Idaho state and municipal interest income to total state and municipal interest income. (7-1-98)()

05. Interest Expense Attributable to Tax-Exempt Interest Income. As provided by Section 63-3022M, Idaho Code, a taxpayer ~~shall~~ **must** add interest expense on indebtedness incurred to purchase or carry certain obligations that produce tax-exempt interest income. Because this addition serves to offset the tax-exempt interest income, it is often referred to as an interest expense offset related to tax-exempt interest income. See Rule 115 of these rules for the computation of the interest expense offset related to tax-exempt interest. (7-1-99)()

06. 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 acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes ~~shall~~ **must** be computed without regard to the special first-year depreciation allowance. ~~Add:~~ The amount of depreciation computed for federal income tax purposes that exceeds the amount of depreciation computed for Idaho income tax purposes **must be added**. The adjustments required by this subsection do not apply to property acquired after 2007 or before 2010. (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

120. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE TO ALL TAXPAYERS (RULE 120).

Section 63-3022, Idaho Code. The following items are allowable subtractions to all taxpayers in computing Idaho taxable income. (3-20-97)()

01. State and Local Income Tax Refunds. ~~Subtract from taxable income~~ state and local income tax refunds included in taxable income **may be subtracted**, unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (3-15-02)()

02. Idaho Net Operating Loss. As provided in Section 63-3022(c), Idaho Code, ~~subtract the an~~ Idaho net operating loss deduction described in Section 63-3021, Idaho Code, and allowed by Section 63-3022(c), Idaho Code, and Rules 200 through 210 of these rules **may be subtracted**. An S corporation or a partnership that incurs a loss is not entitled to claim a net operating loss deduction. The loss is passed through to the shareholders and partners who may deduct the loss. (7-1-99)()

03. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, ~~subtract the amount of~~ income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States **may be subtracted** if that income is included in taxable income and has not been previously subtracted. Income exempt from taxation by Idaho includes the following: (7-1-99)()

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

04. ~~Donated~~ Technological Equipment Donation. As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, ~~subtract~~ the fair market value of technological equipment donated to qualifying institutions **may be subtracted**. (4-5-00)()

05. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the amount of the premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer to the extent the premiums have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. ~~For taxable years beginning between January 1, 2001, and December 31, 2003, the deduction was allowed for fifty~~

~~percent (50%) of the amount of the premiums paid during the taxable year.~~ See Rule 193 of these rules.

~~(5-8-09)~~()

06. 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 acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes ~~shall~~ **must** be computed without regard to the special first-year depreciation allowance. The adjustments required by this subsection do not apply to property acquired after 2007 or before 2010.

~~(5-8-09)~~()

a. Depreciation. ~~Subtract~~ **The** amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes may be subtracted.

~~(3-20-04)~~()

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions ~~shall~~ apply in computing the Idaho capital loss allowed.

~~(3-20-04)~~()

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, ~~subtract~~ a subtraction is allowed for the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction.

~~(3-20-04)~~()

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, ~~subtract~~ the federal gain and the Idaho loss must be added together and the total may be subtracted. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000).

~~(3-20-04)~~()

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, ~~subtract~~ the difference between the federal and Idaho losses may be subtracted. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200).

~~(3-20-04)~~()

iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars (\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income.

(3-20-04)

07. Income Restored Under Federal Claim of Right. As provided by Section 63-3022F, Idaho Code, if a taxpayer included an item in Idaho taxable income in a prior taxable year and was later required to restore the item because it was established after the close of the prior taxable year that the taxpayer did not have an unrestricted right to such item or to a portion of the item, such taxpayer ~~shall be~~ **is** allowed a deduction in determining Idaho taxable income if the taxpayer has not otherwise deducted such item in computing his taxable income. The deduction ~~shall be~~ **is** allowed to the extent such deduction would have been allowed to the taxpayer under Section 1341, Internal Revenue Code, had the taxpayer claimed the deduction instead of the recalculation of federal tax, but only to the extent the item was included in Idaho taxable income in the prior taxable year.

~~(4-11-06)~~()

121. ADJUSTMENTS TO TAXABLE INCOME -- SUBTRACTIONS AVAILABLE ONLY TO INDIVIDUALS (RULE 121).

Section 63-3022, Idaho Code.

(3-20-97)

01. Income Not Taxable by Idaho. As provided in Section 63-3022(f), Idaho Code, subtract the amount of income that is exempt from Idaho income tax if included in taxable income. Income exempt from taxation by Idaho includes the following: (7-1-99)

a. Certain income earned by American Indians. See Rule 033 of these rules. (5-3-03)

b. Retirement payments received pursuant to the old Teachers' Retirement System. Prior to its repeal on July 1, 1967, the old Teachers' Retirement System was codified at Title 33, Chapter 13, Idaho Code. Teachers who were employed by the state of Idaho and who retired on or after January 1, 1966, generally do not qualify for this exemption. Teachers who were not state employees and who retired on or after January 1, 1968, do not qualify. Teachers receiving benefits pursuant to the Public Employees' Retirement System, Title 59, Chapter 13, Idaho Code, do not qualify for the exemption. No exemption is provided for amounts received from other states, school districts outside Idaho, or any other source if the proceeds do not relate to teaching performed in Idaho. (3-20-97)

02. Military Compensation for Service Performed Outside Idaho. As provided in Section 63-3022(h), Idaho Code, certain members of the United States Armed Forces may deduct from taxable income their military service pay received for military service performed outside Idaho. See Rule 032 of these rules. (3-30-01)

03. Standard or Itemized Deduction. As provided in Section 63-3022(j), Idaho Code, deduct either the standard deduction amount as defined in Section 63, Internal Revenue Code, or the itemized deductions allowed by the Internal Revenue Code. If itemized deductions are limited pursuant to the Internal Revenue Code, they are also limited for Idaho income tax purposes. (3-30-01)

a. If state and local income or general sales taxes are included in itemized deductions for federal purposes pursuant to Section 164, Internal Revenue Code, they shall be added to taxable income. If itemized deductions are limited pursuant to Section 68, Internal Revenue Code, the amount of state and local income or general sales taxes added back shall be computed by dividing the amount of itemized deductions that are allowed to the taxpayer after all federal limitations by total itemized deductions before the Section 68 limitation. For taxable years beginning in or after 2007, this proration shall be calculated 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). The result is then applied to state and local income or general sales taxes to determine the Idaho state and local income and general sales tax addback. See Rule 105 of these rules. (4-2-08)

b. If an itemized deduction allowable for federal income tax purposes is reduced for the mortgage interest credit or the foreign tax credit, the amount that would have been allowed if the federal credit had not been claimed is allowed as an itemized deduction. (7-1-99)

~~**e.** 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)~~

~~**d.c.** 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)~~

04. Social Security and Railroad Retirement Benefits. As provided in Section 63-3022(l), Idaho Code, subtract from taxable income the amount of social security and certain railroad retirement benefits included in gross income pursuant to Section 86, Internal Revenue Code. (3-30-01)

a. The term social security benefits includes United States social security benefits and Canadian social security pensions received by a United States resident that are treated as United States social security benefits for United States income tax purposes. (7-1-99)

b. The term certain railroad retirement benefits means the following amounts paid by the Railroad Retirement Board: (4-6-05)

i. Annuities, supplemental annuities, and disability annuities, including the Tier I social security equivalent benefits, and the Tier II pension amounts; (4-6-05)

ii. Railroad unemployment; and (4-6-05)

iii. Sickness benefits. (4-6-05)

05. Self-Employed Worker's Compensation Insurance Premiums. As provided in Section 63-3022(m), Idaho Code, self-employed individuals may subtract from taxable income the premiums paid to secure worker's compensation insurance for coverage in Idaho if the premiums have not been previously deducted in computing taxable income. The term worker's compensation insurance means "workmen's compensation" as defined in Section 41-506(d), Idaho Code. Premiums paid to secure worker's compensation insurance coverage are those payments made in compliance with Section 72-301, Idaho Code. (3-30-01)

06. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. (3-20-97)

07. Insulation of an Idaho Residence. As provided in Section 63-3022B, Idaho Code, and Rule 140 of these rules, a deduction from taxable income is allowed for qualified expenses related to the addition of insulation of an Idaho residence built before 1976. ~~(3-20-97)~~(____)

08. Alternative Energy Devices. As provided in Section 63-3022C, Idaho Code, and Rule 150 of these rules, a deduction from taxable income is allowed for qualified expenses related to the acquisition of an alternative energy device used in an Idaho residence. (3-20-97)

09. Household and Dependent Care Services. As provided in Section 63-3022D, Idaho Code, and Rule 160 of these rules, a deduction from taxable income is allowed for certain employment related expenses incurred for the care of qualifying individuals. (3-20-97)

10. Household Deduction for Elderly or Developmentally Disabled Dependents. As provided in Section 63-3022E, Idaho Code, and Rule 165 of these rules, a deduction from taxable income is allowed for maintaining a household where an elderly or developmentally disabled family member resides. (3-20-97)

11. Reparations to Displaced Japanese Americans. As provided in Section 63-3022G, Idaho Code, certain individuals are allowed a deduction for amounts included in taxable income relating to reparation payments from the United States Civil Liberties Public Education Fund. (3-20-97)

12. Capital Gains. As provided in Section 63-3022H, Idaho Code, and Rules 170 through 173 of these rules, a deduction from taxable income may be allowed for net capital gains recognized from the sale of qualified Idaho property. ~~(3-20-97)~~(____)

13. Adoption Expenses. As provided in Section 63-3022I, Idaho Code, and Rule 185 of these rules, a deduction from taxable income is allowed for certain expenses incurred when adopting a child. (3-20-97)

14. Idaho Medical Savings Account. As provided in Section 63-3022K, Idaho Code, and Rule 190 of these rules, a deduction from taxable income is allowed for qualifying contributions to and interest earned on an Idaho medical savings account. (4-5-00)

15. Idaho College Savings Program. As provided in Section 63-3022(n), Idaho Code, a deduction from taxable income is allowed for qualifying contributions to a college savings program. (3-15-02)

16. Health Insurance Costs. A deduction from taxable income is allowed for the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care, as defined in Section 63-3022P, Idaho Code, for the taxpayer, the spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes. See Rule 193 of these rules. (5-3-03)

17. Unused Net Operating Losses of Estates and Trusts. An unused net operating loss carryover remaining on termination of an estate or trust is allowed to the beneficiaries succeeding to the property of the estate or trust. The carryover amount is the same in the hands of the beneficiaries as in the hands of the estate or trust. The first one hundred thousand dollars (\$100,000) of loss sustained in any taxable year of an estate or trust must first be carried back by the estate or trust unless an election has been made as provided by Section 63-3022(c), Idaho Code, to forego the carryback. The first taxable year of the beneficiaries to which the net operating loss is to be carried is the taxable year of the beneficiary in which the estate or trust terminates. No part of a net operating loss incurred by an estate or trust can be carried back by a beneficiary, even if the estate or trust had no preceding taxable years eligible for a carryback. For purposes of determining the number of years to which a loss may be carried over by a beneficiary, the last taxable year of the estate or trust and the first taxable year of the beneficiary to which a loss is carried over each constitute a taxable year. ()

(BREAK IN CONTINUITY OF SECTIONS)

125. ADJUSTMENTS TO TAXABLE INCOME -- BONUS DEPRECIATION ON PROPERTY ACQUIRED AFTER SEPTEMBER 10, 2001, AND BEFORE DECEMBER 31, 2007, OR AFTER DECEMBER 31, 2009 (RULE 125).

Section 63-3022O, Idaho Code.

(4-2-08)

01. In General. ~~For taxable years beginning on and after January 1, 2001,~~ Section 63-3022O, Idaho Code, requires that when computing Idaho taxable income, the amount of the adjusted basis of depreciable property, depreciation, and gains and losses from the sale, exchange, or other disposition of depreciable property acquired after September 10, 2001, and before December 31, 2007, ~~shall~~ or acquired after December 31, 2009, must be computed without regard to bonus depreciation allowed by Section 168(k), Internal Revenue Code. In order to meet this requirement, a taxpayer ~~shall~~ must be consistent in making the Idaho adjustments required for all the taxable years in which federal bonus depreciation is claimed. See Subsection 125.02 of this rule. The adjustments required by this rule do not apply to property acquired after 2007 or before 2010. ~~(5-8-09)~~()

02. Depreciation.

(4-2-08)

a. If a taxpayer makes the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, in the subsequent taxable years the taxpayer ~~shall be~~ is entitled to the Idaho subtractions for the additional depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation claimed for federal income tax purposes. ~~(4-2-08)~~()

b. If a taxpayer fails to make the Idaho addition in the first taxable year bonus depreciation was claimed for federal income tax purposes, the taxpayer ~~shall~~ is not ~~be~~ entitled to claim the Idaho subtractions for additional depreciation in subsequent taxable years. In such instances, claiming an Idaho subtraction for additional depreciation when the first year Idaho addition was not claimed constitutes computing depreciation with regard to Section 168(k), Internal Revenue Code, which is specifically prohibited in Section 63-3022O(1), Idaho Code. For example, the Idaho addition is required for a taxable year when the bonus depreciation is claimed even though the taxpayer may be limited in claiming a passive loss from a pass-through entity in which the bonus depreciation arose. If the bonus depreciation is not added back in that taxable year, the Idaho subtractions are not allowed in the subsequent taxable years. ~~(4-2-08)~~()

c. The Idaho adjustments ~~shall be~~ are required in all taxable years in which the taxpayer has an Idaho filing requirement or is a member of a combined group of corporations in which at least one member has an Idaho filing requirement. If the taxpayer is not required to file an Idaho income tax return for one (1) or more years in which depreciation may be claimed, the taxpayer ~~shall~~ may claim the Idaho adjustment in the taxable years in which an Idaho return is filed if all such taxable years are treated consistently. ~~(4-2-08)~~()

d. Example. A corporation transacted business in California and Oregon during taxable year 2003. In 2004, the taxpayer began transacting business in Idaho and was required to file an Idaho corporation income tax return for that year. On the federal return filed for 2003, the taxpayer claimed bonus depreciation for assets placed in

service that year. Because the taxpayer was not required to file an Idaho corporation income tax return for 2003, there was no Idaho bonus depreciation addition required of the taxpayer. In 2004, the second year of depreciation for the assets placed in service in 2003, the taxpayer was required for Idaho income tax purposes to compute depreciation on the assets as if bonus depreciation had not been claimed. The difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes for 2004 would be allowed to the taxpayer as an Idaho subtraction since the taxpayer was required to file an Idaho corporation income tax return for that year. Assuming the taxpayer files an Idaho corporation income tax return for the remaining years when depreciation on the assets is allowed, the taxpayer will be allowed the Idaho subtraction in those years for the difference in the Idaho and federal depreciation amounts. If the corporation transacted business in Idaho during 2003 only, the return filed for that year should reflect the Idaho addition for the difference in the amount of Idaho depreciation and the depreciation claimed for federal income tax purposes, even though the subtractions will not apply in subsequent years. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

171. IDAHO CAPITAL GAINS DEDUCTION -- QUALIFIED PROPERTY (RULE 171).

Section 63-3022H, Idaho Code.

(3-20-97)

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. (4-7-11)

02. Real Property. ~~Idaho~~ ~~Real~~ property qualifies for the Idaho capital gains deduction if it was held by the taxpayer for twelve (12) months. Section 63-3022H(5), Idaho Code, defines real property to be land and other tangible property permanently upon or affixed to the land. For purposes of the Idaho capital gains deduction, ~~Real~~ 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: (4-7-11)()

- a. Easements and rights of way, including agricultural, forest, historic, or open-space easements; (4-7-11)
- b. Grazing permits; (4-7-11)
- c. Leasehold interests; (4-7-11)
- d. Options; (4-7-11)
- e. Water, mineral, hunting and fishing, renewable energy, and land surface rights; (4-7-11)
- f. Conservation easements; (4-7-11)
- g. Scenic easements. (4-7-11)

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. (4-7-11)

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 Subparagraph 171.05.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. (4-7-11)

06. 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)

ba. 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)

b. Property Distributed by an S Corporation or Partnership. ()

i. Liquidating Distributions. For purposes of this rule, the holding period of property received in a distribution from a partnership in liquidation of a partnership interest or from an S corporation in liquidation of stock does not include the time the partnership or S corporation held the property. In such cases, the property is received in exchange for the interest in the entity. Since a partnership interest and stock are not qualified property for purposes of the Idaho capital gains deduction, the entity's holding period does not tack on to the holding period of the property received in liquidation. ()

ii. Nonliquidating Distributions. For purposes of this rule, the holding period of property received in a distribution from a partnership other than in liquidation of a partnership interest or from an S corporation other than in liquidation of stock includes the time the entity held the property. ()

(BREAK IN CONTINUITY OF SECTIONS)

250. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INCOME SUBJECT TO IDAHO TAXATION (RULE 250).

Sections 63-3026A(1) and (2), Idaho Code. (3-20-97)

01. Tax on Income From Idaho Sources. All income earned or received from sources within Idaho is subject to Idaho income taxation. For nonresidents and part-year residents, income from sources within Idaho ~~shall~~ **must** be determined in accordance with Section 63-3026A(3), Idaho Code, and Rules 260 through 275 of these rules. (3-30-01)()

02. Tax on Income Received by Individuals Residing in or Domiciled in Idaho. All income earned or received by an individual who resides in or is domiciled in Idaho is subject to Idaho income taxation without regard to the source of the income. (3-20-97)

03. Receipt of Income -- Part-Year Residents. For purposes of determining if income is reportable to Idaho by a part-year resident, a cash basis taxpayer is considered to have earned or received income when it is actually or constructively received, except as provided in Subsections 250.04 and 250.05. (3-30-01)

04. Receipt of Intangible Income -- Part-Year Residents. (3-30-01)

a. Interest and dividend income received from a source other than from a pass-through entity is considered to be earned or received by a part-year resident ratably during the taxable year. ()

b. If a transaction or activity gives rise to income that ~~must be~~ **is** reported in a subsequent year when the taxpayer is a part-year resident, the income ~~shall~~ **must** be treated as received ratably during that subsequent year. ~~This~~ Subsection ~~shall apply~~ **250.04 also applies** to income that is not received during the year by the taxpayer, but which must be reported in taxable income. See Subsection 250.05 for the receipt of income from a pass-through entity. (3-30-01)()

b.c. A part-year resident ~~shall~~ **must** report such income to Idaho in the proportion that the number of days during the **taxable** year that the individual qualified as an Idaho part-year resident bears to total days **in the taxable year.** (3-30-01)()

d. Example. An individual converts an amount from a traditional IRA to a Roth IRA in year one (1). He elects to have the income taxed over four (4) years. The individual moves to Idaho on August 1 of year two (2). Since the individual was an Idaho resident for one hundred fifty-three (153) days of year two (2), he must report as Idaho income forty-two percent (42%) of his income from the conversion to a Roth IRA for that year. (3-30-01)

05. Receipt of Pass-Through Items of Income and Losses -- Part-Year Residents. (3-30-01)

a. For a part-year resident who is a shareholder in an S corporation, or a partner in a partnership, the

income, gains, losses and other pass-through items from the S corporation or partnership are treated as received ratably during the taxpayer's taxable year. If the taxpayer was not a shareholder or partner for the entire taxable year, the pass-through items are treated as received ratably during the period portion of the taxable year the taxpayer was a shareholder of the S corporation or partner of the partnership. (3-30-01)()

b. For a part-year resident who is a beneficiary of an estate or trust, the income, gains, losses and other pass-through items from the estate or trust are treated as received ratably during the taxpayer's taxable year. If the taxpayer was not a beneficiary of the estate or trust for the entire taxable year, the pass-through items are treated as received ratably during the period portion of the taxable year the taxpayer was a beneficiary of the estate or trust. (3-30-01)()

c. A part-year resident shall must report such income to Idaho in the proportion that the number of days during the taxable year that the individual qualified as an Idaho part-year resident bears to total days in the taxable year. (3-30-01)()

(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. (4-7-11)

01. Interest and Dividends Not Taxable Pursuant to the Internal Revenue Code. (3-20-97)

a. Part-Year Residents. 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, interest received from obligations of the state of Idaho or any political subdivision of Idaho is exempt from Idaho income tax and is not added. (4-7-11)

b. Nonresidents. 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. (4-7-11)

02. Net Operating Loss Deduction. The amount of the net operating loss deduction included in Idaho adjusted gross income must be added. (4-7-11)

03. Capital Loss. 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. (4-7-11)

04. Lump Sum Distributions. Part-year residents must add the taxable amount of a lump sum distribution deducted 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. (4-7-11)

05. Idaho Medical Savings Account. An account holder must add the amount of any nonqualified withdrawal from an Idaho medical savings account if the withdrawal was not made for the purpose of paying eligible medical expenses. (4-7-11)

06. Idaho College Savings Program. (4-7-11)

a. An account owner must add 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. (4-7-11)

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. (4-7-11)

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 acquired before 2008 or after 2009 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 add 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 or before 2010. (4-7-11)(____)

08. Certain Expenses of Eligible Educators. The amount of out-of-pocket classroom expenses deducted pursuant to Section 62, Internal Revenue Code, must be added. (4-7-11)

254. NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- SUBTRACTIONS ALLOWED IN COMPUTING IDAHO ADJUSTED INCOME (RULE 254).

Section 63-3026A(6), Idaho Code. The following items are allowable subtractions in computing the Idaho adjusted income of nonresident and part-year resident individuals. (3-20-97)(____)

01. Idaho Net Operating Loss—Carryover. ~~Subtract the~~ An Idaho net operating loss ~~carryover deduction described in Section 63-3021, Idaho Code, and~~ allowed by Section 63-3022(c), Idaho Code, and Rules 200 through 210 of these rules, may be subtracted to the extent the loss was incurred while the taxpayer was residing in or domiciled in Idaho or to the extent the loss was from activity taking place in Idaho. A net operating loss incurred from an activity not taxable by Idaho may not be subtracted. (5-3-03)(____)

02. State and Local Income Tax Refunds. ~~Subtract~~ state and local income tax refunds included in Idaho total income may be subtracted unless the refunds have already been subtracted pursuant to Section 63-3022(a), Idaho Code. (3-15-02)(____)

03. Income Not Taxable by Idaho. ~~Subtract~~ As provided in Section 63-3022(f), Idaho Code, income that is exempt from Idaho income taxation by a law of the state of Idaho or of the United States; may be subtracted if that income is included in Idaho total income and has not been previously subtracted. Income ~~not taxable exempt from taxation~~ by Idaho includes the following: (3-15-02)(____)

a. Interest income from obligations issued by the United States Government. Gain recognized from the sale of United States Government obligations is not exempt from Idaho tax and, therefore, may not be subtracted from taxable income. For the interest expense offset, see Rule 115 of these rules. (7-1-99)

b. Idaho lottery prizes exempt by Section 67-7439, Idaho Code. For prizes awarded on lottery tickets purchased in Idaho after January 1, 1998, a subtraction is allowed for each lottery prize that is less than six hundred dollars (\$600). If a prize equals or exceeds six hundred dollars (\$600), no subtraction is allowed. The full amount of the prize is included in income. (4-5-00)

c. Certain income earned by American Indians. An enrolled member of a federally recognized Indian tribe who lives on ~~a~~ his tribe's federally recognized Indian reservation is not taxable on income derived within the at reservation. See Rule 033 of these rules. (5-3-03)(____)

d. Certain income earned by transportation employees covered by Title 49, Sections 11502, 14503 or 40116, United States Code. See Rule 045 of these rules. (7-1-99)

04. Military Pay. ~~Subtract~~ Qualified military pay included in Idaho total income earned for military service performed outside Idaho may be subtracted. Qualified military pay means all compensation paid by the United States for services performed while on active duty as a full-time member of the United States Armed Forces which full-time duty is or will be continuous and uninterrupted for one hundred twenty (120) consecutive days or

more. A nonresident does not include his military pay in Idaho total income and, therefore, makes no adjustment. See Rule 032 of these rules for information regarding the residency status of members of the United States Armed Forces. (3-15-02)()

05. Social Security and Railroad Retirement Benefits. ~~Subtract~~ social security benefits and benefits paid by the Railroad Retirement Board that are taxable pursuant to the Internal Revenue Code, may be subtracted to the extent the benefits are included in Idaho total income. See Subsections 121.04.a. and 121.04.b. of these rules. (3-15-02)()

06. Household and Dependent Care Expenses. ~~Subtract~~ The allowable portion of household and dependent care expenses that meets the requirements of Section 63-3022D, Idaho Code, may be subtracted if incurred to enable the taxpayer to be gainfully employed in Idaho. To determine the allowable portion of household and dependent care expenses, ~~calculate~~ a percentage is calculated by dividing Idaho earned income by total earned income. ~~Multiply~~ The qualified expenses are multiplied by the percentage. Earned income is defined in Section 32(c)(2), Internal Revenue Code. (3-20-97)()

07. Insulation and Alternative Energy Device Expenses. ~~Subtract~~ Expenses related to the installation of insulation or alternative energy devices that meet the requirements of Section 63-3022B or 63-3022C, Idaho Code, may be subtracted. (3-20-97)()

08. Deduction for Dependents Sixty-Five or Older or with Developmental Disabilities. ~~Subtract~~ One thousand dollars (\$1,000) may be subtracted for each person who meets the requirements of Section 63-3022E, Idaho Code. The deduction may be claimed for no more than three (3) qualifying dependents. If a dependent has not lived in the maintained household for the entire taxable year, the allowable deduction is eighty-three dollars (\$83) for each month the dependent resided in the maintained household during the taxable year. For purposes of this rule, a fraction of a month exceeding fifteen (15) days is treated as a full month. (3-20-97)()

09. Adoption Expenses. ~~Subtract~~ The allowable portion of adoption expenses that meets the requirements of Section 63-3022I, Idaho Code, may be subtracted. To determine the allowable portion, calculate a percentage is calculated by dividing Idaho total income by total income. ~~Multiply~~ The deduction allowable pursuant to Section 63-3022I, Idaho Code, is multiplied by the percentage. (3-15-02)()

10. Capital Gains Deduction. ~~Subtract~~ The Idaho capital gains deduction allowed by Section 63-3022H, Idaho Code, may be subtracted. (3-20-97)()

11. Idaho Medical Savings Account. (7-1-98)

a. ~~Subtract~~ The qualifying amount of contributions to an Idaho medical savings account that meets the requirements of Section 63-3022K, Idaho Code, may be subtracted. (7-1-98)()

b. ~~Subtract~~ Interest earned on an Idaho medical savings account may be subtracted to the extent included in Idaho total income. (3-15-02)()

12. Technological Equipment Donation. ~~Subtract donations~~ As provided by Section 63-3022J, Idaho Code, and Rule 180 of these rules, the fair market value of technological equipment allowed by Section 63-3022J, Idaho Code. See Rule 180 of these rules donated to qualifying institutions may be subtracted. (3-20-97)()

13. Worker's Compensation Insurance. As allowed by Section 63-3022(m), Idaho Code, a self-employed individual may subtract the premiums paid for worker's compensation for coverage in Idaho to the extent not previously subtracted in computing Idaho taxable income. (3-30-01)

14. Idaho College Savings Program. ~~Subtract~~ The qualifying amount of contributions to a college savings program that meets the requirements of Section 63-3022(n), Idaho Code, may be subtracted. (3-15-02)()

15. Retirement Benefits. As provided in Section 63-3022A, Idaho Code, and Rule 130 of these rules, a deduction from taxable income is allowed for certain retirement benefits. To determine the allowable portion of the deduction for certain retirement benefits, ~~calculate~~ a percentage is calculated by dividing the qualified retirement

benefits included in Idaho gross income by the qualified retirement benefits included in federal gross income. ~~Multiply~~ The deduction allowable pursuant to Section 63-3022A, Idaho Code, and Rule 130 of these rules, is multiplied by the percentage. ~~(3-30-01)~~()

16. Health Insurance Costs. ~~Subtract~~ The allowable portion of the amounts paid by the taxpayer during the taxable year for insurance that constitutes medical care as defined in Section 63-3022P, Idaho Code, for the taxpayer, spouse or dependents of the taxpayer not otherwise deducted or accounted for by the taxpayer for Idaho income tax purposes may be subtracted. To determine the allowable portion of the amounts paid for medical care insurance, ~~calculate~~ a percentage is calculated by dividing Idaho total income by total income. ~~Multiply~~ The deduction allowable pursuant to Section 63-3022P, Idaho Code, is multiplied by the percentage. See Rule 193 of these rules. ~~(5-3-03)~~()

17. Long-Term Care Insurance. As provided in Section 63-3022Q, Idaho Code, a deduction from taxable income is allowed for the allowable portion of premiums paid during the taxable year for qualifying long-term care insurance for the benefit of the taxpayer, a dependent of the taxpayer or an employee of the taxpayer that have not otherwise been deducted or accounted for by the taxpayer for Idaho income tax purposes. To determine the allowable portion, ~~calculate~~ a percentage is calculated by dividing Idaho total income by total income. ~~Multiply~~ The deduction allowable pursuant to Section 63-3022Q, Idaho Code, is multiplied by the percentage. See Rule 193 of these rules. ~~(5-8-09)~~()

18. 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 acquired before 2008 or after 2009 pursuant to Section 168(k), Internal Revenue Code, the adjusted basis of that property and the depreciation deduction allowed for Idaho income tax purposes ~~shall~~ must be computed without regard to the special first-year depreciation allowance. The adjustments required by this subsection do not apply to property acquired after 2007 or before 2010. ~~(5-8-09)~~()

a. Depreciation. ~~Subtract~~ The amount of depreciation computed for Idaho income tax purposes that exceeds the amount of depreciation computed for federal income tax purposes may be subtracted. ~~(3-20-04)~~()

b. Gains and losses. During the recovery period, the adjusted basis of depreciable property computed for federal income tax purposes will be less than the adjusted basis for Idaho income tax purposes as a result of claiming the special first-year depreciation allowance. If a loss qualifies as a capital loss for federal income tax purposes, the federal capital loss limitations and carryback and carryover provisions ~~shall~~ apply in computing the Idaho capital loss allowed. ~~(3-20-04)~~()

i. If a sale or exchange of property results in a gain for both federal and Idaho income tax purposes, ~~subtract~~ a subtraction is allowed for the difference between the federal and Idaho gains computed prior to any applicable Idaho capital gains deduction. ~~(3-20-04)~~()

ii. If a sale or exchange of property results in a gain for federal income tax purposes and an ordinary loss for Idaho income tax purposes, ~~subtract~~ the federal gain and the Idaho loss must be added together and the total may be subtracted. For example, if a taxpayer has a federal gain of five thousand dollars (\$5,000) and an Idaho loss of four thousand dollars (\$4,000), the amount subtracted would be nine thousand dollars (\$9,000). ~~(3-20-04)~~()

iii. If a sale or exchange of property results in an ordinary loss for both federal and Idaho income tax purposes, ~~subtract~~ the difference between the federal and Idaho losses may be subtracted. For example, if a taxpayer has a federal loss of three hundred dollars (\$300) and an Idaho loss of five hundred dollars (\$500), the amount subtracted would be two hundred dollars (\$200). ~~(3-20-04)~~()

iv. If a sale or exchange of property results in a capital loss for both federal and Idaho income tax purposes, apply the capital loss limitations and subtract the difference between the federal and Idaho deductible capital losses. For example, if a taxpayer has a federal capital loss of six thousand dollars (\$6,000) and an Idaho capital loss of eight thousand dollars (\$8,000), both the federal and Idaho capital losses are limited to a deductible capital loss of three thousand dollars (\$3,000). In this case, no subtraction is required for the year of the sale. In the next year, assume the taxpayer had a capital gain for both federal and Idaho purposes of two thousand dollars (\$2,000). The capital loss carryovers added to the capital gain results in a federal deductible capital loss of one

thousand dollars (\$1,000) and an Idaho deductible capital loss of three thousand dollars (\$3,000). The taxpayer would subtract the difference between the federal and Idaho deductible losses or two thousand dollars (\$2,000) in computing Idaho taxable income. (3-20-04)

(BREAK IN CONTINUITY OF SECTIONS)

263. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- DISTRIBUTIVE SHARE OF S CORPORATION AND PARTNERSHIP INCOME (RULE 263).
Section 63-3026A(3), Idaho Code. (3-20-97)

01. In General. The taxable amount of a shareholder's pro rata share or a partner's distributive share of business income, gains, losses, and other pass-through items from an S corporation or partnership operating both within and without Idaho is determined by multiplying each pass-through item by the Idaho apportionment factor of the business. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. (3-20-97)

02. Nonbusiness Income. Pass-through items of identifiable nonbusiness income, gains, or losses of an S corporation or partnership constitute Idaho source income to the shareholder or partner if allocable to Idaho pursuant to the principles set forth in Section 63-3027, Idaho Code. (3-20-97)

03. Pass-Through Items. Whether a pass-through item of income or loss is business or nonbusiness income is determined at the pass-through entity level. Pass-through items of business income or loss may include: (3-20-97)

- a. Ordinary income or loss from trade or business activities; (3-20-97)
- b. Net income or loss from rental real estate activities; (3-20-97)
- c. Net income or loss from other rental activities; (3-20-97)
- d. Interest income; (3-20-97)
- e. Dividends; (3-20-97)
- f. Royalties; (3-20-97)
- g. Capital gain or loss; (3-20-97)
- h. Other portfolio income or loss; (3-20-97)
- i. Gain or loss recognized pursuant to Section 1231, Internal Revenue Code. (3-20-97)

04. Guaranteed Payments. The amount of guaranteed payments received by a partner that is from Idaho sources is determined by multiplying the taxable amount of guaranteed payments pursuant to Section 707, Internal Revenue Code, by the Idaho apportionment factor of the partnership. No effect is given to a provision in the partnership agreement that characterizes payments to a partner as being for services or for the use of capital. The Idaho apportionment factor is determined pursuant to Section 63-3027, Idaho Code, and related rules. ()

05. Distributions. ()

a. Partnerships. The amount of distributions received by a partner that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 731, Internal Revenue Code, by the Idaho apportionment factor of the partnership. ()

b. S Corporations. The amount of distributions received by a shareholder that is from Idaho sources is determined by multiplying the taxable amount of distributions pursuant to Section 1368, Internal Revenue Code, by the Idaho apportionment factor of the S corporation. ()

c. The Idaho apportionment factor for purposes of Paragraphs 263.05.a. and 263.05.b. of this rule is determined pursuant to Section 63-3027, Idaho Code, and related rules. ()

(BREAK IN CONTINUITY OF SECTIONS)

266. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INCOME FROM INTANGIBLE PROPERTY (RULE 266).
Section 63-3026A(3), Idaho Code. (7-1-99)

01. In General. Gross income from intangible property generally is sourced to the state of the owner's domicile. The following are exceptions to this rule. (4-11-06)

a. If the intangible property is employed in the owner's trade, business or profession carried on within Idaho, any income derived from or related to the property, including gains from the sale thereof, constitutes income from Idaho sources. For example, if a nonresident pledges stocks, bonds or other intangible personal property as security for the payment of indebtedness incurred in connection with the nonresident's Idaho business operations, the intangible property has an Idaho situs and the income derived therefrom constitutes Idaho source income. (7-1-99)

b. Interest income from the sale of real or tangible personal property on the installment method is treated as income from the sale of the underlying property and is therefore sourced to Idaho if the underlying property was located in Idaho when sold. (7-1-99)

c. Interest income paid by an S corporation to a shareholder or by a partnership to a partner is sourced to Idaho in proportion to the Idaho apportionment factor of the partnership or S corporation. (7-1-99)

d. Gains or losses from the sale or other disposition of a partnership interest or stock in an S corporation are sourced to Idaho by using the Idaho apportionment factor for the entity for the taxable year immediately preceding the year of the sale of the interest or stock. However, a gain or loss from the sale of an interest in a publicly traded partnership transacting business in Idaho is Idaho source income to the extent of the gain or loss determined under Section 751, Internal Revenue Code, multiplied by the Idaho apportionment factor of the partnership for the year in which the sale occurred. (4-11-06)()

02. Interest Income Earned on a Bank Account. (7-1-99)

a. Personal Bank Accounts. Interest income earned on a personal bank account is sourced to the owner's state of domicile. A personal bank account is an account that is not used in connection with a business. (7-1-99)

b. Business Bank Accounts. If the business is a sole proprietorship, see Rule 265 of these rules. If the business is an S corporation or partnership, see Rule 263 of these rules. (7-1-99)

03. Payment of Penalties. Payment of penalties ~~shall be~~ is sourced to Idaho the same as interest income. This includes penalties arising from the prepayment or late payment of an installment contract. If the installment contract is for the sale of Idaho property, any penalties paid ~~shall be~~ is Idaho source income. (5-8-09)()

04. Covenant Not to Compete. Income from a covenant not to compete is sourced to ~~the owner's state of domicile unless the covenant was employed in the owner's business, trade, profession or occupation conducted or carried on in Idaho as described in Paragraph 266.01.a. of this rule~~ Idaho based on the Idaho apportionment factor of the entity sold for the taxable year immediately preceding the year of the sale. (4-11-06)()

05. Goodwill. Gain or loss from the sale of goodwill from a business transacting business in Idaho is sourced to Idaho based on the Idaho apportionment factor of the business sold for the taxable year immediately preceding the year of the sale. ()

056. Timing of Sourcing Determination for Intangible Personal Property. The source of gains and losses from the sale or other disposition of intangible personal property is determined at the time of the sale or disposition of the property. For example, if an Idaho resident sells intangible personal property under the installment method, and subsequently becomes a nonresident, gain attributable to any installment payment receipts relating to that sale will be sourced to Idaho even though the individual is a nonresident when a payment is received. If the intangible personal property was employed in the owner's business, trade, profession or occupation conducted or carried on in Idaho as described in Paragraph 266.01.a., of this rule, at the time of the sale, any subsequent installment payments ~~shall be~~ is Idaho source income. (5-8-09)()

~~267. -- 269.~~ (RESERVED) IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- PASSIVE ACTIVITY LOSSES (RULE 267).
Section 63-3026A(6), Idaho Code. ()

01. In General. Losses from a passive activity incurred while an individual is a nonresident are included in Idaho taxable income only to the extent the losses were from Idaho activity. ()

02. Idaho Activity. An activity is an Idaho activity only to the extent the income from that activity would be included in the Idaho taxable income of a nonresident pursuant to Section 63-3026A, Idaho Code. If a passive activity is engaged in both within and without Idaho, the principles of allocation and apportionment of income set forth in Section 63-3027, Idaho Code, and related rules must be applied to determine the extent of Idaho activity. ()

03. Prior Year Losses. Suspended passive activity losses from prior years included in federal taxable income for the current year are included in Idaho taxable income only to the extent the losses were from Idaho activity. ()

04. Current Year Losses. Non-Idaho passive activity losses incurred in the current taxable year are included in Idaho taxable income only to the extent the losses were incurred while the individual was an Idaho resident. The portion of the losses incurred while an Idaho resident is determined by prorating the losses based on the proportion of the year the individual resided in Idaho. ()

~~268. -- 269.~~ (RESERVED)

270. IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- IDAHO COMPENSATION -- IN GENERAL (RULE 270).
Section 63-3026A(3). (4-5-00)

01. In General. If a ~~nonresident~~ individual performs personal services, either as an employee, agent, independent contractor or otherwise, both within and without Idaho, the portion of his total compensation that constitutes Idaho source income is determined by multiplying that total compensation by the Idaho compensation percentage. (3-20-97)()

02. Definitions. (3-20-97)

a. The Idaho compensation percentage is the percentage computed by dividing Idaho work days by total work days. (3-20-97)

b. The term Idaho work days means the total number of days the taxpayer provided personal services in Idaho for a particular employer or principal during the calendar year. If personal services were provided both within and without Idaho on the same day, that day is an Idaho work day unless the taxpayer establishes that less than fifty percent (50%) of the services were performed within Idaho that day. If an employee works in Idaho part of the day on a regular full-time basis, working hours must be used to determine the amount of Idaho compensation.

(3-20-97)()

c. Total work days means the total number of days the taxpayer provided personal services for that employer or principal both within and without Idaho during the calendar year. For example, a taxpayer working a five (5) day work week may assume total work days of two hundred sixty (260) less any vacation, holidays, sick leave days and other days off. (3-20-97)

d. Total compensation means all salary, wages, commissions, contract payments, and other compensation for services, including sick leave pay, holiday pay and vacation pay, that is taxable pursuant to the ~~Idaho Income Tax Act if earned by a resident of Idaho~~ Internal Revenue Code. (3-20-97)()

03. **Work Days.** Work days include only those days the taxpayer actually performs personal services for the benefit of the employer or principal. Vacation days, sick leave days, holidays, and other days off from work are considered nonwork days whether compensated or not. Total work days must equal Idaho work days plus non-Idaho work days. The taxpayer has the burden of establishing non-Idaho work days. Documentation establishing non-Idaho work days may be required to support the Idaho compensation percentage used by the taxpayer. (3-20-97)

04. **Multiple Employers.** If a taxpayer performs personal services both within and without Idaho for more than one (1) employer or principal, he ~~shall~~ **must** determine an Idaho compensation percentage separately for each employer or principal. (3-20-97)()

05. **Alternative Method.** If the Idaho compensation percentage does not fairly represent the extent of the taxpayer's personal service activities in Idaho, the taxpayer may propose or the Tax Commission may require an alternative method. For example, working hours may be a more appropriate measure than work days in some cases. (3-30-01)

a. The taxpayer ~~shall~~ **must** fully explain the alternative method in a statement attached to his Idaho individual income tax return. (3-20-97)()

b. The alternative method may be used in lieu of the method in Subsection 270.01 unless the Tax Commission expressly denies its use. (4-5-00)

(BREAK IN CONTINUITY OF SECTIONS)

275. **IDAHO SOURCE INCOME OF NONRESIDENT AND PART-YEAR RESIDENT INDIVIDUALS -- INVESTMENT INCOME FROM QUALIFIED INVESTMENT PARTNERSHIPS (RULE 275).**
Section 63-3026A(3)(c), Idaho Code. (4-11-06)

01. **In General.** (4-11-06)

a. For taxable years beginning on or after January 1, 2007, ~~an Idaho~~ **the Idaho taxable income of a** nonresident individual ~~will not be taxed on~~ **does not include the distributive share of** investment income ~~from of~~ a qualified investment partnership. **The distributive share of noninvestment income of a qualified investment partnership derived from or related to sources within Idaho is included in Idaho taxable income.** See Rule 250 of these rules for information on when pass-through income from a partnership is deemed to have been received. (4-2-08)()

b. The exemption from tax on investment income from a qualified investment partnership ~~shall~~ **does** not apply to gains or losses derived from the sale of a nonresident individual's interest in a qualified investment partnership. The source of these gains and losses is ~~to be~~ governed by Section 63-3026A(3)(a)(vii), Idaho Code, and ~~as discussed in~~ Rule 266 of these rules. The source of investment income that is not from a qualified investment partnership ~~shall be~~ **is** determined as provided in Rule 263 of these rules. (4-2-08)()

02. **Qualified Investment Partnership.** An entity ~~shall be~~ **is** a qualified investment partnership only if

it meets both of the following criteria:

(4-2-08)()

a. The entity is classified as a partnership for federal income tax purposes, but is not a publicly traded partnership taxed as a corporation under Section 63-3006, Idaho Code. (4-2-08)

b. The gross income from investments of the entity ~~must be~~ is derived at least ninety percent (90%) from investments that when held by a nonresident individual directly, would not produce income subject to the Idaho income tax. See Rules 263 and 266 of these rules. (4-2-08)()

03. Investment Income. For purposes of this exclusion, an item of partnership income is investment income only if it would not be Idaho taxable income of a nonresident individual if the individual held the investment directly. ()

04. Examples. ()

a. A is a nonresident individual member of ABC, a partnership operating solely within Idaho. The taxable income of ABC for the taxable year consists of ninety thousand dollars (\$90,000) of dividend income and ten thousand dollars (\$10,000) of capital gains from stock trading through a brokerage account. If A held the stock directly, Section 63-3026A(3)(a)(iii), Idaho Code, provides that the dividends and capital gains would not be included in Idaho taxable income. Since at least ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership and none of A's distributive share of the income is included in Idaho taxable income even though ABC is an Idaho partnership. ()

b. Assume the same facts as in Paragraph 275.04.a. of this rule, except that the ten thousand dollars (\$10,000) of capital gains is from the sale of Idaho real property. Since at least ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual, ABC is a qualified investment partnership. A's distributive share of ABC's dividend income is excluded from A's Idaho taxable income, but A's distributive share of ABC's gain from the sale of Idaho real property is included in Idaho taxable income because Section 63-3026A(3), Idaho Code, provides that such income would be taxable to A if A had owned the property directly. ()

c. A is a nonresident individual member of ABC, a partnership operating solely within Idaho. The taxable income of ABC for the taxable year consists of eighty thousand dollars (\$80,000) of dividend income and twenty thousand dollars (\$20,000) of capital gains from the sale of Idaho real property. ABC is not a qualified investment partnership because less than ninety percent (90%) of ABC's income is from investments that would not be taxable to a nonresident individual if held directly by that individual. A's distributive share of ABC's dividend income and capital gain income is included in Idaho taxable income as provided in Rule 263 of these rules. ()

(BREAK IN CONTINUITY OF SECTIONS)

290. TAX PAID BY PASS-THROUGH ENTITIES FOR OFFICERS, DIRECTORS, 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, owner, or beneficiary. For purposes of this rule, pass-through entity means "pass-through entity" as defined in Section 63-3006C, Idaho Code. (4-7-11)

b. The election is not available to: (4-7-11)

- i. Corporations; (4-7-11)
- ii. Partnerships; (4-7-11)
- iii. Electing small business trusts; (4-7-11)
- iv. Any other person who is not an individual; ~~or~~ (4-7-11)()

v. A nonresident individual owner or beneficiary who has Idaho taxable income in addition to income for which the individual has made the election under Section 63-3022L, Idaho Code. If a nonresident individual has no other Idaho taxable income except for income from pass-through entities, the individual may make the election if the election is made for each pass-through entity in which the individual is an owner or beneficiary. ()

- v. Idaho resident individuals ~~or~~ (4-7-11)()

vii. An Idaho part-year resident individual who has Idaho taxable income in addition to income from a pass-through entity. If a part-year resident individual has no other Idaho taxable income except for income from pass-through entities, the individual may make the election if the election is made for each pass-through entity in which the individual is an owner or beneficiary. ()

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. (4-7-11)

- a. The election must be made for each taxable year to which it will apply. (4-7-11)
- 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. (4-7-11)
- c. The election must be provided to the pass-through entity by January 31 following the end of the tax~~able~~ year for which it is to apply. (4-7-11)()
- d. Once the election is made, it is irrevocable for that tax~~able~~ year. (4-7-11)()

03. Failure to Make Election. If the individual fails to make the election to have the ~~pass-through~~ entity pay the tax, the pass-through entity must remit ~~the tax withheld back-up withholding on any cash distributions paid to the individual~~ the individual's share of the pass-through entity's income, including guaranteed payments, and wages, salary, and other compensation paid by the pass-through entity that is required to be included on the owner's Idaho return as required in Section 63-3036B, Idaho Code, and Rule 877 of these rules. (4-7-11)()

(BREAK IN CONTINUITY OF SECTIONS)

570. SPECIAL RULES: SALES FACTOR (RULE 570).
Section 63-3027(s), Idaho Code. (3-20-97)

~~01. De Minimis Gross Receipts. Minimal amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless the exclusion would materially affect the amount of income apportioned to Idaho.~~ (3-20-97)

021. Gross Receipts from Intangibles. (3-20-97)

a. If the income producing activity in respect to business income from intangible personal property can be readily identified, the gross receipts ~~shall be~~ are included in the denominator of the sales factor and, if the income producing activity occurs in Idaho, in the numerator of the sales factor as well. (4-11-06)()

b. Notwithstanding Rule 550 of these rules, gross receipts from the sale of an ownership interest in another entity are included in the sales factor numerator based on the proportion of the entity's operational assets located in Idaho. The amount included is determined by multiplying the gross receipts received by the percentage of the entity's total real and tangible personal property located in Idaho at the time of the sale. ()

bc. If business income from intangible property cannot readily be attributed to any particular income producing activity of the taxpayer, the gross receipts ~~shall be~~ are excluded from the denominator and numerator of the sales factor. For example, if business income in the form of dividends received on stock, royalties received on patents or copyrights, and interest received on bonds, debentures or government securities results from the mere holding of the intangible personal property by the taxpayer, the dividends, royalties and interest ~~shall be~~ are excluded from the denominator and numerator of the sales factor. (4-11-06)()

ed. ~~Subsection 570.02 of~~ This rule is not intended to limit the ability of the Tax Commission to allow or require alternative apportionment when appropriate to fairly represent the extent of the taxpayer's business activity in this state. As a result, alternative apportionment may be allowed or required even if the income producing activity with respect to business income derived from intangible personal property can be readily identified. (4-11-06)()

032. Net Gains. If gains and losses on the sale of liquid assets are not excluded from the sales factor by other provisions of this rule, such gains or losses ~~shall be~~ are treated as provided in Subsection 570.032 of this rule. This provision does not provide rules relating to the treatment of other receipts produced from holding or managing such assets. If a taxpayer holds liquid assets in connection with one (1) or more treasury functions of the taxpayer, and the liquid assets produce business income when sold, exchanged or otherwise disposed, the overall net gain from those transactions for each treasury function for the tax period is included in the sales factor. For purposes of Subsection 570.032 of this rule, each treasury function ~~shall be~~ is considered separately. (4-11-06)()

a. For purposes of Subsection 570.032 of this rule, a liquid asset is an asset, other than functional currency or funds held in bank accounts, held to provide a relatively immediate source of funds to satisfy the liquidity needs of the trade or business. Liquid assets include foreign currency, and trading positions therein, other than functional currency used in the regular course of the taxpayer's trade or business; marketable instruments, including stocks, bonds, debentures, bills, notes, options, warrants, futures contracts; and mutual funds which hold such liquid assets. An instrument is considered marketable if it is traded in an established stock or securities market and is regularly quoted by brokers or dealers in making a market. Stock in a corporation that is unitary with the taxpayer or has a substantial business relationship with the taxpayer is not considered marketable stock. (4-11-06)()

b. For purposes of Subsection 570.032 of this rule, a treasury function is the pooling and management of liquid assets for the purpose of satisfying the cash flow needs of the trade or business, such as providing liquidity for a taxpayer's business cycle, providing a reserve for business contingencies, and providing for business acquisitions. A taxpayer principally engaged in the trade or business of purchasing and selling instruments or other items included in the definition of liquid assets set forth herein is not performing a treasury function with respect to income so produced. (4-11-06)()

c. Overall net gain refers to the total net gain from all transactions incurred at each treasury function for the entire tax period, not the net gain from a specific transaction. (4-5-00)

d. Examples. (4-5-00)

i. A taxpayer manufactures various gift items. Because of seasonal variations, the taxpayer must keep liquid assets available for later inventory acquisitions. Because the taxpayer wants to obtain a return on available funds, the taxpayer acquires liquid assets, which are held and managed in State A. The net gain resulting from all gains and losses on the sale of the liquid assets for the tax year will be reflected in the denominator of the sales factor and in the numerator of State A. (4-5-00)

ii. A stockbroker acts as a dealer or trader for its own account in its ordinary course of business. Some of the instruments sold are liquid assets. Subsection 570.032 of this rule does not operate to classify those sales as attributable to a treasury function. (4-11-06)()

~~043.~~ **Commissions and Fee Income Related to the Sale of Another Taxpayer's Real Property.** Notwithstanding the provisions of Rule 550 of these rules, gross receipts from commissions or fees arising as a result of the personal services and activities associated with the selling of another taxpayer's real property ~~shall be~~ are sourced to the state where the real property is located. ~~(3-29-10)()~~

(BREAK IN CONTINUITY OF SECTIONS)

582. SPECIAL RULES: FINANCIAL INSTITUTIONS (RULE 582).

Section 63-3027(s), Idaho Code.

(7-1-98)

01. Adoption of MTC Recommended Formula for the Apportionment and Allocation of Net Income of Financial Institutions. This rule incorporates by reference 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 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:~~ (7-1-98)

~~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 be excluded for purposes of this subsection. For example, gross income from the sale of a headquarters building shall be 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 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~~ **"Financial institution" means:** (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. A production credit association organized under the Federal Farm Credit Act of 1933, all of whose stock held by the Federal Production Credit Corporation has been retired; ()

gh. Any corporation ~~whose voting stock~~ or other business entity that is more than fifty percent (50%) owned, directly or indirectly, by any person or business entity described in Subsections Paragraphs 582.032.a. through 582.032.fg. other than an insurance company exempted from tax by Section 41-405, Idaho Code; and (7-1-98)()

hi. 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 ~~shall~~ 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 shall~~ This 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)()

i. Any corporation or business entity that derives more than fifty percent (50%) of its gross income from activities that a person described in Paragraphs 582.02.a. through 582.02.g. and 582.02.i. of this rule is authorized to transact. For purposes of this subsection, the computation of gross income does not include income from non-recurring, extraordinary items. ()

043. **Exclusion from ~~Rule Paragraph 582.02.j.~~** The Tax Commission is authorized to exclude any person from the application of ~~Subsection Paragraph 582.042.j.~~ 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 582.032.a. through 582.032.fg. and 582.032.hi.~~ (7-1-98)()

054. **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)

065. **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~~ are 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)()

(BREAK IN CONTINUITY OF SECTIONS)

705. CREDIT FOR CONTRIBUTIONS TO EDUCATIONAL INSTITUTIONS FOR TAXABLE YEARS BEGINNING AFTER 2010 (RULE 705).

Section 63-3029A, Idaho Code.

(3-20-97)

01. Qualified Contributions. Contributions must be made in cash or in ~~kind~~ another monetary form during the taxable year the credit is claimed. Unpaid pledges, goods, or services provided do not qualify as contributions. Tuition, room and board, student fees, and similar charges are not contributions. ~~(3-20-97)~~()

02. Limitations - Individuals. The credit allowed to an individual is fifty percent (50%) of the amount contributed limited to the lesser of: (3-20-97)

a. ~~Twenty~~ Fifty percent (~~25~~50%) of ~~his~~ the individual's total income tax liability; or ~~(3-20-97)~~()

b. ~~One~~ Five hundred dollars (~~\$1~~\$500) if filing a return other than a joint return or ~~two hundred one~~ thousand dollars (~~\$21~~\$1.000) if filing a joint return. ~~(3-15-02)~~()

03. Limitations - Corporations. The credit allowed to a corporation is fifty percent (50%) of the amount contributed limited to the lesser of: (3-20-97)

a. Ten percent (10%) of the corporation's total income tax liability; or ~~(3-20-97)~~()

b. ~~One~~ Five thousand dollars (~~\$1~~\$5,000). ~~(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. For pass-through entities paying tax and the application of limitations on pass-through credits, see Rule 785 of these rules. (3-15-02)

05. Other Limitations. (3-15-02)

a. This credit is further limited if the credit for qualifying new employees is claimed. (3-15-02)

b. This credit plus other nonrefundable credits may not reduce the taxpayer's tax liability below zero (0). See Rule 799 of these rules for the priority of credits. (3-15-02)

06. Effect on Itemized Deductions. The credit allowed does not reduce the amount of charitable contributions that may be included in itemized deductions. (3-20-97)

07. Nonprofit Public and Private Museums. To qualify as a museum pursuant to Section 63-3029A, Idaho Code, the public or private nonprofit institution must be organized for the purpose of collecting, preserving, and displaying objects of aesthetic, educational, or scientific value and must be open to the general public on a regular basis. (3-20-97)

(BREAK IN CONTINUITY OF SECTIONS)

711. IDAHO INVESTMENT TAX CREDIT: TAXPAYERS ENTITLED TO THE CREDIT (RULE 711).

Section 63-3029B, Idaho Code.

(3-20-97)

01. Unitary Taxpayers. A corporation included as a member of a unitary group may elect to share the investment tax credit it earns but does not use with other members of the unitary group. Before the corporation may share the credit, it must claim the investment tax credit to the extent allowable against its tax liability. ()

a. The credit available to be shared is the amount of investment tax credit carryover and credit earned for the taxable year that exceeds the limitation provided in Section 63-3029B(4), Idaho Code. 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)()

b. In the taxable year when a corporation that earned the investment tax credit is acquired or disposed of, only a portion of the tax of the other members of the unitary group may be offset with shared investment tax credit from that corporation. To determine the allowable portion of the tax, a percentage is calculated by dividing the number of days that the corporation that earned the investment tax credit is included in the unitary group's taxable year by the total number of days in the taxable year. The tax for each member with an Idaho filing requirement is multiplied by the percentage. The result is the amount of tax that can be offset with a share of the credit, subject to other limitations imposed by law or related rules. ()

02. Conversion of C Corporation to S Corporation.

(3-20-97)

a. An investment tax credit carryover earned by a C corporation that has converted to an S corporation is allowed against the S corporation's tax on net recognized built-in gains and excess net passive income. The credit is allowed against this tax until the carryover period has expired. The credit is not allowed against the tax computed pursuant to Section 63-3022L, Idaho Code. In addition, the credit may not be passed through to the S corporation shareholders. (3-29-10)()

b. The election to file as an S corporation does not cause recapture of investment tax credit. However, the S corporation shall be liable for any recapture of credit originally claimed by the C corporation as provided by Rule 715 of these rules. (3-20-97)

03. Agricultural Cooperatives. The portion of the investment tax credit earned by an agricultural cooperative that it cannot use for the taxable year shall be allocated to the members of the cooperative. If qualifying property is disposed of or ceases to qualify prior to the close of its estimated useful life, the recapture of credit as provided by Rule 715 of these rules applies as though the cooperative did not allocate any of the original credit to the members. (3-20-97)

a. The distribution to members is made as provided in Rule 785 of these rules. (3-15-02)

b. The investment tax credits claimed by the agricultural cooperative and its members may not be more than one hundred percent (100%) of the credit earned. (3-20-97)

04. Leased Property. Generally the credit for qualified investments in leased property is claimed by the lessor. A lessee may claim the investment tax credit on leased property only as provided in Paragraphs 711.04.a. and 711.04.b. of this rule. (3-29-10)

a. If the lessor elected to pass the investment tax credit to the lessee and filed the federal election pursuant to the Internal Revenue Code and Treasury Regulations prior to the 1986 Tax Reform Act, the investment tax credit shall be claimed by the lessee. Both parties must attach the original election and a schedule identifying the qualifying property. (3-20-97)

b. If a taxpayer is a lessee in a conditional sales contract, he is entitled to the investment tax credit on any qualifying property subject to the contract since the lessee is considered the purchaser of the property. (3-20-97)

~~**712. IDAHO INVESTMENT TAX CREDIT- CREDIT EARNED ON MOVABLE PROPERTY IN TAXABLE YEARS BEGINNING BEFORE JANUARY 1, 1992 (RULE 712).**~~

~~Section 63-3029B, Idaho Code.~~

~~(3-20-97)~~

~~**01. In General.** The qualified investment for movable property is computed by multiplying the investment in that property by the Idaho apportionment factor, provided it otherwise qualifies for the investment tax credit. For example, a taxpayer determines the qualified investment for a fleet of new trucks based on the investment in the new trucks multiplied by the Idaho apportionment factor. The apportionment factor must be used to compute the credit for movable property unless the taxpayer can prove, pursuant to Section 63-3027(s), Idaho Code, the apportionment factor distorts the measure of Idaho business activity.~~ (3-20-97)

~~**02. Unitary Taxpayers.** A corporation that is a member of a combined group must use its measure of~~

business activity in Idaho to compute the qualified investment in movable property. The measure of business activity in Idaho must be computed using the denominators of the combined group. (3-20-97)

~~**03. Recomputation of Carryover.** If investment tax credit earned in taxable years beginning prior to January 1, 1992, is available to be carried over to taxable years beginning on or after January 1, 1992, the carryover must be recomputed if the credit earned included credit on movable property. Only the credit earned on property used in Idaho qualifies for the carryover as provided in Section 63-3029B, Idaho Code, and Rule 713 of these rules. This recomputation is made only for purposes of determining the allowable carryover.~~ (3-20-97)

~~**713. IDAHO INVESTMENT TAX CREDIT: CREDIT EARNED ON PROPERTY USED BOTH IN AND OUTSIDE IDAHO IN TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1991, BUT BEFORE JANUARY 1, 1995 (RULE 713).** Section 63-3029B, Idaho Code.~~ (3-20-97)

~~**01. In General.** Property must be used at least part of the time in Idaho to qualify for the investment tax credit, provided it otherwise qualifies for the credit. It must also be used in Idaho in each succeeding year to which a carryover may be taken. Carryovers of investment tax credit earned on property that first qualified for the credit in taxable years beginning prior to January 1, 1992, are subject to the provisions of this rule.~~ (3-20-97)

~~**02. Election of Methods.** The taxpayer must elect to compute the investment tax credit on property used both in and outside Idaho using either the percentage of use method or the Idaho property factor method. The credit for all property used both in and outside Idaho must be computed using the method elected.~~ (3-20-97)

~~**a.** If the percentage of use method is elected, the basis of each qualified asset is multiplied by the percentage of time, miles, or other measure that accurately reflects the use of that asset in Idaho. The use of aircraft within and without Idaho during the taxable year shall be determined by the ratio of departures from locations in Idaho to total departures.~~ (7-1-98)

~~**b.** If the Idaho property factor method is elected, the total basis of all assets used in and outside Idaho that otherwise qualify for the credit is multiplied by the Idaho property factor of the taxpayer.~~ (3-20-97)

~~**03. Unitary Taxpayers.** The property factor of a corporation that is a member of a combined group is computed using its Idaho property as the numerator and the combined group's everywhere property as the denominator.~~ (3-20-97)

~~**04. Examples.**~~ (3-20-97)

~~**a.** Idaho Percentage of Use Method. In January 1992 a calendar year corporation purchased a road grader for fifty thousand dollars (\$50,000). Thirty percent (30%) of its hours were logged in Idaho during the year. No other qualified investments were made during 1992. The taxpayer elected to compute the credit using the percentage of use method. The taxpayer has a fifteen thousand dollar (\$15,000) qualified investment computed by multiplying thirty percent (30%) by fifty thousand dollars (\$50,000). The investment tax credit is computed at three percent (3%) of fifteen thousand dollars (\$15,000) for a credit of four hundred fifty dollars (\$450).~~ (3-20-97)

~~**b.** Idaho Property Factor Method. Assume the same facts as in Subsection 713.04.a., except that in addition to the road grader the taxpayer also purchased an asphalt layer and a dump truck. Only the road grader and dump truck were used in Idaho during the year. The taxpayer's Idaho property factor is twenty percent (20%). The road grader cost fifty thousand dollars (\$50,000), the dump truck cost seventy five thousand dollars (\$75,000), and the asphalt layer cost two hundred thousand dollars (\$200,000). The taxpayer has qualified investments totaling twenty five thousand dollars (\$25,000), computed at twenty percent (20%) of the one hundred twenty five thousand dollars (\$125,000) basis in the road grader and the dump truck. The investment tax credit is computed at three percent (3%) of the twenty five thousand dollars (\$25,000) for a total credit of seven hundred fifty dollars (\$750). The asphalt layer does not qualify for the credit since it was not used in Idaho at any time during 1992.~~ (3-20-97)

712. -- 713. (RESERVED)

(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 ~~or after~~ 2010.

(4-7-11)()

01. In General. A revenue-producing enterprise is defined in Section 63-3022H, Idaho Code, and Rule 172 of these rules. (3-6-11)

02. 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)

03. 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)

04. Unitary Taxpayers. The activities of a taxpayer that qualify as a revenue-producing enterprise are determined separately for each corporation that is a member of the unitary group. (4-7-11)

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 after 2004 and before 2011.

(4-7-11)()

01. In General. An 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. (4-7-11)

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.** 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 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 taxable year in which the credit is earned. (4-7-11)
 - 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. (4-7-11)
 - 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. (4-7-11)
 - 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 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. (4-7-11)
- 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. ()

a. 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)()

b. The credit may be carried forward only to taxable years beginning prior to January 1, 2011. If there is any credit remaining after application to taxable years beginning prior to January 1, 2011, any further benefit from the credit is lost. ()

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)

747. CREDIT FOR QUALIFYING NEW EMPLOYEES: NET INCOME OF A TRADE OR BUSINESS (RULE 747).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning *on and* after *January 1, 2005* and before 2011. (3-30-07)()

01. Net Income From the Taxpayer's Trade or Business. If a taxpayer is claiming the credit under Section 63-3029F, Idaho Code, the net income of the taxpayer's trade or business shall be calculated as follows: (3-30-07)

a. Proprietorships. The amount of income from Idaho activities that is reported as net profit or net loss on Schedule C or Schedule F. (3-30-01)

b. 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 allocable to Idaho. (3-30-01)

c. S Corporations. The amount of Idaho taxable income reported on Idaho Form 41S, modified as follows: the deduction for income reported by shareholders on their Idaho income tax returns shall be added back, the addition for compensation or income attributable to individual shareholders who do not report this income on Idaho

income tax returns shall be deducted, and any nonbusiness income and expenses allocable to Idaho shall be excluded. (3-30-07)

d. Partnerships. The amount of Idaho taxable income reported on Idaho Form 65, modified as follows: the deduction for income reported by partners on their Idaho income tax returns shall be added back, the addition for compensation or income attributable to individual partners who do not report this income on Idaho income tax returns shall be deducted, and any nonbusiness income and expenses allocable to Idaho shall be excluded. (3-30-07)

02. 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. (3-30-01)

748. CREDIT FOR QUALIFYING NEW EMPLOYEES: RECORD-KEEPING REQUIREMENTS (RULE 748).

Sections 63-3029E and 63-3029F, Idaho Code, as in effect for taxable years beginning ~~in 2000 and~~ after 2001 ~~and before 2011.~~ (5-3-03)()

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; (3-30-01)

d. The qualification as a revenue-producing enterprise; (3-30-01)

e. The computation of the credit; (3-30-01)

f. The computation of net income; (3-30-01)

g. The continued maintenance of adequate employment levels into carryover years; and (3-30-01)

h. The computation of any carryovers. (3-30-01)

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)

(BREAK IN CONTINUITY OF SECTIONS)

~~754.—755.~~ (RESERVED)

755. HIRE ONE ACT CREDIT FOR QUALIFYING NEW EMPLOYEES -- IN GENERAL (RULE 755).
Section 63-3029F, Idaho Code, as in effect for taxable years beginning in or after 2011 and before 2014. ()

01. In General. For taxable years beginning on and after January 1, 2011, and before 2014, the Hire One Act allows an employer who is subject to the Idaho income tax to earn a credit for a qualifying new employee. Because an employee must be hired on or after April 15, 2011, to qualify, the credit generally cannot be earned in a taxable year that begins prior to January 15, 2011. ()

02. Qualifying Employer. A qualifying employer is a rated employer under the Idaho Employment Security Law, but does not include a governmental agency or nonprofit entity. For purposes of Section 63-3029F,

Idaho Code, and Rules 755 through 759 of these rules, a nonprofit entity includes any entity that is exempt from the Idaho income tax under Section 63-3025B, Idaho Code, including those entities that are exempt except for paying income tax on unrelated business income. ()

03. Pass-Through Entities. The credit earned by a pass-through entity is refunded to the pass-through entity, rather than passed through to the owner. ()

04. Unitary Corporations. Each corporation in a unitary group must separately calculate the amount of the Hire One Act credit based on its own employees and may not include the employees of other corporations included in the combined group. ()

05. Employer-Provided Health Care Benefits. For purposes of administering the Hire One Act and Rules 755 through 759 of these rules, “employer-provided” and “health care benefits” are defined as provided in Rule 756 of these rules. ()

06. Seasonal or New Business. An individual employed in a seasonal or new business that was in operation for less than nine (9) consecutive months cannot qualify as a new employee. ()

07. Carryover. Because the credit is a refundable credit, no carryover is allowed. Credit not claimed within the time allowed under Section 63-3072, Idaho Code, for claiming a refund is lost. ()

~~756.—759.~~ (RESERVED)

756. HIRE ONE ACT CREDIT FOR QUALIFYING NEW EMPLOYEES -- EMPLOYER-PROVIDED HEALTH CARE BENEFITS (RULE 756).

Section 63-3029F, Idaho Code, as in effect for taxable years beginning in or after 2011 and before 2014. ()

01. Employer-Provided. “Employer-provided” means an individual’s employer must pay the following percentages of the cost of an employee’s premium for health care benefits as defined in Subsection 756.02 of this rule: ()

a. At least eighty percent (80%) of the cost of the employee’s premium if such employee had single coverage. ()

b. At least seventy percent (70%) of the cost of the employee’s premium if such employee had family coverage. ()

02. Health Care Benefits. “Health care benefits” means coverage offered through a group health plan for employees that includes hospital, medical and surgical expense coverage set forth as follows: ()

a. An accident and sickness insurance policy that provides hospital, medical and surgical expense coverage, to an aggregate maximum of not less than five hundred thousand dollars (\$500,000); ()

b. Coinsurance percentage per year per covered person not to exceed fifty percent (50%) of covered charges, provided that the coinsurance out-of-pocket maximum combined with any deductibles does not exceed four percent (4%) of the aggregate maximum limit under the policy for each covered person; ()

c. A deductible stated on a per person, per family, per illness, per benefit period, per year basis, or a combination of these bases not to exceed four percent (4%) of the aggregate maximum limit under the policy for each covered person for at least: ()

i. Daily hospital room and board expenses subject only to limitations based on average daily cost of the semiprivate room rate in the area where the insured resides; ()

ii. Miscellaneous hospital services; ()

iii. Surgical services; ()

- iv. Anesthesia services; ()
- v. In-hospital medical services; and ()
- vi. Out-of-hospital care, consisting of physicians' services rendered on an ambulatory basis where coverage is not provided elsewhere in the policy for diagnosis and treatment of sickness or injury, diagnostic x-ray, laboratory services, radiation therapy, and hemodialysis ordered by a physician. ()

d. Additional benefits. Health care benefits must also provide not fewer than three (3) of the following additional benefits: ()

- i. In-hospital private duty registered nurse services; ()
- ii. Convalescent nursing home care; ()
- iii. Diagnosis and treatment by a radiologist or physiotherapist; ()
- iv. Rental of special medical equipment, as defined by the insurer in the policy; ()
- v. Artificial limbs or eyes, casts, splints, trusses or braces; ()
- vi. Treatment for functional nervous disorders, and mental and emotional disorders; or ()
- vii. Out-of-hospital prescription drugs and medications. ()

03. Non-Qualifying Health Care Benefits. Health care benefits do not include limited benefit policies or certificates of insurance for specific disease, hospital confinement indemnity, accident-only, credit, dental, vision, medicare supplement, long-term care, or disability income insurance, student health benefits-only coverage issued as a supplement to liability insurance, worker's compensation or similar insurance, automobile medical payment insurance or nonrenewable short-term coverage issued for a period of twelve (12) months or less. ()

04. Waiting Period. To qualify as employer-provided health care benefits, the health care benefits plan may not have a waiting period of more than two (2) months from the date of an employee's first day of employment. The Hire One Act credit cannot be earned on a new employee who is covered by a plan with a waiting period longer than two (2) months from the employee's first day of employment. ()

757. HIRE ONE ACT CREDIT FOR QUALIFYING NEW EMPLOYEES -- DETERMINATION OF QUALIFYING NEW EMPLOYEES (RULE 757.)

Section 63-3029F, Idaho Code, as in effect for taxable years beginning in or after 2011 and before 2014. ()

01. Calculating Average Employment for a Taxable Year. ()

a. Number of Qualifying Employees. Only employees who meet the qualifications set forth in Section 63-3029F(2)(a), Idaho Code, are included when computing the average employment for a taxable year. Such requirements include the following: ()

- i. The employee must have been subject to Idaho income tax withholding. ()
- ii. The employee must have been covered for Idaho unemployment insurance purposes. ()
- iii. 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. ()
- iv. The employee must have been performing such duties for the employer for a minimum of nine (9) consecutive months, with at least part of that time performed in the taxable year. An individual employed in a

seasonal or new business that was in operation for less than nine (9) consecutive months does not qualify. ()

v. The employee must not have been transferred from a related taxpayer. ()

b. Idaho Department of Labor Reports. The employer must begin with its Idaho Department of Labor reports to determine the number of employees for each month of the taxable year. However, an employee listed in these reports does not automatically qualify to be included in the calculation of the number of employees. The employer must determine how many employees included in these reports meet the qualifications under Section 63-3029F, Idaho Code, and paragraph 757.01.a. of this rule. Only those qualifying employees are included in the monthly total. ()

c. Calculation. The number of qualifying employees for each month are added together and the total is divided by the number of months of operation for the taxable year. This is the employer's average employment for the taxable year. ()

02. Calculating the Number of Qualifying New Employees. ()

a. The number of qualifying new employees is the increase in the employer's average employment of qualifying employees for the taxable year over the greater number of the following: ()

i. The employer's average employment of qualifying employees for the prior taxable year; or ()

ii. The employer's average employment of qualifying employees for the three (3) prior taxable years. ()

b. The number of qualifying new employees must be rounded down to the nearest whole number and must equal or exceed one (1) or no credit is earned. ()

03. Identification of New Employees. The employer must identify the specific new employees. The new employees are those qualifying employees who were last hired by the employer based on the date the employee first performed services for the employer. ()

04. Eligible New Employee. The new employee must meet the qualifications listed in Paragraphs 757.04.a. through 757.04.c. of this rule in order to be an eligible new employee. ()

a. Average Annual Earnings. The new employee must have earned annual wages at a rate averaging at least: ()

i. Twelve dollars (\$12) per hour worked if the employee was employed in a county with an unemployment rate of ten percent (10%) or more as of the date the new employee was hired; or ()

ii. Fifteen dollars (\$15) per hour worked if the employee was employed in a county with an unemployment rate below ten percent (10%) as of the date the new employee was hired. ()

b. The new employee must have been hired on or after April 15, 2011. ()

c. The new employee must have received employer-provided health care benefits as defined in Rule 756 of these rules. ()

05. Computation of Average Annual Earnings. Average annual earnings is computed as follows: ()

a. For hourly employees, the gross wages paid by the employer is divided by the number of hours worked for the taxable year. ()

b. For salaried employees, the gross wages paid is divided by two thousand eighty (2,080) hours if employed on a full time basis for the entire taxable year. If a salaried employee is regularly scheduled to work more

or less than forty (40) hours per week, the computation must be adjusted accordingly to determine the hourly rate. For example, if an employee is regularly assigned to work a thirty-two (32) hour week and worked for the employer the entire taxable year, the gross wages actually paid must be divided by sixteen hundred sixty-four (1,664). The total hours must not be reduced for days taken off, such as for vacation, sick leave, or personal days, if such days off were paid. If the employee's annual salary is adjusted for days taken off that are not paid, the number of hours should be adjusted in a consistent manner. ()

c. If the new employee is determined to be eligible for the credit, the credit is computed as provided in Rule 758 of these rules. ()

758. HIRE ONE ACT CREDIT FOR QUALIFYING NEW EMPLOYEES -- CALCULATION OF CREDIT (RULE 758).

Section 63-3029F, Idaho Code, as in effect for taxable years beginning in or after 2011 and before 2014. ()

01. Computation of Credit. The credit for an eligible new employee is calculated by multiplying the gross salary paid to the eligible new employee for the initial twelve (12) months of employment by the applicable credit rate. The credit is not allowed for new employees who were part of a trade or business the employer acquired from another taxpayer, or of an employer who operates in a place of business the same or a substantially identical trade or business as operated by another taxpayer within the prior twelve (12) months, except as the prior taxpayer in either situation would have qualified. ()

02. Gross Salary. Gross salary does not include: ()

a. Nontaxable fringe benefits; ()

b. Tips paid by customers of the employer. ()

c. Wages that are subsidized through another taxpayer or program, including any federal or state grant. ()

03. Credit Rate. The applicable credit rate is determined based on the employer's rating from the Idaho Department of Labor for unemployment purposes that applies to the calendar year in which the taxable year begins. For example, the rating received by an employer in December 2011 will apply to taxable years beginning in 2012. The credit rate is six percent (6%) for a positive-rated employer, four percent (4%) for a standard-rated employer, and two percent (2%) for a deficit-rated employer. ()

04. Employed in a County. To be employed in a county, at least some of the employee's service must be performed in that county. An employee is employed in a county if: ()

a. The employee's service is performed entirely within the county; ()

b. The employee's service is performed both in and outside the county, but the service performed outside the county is incidental to the employee's service in the county; or ()

c. Some of the service is performed in the county and: ()

i. The base of operations is located in the county or, ()

ii. If there is no base of operations, the place from which the service is directed or controlled is in the county, or ()

iii. The base of operations or the place from which the service is directed or controlled is not in any county in which some part of the service is performed, but the individual's residence is in the county. ()

759. HIRE ONE ACT CREDIT FOR QUALIFYING NEW EMPLOYEES -- RECORD-KEEPING REQUIREMENTS (RULE 759).

Section 63-3029F, Idaho Code, as in effect for taxable years beginning in or after 2011 and before 2014. ()

01. Information Required to be Included With Idaho Return. An employer must include with the Idaho income tax return on which the Hire One Act credit is claimed a copy of the taxable wage rate notice issued by the Department of Labor for that income tax year. Notices that cannot be included with an electronically filed return must be separately mailed to the Tax Commission. No credit may be allowed if this notice is not included with the Idaho income tax return or mailed separately to the Tax Commission. ()

02. Information Required to be Retained By Employer. An employer claiming the Hire One Act credit must retain and make available, on request, records to document the credit claimed. The records must include all of the following: ()

a. The Employer Quarterly Unemployment Insurance Tax Reports and the Unemployment Insurance Wage Reports filed with the Idaho Department of Labor; ()

b. Payroll records and reports documenting start and end of employment dates, if applicable, and hours worked by employee; ()

c. The computation of the number of qualifying employees including a listing of all such employees by name and social security number; ()

d. Records verifying gross salary paid and county employed in for the employees identified as the new employees; ()

e. Records documenting a new employee's coverage under the employer-provided health care benefits; and ()

f. Documentation from the Department of Labor verifying the employer's tax rate. ()

03. Failure to Maintain Adequate Records. Failure to maintain any of the records required by this rule may result in the disallowance of the credit. ()

(BREAK IN CONTINUITY OF SECTIONS)

~~761. IDAHO INCENTIVE INVESTMENT TAX CREDIT- MOBILE PROPERTY (RULE 761).
Section 63-3029J, Idaho Code. (3-15-02)~~

~~01. In General. The Idaho incentive investment tax credit is computed using the percentage rate for the Idaho county in which the property is primarily based. (3-15-02)~~

~~a. Mobile property is considered primarily based in the Idaho county in which it has more than fifty percent (50%) of its use for that taxable year. If the property is not used in any Idaho county more than fifty percent (50%), it shall be deemed to be primarily based in the Idaho county in which it has most of its use for that taxable year. (3-15-02)~~

~~b. Use shall be determined based on time, miles, or other measure that accurately reflects the use of the property. The use of aircraft in a county shall be determined by the ratio of departures from locations within a county to total departures everywhere. (3-15-02)~~

~~c. If property is used one hundred percent (100%) in Idaho but in more than one (1) county, one hundred percent (100%) of the cost of the property will qualify if the property is primarily based in a qualifying county. If the property is primarily based in a county that does not qualify, the property will not qualify. (3-15-02)~~

~~d. If property is used in and outside Idaho, only the percent of the property used inside Idaho is eligible for the credit. (3-15-02)~~

~~02. Examples. (3-15-02)~~

~~a. A loader is used in Idaho county A fifteen percent (15%), in Idaho county B thirty percent (30%), and in Idaho county C fifty five percent (55%). The loader is deemed to be primarily based in Idaho county C. Since Idaho county C qualifies for the credit, one hundred percent (100%) of the cost of the loader qualifies for the credit at the rate for Idaho county C. (3-15-02)~~

~~b. A loader is used in Idaho county A twenty five percent (25%), in Idaho county B thirty percent (30%), and in Idaho county C forty five percent (45%). The loader is deemed to be primarily based in Idaho county C. Since Idaho county C qualifies for the credit, one hundred percent (100%) of the cost of the loader qualifies for the credit at the rate for Idaho county C. (3-15-02)~~

~~c. A loader is used in Idaho county A fifteen percent (15%), in Idaho county B thirty percent (30%), and in Idaho county C fifty five percent (55%). The loader is deemed to be primarily based in Idaho county C. Since Idaho county C has a credit percentage rate of zero (0), the credit is zero (0). (3-15-02)~~

~~d. A loader is used in Idaho county A fifteen percent (15%), in Idaho county B thirty percent (30%), and in Oregon fifty five percent (55%). The loader is deemed to be primarily based in Idaho county B, the Idaho county with the most usage. Only forty five percent (45%) of the property will qualify for the credit at the credit percentage rate for Idaho county B, since the percent of the loader used outside Idaho is not eligible for the credit. (3-15-02)~~

~~762. IDAHO INCENTIVE INVESTMENT TAX CREDIT: RECAPTURE (RULE 762).
Section 63-3029J, Idaho Code. (3-15-02)~~

~~01. In General. If a taxpayer is claiming or has claimed the incentive investment tax credit for property sold or otherwise disposed of, or that ceases to qualify pursuant to Section 63-3029B, Idaho Code, prior to being held five (5) full years, a recomputation of the credit shall be made. See Rule 715 of these rules. (3-15-02)~~

~~02. Unitary Taxpayers. The corporation that earned the credit is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-15-02)~~

~~03. Transferred Credit. The transferor is responsible for the recapture or recomputation of the credit when the property ceases to qualify. (3-15-02)~~

~~761. -- 762. (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. The maximum credit allowed per qualifying exemption is as follows:

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
2011	\$80	\$60

TAX YEAR	IDAHO TAXABLE INCOME \$1,000 OR LESS	IDAHO TAXABLE INCOME MORE THAN \$1,000
2010	\$70	\$50
2009	\$60	\$40
2008	\$50	\$30

~~(4-7-11)~~()
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 Uniformed Services. A member of the uniformed services who is: (4-7-11)

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. (4-7-11)

07. Spouse or Dependents of Members of the Uniformed Services. Beginning on January 1, 2009, a spouse of a nonresident member of the uniformed services stationed in Idaho 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. (4-7-11)

08. Claiming the Credit. (5-8-09)

a. An individual who is required to file an Idaho individual income tax return must claim the credit on his return. If the credit exceeds his tax liability, the resident will receive a refund. (4-7-11)

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. (4-7-11)

c. No credit 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. (4-7-11)

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)

815. EXTENSIONS OF TIME (RULE 815). Section 63-3033, Idaho Code. (3-20-97)

01. Taxpayers Abroad. An extension granted by the Internal Revenue Service when a taxpayer has not yet met either the bona fide resident test or the physical presence test pursuant to Section 911, Internal Revenue Code, but expects to qualify after the two (2) month extension, is accepted as a valid extension for Idaho filing purposes. A copy of the approved federal extension form must accompany the Idaho income tax return. (7-1-99)

02. Individuals in Combat Zone. Section 7508, Internal Revenue Code, applies to individuals who are serving in a combat zone or who are hospitalized as a result of serving in a combat zone. In this case, returns are not due until one hundred eighty (180) days after the period of qualified service or qualified hospitalization, whichever occurs last. For individuals entitled to this extension of time, interest accrues on the portion of the tax not paid from the extended due date. (3-20-97)()

03. Interest. Interest accrues on the portion of the tax not withheld or paid from the due date until the date the return is filed and the full amount of tax is paid. See Rule 817 of these rules for the exception when extensions are Exceptions only apply in the case of an individual in a combat zone as allowed by Section 63-3033(g), Idaho Code, and Subsection 815.02 of this rule, and when disaster relief is granted to a taxpayer as allowed under Section 63-114, Idaho Code, and Rule 817 of these rules. A taxpayer will not receive interest on amounts withheld or on corporation estimated tax in excess of the actual tax liability. See Section 63-3073, Idaho Code. (5-3-03)()

(BREAK IN CONTINUITY OF SECTIONS)

877. BACKUP WITHHOLDING BY PASS-THROUGH ENTITIES. (RULE 877). Sections 63-3022L and 63-3036B, Idaho Code. (4-7-11)

01. In General. A pass-through entity that ~~makes a cash distribution to an individual owner or beneficiary~~ is transacting business in Idaho or an estate or trust that has income taxable in Idaho must withhold Idaho income tax from ~~such distribution~~ the owner's or beneficiary's share of income and guaranteed payments from the pass-through entity and from wages, salary, or other compensation paid by the pass-through entity to the individual that is required to be included in the individual's Idaho taxable income unless exempt from backup 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. The provisions of this rule do not affect the withholding requirements set forth in Sections 63-3035, 63-3035A, or 63-3036, Idaho Code, and related rules. (4-7-11)()

02. Exceptions to Backup Withholding. Backup ~~W~~withholding by a pass-through entity is not required on ~~distributions paid to~~ the income of the following pass-through owners and beneficiaries: (4-7-11)()

a. Owners and beneficiaries who are not natural persons, including corporations, partnerships, trusts, and estates. (4-7-11)

b. Unit holders of a publicly traded partnership as defined by Section 7404(b), Internal Revenue Code, if the publicly traded partnership: (4-7-11)

- i. Is treated as a partnership for purposes of the Internal Revenue Code; and (4-7-11)
- ii. Has agreed to file an annual information return. The information return must be in the form of a schedule included with the partnership's Idaho Partnership Return of Income 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. ~~(4-7-11)()~~
- c. Resident individuals and part-year resident individuals who have income other than from a pass-through entity. ~~(4-7-11)()~~
- d. Nonresident individuals if: (4-7-11)
- i. Such individual elects to have his Idaho tax on income from the pass-through entity reported and paid by the pass-through entity. Such election must be made on a form as required by the Tax Commission and is required for each taxable year by the last day of the month following the end of the taxable year. Such election is irrevocable. ~~(4-7-11)()~~
- ii. Such individual's share of income, guaranteed payments, and compensation of the pass-through entity from Idaho sources is less than one thousand dollars (\$1,000) for the taxable year in which distribution is paid income is subject to tax; or ~~(4-7-11)()~~
- iii. The distribution income is subject to withholding under Section 63-3035 or 63-3036, Idaho Code. ~~(4-7-11)()~~
- 03. Certification of Residency.** Backup Wwithholding is not required on distributions made to income from a pass-through entity of an individual owner or beneficiary who certifies to the pass-through entity that he is an Idaho resident or an Idaho part-year resident with Idaho taxable income from sources other than another pass-through entity. 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 the income from the pass-through entity of such individual ~~are~~ is exempt from withholding unless the pass-through entity knowingly accepts a false certificate. ~~(4-7-11)()~~
- 04. Payment of Backup Withholding.** (4-7-11)
- a. The pass-through entity must withhold amounts from distributions to the pass-through income of nonresident individuals at the highest marginal rate applicable for the taxable year under Section 63-3024, Idaho Code. The amount withheld during a calendar for a taxable year must be remitted to the Tax Commission annually on or before January 31 the fifteen day of the fourth month following the end of the following taxable 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. ~~(4-7-11)()~~
- b. Amounts remitted as backup withholding for a calendar taxable 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 taxable year in which begins within such calendar the pass-through entity's taxable year ends. 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. ~~(4-7-11)()~~
- 05. Backup Withholding Returns.** A reconciliation schedule must be included with the pass-through entity's Idaho income tax return. Returns submitted to the Tax Commission reporting amounts withheld as required by Section 63-3036B, Idaho Code, must include the following information: ~~(4-7-11)()~~
- a. The amount of income described in Section 63-3022L(2), Idaho Code, by owner or beneficiary; ~~(4-7-11)()~~
- b. The amount of tax withheld; (4-7-11)
- c. Name, address, and social security number of each owner or beneficiary; (4-7-11)

- d. The pass-through entity's name, and federal employer identification number, ~~and signature.~~ (4-7-11)()

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 backup withholding by the due date may cause interest and penalties to be imposed. (4-7-11)()

878. -- 879. (RESERVED)

880. CREDITS AND REFUNDS (RULE 880).

Section 63-3072, Idaho Code. (3-20-97)

- 01. Overpayment.** The term overpayment includes: (3-20-97)

- a. A voluntary and unrequested payment greater than an actual tax liability. (3-20-97)
- b. An excessive amount that an employer withholds pursuant to Sections 63-3035 and 63-3036, Idaho Code. (3-20-97)
- c. All amounts erroneously or illegally assessed or collected. (3-20-97)
- d. The term overpayment does not include an amount paid pursuant to a final determination of tax, including a compromise and closing agreement, decision of the Tax Commission, decision of the Board of Tax Appeals, or final court judgment. (3-20-97)

02. Requirements of a Valid Refund Claim. Before the Tax Commission can credit or refund an overpayment, the taxpayer making the claim must establish both of the following: (4-2-08)

- a. The basis for the credit or refund claim, and (4-2-08)
- b. The amount of the overpayment. (4-2-08)

- 03. Timely Claim Required for Refund.** (3-20-97)

a. The Tax Commission may not credit or refund an overpayment after the expiration of the period of limitations unless the taxpayer filed a claim before the expiration of the period. (3-20-97)

b. When an adjustment to the taxpayer's federal return affects the calculation or application of an Idaho net operating loss, capital loss, or Idaho credit in a year otherwise closed by the period of limitations, the taxpayer has one (1) year from the date of the final determination to file a claim for refund. (4-2-08)

04. Amended Returns Required as Refund Claims. The claim for a credit or refund must be made on an amended Idaho income tax return that is properly signed and includes an explanation of each legal or factual basis in sufficient detail to inform the Tax Commission of the reason for the claim. By signing the amended return the taxpayer shall be declaring that the claim for refund is true and correct to the best of his knowledge and belief and is made under the penalties of perjury. (4-6-05)

05. Closed Issues. The Tax Commission shall deny a credit or refund claim for a taxable year for which the Tax Commission has issued a Notice of Deficiency, unless the taxpayer shows that the changes on the amended return are unrelated to the adjustments in the Notice of Deficiency or that the changes result from a final federal determination. (3-20-97)

06. Limitations on Refunds of Withholding and Estimated Payments. As provided by Section 63-3072(c), Idaho Code, ~~The~~ Tax Commission may not refund taxes withheld from wages unless the taxpayer files a return within three (3) years after the due date. ~~See Section 63-3072(c), Idaho Code.~~ The Tax Commission may not

refund any payment received with an extension of time to file or with a tentative return, including quarterly estimated payments, unless the taxpayer makes a claim for a refund within three (3) years of the due date of the return. However, when an individual is in a combat zone and entitled to an extension of time by Section 7508, Internal Revenue Code, the number of days disregarded under such section will be added to the three (3) year period for allowing refunds of amounts withheld or paid as estimated payments. (3-15-02)()

07. Reduction or Denial of Refund Claims. If the Tax Commission determines that a refund claim is in error, the Tax Commission shall deny the claim in whole or part. Unless the denial results from a mathematical error by the claimant, the Tax Commission shall give notice of the denial by a Notice of Deficiency in the manner required by Section 63-3045, Idaho Code, and related rules. The protest and appeal process that applies to a Notice of Deficiency also applies to the denial or reduction of a refund. See Section 63-3045A, Idaho Code, for information on mathematical errors. (3-20-97)

08. Amended Federal Return. Filing a claim with the Internal Revenue Service to reduce taxable income does not extend the Idaho period of limitations for claiming a refund or credit of tax. If the statute of limitations is about to expire on a taxpayer's Idaho return for which an issue is pending on his federal return or return filed with another state, the taxpayer should amend his Idaho return. He should clearly identify the amended return as a protective claim for refund. The taxpayer must notify the Tax Commission of the final resolution. (7-1-98)

09. Combined Reports -- Final Federal Determination and Change of Filing Method. If the Idaho period of limitations is open due to a final federal determination, a corporate taxpayer may not adjust its Idaho return to include a previously omitted corporation or to exclude any corporation previously included in a combined report. (3-20-97)

10. Duplicate Returns. If a return is filed pursuant to Section 63-217(1)(b), Idaho Code, where the taxpayer establishes by competent evidence that the return was deposited in the United States mail or with a qualifying private delivery service (See IDAPA 35.02.01, "Tax Commission Administration and Enforcement Rules," Rule 010) on or before the date for filing and the Tax Commission has notified the taxpayer that it has not received the return, the taxpayer shall submit a duplicate return within fifteen (15) days of such notification for the newly filed return to qualify as a duplicate return. The period of limitations for a duplicate return is the later of one (1) year from the filing of the duplicate return or the date provided for in Section 63-3072(b), Idaho Code. (4-6-05)

IDAPA 35 - IDAHO STATE TAX COMMISSION

35.01.02 - SALES TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0102-1101

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.

AUTHORITY: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 043 is being amended to comply with House Bill 213 exempting from sales and use tax all gratuities, whether voluntary or mandatory, if the gratuity is given for services provided as a supplement to the income of the service provider.

Rule 073 is being amended to comply with House Bill 214 that exempts from use tax the use of motor vehicles by nonresident college students in the state of Idaho.

Rule 085 is being amended to clarify that the Red Cross's sales and use tax responsibility should be addressed in the federal government section of Rule 094 rather than its current location in Rule 085 about nonprofits.

Rule 094 is being amended to explain that the state of Idaho cannot require the federal government or its instrumentalities to collect sales tax on any sales and that the Red Cross is an instrumentality of the federal government for purposes of sales and use tax.

Rule 098 is being amended to reflect the altered appearance of the diplomatic exemption card system by eliminating the specific language describing the previous appearance of the cards and would contain a more generic description of the new cards.

Rule 107 is being amended to comply with House Bill 214 that exempts from use tax the use of motor vehicles by nonresident college students in Idaho, Senate Bill 1052 that exempts from use tax all purchases made by temporarily assigned military personnel more than 90 days prior to moving to Idaho, and to amend the definition of a nonresident company to say that it is not required to be registered with the Idaho Secretary of State.

Rule 109 is being amended to change the definition of currency operated amusement devices to included credit and debit card machines, to change the requirement from a specific location on the device to any easily visible place on the device, and to include a new section that requires another permit to be affixed to a device in the event of a lost, stolen, or destroyed permit.

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 McLean Russell (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 26, 2011.

DATED this 31st day of August, 2011.

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

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0102-1101

043. SALES PRICE OR PURCHASE PRICE DEFINED (RULE 043).

01. Sales Price and Purchase Price. The term sales price and purchase price may be used interchangeably. Both mean the price paid by the customer or user to the seller including: (7-1-93)

- a.** The cost of transporting goods to the seller. See Rule 061 of these rules. (3-20-04)
- b.** Manufacturer's or importer's excise tax. See Rule 060 of these rules. (3-20-04)
- c.** Services agreed to be rendered as part of the sale. (7-1-97)
- d.** Separately stated labor charges to produce or fabricate made to order goods. See Rule 029 of these rules. (3-20-04)

02. Services Agreed to Be Rendered as a Part of the Sale. The sales and use tax is computed on the sales price of a transaction. The term "sales price" is defined by Section 63-3613, Idaho Code, to include "services to be rendered as a part of the sale." The following items are among those that are part of the sales price and, therefore, may not be deducted before computation of the sales price. This is not intended to be an exclusive list of such items: (3-20-04)

- a.** Any charges for any services to bring the subject of a sale to its finished state ready for delivery and in the condition specified by the buyer, including charges for assembly, fabrication, alteration, lubrication, engraving, monogramming, cleaning, or any other servicing, customizing or dealer preparation. (3-20-04)
- b.** Any charge based on the amount or frequency of a purchase, such as a small order charge or the nature of the item sold, such as a slow-moving charge for an item not frequently sold. (3-20-04)
- c.** Any commission or other form of compensation for the services of an agent, consultant, broker, or similar person. (3-20-04)
- d.** Any charges for warranties, service agreements, insurance coverage, or other services required by

the vendor to be taken as a condition of the sale. If the sale could be consummated without the payment of these charges, the charges are not part of the sales price if separately stated. Also see Rule 049 of these rules. (3-20-04)

03. Charges Not Included. Sales price does not include charges for interest, carrying charges, amounts charged for optional insurance on the property sold, or any financing charge. These various charges may be deducted from the total sales price if they are separately stated in the contract. In the absence of a separate statement, it will be presumed that the amount charged is part of the total sales price. (3-20-04)

04. Gratuities. ~~A gratuity is defined as something given voluntarily or beyond obligation. Gratuities may sometimes be referred to as tips. When a gratuity is paid in addition to the price of a meal, no sales tax applies to the gratuity. A gratuity can be paid voluntarily by the customer or be required by the seller. A gratuity is also commonly known as a tip.~~ (7-1-93)()

a. ~~When a gratuity is given directly to employees by the purchaser in the form of cash or the purchaser adds a nonsolicited gratuity to his bill, charge card voucher form, or house account form, no sales tax applies to the gratuity. If a gratuity does not meet all of the following requirements, the gratuity will be subject to sales tax:~~ (7-1-93)()

i. ~~A gratuity must be paid to the service provider of the meal as additional income to the base wages of the service provider;~~ ()

ii. ~~A gratuity must be separately stated on the receipt or be voluntarily paid by the customer; and~~ ()

iii. ~~A gratuity must not be used to avoid sales tax on the actual price of the meal.~~ ()

b. ~~When an amount is added to a customer's bill by the retailer and the customer is advised in writing on the face of the bill that he may decline to pay all or part of the amount, that amount is a gratuity. Sales tax will not apply to the gratuity. For the purposes of Subsection 043.04 of this rule, the following definitions apply:~~ (7-1-93)()

i. ~~Meal. Food or drink prepared for or provided to a customer.~~ ()

ii. ~~Service provider. An individual directly involved in preparing or providing a meal to a customer. This includes, but is not limited to, the server, the busser, the cook and the bartender. This does not include individuals who manage or own the company if they are not directly involved in preparing and providing a meal.~~ ()

c. ~~When an amount is added to a customer's bill by the retailer, and the customer is not advised in writing on the face of the bill that he may decline to pay all or part of the amount, it is not a gratuity and the fee so added is subject to the sales tax.~~ (7-1-93)

d. ~~When a gratuity is negotiated before the sale, such as in the case of a banquet, tax must be charged on the entire fee so negotiated. Because of the negotiation, the fee loses its identity as a gratuity and becomes a service charge and part of the purchase price of the meal. See Subsection 043.04 of this rule.~~ (7-1-93)

05. Service Charges. Amounts designated as service charges, added to the price of meals or drinks, are a part of the selling price of the meals or drinks and accordingly, must be included in the purchase price subject to tax, even though such service charges are made in lieu of tips and paid over by the retailer to his employees. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

073. TANGIBLE PERSONAL PROPERTY BROUGHT OR SHIPPED TO IDAHO (RULE 073).

01. Equipment Brought into Idaho. Equipment or other tangible personal property brought or shipped to Idaho by residents or nonresidents is presumed to be for storage, use, or other consumption in this state. Generally, tangible personal property is subject to use tax on its fair market value when it is first used in Idaho. Special rules apply to transient equipment present in Idaho for ninety (90) days or less in any consecutive twelve (12) month period. See Section 63-3621A, Idaho Code, and Subsection 073.03 of this rule. For property a contractor fabricates to install into Idaho real property, see Rule 012 of these rules. (4-11-06)

02. Substantive Use. Any substantive use of the property in Idaho is sufficient to subject the property to use tax. Use is defined in Section 63-3615, Idaho Code, and Rule 072 of these rules. The use tax does not apply to the use of items purchased before July 1, 1965, or the use of items excluded from tax by Idaho Code. (3-20-04)

03. Transient Equipment. Transient equipment means equipment that is: owned by the user, which is a business based in another state; a depreciable asset for income tax purposes and treated as such on the owner's income tax returns; brought to Idaho and kept here for ninety (90) days or less in any consecutive twelve (12) months; and either was not taxed in another state or, if tax was paid to another state, the amount paid was less than the amount of Idaho use tax due. (7-1-93)

a. A nonresident business that brings transient equipment to Idaho may elect to pay use tax on either the fair market value of the equipment at the time it enters Idaho, or the fair market rental value of transient equipment for the time it is kept in Idaho. Fair market rental value is the amount it would cost to rent or lease similar equipment from an unrelated equipment rental company. (3-20-04)

b. Businesses that elect to pay use tax on the rental value of transient equipment may do so without the approval of the Tax Commission as long as the use tax due on the first month's rental is paid in a timely manner. If the owner fails to pay the tax timely, he must get written approval from the Tax Commission to use this option. (7-1-93)

c. Equipment which remains in Idaho for more than ninety (90) days in any consecutive twelve (12) months is no longer transient. This equipment becomes subject to Idaho use tax on its fair market value at that time. No credit may be taken for use tax paid on fair market rentals against the use tax due at the time equipment ceases to qualify as transient. (7-1-93)

d. Example: A Wyoming contractor brings transient equipment, with a fair market value of one hundred thousand dollars (\$100,000), to Idaho for use on a ninety (90) day project. The fair market rental value of the equipment for the ninety (90) days totals fifteen thousand dollars (\$15,000). Idaho use tax on the fair market rental value, assuming a rate of six percent (6%), totals nine hundred dollars (\$900). The contractor paid three thousand five hundred dollars (\$3,500) of sales tax to the state of Wyoming when he bought the equipment new. The contractor is not required to pay tax to Idaho since the tax paid to Wyoming exceeds the amount of Idaho use tax due. (4-2-08)

e. Example: The same contractor in the previous example returns to Idaho within the same twelve (12) months with the same equipment, now with a fair market value of ninety-five thousand dollars (\$95,000). As the equipment has now exceeded the ninety (90) day rule for transient equipment, it is subject to Idaho's six percent (6%) use tax on its present value of ninety-five thousand dollars (\$95,000) x six percent (6%) = five thousand seven hundred dollars (\$5,700). Credit of two thousand six hundred dollars (\$2,600) is allowed for sales tax paid to Wyoming, three thousand five hundred dollars (\$3,500) less the nine hundred dollar (\$900) credit already used on rentals. The contractor owes three thousand one hundred dollars (\$3,100) of use tax to Idaho. (4-2-08)

04. Licensed Motor Vehicles. A motor vehicle licensed in a nonresident's home state and brought to Idaho to use for ninety (90) days or less in any consecutive twelve (12) months is not subject to Idaho use tax. Once the vehicle is used here more than ninety (90) days during any consecutive twelve (12) months, use tax applies to the fair market value of the vehicle at that time unless tax was paid to another state in an amount equal to, or greater than, the tax owed to Idaho. Special rules apply to new residents, of nonresident college students, and temporarily assigned military personnel in Idaho. See Rule 107 of these rules. (3-20-04)()

(BREAK IN CONTINUITY OF SECTIONS)

085. SALES TO AND PURCHASES BY NONPROFIT ORGANIZATIONS (RULE 085).

01. In General. The Sales Tax Act does not provide any general exemption for, charitable or nonprofit organizations, corporations, associations or other entities. Specific statutory provisions provide exemptions for some charitable organizations. Unless an exemption is clearly granted to a specific organization or to specific sales or purchases by a specific organization or a class of organization, no exemption applies. Special rules apply to religious organizations. See Rule 086 of these rules. (3-6-00)

02. Educational Institutions. Sales to and purchases made by non-profit educational institutions, as defined in Section 63-3622O, Idaho Code, are exempt from Idaho sales or use taxes. (3-6-00)

03. Health Related Entities. Sales to and purchases made by the specific health related entities listed in Section 63-3622O, Idaho Code, are exempt from Idaho sales or use taxes. Health related organizations not named are not entitled to any exemption from sales and use taxes as a health related entity. (3-6-00)

04. Hospitals. In addition to the health related entities listed in Section 63-3622O, Idaho Code, hospitals which are nonprofit institutions licensed for the care of ill persons are exempt. To qualify for the exemption the hospital must be a facility defined in Section 39-1301(a), Idaho Code, and licensed as provided in Chapter 13, Title 39, Idaho Code, or an equivalent law in another state. Hospitals operated for profit do not qualify for this exemption, nor do nursing homes, clinics, doctors' offices, or similar facilities unless the organization qualifies for an exemption under Section 63-3622O, Idaho Code. (3-6-00)

05. Idaho Foodbank Warehouse, Inc. The Idaho Foodbank Warehouse, Inc. is a nonprofit corporation which gathers food and food products at one (1) central location for distribution to food banks throughout Idaho. All sales to, donations to, and purchases by the Idaho Foodbank Warehouse, Inc., are exempt from sales and use taxes. (3-6-00)

a. Example 1: The XYZ Corporation purchases food from a grocer to donate to the Idaho Foodbank Warehouse, Inc. The XYZ Corporation must pay sales tax on the purchase since they are not purchasing the food for resale and no other exemption applies. (3-6-00)

b. Example 2: The Idaho Food Bank Warehouse, Inc. purchases office supplies. No tax is due on the purchase. (3-6-00)

06. Food Banks and Soup Kitchens. Food banks or soup kitchens are nonprofit organizations, other than the Idaho Foodbank Warehouse, Inc., which, as one of their regular activities, furnish food to others without charge. Sales to, donations to, and purchases of food or tangible personal property used by food banks and soup kitchens other than the Idaho Foodbank Warehouse, Inc. to grow, store, prepare, or serve food are exempt from sales and use taxes. However, there is no exemption from the sales tax if goods are purchased with the intent and purpose of donation to a qualified organization. This exemption does not extend to the sale, purchase, or use of licensed motor vehicles by food banks or soup kitchens. (3-6-00)

a. Example 1: A grocer removes food from his inventory of goods held for resale to donate to a food bank or soup kitchen. The grocer is exempt from the use tax on his cost of the inventory donated. (3-6-00)

b. Example 2: The XYZ Corporation purchases food from a grocer to donate to a food bank. The XYZ Corporation is not purchasing the food items for resale, and no other exemption from sales tax applies. Sales tax must be paid on the purchase. (7-1-93)

c. Example 3: A food bank purchases a licensed motor vehicle. The purchase is subject to sales tax because the motor vehicle is not used to grow, prepare, or serve food. (3-6-00)

07. Red Cross. ~~Sales to the American Red Cross are exempted from state sales tax by federal law.~~ See [Rule 094 of these rules.](#) (7-1-93)()

08. Nonsale Clothiers. Nonprofit organizations, one of whose primary functions is to provide clothing

to the needy without charge, may purchase the clothing without paying tax. Only clothing qualifies for the exemption. Other purchases by the organization are taxable. Clothing may also be removed from a resale inventory and donated to these organizations exempt from use tax. However, there is no exemption from the sales tax if goods are purchased with the intent and purpose of donation to a qualified organization. (3-6-00)

a. Example 1: A department store removes clothing from resale merchandise to donate to a nonprofit, nonsale clothier. The store is exempt from the use tax on the cost of the inventory donated. (7-1-93)

b. Example 2: A nonprofit, nonsale clothier purchases clothing and bed sheets from a department store to give to the needy. No tax is due on the clothing, but the store must charge the organization sales tax on the bed sheets. (7-1-93)

09. Exemption Certificate. The organizations listed in this rule may make purchases without paying sales tax to the vendor by completing an exemption certificate. See Rule 128 of these rules. (3-6-00)

10. Literature. The sale, purchase, use, or other consumption of literature, pamphlets, periodicals, tracts, books, tapes, audio CDs, and other literature which is produced in a machine readable format that are both published and sold by an entity qualified under Section 501(c)(3) of the Internal Revenue Code are exempt from the tax if no part of the net earnings benefits any individual or shareholder. (3-6-00)

11. Sales by Nonprofit Organizations. An exemption from sales tax on sales to one of the foregoing entities does not constitute an exemption from the requirements to collect and remit tax when the entity makes taxable sales to purchasers not exempt from tax. When an exempt organization qualifies as a retailer the organization must register with the State Tax Commission, obtain a seller's permit, and collect and remit sales taxes on sales as defined in Section 63-3612, Idaho Code, in the same manner and in accordance with the same statutes and rules which govern all other retailers in the state. There are two (2) exceptions to this rule. (3-6-00)

a. Sales of places to sleep by the Idaho Ronald McDonald house are exempt from sales taxes. (3-6-00)

b. Sales of admissions by an entity qualified under Section 501(c)(3) of the Internal Revenue Code, or by an organization conducting an exempt function defined in Section 527 of the Internal Revenue Code when: (3-6-00)

i. The event is not predominately recreational or commercial; and (3-6-00)

ii. Any entertainment value included in the admission charge is minimal when compared to the charge for admission; and (3-6-00)

iii. Such entity has paid a sales or use tax on taxable purchases or tangible personal property or services consumed during the event. (3-6-00)

12. Senior Citizen Centers. Sales to certain senior citizen centers are exempt from sales tax. The definition of "senior citizen center" in Section 63-3622O, Idaho Code, is the same as the definition of a "multipurpose senior center" as defined in the Older Americans Act, Title 42, Section 3002, United States Code. To qualify for the exemption the center must have been granted exempt status pursuant to Section 501(c) (3) of the Internal Revenue Code. Long-term care facilities do not qualify for this exemption. (4-2-08)

13. Free Dental Clinics. Sales to and purchases by organizations providing free dental care to children are exempt from sales and use tax. For the purposes of this exemption "children" shall mean persons under the age of eighteen (18). To qualify for the exemption property or services must be: (4-2-08)

a. Purchased by an organization whose primary purpose is providing free dental care to children; and (4-2-08)

b. Primarily used by an organization whose primary purpose is providing free dental care to children. (4-2-08)

(BREAK IN CONTINUITY OF SECTIONS)

094. EXEMPTIONS ON PURCHASES BY POLITICAL SUBDIVISIONS, SALES BY THE STATE OF IDAHO, ITS DEPARTMENTS, INSTITUTIONS, AND ALL OTHER POLITICAL SUBDIVISIONS (RULE 094).

01. In General. This rule governs application of the sales and use tax to governmental instrumentalities. As used herein, the term governmental instrumentalities means the state of Idaho, its agencies, departments or institutions and all political subdivisions of the state of Idaho; but does not include other states, their agencies, departments, or institutions and political subdivisions. (7-1-93)

02. Extent of Exemptions. The state and all its agencies, departments and institutions are exempt from the sales and use tax. This exemption does not extend to corporations, the stock of which is owned in whole or in part by the state, nor does it extend to private agencies to which the state contributes funds. The exemption only applies in the case of purchases made directly by the state, its agencies, departments, and institutions. (7-1-93)

03. Political Subdivisions. Political subdivisions of this state are also exempt from payment of the sales and use tax. A political subdivision is a governmental organization which embraces a certain territory organized for public advantage and not in the interest of private individuals or classes to which has been delegated certain functions of state government. In addition to this, a political subdivision has the power to levy taxes. Included within the definition of political subdivisions would be all counties, municipalities, townships, towns and villages, public school districts, cemetery maintenance districts, fire protection districts, local improvement districts and irrigation districts. Canal companies and ditch companies do not come within the scope of this exemption. (7-1-93)

04. Purchases by Contractors. Contractors are consumers under Idaho tax law. Purchases made by contractors are subject to tax even though they are to be applied to use on a state or political subdivision construction project. (7-1-93)

05. Sales by Political Subdivisions. Sales by the state, its departments or institutions, counties, cities, school districts or any political subdivision are subject to sales tax which is to be collected by the political subdivision. If taxable sales are made, a permit is required. This permit is to be obtained by each sales outlet or by the office at which regular and current sales records are maintained. Examples of taxable sales are all sales of tangible personal property, admission charges, fees to use recreational facilities, recreational program fees, copies of documents for which a fee is not set by Idaho Code and garbage service when receptacles or dumpsters are provided by the service and part of the fee represents rental of the receptacle. (7-1-93)

a. Taxable sales. Taxable sales of tangible personal property will include sales of: code books; books sold by library, book fairs, etc.; maps; crime prevention signs; calendars; cafeteria sales to employees or the public; office supplies or any sale to employees; concession stands; trees, shrubs, or bedding plants; items sold to prisoners, such as cigarettes, candy, pop, etc., through vending machines (tax is to be computed on one hundred seventeen percent (117%) of acquisition cost if the machine is operated by the political subdivision); chemicals for noxious weeds; unclaimed property; chemicals for pest control; surplus property-assets; gravel, culverts, or pipe; uniforms to employees; equipment rentals with no operator; grave markers; rental of other property, golf carts, swimsuits; and nonresident or resident library cards. See ISTC Rule 058. (7-1-93)

b. Admission charges. Taxable admission charges will include those fees for using golf courses and swimming pools, for attending athletic events, concerts, fireworks displays, and fund raising events. (3-4-10)

c. Use of facilities for recreation. Taxable use of facilities for a recreational purpose will include receipts from the use of park structures, picnic tables, fair grounds, rodeo grounds, gymnasiums, ball parks, snowmobile areas and campground areas. Exception: If an individual or organization rents or leases one of these facilities and charges admission to each person using the facility, tax will not be required on its rental or lease of the facility. However, the individual or organization will be required to register and apply for a seller's permit number, under which the tax on the admission will be reported and paid. See ISTC Rule 030. (7-1-93)

d. Recreation program fees. Fees to participate in recreational programs are taxable. Some examples of these programs are city recreational programs in softball, baseball, basketball and football. If instruction is included in such activities as tennis, golf or swimming, the tax will not be due on the separately stated instructional portion of the total fee. If not separately stated, the entire fee is taxable. (7-1-93)

e. Garbage service. Garbage service is taxable on that portion of the total charge which is the rental of the receptacle such as a dumpster. If the statement for service includes the rental of the dumpster or other receptacle but the rental charge is not separately stated, the entire cost of the service is taxable. (7-1-93)

f. The examples cited above are not inclusive. (7-1-93)

06. Federal Government. Sales to and purchases by the federal government and its instrumentalities are not subject to Idaho sales or use taxes except as provided by federal laws or regulations. Federal law also prevents the state of Idaho from imposing sales tax on any sales by the federal government or its instrumentalities. For purposes of Idaho sales and use tax, the American Red Cross is an instrumentality of the federal government. (7-1-93)()

07. Other States. Sales to and purchases by states OTHER than Idaho and their political subdivisions are subject to the tax if delivery occurs in this state. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

098. FOREIGN DIPLOMATS (RULE 098).

01. In General. The United States Government grants immunity from state taxes to diplomats from certain foreign countries. The diplomat is issued a federal tax exemption card by the U.S. Department of State. The cards are nontransferable and bear a photograph of the holder, a federal tax exemption number, and specific instructions as to the extent of the exemption granted to the diplomat. (5-3-03)

02. Federal Tax Exemption Cards. Federal tax exemption cards ~~are coded with colored stripes. Cards with a blue stripe exempt the bearer from all sales taxes, including taxes on hotel rooms. Cards with a yellow stripe~~ list all restrictions on tax exemptions on the face of the card, including whether or not the card privileges extend to both official and personal purchases. ~~Cards with stripes colored red or green are no longer issued but some may still be in use and have limitations that are printed on the face of the card.~~ (5-3-03)()

~~**03. Mission Card.** Some foreign diplomats are issued mission cards that may only be used by the bearer for official foreign mission purchases, and may not, under any circumstances, be used for personal purchases. "Mission cards" are so designated on the card's face.~~ (5-3-03)

043. Documentation. Retailers must document an exempt sale to a foreign diplomat by: (7-1-93)

a. Retaining a photocopy of the front and back of the federal tax exemption card to support the exempt sale; or (7-1-93)

b. Recording for their permanent record the name of the bearer, the mission represented, the federal tax exemption number displayed on the card, the date of expiration, and the nature of the exemption granted to the diplomat. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

107. VEHICLES AND VESSELS -- GIFTS, MILITARY PERSONNEL, NONRESIDENT, NEW RESIDENT, TAX PAID TO ANOTHER STATE, SALES TO FAMILY MEMBERS, SALES TO AMERICAN INDIANS, AND OTHER EXEMPTIONS (RULE 107).

01. In General. This rule discusses specific topics relating to motor vehicles including gifts, military personnel, and exemptions. Refer to Rule 106 of these rules for general information on purchases, sales, rentals, and leases of motor vehicles. (3-6-00)

02. Gifts of Motor Vehicles. When the following facts clearly establish that a motor vehicle is being transferred as a gift from the titleholder to another, the vehicle can be transferred tax exempt if: (7-1-93)

a. No money, services, or other consideration is exchanged between the donor and recipient at any time. (7-1-93)

b. The recipient assumes no indebtedness. (7-1-93)

c. The relationship of the donor and recipient indicates a basis for a gift. (7-1-93)

d. The donor and recipient complete and sign a Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, and submit it to the county assessor or the Idaho Transportation Department along with the title to the vehicle being transferred. If the donor is unable to sign the affidavit: (2-18-02)

i. A letter stating the vehicle is a gift, and signed by the donor, may be accepted by the county assessor or his representative and attached to the affidavit; or (2-18-02)

ii. The title may be marked as a gift and signed by the donor. (3-4-10)

03. Nonresidents. (3-30-07)

a. A nonresident does not owe use tax on the use of a motor vehicle which is purchased outside of Idaho and titled or registered under the laws of another state or nation, is not used in Idaho more than ninety (90) days in any consecutive twelve (12) months pursuant to Section 63-3621(k), Idaho Code, and is not required to be registered or licensed under Idaho law. For purposes of this Subsection (107.03.a.), a motor vehicle is considered to have been used in Idaho for a day when it is present in this state for more than sixteen (16) hours during any twenty-four (24) hour period. This exemption applies only to nonresidents. 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 motor vehicles is not a nonresident. The use of a vehicle owned by such an entity will be subject to use tax upon its first use in Idaho. (4-2-08)

b. For the purposes of this rule, 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. (~~3-30-07~~)()

c. A nonresident college student does not owe use tax on any use of a motor vehicle while enrolled as a full-time student in a college or university located in Idaho. The motor vehicle must be registered under the laws of the student's state of residence. The motor vehicle must be owned by the student or a family member of the student. The college or university must be accredited by the Idaho State Board of Education. ()

04. New Residents. A new resident of Idaho or military personnel temporarily assigned to Idaho and their spouses does not owe tax on the use of household goods, personal effects, vehicles, vessels, and aircraft if they are personally owned and he acquired them while he resided in another state and used them primarily outside Idaho. If a vehicle owner obtained a registration or title from another state or nation of residence more than three (3) months before moving to Idaho, this is proof that the vehicle was primarily for use outside Idaho. New residents entering Idaho with a vehicle titled in a state that does not impose a general sales and use tax will be required to complete and sign a Three Month Exemption Claim Form ST-102 and submit it to the Idaho Transportation Department or county assessor when applying for a title transfer. (~~3-4-10~~)()

a. If the vehicle was acquired less than three (3) months before the buyer moved to Idaho, it is presumed that it was acquired for use in this state. (7-1-93)

b. Exclusion from the tax applies only to vehicles and aircraft owned by an individual. A privately owned vehicle or aircraft is one that is owned by, and titled to, a private individual or individuals. (3-4-10)

05. Military Personnel. Military personnel receive no special exemption from the Idaho sales and use tax regarding motor vehicles or other tangible personal property purchased while temporarily assigned in this state. ~~The exemptions discussed in this rule apply equally to military and nonmilitary personnel. A military person with a home of record other than Idaho is considered to be a nonresident. A military person whose home of record is Idaho is considered to be a resident of this state. Example: A military officer with a home of record in Oregon brings a vehicle purchased in Germany to Idaho upon being stationed at Mountain Home Air Force Base. During his first year at Mountain Home, the vehicle is present in Idaho for more than ninety (90) days. The exemption provided to nonresidents, as discussed in Subsection 107.03 of this rule, does not apply. Use tax applies to the fair market value of the vehicle.~~ (7-1-93)()

06. Tax Paid to Another State. When a general retail sales tax has been properly imposed by another state or political subdivision of a state of the United States in an amount equal to or greater than the amount due Idaho, no Idaho tax is due. The credit for state and local taxes paid in another state will be applied first to the state sales tax due and the remainder, if any, will be applied to any local taxes due. (3-30-07)

a. If the amount paid to the other state is less, Idaho tax is due to the extent of the difference, unless some other exemption applies. The owner must provide evidence that the tax was paid to the other state. A registration certificate or title issued by another taxing state is sufficient evidence that tax was imposed at the other state's tax rate. (7-1-93)

b. Example: A resident of another state buys a vehicle in that state for ten thousand dollars (\$10,000) two (2) months before moving to Idaho. He presents his title from the other state to an Idaho county assessor. Since he acquired the vehicle only two (2) months before entering Idaho, no exemption applies. The tax paid to the other state was three hundred dollars (\$300) when the vehicle was purchased. Credit for this amount is allowed against the five hundred dollars (\$500) tax due Idaho. The assessor will collect two hundred dollars (\$200) tax. (4-2-08)

c. Example: A resident of another state purchased a vehicle two (2) months before moving to Idaho. The applicant paid four percent (4%) state sales tax, one and six tenths percent (1.6%) city sales tax, and one and six tenths percent (1.6%) county sales tax. The total general sales tax paid was seven and two tenths percent (7.2%). Since the Idaho tax rate is lower, no tax is due Idaho because the amount of tax paid to the other state exceeds the amount owed Idaho. (4-2-08)

d. Example: A resident of Alaska purchases a vehicle immediately prior to moving to Idaho. The purchaser paid a three percent (3%) city sales tax in Alaska. When the purchaser moves to Idaho, credit will be given for the local tax paid against the Idaho state use tax due. (3-30-07)

e. A registration certificate or title issued by another taxing state is proof that tax was paid to the other taxing state. This does not apply to states that do not have a tax, such as Montana and Oregon, or when a state has exempted the motor vehicle from tax. (7-1-93)

f. Example: A church buys and titles a vehicle in Utah. The Utah sales tax law exempts the purchase of the vehicle from sales tax. The church later titles the vehicle in Idaho. Sales tax must be paid on the fair market value of the vehicle when it is titled in Idaho. (7-1-93)

g. Taxes paid to another nation cannot be offset against the taxes owed to Idaho. (7-1-93)

07. Sales to Family Members. The tax does not apply to sales of motor vehicles between members of a family related within the second degree of consanguinity. The second degree of consanguinity means only the following blood or formally adopted relatives of the person making the sale: parents, children, grandparents, grandchildren, brothers, and sisters. Relatives of the second degree of consanguinity do not include persons who are

related only by marriage. However, when the motor vehicle sold is community property, and it is sold to a person who is related within the second degree of consanguinity to either spouse, the sale is exempt from tax. (7-1-93)

a. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and buyer must complete and sign Form ST-133 and submit it to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. If the seller is unable to sign the affidavit a letter from the seller stating the sale was made to a qualified family member may be accepted by the county assessor or his representative and attached to the affidavit. (2-18-02)

b. This exemption does not apply if the seller did not pay tax when he acquired the vehicle. (7-1-93)

c. Example: An Oregon resident buys a vehicle and titles it in Oregon without paying sales or use tax. Later, he sells the vehicle for ten thousand dollars (\$10,000) to his son who is an Idaho resident. No exemption applies, since the father did not pay a sales or use tax when he acquired the vehicle. The son is required to pay Idaho use tax on the ten thousand dollar (\$10,000) purchase price of the vehicle. (4-11-06)

08. Sales to American Indians. An enrolled American Indian tribal member may buy a motor vehicle exempt from tax if the sale and delivery of the vehicle is made within the boundaries of the Indian Reservation. The Sales Tax Exemption Certificate-Transfer Affidavit, Form ST-133, is used to document this exemption. The seller and the buyer must complete and sign Sales Tax Exemption Certificate - Transfer Affidavit Form ST-133 including the name of the tribe, Tribal Identification Number and the name of the Reservation upon which the sale and delivery occurred. The affidavit is then given to the Idaho Transportation Department or county assessor along with the title to the vehicle being transferred. (2-18-02)

09. Bulk Sale Transfers. A transfer or sale of a motor vehicle as part of a bulk sale of assets or property, as defined by Rule 099 of these rules, is exempt from tax. The buyer must complete and sign Sales Tax Exemption Certificate -- Capital Asset Transfer Affidavit Form ST-133CATS to present to the Idaho Transportation Department or county assessor when applying for transfer of title. The buyer must attach a copy of the sales agreement showing the sale qualifies for the exemption on the Form ST-133CATS. (2-18-02)

10. Vehicles and Vessels Purchased in Idaho by Nonresidents for Use Outside Idaho. (5-3-03)

a. Sales to nonresidents of motor vehicles, trailers, vessels, all-terrain vehicles (ATVs), off-highway motorcycles, and snowmobiles for use out of this state, even though delivery is made within this state are exempt from tax when: (5-3-03)

i. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be taken from the point of delivery in this state directly to a point outside this state; and (5-3-03)

ii. The motor vehicles, vessels, ATVs, trailers, off-highway motorcycles, and snowmobiles will be registered immediately under the laws of another state or country and will be titled in that state or country, if required to do so by that state or country and will not be used in Idaho more than sixty (60) days in any twelve-month period. (5-3-03)

b. To claim the exemption, the buyer must provide the seller a completed and signed Sales Tax Exemption Certificate - Vehicle/Vessel Form ST104-MV. (5-3-03)

c. This exemption does not apply to sales of truck campers or to the sales of canoes, kayaks, or inflatable boats regardless of length when sold without a motor. (5-3-03)

d. For purposes of Subsection 107.10 of this rule, an ATV means any recreational vehicle with three (3) or more tires, weighing under nine hundred (900) pounds, fifty (50) inches or less in width, having a wheel base of sixty-one (61) inches or less, has handlebar steering, and a seat designed to be straddled by the operator. (3-4-10)

e. For purposes of Subsection 107.10 of this rule, a vessel means any boat intended to carry one (1) or more persons upon the water which is either: (3-20-04)

- i. Sold together with a motor; or (5-3-03)
- ii. Eleven (11) feet in length or more, not including canoes, kayaks, or inflatable boats unless such canoe, kayak, or inflatable boat is sold together with attached motor. (5-3-03)
- f. For the purposes of Subsection 107.10 of this rule a trailer must meet the definition of either “trailer” or “utility trailer” found in Sections 49-121 and 49-122 Idaho Code, which is a vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle. The term “trailer” includes the specific types of trailers defined in Sections 49-121(6)(a) through 49-121(6)(h), Idaho Code. (4-2-08)
- g. To qualify for this exemption the purchaser must be a nonresident of Idaho. An Idaho resident may form an LLC or other legal entity under the laws of another state. If such an LLC or other entity is formed primarily for the purpose of owning one (1) or more motor vehicles it is not a nonresident. The purchase or use of a motor vehicle in Idaho by such an entity is taxable. (3-30-07)

11. Motor Vehicles and Trailers Used in Interstate Commerce. The sale of motor vehicles with a maximum gross registered weight of over twenty-six thousand (26,000) pounds and trailers are exempt from sales or use tax when they are purchased to become part of a fleet of vehicles registered under the International Registration Plan, or similar proportional or pro rata registration system, and they will be used in interstate commerce with at least ten percent (10%) of the fleet miles operated outside this state. The owner must complete and sign the Sales Tax Exemption Certificate - Vehicle/Vessel Form ST-104MV, and provide it to the seller, the Idaho Transportation Department or the county assessor when applying for title transfer. See Rule 101 of these rules. (5-3-03)

12. Related Party Transfers and Sales. Certain transfers and sales of motor vehicles between businesses defined as related parties are exempt from tax. Refer to Rule 099 of these rules. The new owner must complete and sign Sales Tax Exemption Certificate - Capital Asset Transfer Affidavit Form ST-133CATS to submit to the Idaho Transportation Department or county assessor when applying for title transfer. (2-18-02)

(BREAK IN CONTINUITY OF SECTIONS)

109. AMUSEMENT DEVICES (RULE 109).

01. Currency Operated Amusement Devices. “Amusement device” means all currency or token operated machines and devices used for amusement or entertainment. For purposes of Section 109 of this rule, “currency” includes debit or credit cards. This definition includes, but is not limited to, game machines; pool tables; jukeboxes; electronic games; video or cinematic viewing devices; crane, rotary, and pusher machines; and similar devices. It does not include vending machines that are used to sell tangible personal property or noncurrency operated machines or games described in Subsection 109.03 of this rule. ~~(6-30-95)~~()

02. Requirement to Obtain Permit. The owner or operator of amusement devices is required to obtain a seller’s permit if he is making retail sales other than the use of currency or token operated amusement devices. If the owner or operator is not making such other retail sales, he need not obtain a seller’s permit, but must obtain an amusement device permit for each device in service. (6-30-95)

a. Owners and operators of coin or currency operated amusement devices are required to pay a permit fee for every such device in operation. ~~At a tax rate of 5% this fee is thirty-five dollars (\$35).~~ Section 63-3623B(c), Idaho Code, states that the fee may be increased proportionately to any increase in the tax rate. The formula to calculate the permit fee is seven hundred dollars (\$700) x tax rate. For example, at a tax rate of five percent (5%) the amount of the permit fee is seven hundred dollars (\$700) x five percent (5%) = thirty-five dollars (\$35). If the tax rate is six percent (6%), the permit fee will be forty-two dollars (\$42). If any change in the tax rate becomes effective on July 1 of a given year, the charge for the permit fee will change proportionately on that date also. If a change in the tax rate occurs on a day other than July 1, the permit fee will be changed on the next July 1 following the change in the tax rate. ~~(4-2-08)~~()

b. Upon receiving the appropriate payment, the Tax Commission will issue to the owner or operator of one (1) or more amusement devices, a permit for each such device in service. A separate permit on each device in service is required. The permit shall be affixed ~~near the currency slot of~~ to the machine in such a manner that it is easily visible. Permits are transferable from one person to another after written notice of the transfer is received and acknowledged by the Tax Commission. Permits may be transferred from a machine that is no longer in service to another machine owned or operated by the same person. An amusement device permit is not valid unless the name and business address of the owner or operator is typed or printed in black ink on the face of the permit.

(3-16-04)()

c. Video amusement devices may have more than one (1) monitor and be designed to be operated independently by more than one (1) person. In such cases a separate permit is required for each monitor. (6-30-95)

d. Amusement device permits must be renewed annually. Annual permits are valid from July 1 through June 30. Permits must be renewed on or before July 1 by the owner or operator of the amusement devices. Amusement devices acquired after July 1 or placed in service before the next July 1 will require the appropriate fee for a full-year permit. (3-16-04)

e. If an amusement device permit is lost, stolen, or destroyed, an amusement device permit for the current year must still be affixed to every operating amusement device. This may require the purchase of a new permit. The Tax Commission will not issue free replacement amusement device permits regardless of the reason for the loss of the permit. ()

03. Noncoin Operated Amusement Machines or Games. Charges for the use of amusement machines or games which are not currency or token operated are subject to tax at the prevailing rate times one hundred percent (100%) of the gross proceeds received for the use of the device. This applies regardless of the method the owner or operator uses to determine the charge, such as by the hour or by the game. The owner or operator of noncurrency or nontoken operated amusement machines or games is required to obtain a seller's permit if he is charging for the use of such machines. (6-30-95)

04. Cross-Reference. See Rule 095 of these rules regarding purchases of Money-Operated Dispensing Equipment. (3-16-04)

IDAPA 35 - IDAHO STATE TAX COMMISSION
35.01.05 - IDAHO MOTOR FUELS TAX ADMINISTRATIVE RULES

DOCKET NO. 35-0105-1101

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 19, 2011.

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 310 is being amended in Subsection 310.02.b. to provide the Tax Commission with adequate time to determine that a fuel distributor is delinquent and to notify the fuel distributor that its bond exemption will be terminated if the delinquency is not paid. The fuel distributor will need time to obtain a bond if it is not able to pay the delinquency. A fuel distributor's license is revoked if it does not have a bond or a bond exemption.

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 26, 2011.

DATED this 31st day of August, 2011.

Randy Nilson
Tax Policy Specialist
Idaho State Tax Commission
800 Park Bl., Plaza IV
P.O. Box 36, Boise, ID 83722-0410

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 35-0105-1101

310. EXEMPTION FROM REQUIREMENT FOR BONDS, DETERMINATION OF FINANCIAL RESPONSIBILITY (RULE 310).

01. Exemption to Bond Requirements for Licensed Distributors. Bonds, as referred to in Rule 010 of these rules are required of all licensed distributors unless the distributor is found to be financially responsible. A licensed distributor seeking exemption from the bonding requirement must apply for the exemption by filing a written petition with the State Tax Commission. The petition must contain information relating to the requirements of Section 63-2428, Idaho Code, for establishing financial solvency and responsibility. Together with the petition, the distributor must submit any information required in the following Subsections 310.01.a. through 310.01.e. (3-30-01)

a. If all or any part of the unencumbered property offered to show financial solvency is real property, the petition must include both a title report from an independent title company reporting on the state of the title of the real property as of a time not more than fifteen (15) days before the filing of the petition and a copy of the most recent valuation notice issued by the county assessor for ad valorem property tax purposes. (6-23-94)

b. If all or any part of the unencumbered property is licensed motor vehicles, the petition must include copies of the titles of the vehicles and evidence of the value of the vehicles from a source independent from the distributor. (6-23-94)

c. If all or any part of the unencumbered property is personal property other than motor vehicles, the petition must include a description of the property, evidence of ownership of the property, an independent appraisal of the property, and evidence that the property is unencumbered. Copies of all documents relating to all of the distributor's current and long-term liabilities, including contingent liabilities, lawsuits or potential lawsuits to which the distributor is or may become a party, are required to establish that no security interests or other encumbrances exist. (6-23-94)

d. The petitioner must arrange, at the petitioner's expense, for an established, independent commercial credit rating company to submit directly to the State Tax Commission a current and complete credit report about the licensed distributor; or, the distributor must include with the petition its most recent financial statements, including a current income statement, balance sheet, and statement of cash flows. If the petitioner is a publicly held company, the financial statements must be accompanied by an opinion issued by an independent certified public accountant and a responsible company officer must also certify that the financial statements provided present fairly the financial position of the company. If the petitioner is a privately held company, the financial statements must be reviewed by a certified public accountant or licensed public accountant and a responsible company officer must also certify that the financial statements provided present fairly the financial position of the company. (3-30-01)

e. The State Tax Commission may require the distributor to supplement its petition with such further information as the State Tax Commission, in its discretion, finds necessary to determine financial responsibility. If incomplete or substitute submissions are received by the State Tax Commission, the information submitted will be reviewed on a case-by-case basis to determine whether an exemption from the bonding requirement will be granted. (3-30-01)

02. Conditions for Termination of Exemption. If granted, the exemption from the bonding requirement shall terminate: (6-23-94)

a. One (1) year after the date on which it was granted. (6-23-94)

b. ~~Upon Ninety (90) days after~~ the occurrence of any delinquency in motor fuels tax ~~unless the delinquency has been paid within that time period.~~ ~~(6-23-94)~~()

c. Upon the occurrence of any encumbrance of any of the property upon which the finding of financial responsibility was based. (6-23-94)

d. Upon the occurrence of any change in the business activity of the distributor that would cause the amount of bond required to be increased to an amount greater than the value of the distributor's unencumbered assets.

(6-23-94)

- e. Upon the occurrence of any event prejudicing the distributor's solvency or financial responsibility. (6-23-94)

03. Bond Requirement upon Termination of Exemption. Immediately upon any termination of the exemption from the requirement for a bond the distributor must supply the required bond according to Section 63-2428, Idaho Code. (3-30-01)

04. Pending Application Does Not Excuse the Bond Requirement. Having an application pending for exemption from the requirement for a bond does not excuse the bond. If a bond exemption is due to expire, the distributor must submit a new petition applying for a continuation of the exemption no later than ninety (90) days before the day the exemption is due to expire to prevent a lapse in the exemption. The petition must meet all of the requirements of this rule. (6-23-94)

05. Conditions for Renewal of Bond Exemption. The following must be submitted to renew a bond exemption: (7-1-97)

- a. A written request for renewal of waiver; (7-1-97)
- b. The information required in Subsections 310.01.a. through 310.01.e. of this rule. (7-1-97)

IDAPA 35 - STATE TAX COMMISSION
35.01.07 - KILOWATT HOUR TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0107-1101
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 19, 2011.

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 030 is being amended to make the change from monthly to quarterly filing of the kilowatt hour tax return discretionary, subject to Tax Commission approval.

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 Cynthia Adrian 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 26, 2011.

DATED this 31st day of August, 2011.

Cynthia Adrian
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 OF DOCKET NO. 35-0107-1101

030. KILOWATT HOUR TAX RETURNS (RULE 030).

01. Required Statement. The statement required by Section 63-2701, Idaho Code, and by these rules shall be made on the kilowatt hour tax return, Form 48, 48C, or 48CM, provided by the Tax Commission. All information requested on the return must be provided and the return must be signed. (7-1-97)

02. Monthly Returns. All producers whose previous year's annual tax liability was greater than fifteen thousand dollars (\$15,000) must file a monthly return with the Tax Commission no later than the last day of the month following the month to which the return relates. (7-1-97)

03. Quarterly Returns. ~~All~~ Producers whose previous year's annual tax liability was equal to or less than fifteen thousand dollars (\$15,000) ~~must~~ may, at the discretion of the Tax Commission, be allowed to file a quarterly return with the Tax Commission no later than the last day of the month following the end of the calendar quarter to which the return relates. When a filing cycle is changed, the change will take effect on January 1 of the following year. (7-1-97)()

04. Previous Year's Annual Tax Liability. If the previous year's annual tax liability is not available, the estimated current year's liability may be used. (7-1-97)

IDAPA 35 - STATE TAX COMMISSION
35.01.08 - MINE LICENSE TAX ADMINISTRATIVE RULES
DOCKET NO. 35-0108-1101
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 19, 2011.

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 010 is being amended to include additional examples of what constitutes a valuable mineral typically found in Idaho subject to the mine license tax.

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 Cynthia Adrian 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 26, 2011.

DATED this 31st day of August, 2011.

Cynthia Adrian
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 OF DOCKET NO. 35-0108-1101

010. DEFINITIONS (RULE 010).

01. These Rules. The term these rules refers to IDAPA 35.01.08, relating to Idaho mine license tax. ~~(7-1-97)~~()

02. Valuable Mineral. The term “valuable mineral,” for purposes of the Idaho Mine License Tax, is defined to include not only gold, silver, copper, lead, zinc, coal, phosphate and limestone, but also any other substance not gaseous or liquid in its natural state, which makes real property more valuable by reason of its presence thereon or thereunder and upon which depletion is allowable pursuant to Section 613 of the Internal Revenue Code. This includes, but is not limited to, calcium carbonates, garnet, granite, pumice, quartzite, scoria, shale, slate, and stone (including dimension and ornamental stone). However, sand and gravel are not included in this definition. ()

IDAPA 35 - STATE TAX COMMISSION

35.02.01 - TAX COMMISSION ADMINISTRATION AND ENFORCEMENT RULES

DOCKET NO. 35-0201-1101

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 19, 2011.

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 310 is being amended to add the interest rate and applicable Revenue Ruling for calendar year 2012 to the table that identifies this information by year.

Rule 704 is being amended consistent to House Bill 680, which was passed by the 2011 Idaho Legislature. The bill provides an exchange of information agreement between the State Tax Commission and the State Treasurer. Rule 704 is modified to add the applicable code section to the title of the rule and the information that may be exchanged with the State Treasurer's office in the applicable subsection.

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 Cynthia Adrian 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 26, 2011.

DATED this 31st day of August, 2011.

Cynthia Adrian
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 OF DOCKET NO. 35-0201-1101

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
Calendar Year 2011	4% simple interest	Revenue Ruling 2010-20
<u>Calendar Year 2012</u>	<u>4% simple interest</u>	<u>Revenue Ruling 2011-20</u>

(4-7-11)()

(BREAK IN CONTINUITY OF SECTIONS)

704. DISCLOSURE OF INFORMATION: GOVERNMENT AGENCIES AND OFFICIALS (RULE 704).
Sections 23-907, 39-8405, 50-1049, 54-1904A, 56-231, 63-602G, 63-2442, 63-3029B, 63-3077, 63-3077A, 63-3077B, 63-3077C, 63-3077D, 63-3077E, 63-3634A, and 67-4917C, Idaho Code. ~~(3-29-10)~~()

01. Legislature. The Tax Commission shall disclose returns or return information to the Idaho Legislature on the written request of the chair of any committee of either branch of the Idaho Legislature on behalf of the committee. When authorized by statute, the Tax Commission shall disclose information to the Legislative Council, the Joint Legislative Oversight Committee, or to the Joint Finance and Appropriations Committee. (3-20-97)

02. Government Agencies or Officials. The Tax Commission shall disclose information necessary to comply with provisions of the Idaho Code requiring reports or information to be provided to government agencies or officials. This includes the disclosure of tax returns and return information for use in enforcing child support obligations pursuant to Section 56-231, Idaho Code. (3-20-97)

03. Exchange of Information. Information may be exchanged between the Tax Commission and: (4-5-00)

- a.** The Internal Revenue Service, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)
- b.** Other states, if reciprocal provisions for information exchanges are granted under Section 63-3077(1)(b), Idaho Code; (5-3-03)
- c.** County assessors, limited to: (3-20-04)
 - i.** Information relating to the taxpayer's residence or domicile and his claim of the homeowner's property tax exemption as provided in Sections 63-3077(4) and 63-602G, Idaho Code; and (4-6-05)
 - ii.** Information related to the property tax exemption claimed in lieu of the Idaho investment tax credit, as allowed by Section 63-3029B, Idaho Code. (3-20-04)
- d.** Department of Labor, as allowed by Section 63-3077A, Idaho Code; (4-5-00)
- e.** Industrial Commission, as limited by Section 63-3077B, Idaho Code; (4-5-00)
- f.** Multistate Tax Commission, as allowed by Section 63-3077(1)(b), Idaho Code; (5-3-03)
- g.** Idaho Transportation Department, relating to: (3-20-04)
 - i.** Fuels tax, as allowed by Section 63-2442, Idaho Code; and (3-20-04)
 - ii.** Residency information, as allowed by Section 63-3634A, Idaho Code. (3-20-04)
- h.** Financial Management Services of the U. S. Department of the Treasury, as allowed by Sections 63-3077(1)(a) and 63-3077D, Idaho Code; (3-30-07)
- i.** Governing entity of the International Fuel Tax Agreement, IFTA, Inc., as allowed by Section 63-3077(1)(b), Idaho Code; (4-6-05)
- j.** Department of Fish and Game, limited to information relating to an individual's place of residence or domicile, as allowed by Section 63-3077C, Idaho Code; ~~(5-3-03)~~()

- k.** Attorney General, as limited by Section 39-8405, Idaho Code; (3-20-04)
- l.** Resort cities, as allowed by Section 50-1049, Idaho Code; (4-6-05)
- m.** Auditorium districts, as allowed by Section 67-4917C, Idaho Code; (4-11-06)
- n.** County treasurers and boards of county commissioners, limited to information related to a claim of the homeowner's property tax exemption, as allowed by Section 63-602G, Idaho Code; and (4-11-06)
- o.** The administrator of the Division of Building Safety, limited to information relating to public works contracts as provided in Section 54-1904A, Idaho Code. (4-11-06)
- p.** The Alcohol Beverage Control Bureau within the Idaho State Police, as provided in Section 23-907, Idaho Code. (3-29-10)
- q.** The State Treasurer, as provided in Section 63-3077E, Idaho Code, limited to: ()
- i.** The names and current addresses of businesses in Idaho; and ()
- ii.** The names and current addresses of individuals or entities identified as owners or potential owners of unclaimed property in the custody of the State Treasurer. ()

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

37.03.02 - BENEFICIAL USE EXAMINATION RULES

DOCKET NO. 37-0302-1101

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5222, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 42-1805(8), Idaho Code, and Section 42-217a, Idaho Code.

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

Tuesday, October 25, 2011 at 9:00 am

**Idaho Department of Water Resources
322 East Front Street, Boise, ID
6th Floor Conference Rooms C and D**

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:

Pursuant to Sections 42-217 through 42-219, Idaho Code, the Department of Water Resources (IDWR) processes proofs of beneficial use and issues water right licenses confirming new water rights. Section 42-217, Idaho Code, requires an examination before a license can be issued. Depending on the water right permit holder's choice, examinations may be conducted by IDWR staff members or by Certified Water Right Examiners (CWREs) from the private sector. The Beneficial Use Examination Rules (IDAPA 37.03.02) establish acceptable standards for conducting examinations and reporting beneficial use. Some of the rules contain ambiguous language that causes confusion about the information to be provided. The proposed rule changes would alter or clarify certain examination requirements to make it easier for CWREs to complete reports. Complete, accurate reports result in water right licenses being issued more quickly. The proposed changes are important at this time because IDWR has a water right licensing backlog of about 3500 permits, and IDWR anticipates more examinations being conducted by CWREs to help address the backlog.

The most significant among the proposed changes are:

1. Clarifying that examinations for some water rights may be conducted without an "on-site" inspection.
2. Clarifying when the examiner must report an annual diversion volume and clarifying how annual diversion volumes are to be determined.
3. Establishing that an aerial photograph must be submitted with all field reports.
4. Removing the water measurement exemption for diversion systems where IDWR did not require the permit holder to install a measuring device or access port.
5. Clarifying that IDWR employees are not CWREs, but they may be authorized by the Director to conduct beneficial use examinations.
6. Conforming the descriptions of large tracts of irrigated land to the provisions of Section 42-219, Idaho Code.
7. Establishing that irrigated acreage shall be reported to the tenth of an acre for parcels of land covering less than 10 acres.

NEGOTIATED RULEMAKING: At the end of fiscal year 2011, the Department re-evaluated its water right programs and recognized an opportunity to shift some emphasis from the diminishing backlog of transfer applications to the chronic backlog of field examinations. On July 30, 2011, the Director decided to request authorization to pursue rule changes that would enhance the Certified Water Right Examiner option to address the examination backlog. Between the Director's decision on July 30, 2011, and the August 31, 2011, deadline for submitting

proposed rules, there was insufficient time to conduct negotiated rulemaking. Prior to the hearing concerning this proposed rulemaking, the Department will seek input from current Certified Water Right Examiners, the Idaho Water Users Association, and the general public.

INCORPORATION BY REFERENCE: No documents are incorporated into this rule by reference.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Shelley Keen at 208-287-4947 or shelley.keen@idwr.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 28, 2011.

DATED this 30th day of August, 2011.

Shelley Keen
Water Rights Section Manager
Idaho Department of Water Resources
322 East Front Street
P.O. Box 83720
Boise, Idaho 83720-0098
Phone 208-287-4947 / FAX 208-287-6700

THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 37-0302-1101

~~002.—003.~~ ~~(RESERVED)~~

002. WRITTEN INTERPRETATIONS (RULE 2).

~~There are no written interpretations of these rules.~~ ~~()~~

003. ADMINISTRATIVE APPEALS (RULE 3).

~~Persons may be entitled to appeal agency actions authorized under these rules pursuant to Section 42-1701A, Idaho Code, and IDAPA 37.01.01, "Rules of Procedure of the Idaho Department of Water Resources."~~ ~~()~~

004. APPLICABILITY INCORPORATION BY REFERENCE (RULE 4).

~~No documents have been incorporated by reference into these rules.~~ ~~()~~

~~01- **Proof of Beneficial Use.** These rules apply to all permits for which proof of beneficial use is not yet due and has not been submitted to the department except as exempted in Rule Subsection 004.04.~~ ~~(7-1-93)~~

~~02- **Examination.** These rules apply to all permits for which an examination has not been conducted except as exempted in Rule Subsection 004.04.~~ ~~(7-1-93)~~

~~03- **Re-Examination.** These rules apply to all permits which have been examined but the license has not been issued due to a request for a re-examination by the permit holder except as exempted in Rule Subsection 004.04.~~ ~~(7-1-93)~~

~~04- **Examination Fee.** The examination fee requirements of these rules do not apply to a permit for~~

~~single family domestic use, stockwatering, or other small uses for which the use does not exceed four one-hundredths (0.04) cfs or four (4) AF/year. The examination fee is required for multiple use permits which exceed four one-hundredths (0.04) cfs or four (4) AF/year even though single family domestic use or stockwater use is included as one (1) of the uses on the permit. (7-1-93)~~

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS (RULE 5).

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. ()

02. Mailing Address. The mailing address for the state office is Idaho Department of Water Resources, P.O. Box 83720, Boise, Idaho 83720-0098. ()

03. Street Address. The street address for the state office of the Department of Water Resources, and the regional offices in Idaho Falls, Coeur d'Alene, Twin Falls, and Boise may be obtained by calling the state office at (208) 287-4800, or by visiting the department's website at <http://www.idwr.idaho.gov>. ()

006. PUBLIC RECORDS ACT COMPLIANCE (RULE 6).

Any records associated with these rules are subject to the provisions of the Idaho Public Records Act, Title 9, Chapter 3, Idaho Code. ()

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

009. APPLICABILITY (RULE 9).

01. Proof of Beneficial Use. These rules apply to all permits for which proof of beneficial use is not yet due and has not been submitted to the department. ()

02. Examination. These rules apply to all permits for which an examination has not been conducted. ()

03. Re-Examination. These rules apply to all permits which have been examined but the license has not been issued due to a request for a re-examination by the permit holder. ()

04. Examination Fee. The examination fee requirements of these rules do not apply to a permit for single family domestic use, stockwatering, or other small uses for which the use does not exceed four one-hundredths (0.04) cfs or four (4) AF/year. ~~The examination fee is required for multiple use permits which exceed four one-hundredths (0.04) cfs or four (4) AF/year even though single family domestic use or stockwater use is included as one (1) of the uses on the permit.~~ ()

010. DEFINITIONS (RULE 10).

Unless the context otherwise requires, the following definitions govern these rules. (7-1-93)

01. Acre-Foot (AF). A volume of water sufficient to cover one (1) acre of land one (1) foot deep and is equal to forty-three thousand, five hundred sixty (43,560) cubic feet. (7-1-93)

02. Acre-Foot/Annum. An annual volume of water that may be diverted under a given use or right. (7-1-93)

03. Amendment. A change in point of diversion, place, period or nature of use or other substantial change in the method of diversion or use of a permitted water right. (7-1-93)

04. Capacity Measurement. The maximum volume of water impounded in the case of reservoirs or the maximum rate of diversion from the source as determined by actual measurement of the system during normal operation. (7-1-93)

05. Certified Water Right Examiner. ~~An employee of the Department, or a representative of the~~

~~permit holder who is a~~ professional engineer or professional geologist, qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the Director, and who has been appointed by the Director, Idaho Department of Water Resources as a certified water right examiner. A certified water right examiner is commonly termed a field examiner, water right examiner or examiner. A certified water right examiner is an impartial investigator and reporter of the information required by the Director to determine the extent of beneficial use established in compliance with a permit. Department employees are authorized to complete water right examinations at the discretion of the Director. (7-1-93)()

06. Conveyance Works. The ditches, pipes, conduits or other means by which water is carried or moved from the point of diversion to the place of use. Storage works, if any, such as a dam can be considered part of the conveyance works. (7-1-93)

07. Cubic Foot Per Second (CFS). A rate of flow approximately equal to four hundred forty-eight and eight tenths (448.8) gallons per minute and also equals fifty (50) miner's inches. (7-1-93)

08. Department. The Idaho Department of Water Resources. (7-1-93)

09. Director. The director of the Idaho Department of Water Resources. (7-1-93)

10. Duty of Water. The quantity of water necessary when economically conducted and applied to land without unnecessary loss as will result in the successful growing of crops. (7-1-93)

11. Examination or Field Examination. An on-site ~~visit~~ inspection or investigation to determine the extent of application of water to beneficial use and to determine compliance with terms and conditions of the water right permit. (7-1-93)()

12. Expansion. The diversion and/or use of more water than originally allowed by the permit including application of water to a larger tract of land than originally permitted. (7-1-93)

13. Field Report. The form provided by the Department upon which the examiner records the data gathered and describes the extent of diversion of water and application to beneficial use. The report is fully termed beneficial use field report and is also termed a field examination report. (7-1-93)

14. Headworks or Diversion Works. The constructed barriers or devices on the source of water (surface water or ground water) by which water can be diverted from its natural course of flow and/or measured. (7-1-93)

15. License. The certificate issued by the director in accordance with Section 42-219, Idaho Code confirming the extent of diversion and beneficial use of the water that has been made in conformance with the permit conditions. (7-1-93)

16. License Examination Fee. The fee required in Section 42-221K, Idaho Code, and is also termed an examination fee. (7-1-93)

17. Legal Subdivision. A tract of land described by the government land survey and usually is described by government lot or quarter-quarter, section, township and range. A lot and block of a subdivision plat recorded with the county recorder may be used in addition to the government lot, quarter-quarter, section, township and range description. (7-1-93)

18. Measuring Device. A generally accepted structure or apparatus used to determine a rate of flow or volume of water. Examples are weirs, meters, and flumes. Less typical devices may be accepted by the Director on a case-by-case basis. (7-1-93)

19. Nature of Use. The characteristic use for which water is or is sought to be applied. Examples are domestic, irrigation, mining, industrial, fish propagation, power generation, municipal, etc. (7-1-93)

20. **Period of Use.** The time period during which water under a given right can be beneficially used. (7-1-93)
21. **Permit Holder or Owner.** The person, association, or corporation to whom a permit has been issued or assigned as shown by the records of the Department. (7-1-93)
22. **Permit or Water Right Permit.** The water right document issued by the director authorizing the diversion and use of unappropriated public water of the state or water held in trust by the state. (7-1-93)
23. **Place of Use (P.U. or POU).** The location where the beneficial use is made of the diverted water. (7-1-93)()
24. **Point of Diversion (P.D. or POD).** The location on the public source of water from which water is diverted. Examples are pump intake, headgate, well locations, and dam locations. (7-1-93)()
25. **Project Works.** A general term which includes diversion works, conveyance works, and any devices which may be used to measure the water or to apply the water to the intended use. Improvements which have been made as a result of application of water, such as land preparation for cultivation, are not a part of the project works. (7-1-93)
26. **Proof of Beneficial Use.** The submittal required in Section 42-217, Idaho Code. This submittal is commonly termed proof. (7-1-93)
27. **Source.** The name of the natural water body at the point of diversion. Examples are Snake River, Smith Creek, ground water, spring, etc. (7-1-93)()

011. ABBREVIATIONS.

- 01. AF. Acre-Foot or Acre-Feet.** ()
- 02. CFS. Cubic Foot Per Second.** ()
- 03. P.D. or POD. Point of Diversion.** ()
- 04. P.U. or POU. Place of Use.** ()
- 05. USGS. United States Geological Survey.** ()
- 0142. -- 024. (RESERVED)**

(BREAK IN CONTINUITY OF SECTIONS)

030. QUALIFICATION, EXAMINATION AND APPOINTMENT OF CERTIFIED WATER RIGHT EXAMINER (RULE 30).

01. **Consideration.** Any professional engineer or geologist qualified and registered in the state of Idaho who has the knowledge and experience necessary to satisfactorily complete water right field examinations as determined by the director shall be considered for appointment as a water right examiner upon application to the director. The application shall be in the form prescribed by the director and shall be accompanied by a non-refundable fee in the amount provided by statute. (7-1-93)
02. **Information.** The director may require an applicant for appointment to the position of water right examiner to provide detailed information of past experience, provide references, and to satisfactorily complete a written or oral examination. (7-1-93)

03. Denial. If the director determines an applicant is not qualified, the application will be denied and returned to the applicant. If the director determines an applicant is qualified, a certificate of appointment will be issued. (7-1-93)

04. Expiration. Every water right examiner certificate of appointment shall expire March 31 of each year unless renewed by application in the manner prescribed by the director. A non-refundable fee in the amount provided by statute shall accompany an application for renewal. (7-1-93)

05. Refusal or Revocation. An appointment or renewal may be refused or revoked by the director at any time upon a showing of reasonable cause. A party aggrieved by an action of the director may request an administrative hearing pursuant to Section 42-1701A(3), Idaho Code. (7-1-93)

06. Reconsideration. An application for appointment or renewal which has been refused or revoked by the director may not be reconsidered for six (6) months. (7-1-93)

07. Liability. The state of Idaho shall not be liable for the compensation of any water right examiner other than department employees. The permit holder shall be responsible for costs associated with proof submittal including examination and field report preparation. (7-1-93)

08. Examinations. Department employees who have the knowledge and experience necessary to satisfactorily complete water right field examinations, as determined by the director, may ~~be appointed as water right examiners for the purpose of completing~~ **conduct** water right examinations during the course and scope of their employment with the department. Upon termination of employment with the department, such examiners, unless reappointed as a non-department certified examiner under provisions of these rules, are not authorized to conduct field examinations. The fee provisions of these rules ~~are waived for appointments of~~ **do not apply to** department employees. (7-1-93)()

09. Ingress or Egress Authority. Appointment as a water right examiner does not grant ingress or egress authority to non-department examiners and does not convey authority unless explicitly prescribed in these rules. (7-1-93)

10. Reports. The director will not accept a field examination report prepared by a certified water right examiner who has any past or present interest, direct or indirect, in either the water right permit, the land or any enterprise benefiting, or likely to benefit, from the water right. Among those that the director will presume to have an actual or potential conflict of interest and from whom he will not accept a field examination report are the following: (7-1-93)

a. The person or persons owning the water right permit or the land or enterprise benefiting from the water right permit, members of their families (spouse, parents, grandparents, lineal descendants including those that are adopted, lineal descendants of parents; and spouse of lineal descendants), and their employees. (7-1-93)

b. The person or persons, who sold or installed the diversion works or distribution system. (7-1-93)

11. Money Received. All moneys received by the department under the provisions of these rules shall be deposited in the water administration fund created under Section 42-238a, Idaho Code. (7-1-93)

031. -- 034. (RESERVED)

035. EXAMINATION FOR BENEFICIAL USE (RULE 35).

01. Field Report. (7-1-93)

a. All items of the field report must be completed and must provide sufficient information for the director to determine the extent of the water right developed in order for the report to be acceptable to the director. (7-1-93)

b. Permitted uses partially developed by the permit holder shall be described in detail. Permitted uses which were not developed by the permit holder shall be noted. Uses determined to exist which are not authorized by the permit being examined shall also be ~~noted~~ described in detail. (7-1-93)(____)

c. A concise description of the diversion works and a general description of the distribution works shall be given. This description must trace the water from the point of diversion to and including the place of use and the return to a public water source, if any. Any reservoir, diversion dam, headgate, well, canal, flume, pump and other related structure shall be included. If water is stored, the timing and method of storage, release, redirection and conveyance to the place of use shall be described. The make, capacity, serial number and model number of all pumps, boosters or measuring devices associated with the point of diversion at the source of the water supply shall be described on the field examination report. Schematic diagrams, photographs, and maps sufficient to locate and describe the diversion, conveyance and usage systems shall also be provided in the examination report. (7-1-93)(____)

d. Any interconnection of the water use being examined with other water rights or with other conveyance systems shall be described on the field report. ~~Any reservoir, diversion dam, headgate, well, canal, flume, pump and other related structure shall be included. This description shall be in the form of a concise word picture of the storage of water, if stored, its release, redirection and conveyance to the place of use. A schematic diagram of the project works shall also be provided in the field report.~~ Interconnection includes, but is not limited to, sharing the same point of diversion, distribution system, place of use, or beneficial use. The examination report shall also include an evaluation of how the water use being examined is distinct from prior existing water rights and provides an alternate source of water or increment of beneficial use not authorized by prior existing water rights. (7-1-93)(____)

e. If water is returned to a public water source after use, a legal description of the point where the water is returned and source to which discharge is made shall be provided. Examples of uses which generally have an effluent discharge include fish propagation and power facilities. (7-1-93)

f. The method of compliance with each condition of approval of a permit shall be shown on the field report by the examiner. (7-1-93)

g. If the water is used for irrigation, the boundaries of the various irrigated areas and the location of the project works providing water to each shall be platted on the ~~proof~~ maps submitted with the report and the full or partial acreage in each legal subdivision of forty (40) acres or government lot shall be shown. (7-1-93)(____)

h. Irrigated acreage shall be shown on the field report to the nearest whole acre in a legal subdivision except the acreage shall be shown to the nearest one-tenth (0.10) acre for permits covering land of ~~five (5) acres or less~~ than ten (10) acres. (7-1-93)(____)

i. Where a permit has been developed as separate distribution systems from more than one point of diversion, the separate areas irrigated from each point of diversion shall be shown on the ~~proof~~ maps as described herein before submitted with the report and the legal subdivisions embracing the irrigated areas for each such respective point of diversion together with the total irrigated area shall be described. (7-1-93)(____)

j. ~~The field examiner does not need to show total volume of water for municipal and fire protection uses on the field report unless the project works provide for storage of water.~~ For each use of water the examiner shall report an annual diversion volume based on actual beneficial use during the development period for the permit. The method of determining the annual diversion volume shall be shown. The annual diversion volume shall account for seasonal variations in factors affecting water use, including seasonal variations in water availability. For irrigation, the volume shall be based on the field headgate requirements in the map titled Irrigation Field Headgate Requirement appended to these rules (see Appendix A located at the end of this chapter). Annual diversion volumes for heating and cooling uses may be adjusted to account for documented weather conditions during any single heating or cooling season from among the fifty (50) years immediately prior to submitting proof of beneficial use for the permit. For storage uses that include filling the reservoir and periodically replenishing evaporation and seepage losses throughout the year, the annual diversion volume shall be the sum of the amounts used for filling and for replenishment. Volumes may include reasonable conveyance losses actually incurred by the water user. The following water uses are exempt from the volume reporting requirement: (7-1-93)(____)

- i. Diversion to storage. (Volume should be reported for the storage use, such as irrigation storage.) ()
- ii. Domestic uses as defined in Section 42-111, Idaho Code. ()
- iii. In-stream watering of livestock. ()
- iv. Fire protection. (Volume is required for fire protection storage.) ()
- v. On-stream, run-of-the-river, non-consumptive power generation uses. ()
- vi. Minimum stream flows established pursuant to Chapter 15, Title 42, Idaho Code. ()
- vii. Municipal use by an incorporated city or other entity serving users throughout an incorporated city, except the following situations that do require a volume to be reported: ()
- (1) The permit or amended permit was approved with a volume limitation; or ()
- (2) The permit was not approved for municipal use but can be amended and licensed for a municipal use established during the authorized development period for the permit. ()
- viii. Irrigation using natural stream flow diverted from a stream or spring. (Volumes must be reported for irrigation uses from ponds, lakes and ground water and for irrigation storage and irrigation from storage.) ()
- k. The total number of holding/rearing ponds and the dimensions and volume of the ponds shall be shown on the field report for fish rearing or fish propagation use. The annual volume shall be calculated based on the changes of water per hour. (7-1-93)
- l. Information shall be submitted concerning the beneficial use that has been made of the water unless the purpose of use is for irrigation. For example, for stockwater use, the number and type of stock watered shall be provided. Similar indications of the extent of beneficial use shall be provided for all other non-irrigation uses. (7-1-93)
- m. Information on the period during each year that the water is used shall be described for each use. (7-1-93)
- n. For permits having more than one use, the diversion rate measured for each use, the annual diversion volume determined for each use (unless specifically exempted by rule or statute), and the place of use for each use shall be described. (7-1-93)()
- o. The amount (rate and/or volume) of water shall be limited by the smaller of the permitted amount, the amount upon which the license examination fee is paid, the capacity of the diversion works or the amount beneficially used prior to submitting proof of beneficial use, including any statutory limitation of the duty of water. (7-1-93)()
- p. Suggested amendments shall be noted on the field report when the place of use, point of diversion, period or nature of use is different from the approved permit or from previously approved amendments. Suggested amendments shall be based on actual use, not on potential use. (7-1-93)()
- q. An aerial photo marked to depict the point(s) of diversion and place(s) of use for each use must accompany each field reports ~~involving ten (10) or more irrigated acres~~ unless waived by the director. If existing photos are not available, the director will accept a USGS Quadrangle map at the largest scale available. (7-1-93)()
- r. Unless required as a condition of permit approval, an on-site examination and direct measurement of the diversion rate are not required for the following water uses if the beneficial use, place of use, season of use, and point of diversion can be confirmed by documentary means such as well driller reports, property tax records, receipts

and other records of the permit holder, or photographs, including aerial photographs: ()

i. Irrigation up to five (5) acres. ()

ii. Storage of up to fourteen point six (14.6) acre-feet of water solely for stock watering purposes. ()

iii. Any uses other than irrigation or storage if the total combined diversion rate for all the uses established in connection with the permit does not exceed twenty-four one hundredths (0.24) cubic feet per second. ()

02. Field Report Acceptability. (7-1-93)

a. All field reports shall be prepared by or under the supervision of certified water right examiners or authorized department employees. ~~The #~~ Reports submitted by certified water right examiners must be properly endorsed with an engineer or geologist seal and signature. Field reports received from certified water right examiners will be accepted if the report includes all the information required to complete the report and provides the information required by Rule Subsection 035.01. (7-1-93)()

b. Field reports not completed as required by these rules will be returned to the certified water right examiner for completion. If the date for submitting proof of beneficial use has passed, the penalty provisions of Rule 055 shall apply. (7-1-93)

c. If the director determines that a field report prepared by a certified water right examiner is acceptable but that additional information is needed to clarify the field report, he will notify the ~~certified water right~~ examiner in writing of the information required. If the additional information is not submitted within thirty (30) days or within the time specified in the written notice, the priority date of the permit will be advanced one (1) day for each day the information submittal is late. Failure to submit the required information within one (1) year of the date of the department's request is cause for the director to take action to cancel the permit. (7-1-93)()

d. Field reports which indicate that a measuring device or lockable controlling works, required as a condition of approval of the permit, has not been installed, are not acceptable and will be returned to the examiner unless the measuring device requirement or lockable controlling works requirement has been formally waived or modified by the director. (7-1-93)()

03. General. (7-1-93)

a. For irrigation purposes, the duty of water shall not exceed five (5) acre feet of stored water for each acre of land to be irrigated or more than one (1) cubic foot per second for each fifty (50) acres of land to be irrigated unless it can be shown to the satisfaction of the director that a greater amount is necessary. (7-1-93)

b. For irrigated acreage of five (5) acres or less, a ~~rate of~~ diversion ~~not in excess of~~ rate up to three one-hundredths (0.03) cfs per acre may be allowed on the license to be issued by the director. (7-1-93)()

c. Conveyance losses of water from the point of diversion to the place of use which are determined by actual measurement may be allowed by the director if the loss is determined by the director to be reasonable. (7-1-93)

d. The duty of water described in Rule Subsections 035.03.a. or 035.03.b. may be exceeded if the department has authorized a greater diversion rate per acre when the permit was issued and good cause acceptable to the director has been demonstrated. (7-1-93)()

e. For irrigation systems which cover ~~more than~~ twenty-five thousand (25,000) acres; or more, within irrigation districts organized and existing under the laws of the state of Idaho, and for irrigation projects developed under a permit held by an association, company, corporation, or the United States to deliver surface water to more than five (5) water users under an annual charge or rental, the field report does not need to describe the irrigated land by legal subdivision, but may ~~be described~~ generally ~~as~~ the lands under the project works if the total irrigated acres

has been accurately determined and is shown on the field report. The amount of water beneficially used under such projects must be shown on the field report. (7-1-93)()

~~04. Requests. Requests to the department for computerized data, copies, or other information involving research of department records must be accompanied by a fee as required in Section 42-221, Idaho Code. (7-1-93)~~

036. -- 039. (RESERVED)

040. WATER MEASUREMENT (RULE 40).

01. Measurement Terminology. (7-1-93)

a. Rate of flow measurements shall be shown in units of cubic feet per second (cfs) with three (3) significant figures and no more precision than hundredths. (7-1-93)

b. Volume measurements shall be shown in units of acre-feet (AF) with three (3) significant figures, and no more precision than tenths. (7-1-93)

02. **Rate of Diversion.** The rate of diversion measurement shall be conducted as close as reasonably possible to the source of supply and shall be measured with the project works fully in place operating at normal capacity. For example, if a sprinkler system is used for irrigation purposes, discharge from the pump must be measured with the sprinkler system connected. (7-1-93)

03. **Measurements.** Water measurements may be made by vessel, weir, meter, rated flume, reservoir capacity table or other ~~accepted~~ standard method of measurement acceptable to the director. The field report shall describe the method used in making the measurement, the date when made, the name of the person making the measurement, the legal description of the location where the measurement was taken and shall include sufficient information, including current meter notes, rating tables, and/or calibration information to enable the director to check the quantity of water measured in each case. (7-1-93)()

04. **Unacceptable Measurements.** Theoretical diversion rates or theoretical carrying capacities are not acceptable as a measure of the rate of diversion except as indicated in these rules and for some diversion systems where ~~an exception is granted by the director. Systems for which a measuring device, access port, or certified water measurement is not a permit requirement, are considered exempt from this rule~~ the flow rate cannot be measured accurately due to the physical characteristics of the diversion and distribution system. (7-1-93)()

05. **Method.** Rate of flow measurements shall be determined using equipment and methods capable of obtaining an accuracy of plus or minus ten percent (10%). (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

050. LICENSE EXAMINATION FEE (RULE 50).

01. Examinations Conducted by Department ~~Certified Water Right Examiners~~ **Staff.** (7-1-93)()

a. The examination fee shall be payable to the Department of Water Resources unless the field examination is conducted by a ~~non-department~~ certified water right examiner. (7-1-93)()

b. The department will not conduct an examination for which the fee has not been paid to the department unless exempted in Rule Subsection 00~~9~~.04, except that for any prior examination, whether conducted by a certified water right examiner or by department staff, the department may conduct a supplemental examination on its own initiative at any time. (7-1-93)()

c. A license shall not be issued for an amount of water in excess of the amount covered by the examination fee. Subsequent to the examination and prior to a license being issued, the director will notify the permit holder that the licensed amount will be limited because an insufficient examination fee was paid. The permit holder will be allowed thirty (30) days after the notice is mailed to pay the additional examination fee, along with a late payment penalty of twenty-five dollars (\$25) or twenty percent (20%) of the amount of the additional required fee whichever is more. If payment is received within the thirty (30) day period, the rate or volume licensed shall not be reduced by reason of the examination fee. If payment is not received within the thirty (30) day period, the rate or volume licensed shall be limited by the original examination fee paid. For the purpose of determining advancement of priority for late fee as provided in Section 42-217, Idaho Code, fees shall not be considered as having been paid until paid in full, including any subsequent fee. (7-1-93)

d. Excess examination fees are non-refundable. (7-1-93)

e. An examination fee equal to the initial examination fee paid to the department shall be paid for a re-examination made at the request for the permit holder except upon a showing of error by the department on the initial examination. (7-1-93)

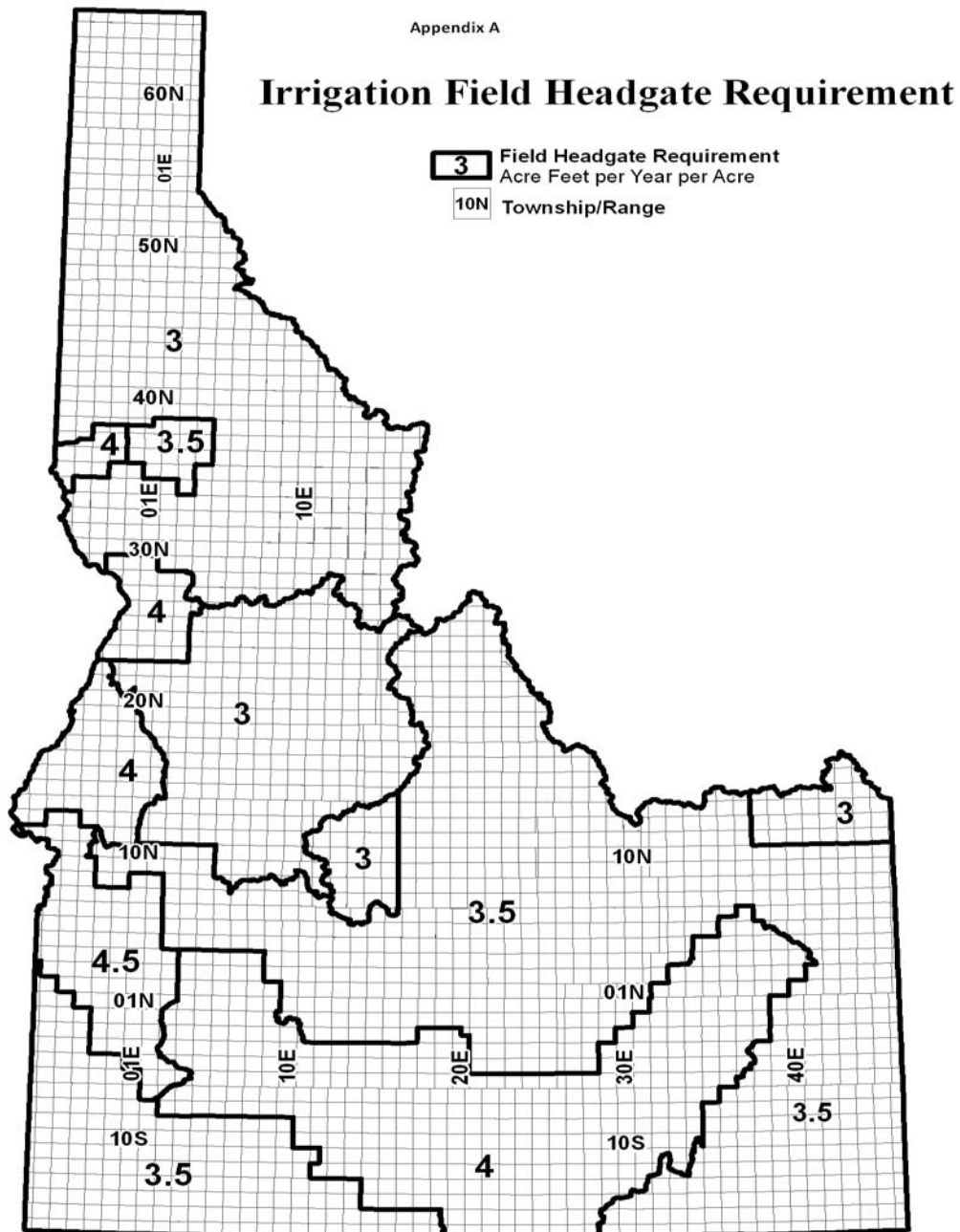
02. Examinations Conducted by Non-Department Certified Water Right Examiners. (7-1-93)

a. The examination fee required by Section 42-217, Idaho Code is not applicable for examination conducted by or under the supervision of ~~non-department~~ certified water right examiners. (7-1-93)()

b. A permit holder may change from one (1) ~~non-department~~ certified water right examiner to another but may not choose to have the examination conducted by the department after selecting a ~~non-department~~ certified water right examiner. (7-1-93)()

c. After submitting proof of beneficial use and paying an examination fee to the department, but before the department's actual examination, a permit holder may submit an examination report completed by a certified water right examiner. Because the examination fee is an essential component of timely proof submittal, the department will not refund the examination fee. ()

Appendix A



IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.03 - RULES GOVERNING VEHICLE DEALER'S PRINCIPAL PLACE OF BUSINESS

DOCKET NO. 39-0203-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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 this agency has adopted a pending rule. The action is authorized pursuant to Sections 49-201(1), Idaho Code, and Title 49, Chapter 16, Dealers and Salesmen Licensing (Vehicle Dealer Act).

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the [August 3, 2011 Idaho Administrative Bulletin, Volume 11-8, pages 228 through 231](#).

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

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

DATED this 31st day of August, 2011.

Linda L. Emry
Office of Governmental Affairs
Idaho Transportation Department
3311 W State St, PO Box 7129,
Boise ID 83707-1129
Phone – 208-334-8810 / FAX – 208-332-4107
linda.emry@itd.idaho.gov

DOCKET NO. 39-0203-1101 - 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 11-8, August 3, 2011, pages 228 through 231](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.47 - RULES GOVERNING REVOCATION OF VEHICLE REGISTRATION FOR FAILURE TO COMPLY WITH A MOTOR VEHICLE EMISSION INSPECTION ORDINANCE

DOCKET NO. 39-0247-1101 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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 this agency has adopted a pending rule. The action is authorized pursuant to Sections 49-201(1) and 49-202(12)(f), Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the [August 3, 2011 Idaho Administrative Bulletin, Volume 11-8, page 232](#).

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

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

DATED this 31st day of August, 2011.

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DOCKET NO. 39-0247-1101 - 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 11-8, August 3, 2011, page 232](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.70 - RULES GOVERNING RESTRICTED DRIVING PERMITS

DOCKET NO. 39-0270-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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 this agency has adopted a pending rule. The action is authorized pursuant to Sections 18-8002A, 49-325, and 49-326, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the [July 6, 2011 Idaho Administrative Bulletin, Volume 11-7, pages 134 through 139.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ed Pemble, Driver Services Manager, 332-7830.

DATED this 31st day of August, 2011.

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DOCKET NO. 39-0270-1101 - 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 11-7, July 6, 2011, pages 134 through 139.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.02.72 - RULES GOVERNING ADMINISTRATIVE LICENSE SUSPENSIONS

DOCKET NO. 39-0272-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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 this agency has adopted a pending rule. The action is authorized pursuant to Sections 18-8002 and 18-8002A, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the [June 1, 2011 Idaho Administrative Bulletin, Volume 11-6, pages 60 through 64.](#)

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 rulemaking has no fiscal impact on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ed Pemble, Driver Services Manager, 332-7830.

DATED this 31st day of August, 2011.

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DOCKET NO. 39-0272-1101 - 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 11-6, June 1, 2011, pages 60 through 64.](#)**

**This rule has been adopted as a pending rule by the Agency and is now awaiting
review and approval by the 2012 Idaho State Legislature for final adoption.**

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.75 - RULES GOVERNING NAMES ON DRIVERS' LICENSES AND IDENTIFICATION CARDS

DOCKET NO. 39-0275-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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 this agency has adopted a pending rule. The action is authorized pursuant to Sections 49-201, 49-306, 49-315, 49-318, 49-319, and 49-2443, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the [August 3, 2011 Idaho Administrative Bulletin, Volume 11-8, pages 233 through 236](#).

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Lynn Rhodes, Driver's License Program Supervisor, 334-8727.

DATED this 31st day of August, 2011.

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DOCKET NO. 39-0275-1101 - 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 11-8, August 3, 2011, pages 233 through 236](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.02.76 - RULES GOVERNING DRIVER'S LICENSE RENEWAL-BY-MAIL PROCESS

DOCKET NO. 39-0276-1101

NOTICE OF RULEMAKING - PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rule-making procedures. The action is authorized pursuant to Section 49-319(10), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rule-making will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 19, 2011.

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 rule-making:

This rulemaking incorporates changes in Sections 001 through 006 as required by the Office of Administrative Rules, documents procedural changes to match current practice (renewal stickers no longer used), sets limitations on electronic or mail renewals for those who may or may not have a lawful presence in the US, and adds provisions for "electronic renewal" that is planned for the future as part of the DMV modernization that is now in 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 resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220, Idaho Code, negotiated rule-making was not conducted because the revisions delete references to out-dated procedures and make provisions for future electronic renewal procedures as part of the DMV modernization, currently in process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Lynn Rhodes, Driver's License Program Supervisor, 334-8727.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 26, 2011.

DATED this 31st day of August, 2011.

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THE FOLLOWING IS THE PROPOSED TEXT OF DOCKET NO. 39-0276-1101

39.02.76 - RULES GOVERNING DRIVER'S LICENSE RENEWAL-BY-MAIL
AND ELECTRONIC RENEWAL PROCESS

000. LEGAL AUTHORITY.

In accordance with Section 49-319(~~§10~~), Idaho Code, the Idaho Transportation Board adopts the following rule to establish a process that may allow~~ing~~ Idaho residents to renew their Class D drivers' licenses by mail or electronically. (7-1-96)()

001. TITLE AND SCOPE.

01. Title. This rule shall be cited as IDAPA 39.02.76, "Rules Governing Driver's License Renewal-by-Mail and Electronic Renewal Process". ()

02. Scope. The purpose of this rule is to establish standards by which Class D drivers' licenses ~~can~~ may be renewed by mail or electronically for those individuals who are licensed Idaho residents and whose licenses are about to expire. The driver's license renewal-by-mail and electronic systems ~~is~~ are designed to reduce the length of driver's license renewal waiting lines at county driver's license offices. (7-1-96)()

002. WRITTEN INTERPRETATIONS.

~~None~~ There are no written interpretations for this chapter. This rule merely implements the provisions of Section 49-319(~~§10~~), Idaho Code, which states: "The department may use a mail renewal process for Class D licenses based on criteria established by rule and regulation." (7-1-96)()

003. ADMINISTRATIVE APPEALS.

~~This chapter does not provide for appeal of the administrative requirements contained herein.~~ Administrative appeals under this chapter shall be governed by the rules of administrative procedure of the attorney general, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." (7-1-96)()

004. INCORPORATION BY REFERENCE.

There are no documents incorporated by reference in this chapter. ()

005. OFFICE – OFFICE HOURS – MAILING AND STREET ADDRESS – PHONE NUMBERS.

01. Street and Mailing Address. The Idaho Transportation Department maintains a central office in Boise at 3311 W. State Street with a mailing address of P O Box 7129, Boise ID 83707-1129. ()

02. Office Hours. Daily office hours are 8:00 a.m. to 5:00 p.m. except Saturday, Sunday and state holidays. ()

03. Telephone and FAX Numbers. The central office may be contacted during office hours by phone at 208-334-8000 or by fax at 208-334-3858. ()

006. PUBLIC RECORDS ACT COMPLIANCE

All records associated with this chapter are subject to and in compliance with the Idaho Public Records Act, as set forth in Sections 9-337 through 9-350, Idaho Code. ()

~~007.~~ -- 009. (RESERVED)

010. DEFINITIONS.

01. CDL. Commercial Driver's License. (7-1-96)

02. Class D Driver's License. A license issued and valid for the operation of a motor vehicle that is not a commercial vehicle as defined in Section 49-123, Idaho Code. (7-1-96)

~~03. **Driver's License Sticker.** A sticker issued by the Idaho Transportation Department that, when affixed to the back of the appropriate driver's license, extends the expiration date by a period of four (4) years from the expiration date printed on the face of the license. (7-1-96)~~

~~043. **Expiration Date.** The date a driver's license expires. (7-1-96)~~

~~054. **Photo License.** A valid Idaho driver's license displaying a color photograph of the license holder. (7-1-96)~~

011. ELIGIBILITY.

01. Eligibility. The renewal by mail or electronic renewal may be granted on the expiration date of a person's Idaho Class D driver's license, in lieu of requiring the person to ~~obtain a new photo license~~ renew a driver's license in person. Licenses renewed by mail or electronically shall only be renewed once in an eight (8) year period, and shall ~~expire four (4) years from the expiration date printed on the face of the license~~ have a four-year validity period. (7-1-96)()

02. License Renewal. Drivers' licenses shall not be renewed by mail or electronically for persons who: (7-1-96)()

a. Hold a driver's license with a "J" restriction (e.g. limited to a five (5) mile driving radius of residence, driving privileges limited to one (1) or two (2) counties, cannot drive without parent for a specified time period, etc.); (7-1-96)

b. Have changes in the information shown on their licenses, other than address changes; (7-1-96)

c. Have any changes in physical, mental, and/or emotional condition, including vision, which may impair the ability to safely operate a motor vehicle; (7-1-96)

d. Have drivers' licenses or driving privileges which are suspended, revoked, cancelled, denied, refused, or disqualified; (7-1-96)

e. Are operating on department or court restricted driving permits; (7-1-96)

f. ~~Have lost, or no longer have, the photo license in their possession~~ Are required to provide documentation proving lawful presence in the United States; (7-1-96)()

g. ~~Want their Social Security Numbers removed from their driver's licenses~~ Are not lawfully present in the United States; (7-1-96)()

h. Have a driving record which has been marked for special handling (e.g., verification of identity or date of birth, possible fraud, etc.); (7-1-96)

i. Already have an existing extension; (7-1-96)

j. Wish to add a motorcycle endorsement; (7-1-96)

k. Are under twenty-one (21) years of age; or (7-1-96)

l. Are seventy (70) years of age or older. (7-1-96)

012. RENEWAL BY MAIL PROCEDURES.

01. Use of Fax or Phone Prohibited. Driver's license renewal-by-mail or electronic renewal applications shall not be processed by fax or telephone. Eligible persons must mail or electronically submit their driver's license renewal application to the driver's license office in their county of residence, or deliver their application in person together with the renewal fee for the same class of license, pursuant to Section 49-306, Idaho

Code.

(7-1-96)()

02. Updating Driving Records. The county driver's license office shall update driving records to reflect the new expiration year, followed by the notation "RM," and issue ~~and mail~~ a driver's license ~~sticker~~ to eligible licensees within three (3) business days after receipt of the completed application form. ~~Driver's license renewal stickers shall be affixed to the back of the driver's license.~~ (7-1-96)()

03. If ~~Renewal Sticker~~ the Driver's License Card Is Lost, Mutilated or Destroyed After Receipt. If a driver's license ~~renewal sticker~~ is lost, mutilated, or destroyed after the applicant receives it, the applicant must apply in person at the county office for a duplicate driver's license. (7-1-96)()

04. If Lost or Destroyed in Mail. If a drivers' license ~~renewal sticker~~ is lost or destroyed in the mail, a written statement detailing the loss or destruction must be mailed or hand-delivered to the applicant's county of residence. Upon receipt of the letter, the county can issue a no-charge replacement ~~sticker~~ driver's license to the applicant. (7-1-96)()

05. Temporarily Residing Out-of-State. Individuals temporarily residing out-of-state may apply for a renewal by mail, electronic renewal, or an extension, but not both, in an eight (8) year period. (7-1-96)()

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

39.03.01 - RULES GOVERNING DEFINITIONS REGARDING OVERLEGAL PERMITS

DOCKET NO. 39-0301-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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 this agency has adopted a pending rule. The action is authorized pursuant to Section 40-312, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the [August 3, 2011 Idaho Administrative Bulletin, Volume 11-8, pages 237 through 242.](#)

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 rulemaking has no fiscal impact on the general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Regina Phipps, Vehicle Size and Weight Specialist, Division of Motor Vehicles, 334-8418.

DATED this 31st day of August, 2011.

Linda L. Emry
Office of Governmental Affairs
Idaho Transportation Department
3311 W State St, PO Box 7129,
Boise ID 83707-1129
Phone – 208-334-8810 / FAX – 208-332-4107
linda.emry@itd.idaho.gov

DOCKET NO. 39-0301-1101 - 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 11-8, August 3, 2011, pages 237 through 242.](#)

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT
39.03.16 - RULES GOVERNING OVERSIZE PERMITS FOR NON-REDUCIBLE
VEHICLES AND/OR LOADS

DOCKET NO. 39-0316-1101

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 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 this agency has adopted a pending rule. The action is authorized pursuant to Section 49-201, Idaho Code, and the provisions of Sections 49-1004 and 49-1010, Idaho Code.

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

The pending rule is being adopted as proposed. The original text of the proposed rule was published in the [August 3, 2011 Idaho Administrative Bulletin, Volume 11-8, pages 243 through 246.](#)

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

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Regina Phipps, Vehicle Size and Weight Specialist, Division of Motor Vehicles, 334-8418.

DATED this 31st day of August, 2011.

Linda L. Emry
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DOCKET NO. 39-0316-1101 - 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 11-8, August 3, 2011, pages 243 through 246.](#)

This rule has been adopted as a pending rule by the Agency and is now awaiting
review and approval by the 2012 Idaho State Legislature for final adoption.

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-1101

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

**Monday, October 24, 2011
12:00 p.m. (noon) MDT**

**Idaho State Department of Agriculture
Conference Rooms A and B
2270 Old Penitentiary Road
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 entire section regarding Board eligibility evaluations of candidates for the national veterinary examination will be removed to concur with a 2011 statute change. The statute change removed the requirement for the Board to determine candidate eligibility to take the national exam.

Fee refunds will be removed for certified veterinary technician applicants who withdraw their applications; this will reimburse the Board for staff time spent on application review.

Numerous questions and concerns from licensees will be addressed by clarifying the requirements when revisions to both paper and electronic patient records are made. In addition, based on negative comments from licensees, the requirement for a written release from the owner prior to transfers of patient medical information will 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 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 Karen Ewing, Executive Director, (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 26, 2011.

DATED this 18th day of August, 2011.

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 OF DOCKET NO. 46-0101-1101

~~016. ELIGIBILITY EVALUATION—NATIONAL EXAMINATION.~~

~~**01. Eligibility Requirements.** Effective July 1, 2000, all applicants applying to the Board for eligibility evaluation for the national examination shall: (3-30-01)~~

~~**a.** If not previously graduated from an accredited school of veterinary medicine at the time of application, be within eight (8) months of expected graduation date. (4-2-08)~~

~~**b.** Have qualified for licensure in this state as outlined in Section 54-2107, Idaho Code, and Subsection 010.01 of these rules; (3-30-01)~~

~~**c.** Have fulfilled the licensing requirements, as outlined in Section 54-2107, Idaho Code, and Subsections 010.02, 010.03, and 010.04 of these rules with the exception of a passing score on the national examination; (3-30-01)~~

~~**d.** Have completed the national examination application prepared by the National Board Examination Committee (NBEC) or its designee and supplied by the Board, NBEC or its designee; (3-30-01)~~

~~**e.** And have paid to the Board the state application and license fee as outlined in Paragraph 014.01.a. of these rules and the national examination processing fee, as outlined in Paragraph 014.01.g of these rules. (3-30-01)~~

~~**02. Application and Fee Deadlines.** For applicants applying to the Board for eligibility evaluation for the national examination, application and fee deadlines for both the national examination and for the state licensure examination shall be ninety (90) days prior to the first date of each national testing window established by the National Board Examination Committee or its designee. No candidate will be permitted to take the national examination until their completed national and state applications have been received and approved, and the established fees paid. (3-30-01)~~

~~**03. Determination of Eligibility.** Upon the Board's determination of an applicant's eligibility for the national examination, the Board shall notify the applicant of his eligibility to take the national examination and shall transmit the applicant's eligibility information and examination fee to the National Board Examination Committee or its designee. Any candidate not included on the Board's eligibility list for the current test window will be ineligible to take the national examination during that test window. (3-30-01)~~

~~**04. Authorization to Test and Scheduling.** The National Board Examination Committee or its designee will supply authorization to test, letters, and scheduling permits to eligible candidates. Scheduling permits will~~

~~contain instructions pertaining to establishing, changing or canceling a test appointment through a centralized registration center (Customer Service Call Center or CSCC). (3-30-01)~~

~~a. Candidates will be responsible for scheduling their own testing date, time and location through the Customer Service Call Center. Candidates who desire to change the date, time or location of the testing appointment may do so without financial penalty until noon on the fifth business day prior to the scheduled appointment. All times are based upon the local time of the center where the candidate is scheduled to test. (3-30-01)~~

~~b. Candidates must take the national examination within the established test window or their authorization to test will expire and their national examination and processing fees forfeited. (3-30-01)~~

~~c. Candidates desiring to retake the national examination during a subsequent test window must have their eligibility reconfirmed by the Board to the National Board Examination Committee or its designee and pay the established national examination and processing fees. (3-30-01)~~

~~**05. National Examination Scoring and Reporting. (3-30-01)**~~

~~a. The passing score for the national examination shall be the criterion referenced passing score established by the National Board Examination Committee or its designee, or by the American Association of Veterinary State Boards or its designated test vendor. (3-30-01)~~

~~b. The Board will report scores on the national examination to the individual candidates. (3-30-01)~~

~~i. No candidate shall be permitted to review the national examination or receive copies of his answers to the examination. (3-30-01)~~

~~ii. For candidates failing the national examination, upon request, a diagnostic breakdown according to the examination's overall content areas will be supplied. (3-30-01)~~

~~iii. Any appeals by candidates regarding examination scores will be managed by and between the candidate and the Board. (3-30-01)~~

~~iv. Any rationales and analyses provided by the National Board Examination Committee beyond the diagnostic information will be at the Board's written request and at the candidate's expense. (3-30-01)~~

~~e. A copy of the candidate's initial score report will be supplied to the Board by the National Board Examination Committee. Subsequent score reports to other boards must be requested by the candidate through the American Association of Veterinary State Boards, or its designee at the candidate's expense. (3-30-01)~~

0176. -- 099. (RESERVED)

100. CERTIFICATION OF VETERINARY TECHNICIANS.

Any person representing himself as a veterinary technician, licensed veterinary technician, registered veterinary technician, or certified veterinary technician, shall hold a valid, unexpired certificate to practice veterinary technology in the state of Idaho. (3-30-07)

01. Application for Certification -- Contents -- Examinations. An individual desiring to be certified as a veterinary technician shall make written application to the Board upon a form furnished by the Board. A complete application shall be valid and maintained at the Board office for a period of one (1) year, contain the applicant's notarized signature, and include: (3-30-01)

a. A copy of a birth certificate or current passport proving that the applicant is eighteen (18) years of age or older. (4-2-08)

b. Notarized affidavits issued during the year preceding certification from two (2) individuals, personally acquainted with the applicant, attesting to the fact that the applicant is of good moral character. (3-30-01)

- c. Documentation of education/training/experience as follows: (3-30-01)
- i. A certified copy of a diploma or transcript, or a letter verifying graduation from a veterinary technology program, accredited by the American Veterinary Medical Association; (3-29-10)
 - ii. A certified copy of a diploma or transcript, or a letter verifying graduation from a veterinary technology program equivalent to a program accredited by the American Veterinary Medical Association, or from another college or institution approved by the Board; (3-29-10)
 - iii. A certified copy of a diploma or transcript, or a letter verifying the award of a D.V.M. or V.M.D. degree or equivalent, from an accredited school of veterinary medicine; or (3-29-10)
 - iv. If a foreign veterinary graduate, notarized verification of having been awarded a D.V.M. or V.M.D. degree or equivalent in a program of veterinary medicine from a foreign school of veterinary medicine or the veterinary department of a foreign university or another college or institution that is approved by the Board. (3-30-07)
- d. Verification of a criterion-referenced passing score reported by the Professional Examination Service or its designee, or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards on the Veterinary Technician National Examination (VTNE) or other national examination approved by the American Association of Veterinary State Boards or its designated test vendor or by the Board. If such a score is not available, the passing score shall be as reported by the Professional Examination Service or its designee, or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards or by the Board and shall be considered equal to or greater than one and five-tenths (1.5) standard deviation below the mean score of the examination. (3-30-01)
- i. The VTNE or other national examination approved by the American Association of Veterinary State Boards or its designated test vendor or by the Board may have been taken at any time. (3-30-01)
 - ii. Scores for the VTNE or other national examination approved by the American Association of Veterinary State Boards or its designated test vendor or by the Board are to be provided to the Board by the Professional Examination Service or its designee or by other designated test vendors or their designees approved by the American Association of Veterinary State Boards. (3-30-01)
- e. A passing score for the jurisprudence examination, which should be ninety percent (90%) or such score as deemed appropriate by the Board. The jurisprudence examination, as prepared by the Board or its designee, may be taken more than once, at three-month intervals. (3-29-10)
- 02. Application for Certification -- Fee -- Deadline -- Validity. (3-30-01)**
- a. A completed application, other required documents, and first year's certification fee in the amount established by the Board shall be received at the Board office by the first day of January or June. (3-30-01)
 - b. The Board will review applications and issue certifications in January and June of each year. Veterinary Technician Certifications shall be consecutively numbered beginning with the number one (1) and all numbers shall be prefixed with the letters CVT. If an applicant is found not qualified, the Board shall notify the applicant in writing of such finding and grounds therefor. An applicant denied certification may request a hearing pursuant to the procedures set forth in Title 67, Chapter 52, Idaho Code. Any applicant who is denied certification shall be allowed the return of the certification fee portion of the application fee. (3-30-01)
- ~~e. Any applicant taking and passing the Idaho Veterinary Technician Jurisprudence Examination and not wanting to be certified at the next review by the Board shall be allowed the return of the certification fee portion of the application fee only. (3-30-01)~~

(BREAK IN CONTINUITY OF SECTIONS)

154. RECORD KEEPING STANDARDS.

Every veterinarian shall maintain daily medical records of the animals treated. These records may be computerized and shall be readily retrievable to be inspected, duplicated, or submitted when requested by the Board. All records, including electronic records, shall be safeguarded against loss, defacement, tampering, and use by unauthorized personnel. If changes are made to any records (either hard-copy or electronic), the records must clearly reflect what the change is, who made the change, when the change was made, and why. In the case of electronic records, the veterinarian shall keep either a duplicate hard-copy record or a back-up ~~unalterable~~ electronic record. Records shall be maintained for a period of three (3) years following the last treatment or examination. Patient medical records shall be maintained for every animal accepted and treated as an individual patient by a veterinarian, or for every animal group (for example, herd, litter, and flock) treated by a veterinarian. (3-30-07)()

- 01. Medical Records.** Medical records shall include, but not be limited to: (7-1-97)
 - a.** Name, address and phone number of the animal's owner or other caretaker. (7-1-97)
 - b.** Name and description, sex (if readily determinable), breed and age of animal; or description of group. (7-1-97)
 - c.** Dates (beginning and ending) of custody of the animal. (7-1-97)
 - d.** A short history of the animal's condition as it pertains to the animal's medical status. (7-1-97)
 - e.** Results and notation of examination, condition, and diagnosis suspected. (4-2-08)
 - f.** All medications, treatments, prescriptions or prophylaxis given, including amount, frequency, and route of administration for both inpatient and outpatient care. (3-29-10)
 - g.** Diagnostic and laboratory tests or techniques utilized, and results of each. (7-1-97)
 - h.** Written anesthesia records. (3-30-07)
- 02. Consent Forms.** Consent forms, signed by the patient's owner or other legal caretaker for each surgical or anesthesia procedure requiring hospitalization or euthanasia, shall be obtained, except in emergency situations, for each animal and shall be maintained on file with the practitioner. (3-30-07)
- 03. Postoperative Instructions.** Postoperative home-care instructions shall be provided in writing and be noted in the medical record. (3-30-07)
- 04. Treatment Records.** Veterinarians who practice with other veterinarians shall indicate by recognizable means on each patient's or animal group's medical record any treatment the veterinarian personally performed and which treatments and procedures were delegated to a technician or assistant to perform. (3-30-01)
- 05. Ownership of Medical Records.** Medical records are the personal property of the hospital or the proprietor of the practice that prepares them. Other veterinarians, including those providing subsequent health needs for a patient, and the patient's owner may receive within fourteen (14) calendar days, a copy or summary of the patient's medical record, upon the request of the patient's owner or other caretaker. Vaccination records shall be supplied within twenty-four (24) hours, unless the business is closed, in which case the records shall be provided within twenty-four (24) hours of resumption of business. ~~Veterinarians shall secure a written release to document that request.~~ (3-29-10)()
- 06. Diagnostic Image Identification and Ownership.** All diagnostic images shall be labeled in the emulsion film or digitally imprinted to identify the veterinarian or premise, the patient, the owner, the date, and anatomical orientation. A diagnostic image is the physical property of the hospital or the proprietor of the practice that prepares it, and it shall be released upon the request of another veterinarian who has the authorization of the owner of the animal to whom it pertains or to the Board. Such diagnostic images shall be returned within a reasonable time to the veterinarian who originally ordered them to be prepared. (4-2-08)

07. Estimates. A veterinarian shall make available to each client a written estimate on request. (3-30-07)

08. Controlled Substances and Prescription or Legend Drugs. A controlled substance is any substance classified by the federal Food and Drug Administration or the Idaho Board of Pharmacy in Schedules I through V of the state or federal Controlled Substances Act, Title 37, Chapter 27, Idaho Code, or 21 CFR 1308. A prescription or legend drug is any drug that under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements: "Caution federal law prohibits dispensing without a prescription"; or "RX Only"; or "Caution: Federal law restricts this drug to used by or on the order of a licensed veterinarian"; or a drug which is required by any applicable federal or state law or regulation or rule to be dispensed on prescription only, or is restricted to use by practitioners only. A veterinarian shall only dispense or distribute a controlled substance or prescription or legend drug within the context of a valid veterinarian/client/patient relationship as defined by Section 150 of these rules. (3-30-01)

a. Records shall be kept that account for all dispensed and distributed controlled substances and prescription or legend drugs. The records shall comply with all federal and state laws. All information required by statute shall be recorded in the patient record along with the initials of the veterinarian who authorized the dispensing or distribution of the controlled substances or prescription or legend drugs. (3-30-01)

b. A separate inventory record shall be kept for each controlled substance by name and strength. The record shall include: (7-1-97)

i. Records of the receipt, which include all information required by federal law, the date of the receipt, the amount received, the source of receipt, and the invoice number. (7-1-97)

ii. Records of dispensing, which include the date the controlled substance was dispensed, the amount dispensed, the animal's name, identification of the patient record, identification of the person who dispensed the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal law. (7-1-97)

c. Records for all dispensed or distributed prescription or legend drugs shall be maintained in the individual patient or herd record and shall include the date the drug was dispensed or distribution was authorized, the amount dispensed or distributed, identification of the person who dispensed or authorized distribution of the drug, identification of the veterinarian who supervised the dispensing and any other information required by federal or state law, regulation or rule. (3-30-01)

d. Prescription drug order means a lawful written or verbal order of a veterinarian for a drug. (3-30-01)

i. When prescription drug orders are issued by a licensed veterinarian to be distributed to the animal's owner or legal caretaker by a retail veterinary drug outlet, all orders for prescription or legend drugs shall be written on an official numbered three (3) part order form available through the Idaho Department of Agriculture. The veterinarian shall retain the second copy in his medical record and the original and one (1) copy shall be sent to the retail veterinary drug outlet. The retail veterinary drug outlet shall retain the original and attach the copy of the original to the order for delivery to the animal's owner or legal caretaker. (5-8-09)

ii. Under no circumstances shall a prescription or legend drug be distributed by a retail veterinary drug outlet to an animal's owner or legal caretaker prior to the issuance of either a written or oral prescription drug order from the veterinarian: (3-30-01)

(1) When a written prescription drug order from the veterinarian has been issued to a retail veterinary drug outlet, a copy of the veterinarian's original numbered prescription drug order shall be attached to the prescription or legend drugs that are delivered to the animal's owner or legal caretaker. (5-8-09)

(2) When a retail veterinary drug outlet receives an oral prescription drug order from the veterinarian, the oral order shall be promptly reduced to writing on a Department of Agriculture unnumbered telephone drug order

blank. A copy of this completed form shall be attached to the prescription or legend drugs that are delivered to the animal(s)'s owner or legal caretaker. (5-8-09)

(3) When a veterinarian issues an oral prescription drug order to a retail veterinary drug outlet, the oral order shall be followed by a written prescription drug order signed by the veterinarian using the official numbered three (3) part order form and procedures required under Subparagraph 154.08.d.i. of these rules. The written order shall be sent promptly by the veterinarian so that it is received by the retail veterinary drug outlet no later than seven (7) days after the retail veterinary drug outlet receives the oral order. The written confirmation order may be hand-delivered, mailed, faxed, attached to an e-mail, or otherwise properly delivered to the retail veterinary drug outlet. (3-29-10)

e. When prescription or legend drugs are dispensed, the labeling on all containers shall be in compliance with the requirements of Paragraph 153.01.d. of these rules. (3-30-01)

f. When controlled substances are dispensed, all containers shall be properly labeled with: (4-5-00)

i. The clinic's name, address, and phone number; (4-5-00)

ii. The name of the client and patient; (3-30-01)

iii. The drug name and quantity; and (3-30-01)

iv. The directions for use, including dosage and quantity. (3-30-01)

g. All controlled substances shall be stored, dispensed, and disposed of in accordance with the requirements of the Uniform Controlled Substances Law and Code of Federal Regulations. (3-29-10)

09. Return or Disposal of Expired Pharmaceuticals and Biologicals. Except for controlled substances, which shall be disposed of in accordance with Paragraph 154.08.g. of these rules, all pharmaceuticals and biologicals that have exceeded their expiration date shall be removed from inventory and disposed of appropriately. (3-29-10)

IDAPA 46 - BOARD OF VETERINARY MEDICINE

46.01.01 - RULES OF THE STATE OF IDAHO BOARD OF VETERINARY MEDICINE

DOCKET NO. 46-0101-1102 (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 54-2105 and 54-2107, Idaho Code.

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

**Monday, October 24, 2011
12:00 p.m. (noon) MDT**

**Idaho State Department of Agriculture
Conference Rooms A and B
2270 Old Penitentiary Road
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:

Budget projections show that the Board's Free Fund Balance will drop to an unacceptably low level in the next two (2) years. The Board's expenses have exceeded its revenue in four (4) of the past eight (8) years. In addition, the Board of Veterinary Medicine's licensing software must be replaced because it is obsolete, experiencing frequent malfunctions, and no longer meets the needs of the Board and its licensees and certificates; licensing software replacement is a substantial expense. The Board must be fiscally self-sufficient and set fees commensurate with its program costs.

The proposed rulemaking will amend Section 014 to increase most, but not all, of the initial application, renewal, and reinstatement licensing and certification fees for veterinarians, veterinary technicians, euthanasia agencies, and euthanasia technicians. Fees have not been increased since 1999.

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

1. Veterinarian Application and Original License Fee increased from \$200 to \$275.
2. Veterinarian Active License Annual Renewal Fee increased from \$125 to \$200.
3. Veterinarian Application and Original License Fee (License Without Clinical Competency Test Fee) increased from \$200 to \$275.
4. Veterinarian Active License Annual Renewal Fee (License Without Clinical Competency Test Fee) increased from \$125 to \$200.
5. Veterinarian License Reinstatement/Late Fee increased from \$50 to \$200.
6. Veterinarian Reactivation Fee (restore inactive license to active status) – New fee of \$150.
7. Veterinarian Temporary Permit Fee increased from \$100 to \$150.
8. Veterinarian License Verifications increased from \$10 to \$20.
9. Veterinary Technician Certification Application and Original Certification Fee increased from \$100 to \$125.
10. Veterinary Technician Certification Annual Renewal Fee increased from \$50 to \$75.
11. Veterinary Technician Certification Reinstatement/Late Fee increased from \$25 to \$50.
12. Certified Euthanasia Agency Certification Annual Renewal Fee increased from \$100 to \$200.
13. Certified Euthanasia Agency Certification Reinstatement/Late Fee increased from \$25 to \$50.

14. Certified Euthanasia Technician Certification Annual Renewal Fee increased from \$50 to \$100.
15. Certified Euthanasia Technician Certification Reinstatement/Late Fee increased from \$25 to \$50.

Fees are established as authorized by Sections 54-2105 and 54-2107, 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 as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to Section 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because of the need to establish and/or increase fees to rebuild the Board's reserve fund, cover expenses that have increased considerably since the last increase in 1999, and cover the costs of replacing the Board of Veterinary Medicine's licensing software. This will ensure that the Board remains fiscally self-sufficient and sets fees commensurate with its program costs. In essence, the proposed rulemaking has gone through a negotiated process since the fee increases have been on the Board's Agenda and discussed during at least two (2) regular Board meetings open to the public, the fee increases have been announced in numerous articles published in both the trade association newsletter and the Board's newsletter, and written comments received by the Board from affected licensees have been considered in the drafting of the rulemaking. Additionally, further public comment will be accepted at the Board's regularly scheduled meeting as noticed herein.

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 26, 2011.

DATED this 18th day of August, 2011.

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 OF FEE DOCKET NO. 46-0101-1102

014. FEES.

Fees are established as authorized under Title 54, Chapter 21, Idaho Code, by action of the Board as follows:

(7-1-97)

01. Veterinarian:

(3-18-99)

a. Application and Original License Fee (Section 54-2107, Idaho Code) - Two hundred ~~seventy-five~~ seventy-five dollars (~~\$20075~~). (3-30-01)()

- b. Annual Renewal Fee (Section 54-2112, Idaho Code). (3-18-99)
- i. Active License -- ~~One~~ **Two** hundred ~~twenty-five~~ dollars (~~\$125~~**200**); ~~(3-18-99)~~()
- ii. Inactive License -- Fifty dollars (\$50). (3-18-99)
- c. License Without Clinical Competency Test Fee (Section 54-2110, Idaho Code): (3-30-01)
- i. Application and Original License Fee -- Two hundred ~~seventy-five~~ dollars (~~\$200~~**75**); ~~(3-30-01)~~()
- ii. Annual Renewal Fee: (3-30-01)
- (1) Active License -- ~~One~~ **Two** hundred ~~twenty-five~~ dollars (~~\$125~~**200**); ~~(3-30-01)~~()
- (2) Inactive License -- Fifty dollars (\$50). (3-30-01)
- d. Reinstatement/Late Fee (Section 54-2112, Idaho Code) -- ~~Fifty~~ **Two hundred** dollars (~~\$50~~**200**). ~~(3-30-01)~~()
- e.** Reactivation Fee (restore inactive license to active status) -- One hundred fifty dollars (\$150); ()
- ef.** Temporary Permit Fee (Section 54-2111, Idaho Code) -- One hundred ~~fifty~~ dollars (~~\$105~~**0**). ~~(3-18-99)~~()
- fg.** License Verifications (Sections 54-2105(6) and 54-2112, Idaho Code) -- ~~Ten~~ **Twenty** dollars (~~\$10~~**20**). ~~(3-30-01)~~()
- g.** ~~National Qualification/Eligibility Review Fee (Section 54-2105(8)(d) and (f), Idaho Code) -- Fifty dollars (\$50).~~ ~~(3-30-01)~~()
- 042.** **Veterinary Technician Certification Fee.** (Section 54-2105(6)(d), Idaho Code). (3-30-01)
- a. Application and Original Certification Fee -- One hundred ~~twenty-five~~ dollars (~~\$100~~**25**). ~~(3-30-01)~~()
- b. Annual Renewal Fee -- ~~Fifty~~ **Seventy-five** dollars (~~\$50~~**75**). ~~(3-18-99)~~()
- c. Reinstatement/Late Fee -- ~~Twenty-five~~ **Fifty** dollars (~~\$25~~**50**). ~~(3-18-99)~~()
- d. Temporary Permit Fee -- Fifty dollars (\$50). (3-18-99)
- 023.** **Certified Euthanasia Agency Certification Fee.** (Section 54-2105(6)(d), Idaho Code). (3-30-01)
- a. Application and Original Certification Fee -- One hundred dollars (\$100). (3-30-01)
- b. Annual Renewal Fee -- ~~One~~ **Two** hundred dollars (~~\$1~~**200**). ~~(7-1-97)~~()
- c. Reinstatement/Late Fee -- ~~Twenty-five~~ **Fifty** dollars (~~\$25~~**50**). ~~(3-30-01)~~()
- 034.** **Certified Euthanasia Technician Certification Fee.** (Section 54-2105(6)(d), Idaho Code). (3-30-01)
- a. Training and Certification Fee -- One hundred dollars (\$100). (3-30-01)

- b. Annual Renewal Fee -- ~~Fifty~~ **One hundred** dollars (~~\$50~~**100**). ~~(3-18-99)~~()
- c. Reinstatement/Late Fee -- ~~Twenty-five~~ **Fifty** dollars (~~\$25~~**50**). ~~(3-30-01)~~()

05. Duplicate License and Certificate Fee -- Twenty-Five Dollars (\$25). When a new license, wall certificate or certification is issued for the purpose of changing the license or certificate holder's name, the request for name change must be accompanied by a copy of the court order or marriage license authorizing the name change and the current license, certification or original wall certificate shall be returned to the Board office. (3-30-01)

~~**06. Adjustment of Renewal Fees.** The Board may adjust renewal fees downward to a minimum of fifty dollars (\$50) for "active" license renewals and a minimum of twenty five (\$25) for "inactive" license renewals if, by majority vote of the Board members, the Board's free fund balance is sufficiently high. (3-18-99)~~

IDAPA 54 - OFFICE OF THE STATE TREASURER

54.01.01 - REPORTS FOR PUBLIC BOND ISSUES

DOCKET NO. 54-0101-1101 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2012 Idaho State Legislature for final approval. The pending rule becomes final and effective July 1, 2010, 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 67-1222, 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 3, 2011 Idaho Administrative Bulletin, Vol. 11-8, page 261](#).

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 Laura Steffler, Chief Deputy Treasurer, (208) 332-2999.

DATED this 31st day of August, 2011.

Ron Crane, Treasurer
Idaho State Treasurer
700 W. Jefferson St., Suite 126
P. O. Box 83720
Boise, ID 83720-0091
Phone: (208) 334-3200
Facsimile: (208) 332-3959

DOCKET NO. 54-0101-1101 - 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 11-8, August 3, 2011, page 261.

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS

DOCKET NO. 58-0108-1101

NOTICE OF INTENT TO PROMULGATE RULES - NEGOTIATED RULEMAKING

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

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

MEETING SCHEDULE: The negotiated rulemaking meetings will be held as follows. Additional meetings may be scheduled if necessary. For information regarding individual participation by telephone or scheduling of additional meetings, contact the undersigned. Individual requests to participate by telephone must be made by October 24, 2011.

October 26, 2011, 9 a.m. to 12:30 p.m. Mountain Time		
Department of Environmental Quality Conference Room A 1410 N. Hilton Boise, ID	Department of Environmental Quality 900 N. Skyline Suite B Idaho Falls, ID	Department of Environmental Quality 2110 Ironwood Parkway Coeur d'Alene, ID
November 8, 2011, 9 a.m. to 12:30 p.m. Mountain Time		
Department of Environmental Quality Conference Room A 1410 N. Hilton Boise, ID	Department of Environmental Quality 900 N. Skyline Suite B Idaho Falls, ID	Department of Environmental Quality 2110 Ironwood Parkway Coeur d'Alene, ID
December 1, 2011, 9 a.m. to 12:30 p.m. Mountain Time		
Department of Environmental Quality Conference Room A 1410 N. Hilton Boise, ID	Department of Environmental Quality 900 N. Skyline Suite B Idaho Falls, ID	Department of Environmental Quality 2110 Ironwood Parkway Coeur d'Alene, ID

PRELIMINARY DRAFT: By October 5, 2011, a preliminary draft of the rule can be obtained at <http://www.deq.idaho.gov/58-0108-1101-negotiated> or by contacting Paula Wilson at paula.wilson@deq.idaho.gov, (208)373-0418.

DESCRIPTIVE SUMMARY: This rulemaking has been initiated to make revisions to the Idaho Rules for Public Drinking Water Systems, 58.01.08, to define terminology and to establish consistent requirements for new water treatment technologies such as membrane filtration and ultra violet (UV) disinfection. The current rules do not adequately identify requirements for the design and operation of these systems.

The preliminary draft rule will include the following proposed revisions:

- 1) New sections for membrane filtration (Sections 525 and 526) and UV disinfection (Section 529), relatively new technologies that are becoming increasingly utilized in Idaho;
- 2) Reorganization of the preliminary engineering report requirements (Section 503);
- 3) Clarification of general requirements for pilot studies (Subsection 501.19);
- 4) Addition or revision of common definitions;
- 5) Clarification of language to improve usability; and
- 6) Typographical and nonsubstantive revisions for consistency with other sections in this rule chapter and other DEQ rules.

The text of the proposed rule will be drafted by DEQ in conjunction with a negotiating committee made up of persons having an interest in the development of this rule. Drinking water system owners and operators, developers, consultants, engineers, cities, counties, industry, drinking water professional organizations, and the public at large may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the spring of 2012 and then present the final proposal to the Board of Environmental Quality for adoption of a pending rule in the fall of 2012. If adopted by the Board, the pending rule will be reviewed by the 2013 Idaho Legislature.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the negotiated rulemaking, contact Mike Piechowski at mike.piechowski@deq.idaho.gov, (208)373-0274.

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 15, 2011.

For information regarding submission of written comments on subsequent drafts of the negotiated rule, to receive copies of submitted written comments, and to receive the most recent version of the draft negotiated rule, contact the undersigned.

Dated this 31st day of August, 2011.

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 60 - IDAHO SOIL & WATER CONSERVATION COMMISSION

60.05.04 - RULES GOVERNING ALLOCATION OF FUNDS TO CONSERVATION DISTRICTS

DOCKET NO. 60-0504-1101 (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 2012 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 this agency has adopted a pending rule. The action is authorized pursuant to Sections 22-2718 and 22-2727, 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:

There are no changes to the pending rule and it is being adopted as originally proposed. The complete text of the proposed rule was published in the [August 3, 2011 Idaho Administrative Bulletin, Vol. 11-8 pages 310 to 313](#).

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 Kristin Magruder, Program Specialist, 208-332-1790, Kristin.Magruder@swc.idaho.gov.

DATED this 31st day of August, 2011.

Kristin Magruder
Program Specialist
Idaho Soil & Water Conservation Commission
650 W. State St., Room 145
Boise, Idaho 83702
208-332-1790 / Fax 208-332-1799
Kristin.Magruder@swc.idaho.gov

DOCKET NO. 60-0504-1101 - 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 11-8, August 3, 2011, pages 310 through 313](#).

This rule has been adopted as a pending rule by the Agency and is now awaiting review and approval by the 2012 Idaho State Legislature for final adoption.

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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 26, 2011, unless otherwise listed.
(Temp & Prop) indicates the rule is both Temporary and Proposed.
(*PH) indicates that a public hearing has been scheduled.*

IDAPA 02 - IDAHO STATE DEPARTMENT OF AGRICULTURE PO Box 790, Boise, ID 83701

02-0104-1101, Rules Governing the Idaho Preferred® Promotion Program. Creates product definition and qualification criteria for lumber and further processed forest products.

02-0409-1101, Rules Governing Milk and Cream Procurement and Testing. Establishes specific parameters and protocols for milk component testing.

02-0418-1101, Rules Governing the CAFO Site Advisory Team. Updates incorporation by reference materials; adds new county CAFO definitions; establishes application fees for the CAFO Site Advisory Team; eliminates references to animal units; provides consistency in definitions with other rules.

02-0426-1101, Rules Governing Livestock Marketing. Provides that an annual market charter fee of \$100 with a renewal form prescribed by the department be submitted on or before May 1 of each year.

02-0430-1101, Rules Governing Nutrient Management. Defines poultry concentrated animal feeding operations; incorporates by reference the June 2007 Idaho Natural Resources Conservation Service Conservation Practice Standard, Nutrient Management Code 590 issued by the USDA.

02-0432-1101, Rules Governing Poultry Operations. Implements the Poultry Environmental Act, Title 25, Chapter 40, Idaho Code.

02-0602-1101, Rules Pertaining to the Idaho Commercial Feed Law. Incorporates by reference the 2012 AAFCO Official Publication.

02-0612-1101, Rules Pertaining to the Idaho Fertilizer Law. Incorporates by reference the 2012 AAPFCO Official Publication and the "2005 Official Methods of Analysis of the AOAC," 18th Edition; and changes the Enforcement Guidelines to Civil Penalties for consistency.

02-0620-1101, Rules Governing Grape Planting Stock. Clarifies and updates requirements for shipping grapevines into Idaho for planting.

02-0630-1101, Rules Under the Idaho Bee Inspection Law. Changes citations to Idaho Code; adds required sections; shifts inspection emphasis to certain diseases.

02-0641-1101, Rules Pertaining to the Idaho Soil and Plant Amendment Act of 2001. Incorporates by reference the 2012 Official Publication of the AAPFCO and the 2005 Official Methods of Analysis of the AOAC, 18th Edition;

removes the sub-section regarding PAM products; amends labeling requirements to include Guaranteed Analysis and directions for use.

IDAPA 03 - STATE ATHLETIC COMMISSION
700 W. State St., Boise, ID 83720-0063

03-0101-1101, Rules of the State Athletic Commission. Increases the application and renewal fees for a promoter, combatants and non-combatants, a matchmaker, and a ring official and application fee for a sanction permit.

IDAPA 05 - DEPARTMENT OF JUVENILE CORRECTIONS
954 W. Jefferson St., Boise ID 83702-0285

05-0102-1101, Rules and Standards for Secure Juvenile Detention Centers. Changes reflect current practices, clarifies language, and addresses the Prison Rape Elimination Act.

IDAPA 07 - DIVISION OF BUILDING SAFETY
P.O. Box 83720, Meridian, ID 83542

07-0103-1101, Rules of Electrical Licensing and Registration - General. Allows an initial renewal of an apprentice registration if applicant completes 2 years of approved schooling and 4,000 hours of work experience toward a journeyman license; limits renewals of apprentice registrations to one without a Board recommendation; requires the Division and Board to consider any extenuating circumstances that may prevent an applicant from completing the schooling and work requirements.

07.01.04 - Rules Governing Electrical Specialty Licensing

07-0104-1101, Allows an initial renewal of a specialty electrical trainee registration if applicant completes one year (2,000 hours) of work experience toward a specialty journeyman license; limits renewals of specialty trainee registrations to one without a Board recommendation; requires the Division and Board to consider any extenuating circumstances which may prevent an applicant from completing the schooling and work requirements.

07-0104-1102, Establishes an electrical specialty license category for the installation, maintenance, and repair of photovoltaic electrical DC systems and micro-inverter/AC systems to include all electrical equipment, wires, and accessories.

07-0105-1101, Rules Governing Examinations. Eliminates the 30-day waiting period after a first or second failed journeyman examination attempt.

07-0106-1101, Rules Governing the Use of National Electrical Code. Adopts the 2011 edition of the National Electric Code and eliminates the amendment to the NEC that requires use of arc fault circuit interrupter breakers in bedrooms.

07-0107-1101, Rules Governing Continuing Education Requirements. Adds a fee to cover cost of reviewing continuing education provider applications.

07.02.05 - Rules Governing Plumbing Safety Licensing

07-0205-1101, Establishes requirements for continuing education courses of instruction, the Division's procedures for approval of programs and providers, the fees associated with applications for approval, and requirements for credit.

07-0205-1102, Requires anyone who has previously been licensed in any jurisdiction as a journeyman or master plumber to disclose such licensure history upon application to prevent any such individual from obtaining an apprentice registration.

07-0205-1103, Allows an apprentice to take the written portion of the journeyman exam upon completion of a 4-year board approved course of instruction without achieving the required 8,000 hours of work experience, however, no journeyman license would be issued, despite successful completion of the written exam, until the apprentice achieves 8,000 hours of work experience and then successfully completes the practical portion of the journeyman exam.

07-0207-1101, Rules Governing Civil Penalties. Establishes a civil penalty for applicants who fail to disclose the required information on any Division plumbing application, including their licensure history and any previously held licenses.

07-0402-1101, Safety Rules For Elevators, Escalators, and Moving Walks. Incorporates by reference the 2010 edition of the Safety Code for Elevators and Escalators, with several amendments and other more specific installation standards; requires an accredited Elevator/Escalator certification organization (AECO) approval in accordance with ANSI standard A17.7 in any request for alternate technology or construction from the Division.

07-0501-1101, Rules of the Public Works Contractors License Board. Adds a fee for requesting an application filing extension for a public works contractor license; adds a provision and fee for service for expediting a public works contractor license application.

07.07.01 - Rules Governing Installation of Heating, Ventilation, and Air Conditioning Systems

07-0701-1101, Clarifies that HVAC contractors and specialty contractors must obtain a compliance bond in lieu of a performance bond, and that the bond must be effective for the entire duration of the 3-year licensing period; eliminates the need for different colored inspection tags and clarifies that unacceptable HVAC installations will receive a 'Notice of Correction' tag.

07-0701-1102, Eliminates the requirements related to the location and protection of the gas piping, regulators, and meters that are the responsibility of the utility company.

IDAPA 08 - STATE BOARD OF EDUCATION / STATE DEPARTMENT OF EDUCATION

P.O. Box 83720, Boise, ID 83720-0037

08-0104-1101, Residency Classification. Change allows Board to determine which institution makes the certification of determination of residency for the special graduate and professional programs based on the program.

08-0109-1101, Rules Governing the GEAR UP Idaho Scholarship Program. New chapter establishes eligibility requirements and the application process for students who have participated in the GEARUP Idaho program.

08-0111-1102, Registration of Post-Secondary Educational Institutions and Proprietary Schools. Adds new enforcement and student complaint processes required by both Idaho and federal law; clarifies the registration requirement for start-up entities; more clearly defines "Idaho presence"; clarifies approval standards for proprietary schools; eliminates language that allowed for an approval process for postsecondary institutions that were not accredited and clarifies that all postsecondary institutions must be accredited by a national accreditation organization.

08-0114-1101, Idaho Rural Physician Incentive Program. (Temp & Prop) Allows for the incentive program award to be made directly to the physician, rather than the lender, for qualified education debt; further clarifies definition of a health professional shortage area.

***08-0201-1101, Rules Governing Administration.** (*PH) Requires district negotiations with personnel to be conducted in open session in accordance with Idaho's open meeting law and prohibits the inclusion of any other items in a negotiated agreement; limits collective bargaining to compensation and benefits and clarifies definitions of both.

08.02.02 - Rules Governing Uniformity

***08-0202-1102,** (*PH) Northwest Association of Accredited Schools has changed its name to the Northwest Accreditation Commission.

***08-0202-1103,** (*PH) Requires an endorsement for the Exceptional Child Certificate; clarifies that the ENL endorsement language to mean modern foreign language; amends the school psychologist endorsement provision to accept national certification requirements for certification in Idaho.

***08-0202-1104,** (*PH) Allows for a three-year interim certificate to be issued to any Idaho-trained educator whose certificate has expired.

***08-0202-1105,** (*PH) Amends language to allow the accreditation process to remain focused on a single set of nationally recognized standards, yet retain necessary state control.

***08-0202-1106,** (*PH) Clarifies the new parent input and growth in student achievement requirements; makes the domains and components of the teacher evaluation framework more consistent with Charlotte Danielson's Framework for Teaching Second Edition.

08.02.03 - Rules Governing Thoroughness

08-0203-1102, Clarifies definition of "online course"; requires 2 credits of "online learning" for graduation and identifies an alternate measure for students who may not be successful in an online learning environment.

***08-0203-1103, (*PH)** Removes references to the Direct Writing Assessment (DWA) and Direct Math Assessment (DMA) tests.

***08-0203-1104, (*PH)** (Temp & Prop) Changes two aspects of high school graduation requirements: dual credit as it pertains to the senior project and college entrance exams.

IDAPA 11 - IDAHO STATE POLICE

700 S. Stratford Dr., Meridian, ID 83642-6202

11-1002-1101, Rules Establishing Fees for Services - Idaho Criminal Justice Information System. Increases fees for processing background checks or rolling fingerprints to cover costs of these services.

11.11.01 - Rules of the Idaho Peace Officer Standards and Training Council

11-1101-1101, Defines the terms “direction” and “supervision” as it relates to reserve officers; establishes that the Basic Misdemeanor Probation Academy may operate as a closed campus if POST has dorm space available; clarifies that a student must attend all basic academy classes to successfully complete the course; establishes criteria for obtaining credit toward higher certifications for officers who formerly served as military law enforcement officers; removes requirement that communications specialists meet minimum employment standards for age and traffic record; removes obsolete references to the Advanced Dispatch Academy; clarifies language regarding canine team training and certification requirements; and updates explosive substances list used for detection canine team certification.

11-1101-1102, Requires POST Division Administrator to report decertification proceedings to the Council on a regular basis; identifies conduct that may constitute cause for decertification; requires an officer charged with a felony or misdemeanor to notify his agency head within 5 business days and requires an agency head to notify POST within 14 days of learning of the charge; allows an agency head intending to hire a decertified officer to petition the Council for reconsideration for law enforcement officer employment 10 years after the date the officer was decertified; establishes the due process procedures.

11-1101-1103, Removes provision that allowed the POST Council to grant a waiver for a felony conviction if the crime has, by statute, been reduced to a misdemeanor or decriminalized.

11-1102-1101, Rules of the Idaho Peace Officer Standards and Training Council for Juvenile Detention Officers. Allows a POST-certified detention officer who does not change employers but simply takes on juvenile detention responsibilities to qualify for juvenile detention certification without having to meet the minimum hearing and vision standards again.

11-1106-1101, Rules of the Idaho Peace Officer Standards and Training Council for Misdemeanor Probation Officers. Allows POST to certify Misdemeanor Probation Officers employed by a private contractor.

IDAPA 12 - DEPARTMENT OF FINANCE

800 Park Blvd., Suite 200, Boise, ID 83712

12-0110-1101, Rules Pursuant to the Idaho Residential Mortgage Practices Act. Updates references to federal laws and regulations to “January 1, 2011” and clarifies that use of the Nationwide Mortgage Licensing System and Registry by Idaho mortgage brokers/lenders/originators for license issuance and maintenance is required.

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

P.O. Box 25, Boise, ID 83707

13-0102-1101, Rules Governing Public Safety. (Temp & Prop) Provides for an exemption from the live fire requirement of hunter education certification for persons with military and peace officer training.

13.01.04 - Rules Governing Licensing

13-0104-1101, (Temp & Prop) Allows nonresident disabled veterans to receive reduced fees for certain licenses and tags for specific hunts; provides specific rules for bighorn sheep auction and lottery tags to accommodate proxy bidders but prevent tag resale; and sets nonresident tag and outfitter set-aside quotas.

13-0104-1102, Provides consistency in tag allocation for the Landowner Appreciation Program and provides incentives for landowners in certain units who provide benefits for wildlife, wildlife habitat, or sportsmen.

13-0105-1101, Rules Governing Fishing Contests. Clarifies and simplifies the definition of “fishing contest”.

13-0106-1101, Rules Governing Classification and Protection of Wildlife. Changes classification name for Leatherside chub and Bluehead sucker to comply with recent research.

13-0108-1101, Rules Governing the Taking of Big Game Animals in the State of Idaho. (Temp & Prop) Deletes references to a wolf trapping permit; allows wolf trapping near naturally deceased big game carcasses; and clarifies and adjusts certain Big Game Management Unit descriptions.

13-0109-1101, Rules Governing the Taking of Game Birds in the State of Idaho. (Temp & Prop) Amends the Youth Waterfowl Day to correspond to the federal age qualification; removes obsolete references to seasons, bag limits, and possession limits which are set by Commission Proclamation.

13-0110-1101, Rules Governing the Importation, Possession, Release, Sale, or Salvage of Wildlife. Allows increased salvage of commercially valuable wildlife.

13-0111-1101, Rules Governing Fish. (Temp & Prop) Amends and simplifies certain definitions; specifies the conditions by which legally-harvested hatchery steelhead and salmon may be transported without tails and heads attached; prohibits marking and releasing fish without a collecting permit; allows use of a gaff hook when harvesting nongame fish taken with archery equipment.

13-0112-1101, Rules Governing Commercial Fishing. Removes mountain sucker from the list of fish species that may be commercially harvested.

13-0116-1101, Rules Governing the Trapping of Predatory and Unprotected Wildlife and the Taking of Furbearing Animals. (Temp & Prop) Adjusts setting of trapping closures near campgrounds and picnic areas; provides detail specifications on trap break-away devices; specifies allowable jaw size for foothold traps in ground sets; and sets wolf trap equipment specifications.

IDAPA 15 - OFFICE OF THE GOVERNOR

15.02 - COMMISSION FOR THE BLIND AND VISUALLY IMPAIRED

P.O. Box 83720, Boise, ID 83720-0012

15-0202-1101, Vocational Rehabilitation Services. Adds a policy outlining Information and Referral; changes the application for VR services to indicate all ways that a client is considered to have applied; removes the policy citing financial participation for clients that received SSA benefits in compliance with federal regulations; changes the VR payment policy related to maintenance; adds a policy that defines what the information and referral process is for ICBVI's VR program.

15.04 - DIVISION OF HUMAN RESOURCES AND PERSONNEL COMMISSION

P.O. Box 83720, Boise, ID 83720-0066

15-0401-1101, Rules of the Division of Human Resources and Idaho Personnel Commission. (Temp & Prop) Expands veterans' preference for disabled veterans to require an interview when a disabled veteran's name appears in the top 25 of a hiring list; clarifies that temporary service would apply towards entrance probation and acting appointment service would apply towards promotional probation.

15.10 - IDAHO STATE LIQUOR DIVISION

P.O. Box 179001, Boise, ID 83717-9001

15-1001-1101, Rules of the Idaho State Liquor Division. Aligns rules to long-standing agency business practices and procedures by amending definitions to more accurately reflect terminology used in ISLD day-to-day operations; clarifies ambiguous language and eliminates unnecessary terms.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

P.O. Box 83720, Boise, ID 83720-0036

16-0301-1101, Eligibility for Health Care Assistance for Families and Children. Aligns rule with other Department

eligibility assistance program rules regarding business processes by adding a self-employment standard deduction for allowable expenses and excluding veterans' educational payments.

16-0304-1101, Rules Governing the Food Stamp Program in Idaho. Changes allow households to conduct business with the Department electronically and allows Department to e-mail notices to participants; streamlines the process for determining student eligibility and recertification for simplified reporting households; adds a Job Search Assistance Program exemption for women in their third trimester of pregnancy; refines the definition of prohibited participation; ensures Idaho's compliance with federal food stamp regulations.

16-0305-1102, Rules Governing Eligibility for Aid to the Aged, Blind, and Disabled (AABD). Aligns rule with other Department eligibility assistance program rules regarding business processes to improve the outcomes for individuals in need of assistance by adding a self-employment standard deduction for allowable expenses and excluding veterans' educational payments.

16-0308-1101, Rules Governing the Temporary Assistance for Families in Idaho (TAFI) Program. Standardizes household composition, income, resources and application time frames; allows Department to collect in all situations involving TAFI overpayments; clarifies how actions impact TAFI time limits for eligible recipients.

16.03.09, Medicaid Basic Plan Benefits

***16-0309-1105, (Temp & Prop) (*PH)** Requires mental health agency providers to meet national accreditation standards per HB 260 (2011).

***16-0309-1106, (*PH)** Provides for the administration of and establishes policies needed to pay for Certified Professional Midwife Services.

***16-0309-1107, (*PH)** Limits benefits to eligible participants of the medical assistance program for physical therapy, speech therapy, and occupational therapy services to meet the Medicare caps.

16-0309-1108, Clarifies Medicaid's reimbursement policies to providers for non-Medicare coordination of benefits when a third party payor (insurance company) reimburses a provider for services, or when the Department determines that a third party liability exists.

***16-0318-1101, Medicaid Cost-Sharing.** (Temp & Prop) (*PH) Establishes enforceable cost sharing in the form of copayments and provides language regarding when copayments can be charged for participants for chiropractic, podiatry, optometry, physical therapy, occupational therapy, speech therapy, physician office visits, and outpatient hospital services.

16-0414-1101, Rules Governing Low Income Home Energy Assistance Program. Aligns income eligibility with the Food Stamp and SSI eligibility requirements that are 150% of the Federal Poverty Guidelines.

IDAPA 17 - INDUSTRIAL COMMISSION

P.O. Box 83720, Boise, ID 83720-0041

17-0209-1102, Medical Fees. Provides the annual adjustment of the medical fee schedule for physician reimbursement and removes reference to individual status codes.

***17-0211-1101, Rules Governing Security For Compensation - Self-Insured Employers.** (*PH) Adds to the requirements for public and private employers applying for approval to become self-insured; expands on the acceptable forms of security; adds provisions to better ensure that security deposits are sufficient to cover the employer's liabilities and provides credit for excess insurance policies; changes the reporting requirements and forms to capture the outstanding liabilities of a self-insured employer for workers' compensation which helps in determining their security deposit requirements and ensures injured workers are adequately covered.

IDAPA 18 - DEPARTMENT OF INSURANCE

PO Box 83720, Boise, ID 83720-0063

18-0146-1101, Recognition of New Mortality Tables for Use in Determining the Minimum Standard of Valuation for Annuities and Pure Endowment Contracts. Adds two new permitted mortality tables for use in determining the minimum standard of valuation for annuity and pure endowment contracts by life and annuity insurance companies operating in Idaho.

18-0150-1101, Adoption of the International Fire Code. Prevents the adopted fire code from interfering with a governmental entity's ability to establish conditions of employment; restores an exemption for the placement of fire extinguishers for certain types of building uses; clarifies when fire sprinklers are required in a building selling upholstered furniture.

IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY

350 N. 9th St. Ste M-100, Boise, ID 83702

***19-0101-1102, Rules of the State Board of Dentistry.** (*PH) Allows qualified dentists to administer moderate enteral sedation to patients who are 16 years of age and older and 100 pounds and over.

IDAPA 20 - DEPARTMENT OF LANDS

300 N 6th Street, Suite 103, Boise, ID 83720

20-0315-1102, Rules Governing the Issuance of Geothermal Leases. Clarifies definitions; most leases would be initially offered at auction instead of on a first-come basis; extends lease term up to 49 years; requires timely exploration and development of lease or it may be cancelled; clarifies exploration and development requirements; geothermal rents and royalties would be determined through bidding or set by the board according to market rates; size of a lease is not restricted and will be determined by the Land Board; requires reinjection of surplus geothermal water to recharge the geothermal aquifer; limits to one year the confidentiality of well logs; bond amounts are to be determined based on the costs of reclamation; increases application fees.

20-0702-1102, Rules Governing Oil and Gas Conservation in the State of Idaho. Clarifies definitions; expands well drilling permit requirements to ensure department's ability to properly review them; adds public comment period on applications; adds application, operating, and reporting requirements for well treatments, including hydraulic fracturing; increases bond amounts and adds additional bonding requirements; provides basic surface owner protections and expands geophysical exploration requirements; modifies well drilling and plugging rules and adds periodic testing of well integrity to better prevent waste and protect fresh waters; adds comprehensive pit requirements and surface reclamation standards; clarifies well completion and well log reporting; defines active and inactive wells to reduce the potential liability of abandoned wells; Class II injection wells are no longer permitted under this rule; adds basic emergency response requirements to address public safety and fire issues; upgrades or adds to rules addressing wellhead equipment, tools with radioactive material, the pulling of casing, gas-oil ratios, and multiple zone completions to prevent waste, protect correlative rights, and protect fresh water supplies; clarifies the responsibilities of the department and the Oil and Gas Conservation Commission; incorporates industry standards by reference.

IDAPA 21 - DIVISION OF VETERANS SERVICES

P.O. Box 83720, Boise, ID 83720-0092

***21-0107-1101, Rules for Education and Training Programs for Veterans.** (*PH) New chapter transfers and revises the rules governing the Division of Veterans Services' administration of federal requirements for Veterans Education Programs.

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

700 W. State St., Boise, ID 83702

24-0101-1101, Rules of the Board of Architectural Examiners. Updates the incorporation by reference of the NCARB Handbook for Interns and Architects and the Rules of Conduct to the latest editions; effective January 1, 2014, the continuing education requirements change and the number of required hours increases to 12.

24-0501-1101, Rules of the Board of Drinking Water and Wastewater Professionals. Clarifies and updates the rules to align them with current national standards; streamlines process to reduce the length of time it takes to reach various license classes.

24-1101-1101, Rules of the State Board of Podiatry. Increases the annual renewal fee to \$500.

24-1301-1101, Rules of the Physical Therapy Licensure Board. Amends the continuing education requirements to allow for additional credit and courses that may be pre-approved.

24-1401-1101, Rules of the State Board of Social Work Examiners. Clarifies accreditation requirements for approved colleges and universities and clarifies an approved social work program to bring training in line with national standards.

24-1501-1101, Rules of the Idaho Licensing Board of Professional Counselors and Marriage and Family Therapists. Amendments update rule to current standards, provide clarification, and simplify licensure by endorsement.

24-1701-1101, Rules of the State Board of Acupuncture. (Temp & Prop) Complies with HB 46 (2011) by replacing the technician certificate with the acupuncture trainee permit.

24-1801-1101, Rules of the Real Estate Appraiser Board. Updates incorporation by reference of the Uniform Standards of Professional Appraisal Practice; clarifies definitions; establishes the CE provider fee and increases license fees; updates the application section; clarifies licensure qualifications; clarifies and amends the registered trainee section; clarifies the requirements for certified residential appraisers and the qualifications for certified general appraisers; amends the continuing education section to allow CE in a 2-year cycle; amends the temporary practice to require applicants to be listed on the National Registry as proof of licensure.

**IDAPA 27 - IDAHO STATE BOARD OF PHARMACY
P.O. Box 83720, Boise, ID 83720-0067**

27.01.01 - Rules of the Idaho State Board of Pharmacy

27-0101-1101, Chapter repeal.

27-0101-1102, Chapter rewrite reorganizes the Board's rules, provides a more comprehensive list of definitions and fee schedules, and provides new rules affecting the practice of pharmacy and controlled substance registrants not previously addressed, including the provisions of a waiver or variance to rule, mandated electronic record keeping systems, automated dispensing and storage systems, sterile product preparation, pharmacy closing procedures, and drug manufacturer rules; expands existing rule that address limited service pharmacy, remote dispensing site registration, unprofessional conduct, student pharmacist practice standards, and institutional pharmacy practice standards; amends provisions for parental admixture pharmacy, registration and licensure, records retention, labeling, technicians, controlled substance inventory, pharmacy security, durable medical equipment outlets, and veterinary drug orders; reduces provisions for therapeutic equivalents, pharmacy minimum standards, space and fixtures, home health care nursing, and pharmacy advertising; eliminates redundant rules including student pharmacist experience hours, preceptor site registration, poison control, and many paper reports.

**IDAPA 31 - IDAHO PUBLIC UTILITIES COMMISSION
P.O. Box 83720, Boise, ID 83720-0074**

31-1101-1101, Safety and Accident Reporting Rules for Utilities Regulated by the Idaho Public Utilities Commission. Update four safety rules by adopting the 2012 edition of the NESC, the 2012 edition of the IMC, and the 2012 edition of the IFGC, and the October 1, 2011 edition of the pipeline safety CFRs and 18 C.F.R. Part 260.9.

31-7103-1101, Railroad Safety and Accident Reporting Rules. Adopts by reference the 2011 edition of the CFR pertaining to the transportation of hazardous materials by railroads issued by the federal Pipeline and Hazardous Material Safety Administration.

**IDAPA 35 - STATE TAX COMMISSION
PO Box 36, Boise, ID 83722-0410**

35-0101-1102, Income Tax Administrative Rules. Addresses the effective date, closed years or issues, and transactions before an effective date of the rules in this chapter; conforms to changes to the Servicemembers Civil Relief Act; amends rule so exemption for income earned on an Indian reservation matches the federal law; adjusts the tax brackets for 2011; removes information related to the standard deduction for tax year 1999; clarifies that real property must be held 12 months to qualify as required by law; addresses when interest and dividend income is received by a part-year resident; addresses the sourcing of guaranteed payments and distributions in excess of basis that a nonresident individual partner would report to Idaho; changes when a nonresident is ineligible to elect to have

a pass-through entity pay his tax on such income; addresses the amount of a suspended passive activity loss a part-year resident is allowed to deduct on their Idaho return; provides more information on what constitutes an Idaho work day; clarifies what qualifies as investment income for nonresidents; addresses how the receipts from stock sales in another corporation will be sourced for purposes of the sales factor numerator when it represents the sale of operational assets of a business; corrects the types of contributions that qualify for the credit; addresses how the investment tax credit may be shared in the year a corporation with ITC is acquired; revises the income tax credit allowed for qualifying new employees; modifies the base on which backup withholding is computed from actual distributions to distributive or pro rata income; provides individuals with additional time to receive a refund of withholding if they receive a filing extension.

35-0102-1101, Sales Tax Administrative Rules. Exempts all gratuities, whether voluntary or mandatory, if the gratuity is given for services provided as a supplement to the income of the service provider; exempts the use of motor vehicles by nonresident college students in the state of Idaho; clarifies where in rule the Red Cross's sales and use tax responsibility should be addressed; establishes that the state of Idaho cannot require the federal government or its instrumentalities to collect sales tax on any sales and that the Red Cross is an instrumentality of the federal government for purposes of sales and use tax; addresses the altered appearance of the diplomatic exemption card system; exempts the use of motor vehicles by nonresident college students in Idaho; exempts all purchases made by temporarily assigned military personnel more than 90 days prior to moving to Idaho; amends definition of a nonresident company to say that it is not required to be registered with the Idaho Secretary of State; changes the definition of 'currency operated amusement devices' to included credit and debit card machines, changes requirement from a specific location on the device to any easily visible place on the device, and requires another permit to be affixed to a device in the event of a lost, stolen, or destroyed permit.

35-0105-1101, Idaho Motor Fuels Tax Administrative Rules. Amends a provision to provide the Tax Commission greater flexibility when determining whether a fuel distributor's bond exemption should be terminated because the fuel distributor is no longer financially responsible.

35-0107-1101, Kilowatt Hour Tax Administrative Rules. Makes the change from monthly to quarterly filing of the kilowatt hour tax return discretionary, subject to Tax Commission approval.

35-0108-1101, Mine License Tax Administrative Rules. Includes additional examples of what constitutes a valuable mineral typically found in Idaho that is subject to the mine license tax.

35-0201-1101, Tax Commission Administration and Enforcement Rules. Adds the interest rate and applicable Revenue Ruling for calendar year 2012 to the table that identifies this information by year; provides an exchange of information agreement between the Tax Commission and the State Treasurer; adds the applicable code section to the title of the rule and the information that may be exchanged with the State Treasurer's office in the applicable subsection.

IDAPA 37 - DEPARTMENT OF WATER RESOURCES

PO Box 83720, Boise, ID 83720-0098

***37-0302-1101, Beneficial Use Examination Rules.** (*PH) Clarifies that examinations for some water rights may be conducted without an "on-site" inspection; clarifies when the examiner must report an annual diversion volume and how annual diversion volumes are determined; requires submission of an aerial photograph with all field reports; removes the water measurement exemption for diversion systems where IDWR did not require the permit holder to install a measuring device or access port; clarifies that IDWR employees are not CWREs, but they may be authorized by the Director to conduct beneficial use examinations; conforms descriptions of large tracts of irrigated land to Idaho Code; establishes that irrigated acreage will be reported to the tenth of an acre for parcels of land covering less than 10 acres.

IDAPA 39 - IDAHO TRANSPORTATION DEPARTMENT

PO Box 7129, Boise ID 83707-1129

39-0276-1101, Rules Governing Driver's License Renewal-By-Mail Process. Documents procedural changes to match current practice; sets limitations on electronic or mail renewals for those who may or may not have a lawful presence in the US; adds provisions for "electronic renewal" that is part of the current DMV modernization plan.

**IDAPA 46 - BOARD OF VETERINARY MEDICINE
PO Box 7249, Boise, ID 83707**

46.01.01 - Rules of the State of Idaho Board of Veterinary Medicine

***46-0101-1101, (*PH)** Deletes requirement for the Board to determine candidate eligibility to take the national exam; veterinary technician applicants who withdraw their applications will not receive fee refunds; clarifies requirements when revisions to both paper and electronic patient records are made; deletes requirement for a written release from the owner prior to transfers of patient medical information.

***46-0101-1102, (*PH)** Increases most, but not all, of the initial application, renewal, and reinstatement licensing and certification fees for veterinarians, veterinary technicians, euthanasia agencies, and euthanasia technicians.

NOTICE OF ADOPTION OF TEMPORARY RULE ONLY

State Board of Education

08-0111-1101, Registration of Post-Secondary Educational Institutions and Proprietary Schools

Idaho Fish and Game Commission

13-0104-1103, Rules Governing Licensing

NOTICE OF PROCLAMATION OF RULEMAKING

State Board of Correction

06-0101-1101, Rules of the Idaho State Board of Correction (effective date 11/4/11)

Idaho Fish and Game Commission

13-0108-1102P and 13-0108-1103P, Rules Governing the Taking of Big Game Animals in the State of Idaho

13-0109-1102P and 13-0109-1103P, Rules Governing the Taking of Game Birds in the State of Idaho

13-0111-1102P, Rules Governing Fish

NOTICE OF SCHEDULED NEGOTIATED RULEMAKING MEETINGS

Department of Environmental Quality

58-0108-1101, Idaho Rules For Public Drinking Water Systems

Please refer to the Idaho Administrative Bulletin, **October 5, 2011, Volume 11-10**, 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 adminrules.idaho.gov.

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*

April 7, 2011 -- October 5, 2011

*(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 April 7, 2011 that have not been
adopted as final rules and all rulemakings being promulgated after April 7, 2011 - Sine Die.)*

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02-0104-1101 Proposed Rulemaking, Bulletin Vol. 11-10
- 02.02.14, Rules for Weights and Measures***
02-0214-1101 Proposed Rulemaking, Bulletin Vol. 11-8
- 02.03.03, Rules Governing Pesticide and Chemigation Use and Application***
02-0303-1101 Proposed Rulemaking, Bulletin Vol. 11-8
- 02.04.09 - Rules Governing Milk and Cream Procurement and Testing***
02-0409-1101 Proposed Rulemaking, Bulletin Vol. 11-10
- 02.04.14, Rules Governing Dairy Waste***
02-0414-0902 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 09-10
- 02.04.18, Rules Governing CAFO Site Advisory Team***
02-0418-1101 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 11-7
02-0418-1101 Proposed Rulemaking, Bulletin Vol. 11-10
- 02.04.20, Rules Governing Brucellosis***
02-0420-1101 Temporary and Proposed Rulemaking, Bulletin Vol. 11-6 (eff. 5-1-11)T
- 02.04.26, Rules Governing Livestock Marketing***
02-0426-1101 Proposed Rulemaking (Fee Rule), Bulletin Vol. 11-10
- 02.04.30, Rules Governing Nutrient Management***
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02-0613-0801 Notice of Intent to Promulgate Rules - Negotiated Rulemaking, Bulletin Vol. 08-9
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- 02.06.02, Rules Pertaining to the Idaho Commercial Feed Law***
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